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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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IN RE: OIL SPILL BY THE
OIL RIG *DEEPWATER HORIZON*
IN THE GULF OF MEXICO ON
APRIL 20, 2010
CIVIL

Docket No. MDL-2179
Section "J"
New Orleans, LA
Thursday, January 22, 2015

THIS DOCUMENT RELATES TO:

UNITED STATES OF AMERICA

Docket No. 10-CV-4536
Section "J"

V.

BP EXPLORATION & PRODUCTION,
INC., ET AL

TRANSCRIPT OF TRIAL PROCEEDINGS
HEARD BEFORE THE HONORABLE CARL J. BARBIER
UNITED STATES DISTRICT JUDGE
VOLUME III, MORNING SESSION

APPEARANCES:

FOR THE UNITED STATES
OF AMERICA:

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENTAL ENFORCEMENT SECTION
BY: SARAH HIMMELHOCH, ESQ.
STEVE O'ROURKE, ESQ.
ABIGAIL ANDRE, ESQ.
PATRICK CASEY, ESQ.
NANCY FLICKINGER, ESQ.
RICHARD GLADSTEIN, ESQ.
MICHAEL ZEVENBERGEN, ESQ.
A. NATHANIEL CHAKERES, ESQ.
DANIELLE FIDLER, ESQ.
RACHEL HANKEY, ESQ.
JUDITH HARVEY, ESQ.
RACHEL KING, ESQ.
BRANDON ROBERS, ESQ.
ERICA PENCAK, ESQ.
GORDON YOUNG, ESQ.

P.O. Box 7611
Washington, DC 20044

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U.S. DEPARTMENT OF JUSTICE
TORTS BRANCH, CIVIL DIVISION
BY: SHARON SHUTLER, ESQ.
MALINDA LAWRENCE, ESQ.
LAURA MAYBERRY, ESQ.
P.O. Box 14271
Washington, D.C. 20004

FOR BP AMERICA INC., BP
AMERICA PRODUCTION COMPANY,
BP COMPANY NORTH AMERICA,
INC., BP CORPORATION NORTH
AMERICA, INC., BP EXPLORATION &
PRODUCTION INC., BP HOLDINGS
NORTH AMERICA LIMITED, BP
PRODUCTS NORTH AMERICA INC.:

KIRKLAND & ELLIS
BY: J. ANDREW LANGAN, ESQ.
MATTHEW T. REGAN, ESQ.
HARIKLIA KARIS, ESQ.
MARK J. NOMEILLINI, ESQ.
A. KATRINE JAKOLA, ESQ.
300 N. LaSalle
Chicago, IL 60654

KIRKLAND & ELLIS
BY: ROBERT C. "MIKE" BROCK, ESQ.
KIMBERLY BRANSCOME, ESQ.
655 Fifteenth St., N.W.
Washington, D.C. 20005

LISKOW & LEWIS
BY: R. KEITH JARRETT, ESQ.
One Shell Square
701 Poydras St., Suite 5000
New Orleans, LA 70139

FOR ANADARKO PETROLEUM
CORPORATION, ANADARKO E&P
COMPANY, LP:

BINGHAM McCUTCHEM
BY: KY E. KIRBY, ESQ.
THOMAS R. LOTTERMAN, ESQ.
2020 K Street, N.W.
Washington, D.C. 20006

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18
19
20
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24
25

MORGAN LEWIS & BOCKIUS
BY: JAMES J. DRAGNA, ESQ.
355 South Grand Ave, Suite 4400
Los Angeles, CA 90071

FOR THE STATE OF LOUISIANA:

KANNER & WHITELEY
BY: ALLAN KANNER, ESQ.
DOUGLAS R. KRAUS, ESQ.
SUSANNAH MCKINNEY, ESQ.
CYNTHIA ST. AMANT, ESQ.
701 Camp St.
New Orleans, LA 70130

OFFICIAL COURT REPORTER:

Karen A. Ibos, CCR, RPR, CRR, RMR
500 Poydras Street, Box 2-13
New Orleans, LA 70130
(504) 589-7776

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I N D E X

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P R O C E E D I N G S

(THURSDAY, JANUARY 22, 2015)

(MORNING SESSION)

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5 (OPEN COURT.)

6 THE COURT: Good morning, everyone. All right. Before we
7 begin, let me just announce the time that has been used by the
8 parties. United States has used seven hours, 57 minutes; has
9 37 hours, three minutes remaining. BP Anadarko have used seven
10 hours, 46 minutes, and have 37 hours, 14 minutes remaining.

11 One more thing while I'm thinking about it. Today,
12 regardless of where we are in the testimony of whatever witness is
13 on the stand, I have to break at 11:50, and we will break from 11:50
14 to 1 o'clock. I have an en banc meeting to attend at noon. So just
15 heads up on that.

16 Somebody made a request for -- Ms. Himmelhoch, I think
17 it's you, right?

18 MS. HIMMELHOCH: Yes, I requested we have our morning
19 break a little early, between the direct and cross of Dr. Mason, for
20 physical reasons.

21 THE COURT: Okay. We can probably accommodate that.

22 MS. HIMMELHOCH: Thank you, your Honor.

23 We have a couple of document admission procedures to go
24 through.

25 THE COURT: Okay.

08:08:04 1 MR. ROBERS: Good morning, your Honor. Brandon Robers for
08:08:05 2 the United States.

08:08:06 3 THE COURT: Good morning.

08:08:07 4 MR. ROBERS: I have here two lists that have been
08:08:09 5 circulated to the parties. The first is documents used and offered
08:08:13 6 in connection with the testimony of Dr. Richard Clapp, and the
08:08:17 7 second is documents offered in connection with the examination of
08:08:21 8 Rear Admiral Meredith Austin.

08:08:24 9 THE COURT: Okay. Are there any objections?

08:08:26 10 MS. KARIS: Not to those, your Honor.

08:08:28 11 MR. LOTTERMAN: No, your Honor.

08:08:29 12 THE COURT: All right, fine. So those are admitted
08:08:32 13 without objection.

08:08:37 14 MS. KARIS: Hariklia Karis for BP. We have circulated
08:08:43 15 lists of exhibits for Meredith Austin as well as for Dr. Diane
08:08:48 16 Austin, and we would move for the admission of those documents at
08:08:51 17 this time.

08:08:51 18 THE COURT: All right. Any objection from the government
08:08:52 19 on those?

08:08:53 20 MR. ROBERS: None, your Honor.

08:08:54 21 THE COURT: All right. Without objection, those are
08:08:56 22 admitted.

08:08:57 23 MS. KARIS: Thank you.

08:08:57 24 THE COURT: Sure. All right, any other preliminary
08:09:04 25 matters before we resume testimony? Apparently not.

08:09:09 1 MS. HIMMELHOCH: Good morning, your Honor, Sarah
08:09:11 2 Himmelhoch for the United States. We will begin with a ten-minute
08:09:14 3 video deposition of Captain Laferriere, and then we will proceed
08:09:19 4 with our witnesses. We will have two other short videos before
08:09:22 5 that.

08:09:22 6 Before we begin, I just want to make a note. We've seen a
08:09:25 7 couple of the fact witnesses in the hallway and we just wanted to
08:09:29 8 confirm the understanding that sequestration is in place as it was
08:09:32 9 in the other phases. We did sequester witness and we just want to
08:09:37 10 confirm.

08:09:38 11 THE COURT: Fine with me. I don't think we actually
08:09:40 12 stated that on the record, but does everyone understand that?

08:09:43 13 MR. BROCK: Our fact witnesses have not been here and will
08:09:46 14 not be in the courtroom.

08:09:48 15 THE COURT: Let's just make sure everybody understands:
08:09:49 16 You keep your fact witnesses outside of the courtroom until they're
08:09:52 17 called to testify. Okay.

08:09:54 18 MS. HIMMELHOCH: Thank you, your Honor.

08:09:55 19 THE COURT: All right. Sure. Okay.

08:10:00 20 (WHEREUPON, THE VIDEO DEPOSITION OF ROGER R. LAFERRIERE WAS
08:10:07 21 PLAYED.)

08:10:07 22 THE COURT: Just a minute.

08:10:30 23 (VIDEO PAUSED.)

08:10:32 24 THE COURT: Go ahead and start it over since I interrupted
08:10:34 25 you.

08:10:36 1 (VIDEO RESUMED.)

08:22:40 2 THE COURT: Stop this for one second.

08:22:43 3 (VIDEO PAUSED.)

08:22:43 4 MS. HIMMELHOCH: Your Honor, that was the last repeat and
08:22:45 5 I do apologize for that.

08:22:46 6 THE COURT: There are two or three places where you're
08:22:49 7 just repeating the same testimony.

08:22:50 8 MS. HIMMELHOCH: It was twice and I don't understand why
08:22:52 9 that happened. It will not happen on the other clips, I promise.

08:22:56 10 THE COURT: All right. Thank you. Let's proceed.

08:23:06 11 MS. HIMMELHOCH: We're almost done.

08:23:19 12 Your Honor, we'll stop at this point, your Honor. Go
08:23:22 13 ahead and pull down the rest of the video.

08:23:25 14 I apologize for those technical difficulties.

08:23:29 15 THE COURT: You're going to submit a written transcript;
08:23:32 16 isn't that what we did last time, too?

08:23:33 17 MS. HIMMELHOCH: Yes.

08:23:34 18 THE COURT: Just make sure you correct the transcript for
08:23:36 19 what was played.

08:23:37 20 MR. BROCK: That won't be a problem.

08:23:39 21 THE COURT: All right. What's next, Ms. Himmelhoch?

08:23:46 22 MS. HIMMELHOCH: Ms. King, will handle the next witness,
08:23:52 23 your Honor.

08:23:52 24 THE COURT: Stephanie, let's turn the lights back on.

08:24:04 25 Next witness is who?

08:24:06 1 MS. KING: United States calls Dr. Charles Mason to the
08:24:10 2 stand.

08:24:14 3 THE DEPUTY CLERK: Raise your right hand.

08:24:16 4 (WHEREUPON, CHARLES F. MASON, WAS SWORN IN AND TESTIFIED AS
08:24:19 5 FOLLOWS:)

08:24:19 6 THE DEPUTY CLERK: Take a seat. If you'll state and spell
08:24:21 7 your name for the record.

08:24:33 8 THE COURT: There is a motion with regard to this witness,
08:24:42 9 which, as I read it, is a little different than the other motions.

08:24:45 10 MR. JARRETT: Good morning, your Honor. Keith Jarrett for
08:24:48 11 BP.

08:24:48 12 Yes, your Honor, this is not a Daubert motion. We don't
08:24:51 13 dispute the witness's qualifications.

08:24:53 14 THE COURT: The motion apparently is arguing that his
08:24:57 15 Round 3 report is not really a rebuttal report. Is that the issue?

08:25:02 16 MR. JARRETT: That's the issue, your Honor.

08:25:05 17 THE COURT: I read his report and I read the motions and
08:25:07 18 briefings. He says he is responding to something, some argument
08:25:14 19 that Dr. Scott made in his Round 2 opinion. I haven't read --
08:25:19 20 frankly, I haven't read Dr. Scott's report yet. So I can't tell for
08:25:24 21 sure if he's really responding. But, you know, again, since this is
08:25:28 22 a bench trial, I think I'll just let him testify; and after I hear
08:25:32 23 Dr. Scott or read his reports, you know, if I agree with you, I'll
08:25:38 24 just disregard whatever he says about that, okay.

08:25:41 25 MR. JARRETT: Understood, your Honor. Thank you.

08:25:42 1 THE COURT: All right. Thank you.

08:25:48 2 MS. KING: Rachel King for the United States.

08:25:51 3 THE COURT: Sure.

08:25:52 4 VOIR DIRE EXAMINATION

08:25:53 5 BY MS. KING:

08:25:53 6 Q. Good morning, Dr. Mason. Please state your full name for the
08:25:55 7 Court.

08:25:55 8 A. My name is Charles Frederick Mason, C-H-A-R-L-E-S,
08:26:01 9 F-R-E-D-E-R-I-C-K, M-A-S-O-N.

08:26:06 10 Q. You've been hired as an expert for the United States?

08:26:08 11 A. That's correct.

08:26:09 12 Q. What questions were you asked to answer, Dr. Mason?

08:26:11 13 A. I was asked to provide a qualitative assessment of the
08:26:17 14 magnitude of economic harm associated with the oil spill. I was
08:26:19 15 asked -- I was asked to assess the role of BP -- BPXP and Anadarko
08:26:26 16 in the Gulf of Mexico economy and the U.S. economy, generally. And
08:26:33 17 I was asked to respond -- to read, analyze, and respond to input
08:26:39 18 that was received from BP expert Loren Scott and from Anadarko
08:26:44 19 expert Dr. David Sunding during their Round 1 reports.

08:26:49 20 Q. Dr. Mason, have you prepared a summary of your educational and
08:26:53 21 work experience?

08:26:53 22 A. Yes, I have.

08:26:54 23 Q. Please pull up Demonstrative 33503. Dr. Mason, please describe
08:27:01 24 your educational background.

08:27:03 25 A. I have a double bachelors degree in mathematics and economics

08:27:08 1 from the University of California Berkeley. I have a Ph.D. in
08:27:11 2 economics also from the University of California at Berkeley.

08:27:15 3 Q. What's your current profession?

08:27:17 4 A. I am a professor of economics at the University of Wyoming
08:27:21 5 where I hold the H.A. True chair in oil and gas economics.

08:27:25 6 Q. As an economics professor, do you publish articles in
08:27:29 7 peer-reviewed economics journals?

08:27:31 8 A. Yes, I do. I have over 60 publications in peer-reviewed
08:27:34 9 journals. Two are listed here as examples that I believe to be
08:27:39 10 relevant to the material in this case. One is an analysis, kind of
08:27:46 11 a variety of vignettes that occurred in the oil industry over the
08:27:51 12 course of its history. The other is an analysis of a matter in
08:27:56 13 which individuals might be anticipated to make decisions in
08:28:00 14 environments where there is some risk, particularly kind of
08:28:06 15 pertaining to some sort of a catastrophe.

08:28:09 16 Q. Dr. Mason, what do you consider your expertise to be as it
08:28:12 17 relates to the work you did in this case?

08:28:13 18 A. So my expertise is resource economics generally, which embodies
08:28:19 19 oil and gas economics, industrial organization, and applied
08:28:26 20 econometrics.

08:28:28 21 Q. What is econometrics?

08:28:29 22 A. Econometrics is the use of statistical techniques to analyze
08:28:34 23 economic phenomena.

08:28:34 24 Q. What is industrial organization?

08:28:36 25 A. Industrial organization is the analysis of strategic

08:28:39 1 interactions -- strategic interactions amongst firms and
08:28:43 2 corporations.

08:28:44 3 Q. Do you have peer-reviewed publications in these areas of
08:28:47 4 expertise?

08:28:48 5 A. I do. The two I discussed a moment ago would be examples
08:28:52 6 thereof.

08:28:52 7 Q. Have you taught courses in these areas of expertise?

08:28:55 8 A. Yes. Every spring I teach a class in oil -- an undergraduate
08:28:59 9 class in oil and economics. For the past several years, in the
08:29:03 10 fall, I taught an undergraduate class in industrial organization.
08:29:07 11 Earlier in my career, I regularly taught graduate industrial
08:29:10 12 organization and graduate econometrics.

08:29:12 13 Q. Are you involved in managing any peer-reviewed journals in the
08:29:16 14 field of economics?

08:29:17 15 A. I am. I have a long relationship with the Journal of
08:29:24 16 Environmental Economics and Management, was -- served as the
08:29:28 17 managing editor for five years, from 2006 to 2011. That's the
08:29:33 18 leading international field journal for environmental and natural
08:29:35 19 resource economics. And presently, I am one of the three
08:29:40 20 editors-in-chief of Strategic Behavior in the Environment.

08:29:44 21 Q. Does the field of resource economics include oil and gas
08:29:47 22 economics?

08:29:48 23 A. Yes, it does.

08:29:49 24 Q. Do you have any other experience that's relevant to the work
08:29:53 25 you did in this case?

08:29:54 1 A. I have some consulting experience I think that's relevant.
08:29:57 2 Earlier in my career, I served -- assisted one of my senior
08:30:02 3 colleagues at the University of Wyoming in a minor damages suit in
08:30:07 4 Colorado. More recently, I worked as a consultant, as an expert for
08:30:12 5 an individual who had suffered damages in the course of development
08:30:17 6 that the City of Cheyenne had undertaken near her property.

08:30:22 7 Q. Please pull up Demonstrative 33539. Dr. Mason, is this the
08:30:28 8 first page of your curriculum vitae?

08:30:30 9 A. Yes, it is.

08:30:30 10 Q. And does this CV accurately summarize your qualifications and
08:30:35 11 publications?

08:30:36 12 A. Yes, I think it does.

08:30:37 13 Q. And this is part of your initial expert report, correct?

08:30:40 14 A. Correct.

08:30:42 15 MS. KING: Your Honor, at this time I tender Dr. Charles
08:30:44 16 Mason as an expert in economics, including oil and gas economics,
08:30:49 17 industrial organization, and econometrics.

08:30:52 18 THE COURT: All right. Any questions on qualifications?

08:30:54 19 MR. JARRETT: None, your Honor.

08:30:55 20 THE COURT: All right. Thank you. He is accepted.

08:30:58 21 MS. KING: Thank you.

08:31:00 22 THE COURT: Ms. Kirby, do you have any questions?

08:31:03 23 MS. KIRBY: No objection.

08:31:04 24 THE COURT: I thought I saw you trying to half stand up
08:31:06 25 there.

DIRECT EXAMINATION

08:31:08 1

08:31:08 2 BY MS. KING:

08:31:08 3 Q. Please call up Demonstrative 33538. Dr. Mason, are these three
08:31:16 4 documents, TREX 13318, TREX 13317, and TREX 13319 your three expert
08:31:26 5 reports in this case?

08:31:27 6 A. Yes, they are.

08:31:30 7 Q. And do these three reports accurately summarize your opinions
08:31:33 8 in this matter and the basis for those opinions?

08:31:36 9 A. Yes, they do.

08:31:37 10 Q. Dr. Mason, do you adopt the entirety of these three reports as
08:31:41 11 your testimony here today?

08:31:44 12 A. Yes, I do.

08:31:45 13 Q. Let's move to the first opinion that you mentioned you were
08:31:47 14 asked to address. You were asked -- you said you were asked to
08:31:52 15 analyze the magnitude of economic harm resulting from the oil spill.
08:31:55 16 Did you reach an opinion on that question?

08:31:57 17 A. Yes, I did. My opinion, the economic harm from the oil spill
08:32:02 18 was severe.

08:32:02 19 Q. Please pull up Demonstrative 33530. Why do you conclude that
08:32:09 20 the economic harm due to the oil spill was severe?

08:32:12 21 A. My conclusion stems from the claims payments that were made
08:32:16 22 through the claims regimes, comprising four reads, if you like:
08:32:22 23 First, the amount of the payments, the magnitude, the \$10 billion.
08:32:26 24 Quite a large amount, claims paid representing here an estimate of
08:32:31 25 losses of income, profits, property value, and so on. These all are

08:32:36 1 measures valid -- economic -- measures of economic harm.

08:32:39 2 Second, the claim payments, aside from being large in
08:32:45 3 kind of absolute magnitude, they're large in comparison to personal
08:32:48 4 income in the Gulf states. For instance, as noted by Dr. Scott in
08:32:52 5 his Round 1 report. And then, lastly, this analysis that I
08:32:58 6 undertook that we're talking about here was focused on a subset of
08:33:02 7 the possible harm, so these claims reflect a subset of harms.

08:33:08 8 Second, the geographic scope of harm. Many counties,
08:33:13 9 scores of counties across the five state Gulf Coast region --

08:33:16 10 THE COURT: We don't have counties here.

08:33:18 11 THE WITNESS: And parishes, excuse me. Counties or
08:33:20 12 parishes. Point taken. In my state we have counties.

08:33:28 13 Third, the number of claimants. Over half a million
08:33:32 14 claimants have received payments -- had received payments as of
08:33:37 15 July 2014.

08:33:37 16 Finally, the variety of range of industries that were
08:33:41 17 impacted.

08:33:43 18 BY MS. KING:

08:33:43 19 Q. Dr. Mason, did you prepare a slide illustrating your first
08:33:47 20 point regarding the amount of payments?

08:33:48 21 A. Yes, I did.

08:33:49 22 Q. Please pull up Demonstrative 33504. What does this pie chart
08:33:55 23 depict?

08:33:55 24 A. This pie chart is showing the claims payments from each of the
08:34:01 25 three payment regimes. First, the BP claims program, which paid out

08:34:07 1 on the order of \$400 million; second, the Gulf Coast Claims
08:34:12 2 Facility, individual and business claims, which paid out about
08:34:16 3 \$6.3 billion; and most recently, the settlement program for economic
08:34:20 4 property claims, which paid out about \$3.7 billion as of the time at
08:34:27 5 which I put this report together.

08:34:29 6 And I would like to note here that this last segment here,
08:34:33 7 this is excluding certain kinds of claims; particularly, Vessels of
08:34:38 8 Opportunity and medical claim payments. Totalling up here to
08:34:46 9 \$10.4 billion.

08:34:46 10 Q. Do you consider that total to be a precise estimate?

08:34:49 11 A. Certainly not. This was meant to be a rough appraisal of the
08:34:52 12 magnitude of harm. In light of the fact that I was asked to give a
08:34:56 13 qualitative appraisal, I saw no point in coming up with a precise
08:35:01 14 estimate. This is a big number.

08:35:03 15 Q. Did you prepare a demonstrative illustrating your second point
08:35:07 16 regarding the geographic scope of claim payments?

08:35:09 17 A. Yes, I did.

08:35:10 18 Q. Can you pull up Demonstrative 33512. What is the significance
08:35:15 19 of this map, Dr. Mason?

08:35:16 20 A. So this map here is showing, for all of the counties in
08:35:21 21 Louisiana and Mississippi, Alabama, Florida, and several counties in
08:35:25 22 Texas, the magnitude of claim payments, color coded - lighter
08:35:29 23 counties, smaller payments; darker counties, larger payments. The
08:35:35 24 counties in red representing the counties or parishes where the
08:35:38 25 payments exceeded \$100 million.

08:35:40 1 And I think it's noteworthy here that the bulk of the
08:35:47 2 damage assessed by these claims payments located along the Gulf; all
08:35:50 3 the dark red counties tend to be clustered on the coast, the dark
08:35:56 4 orange counties by and large, as well.

08:35:59 5 Q. Does this map include all of the claims paid?

08:36:01 6 A. It does not include -- well, this is just for the Gulf Coast
08:36:04 7 claims facility here, so it doesn't include the other claims
08:36:08 8 programs. Though, I think it's worth noting here that this is a
08:36:12 9 fair representation; particularly, in light of the fact that GCCF
08:36:18 10 payments were the largest chunk of the three slices in that
08:36:21 11 preceding pie chart we showed.

08:36:23 12 Q. Dr. Mason, regarding your opinion that a wide variety of
08:36:27 13 industries were impacted, what information did you rely upon in
08:36:32 14 forming that opinion?

08:36:33 15 A. Right. So there is a documentation coming from the court
08:36:38 16 sponsored settlement program that itemizes the categories of
08:36:42 17 payments of claims types.

08:36:44 18 Q. Please pull up Demonstrative 33514. Are these the categories
08:36:49 19 of claim types you were referring to?

08:36:52 20 A. Yes, they are.

08:36:52 21 Q. Why, if at all, is it economically significant that there were
08:36:57 22 a variety of claims payments, for instance, under the settlement
08:37:01 23 program?

08:37:01 24 A. So the -- excuse me. The list here embodies a wide range of
08:37:08 25 types, running from individuals through to businesses, in a range of

08:37:17 1 different kinds of economic activities, incorporating, as well,
08:37:23 2 property loss and that sort of thing. The numbers to the right
08:37:29 3 here, generally, from largest to smallest as you run down. Business
08:37:35 4 Economic Loss here being the largest of these.

08:37:39 5 And so the point I would make in relation to this, you
08:37:44 6 can think of -- think of an individual, for -- let's say, that
08:37:49 7 suffered some loss. Maybe it's -- it had a downfall in its profits.
08:37:56 8 It has to dial back its operations a little bit. It lays off one of
08:38:00 9 its workers. Worker's income now has been reduced, maybe to zero.
08:38:07 10 Their family has to cut back on the kinds of expenditures they
08:38:10 11 undertake, maybe they don't go out to eat very much anymore. That
08:38:15 12 means the expenditures that they might otherwise have made in a
08:38:18 13 local restaurant, let's say, those get reduced. So the restaurant
08:38:21 14 has a reduction in its income, its profits, and maybe there's going
08:38:25 15 to be some sort of knock-off effect for its employees.

08:38:28 16 So you can kind of see how these ripple effects, and from
08:38:32 17 the primary effect of the first firm having problems stems out into
08:38:35 18 a variety of different -- to impacting a variety of different
08:38:39 19 people.

08:38:40 20 Now, imagine that there are many firms in many lines of
08:38:45 21 business in many counties and parishes all across the Gulf, all of
08:38:49 22 them generating these sorts of ripple effects. All of these ripple
08:38:54 23 effects are kind of interacting, stemming out through the whole of
08:38:58 24 the economy. You can see how this is going to reach out into the
08:39:01 25 fabric of the entire Gulf Coast region and economy.

08:39:03 1 Q. Dr. Mason, are the data regarding claims payments reliable for
08:39:07 2 purposes of evaluating the severity of economic harm?

08:39:12 3 A. For my purposes, the kind of providing the general qualitative
08:39:18 4 appraisal, I believe they are.

08:39:20 5 Q. Please pull up Demonstrative 33537. Why is it your opinion
08:39:26 6 that the payments are reliable for the purpose of determining
08:39:30 7 whether economic harm was severe?

08:39:31 8 A. There are four points to be made here. First, the nature of
08:39:37 9 the claims payment mechanisms. They, typically, would be based on
08:39:43 10 or built up from an assessment of harm an individual suffered by
08:39:48 11 comparing current profits or income to profits or income in a period
08:39:54 12 right before the spill. This is consistent with a technique that is
08:40:00 13 widely used in economics. I want to assess the effect of some
08:40:03 14 particular event, like an oil spill, what I would like to do is
08:40:07 15 compare the level -- the observed level of income or profits with a
08:40:11 16 level of income or profits I might believe would have obtained had
08:40:15 17 the spill not occurred.

08:40:17 18 Absent some sort -- some other sort of information upon
08:40:21 19 which to base that prediction about the hypothetical, what profits
08:40:26 20 or income may have been like, a reasonable place to look is the
08:40:30 21 level of income or profits right before the spill. And that's the
08:40:33 22 technique that was used in these benchmark methods.

08:40:36 23 Secondly, in order to effect this claim, the individual
08:40:41 24 would be required to bring documentation. So you would have, you
08:40:44 25 know, you'd know what the profits or income was at the point at

08:40:48 1 which the claim is filed. You would know what they were in the
08:40:51 2 preceding period. This documentation was evaluated by trained
08:40:55 3 assessors, so it went through this vetting process. This sort of
08:41:00 4 vetting process, thinking about the details in the documentation, so
08:41:05 5 forth, is, at least, at the same level of rigor as in the typical
08:41:09 6 economic data set, maybe more rigorous than some.

08:41:15 7 Q. And can you provide an example of the documentation
08:41:19 8 requirement?

08:41:19 9 A. So for an individual they might -- they might bring pay stubs
08:41:25 10 from before and after the spill. They might have photographic
08:41:28 11 evidence. Maybe it's about -- maybe it's real estate property; a
08:41:32 12 picture before the spill, a picture after the spill. For a firm, it
08:41:36 13 might be things like profit and loss statements, tax records, that
08:41:41 14 sort of thing.

08:41:41 15 Q. Please pull up Demonstrative 33507. And this is TREX 230308,
08:41:51 16 Gulf Coast Claims Facility Final Review Final Payment Claim Form.
08:41:56 17 Did this document inform your opinion, Dr. Mason?

08:42:00 18 A. Right, yes, it did. So you can see here in the heading for
08:42:03 19 Section 4 that it clearly tells the claimant that they must provide
08:42:10 20 certain kinds of documentation, that the documentation is required;
08:42:13 21 "required" here being capitalized so for emphasis. The people who
08:42:20 22 were filing these claims, they knew that they had these reporting
08:42:24 23 requirements.

08:42:24 24 Q. Was there also a requirement for claimants to show that their
08:42:28 25 damages were caused by the oil spill in the GCCF?

08:42:33 1 A. There was in the GCCF, yes.

08:42:34 2 Q. Please pull up Demonstrative 33506. And this is TREN 11977,
08:42:42 3 Gulf Coast Claims Facility Protocol For Interim and Final Claims,
08:42:46 4 November 22, 2010. How did this document inform your opinion,
08:42:53 5 Dr. Mason?

08:42:53 6 A. This documentation here says quite clearly that GCCF will only
08:42:58 7 pay for harm that is proximately caused by the spill.

08:43:01 8 Q. Was there a causation requirement in the settlement program?

08:43:04 9 A. There was for some claimants. For others, causation was
08:43:08 10 presumed.

08:43:08 11 Q. For those that was presumed, do you still attribute those
08:43:12 12 claims to harm from the oil spill?

08:43:14 13 A. Again, so for the purposes of this analysis, the qualitative
08:43:20 14 appraisal, I think that that kind of characterization is fair; that
08:43:25 15 the geographic regions, the lines of business for which causation
08:43:30 16 was presumed, are those places, and industries, or lines of
08:43:35 17 business, lines of economic activity that suffered the brunt, that
08:43:39 18 bore the brunt of the spill effects that took on the damages.

08:43:45 19 Q. Let's turn now to review of the claims and design of the claim
08:43:51 20 programs. Was BP involved in establishing claim program protocols
08:43:56 21 for the BP operated claims process?

08:43:58 22 A. Yes, they were.

08:44:00 23 Q. How?

08:44:01 24 A. They -- it was their program. They kind of came up with it and
08:44:10 25 oversaw its implementation.

08:44:11 1 Q. Was BP involved in establishing claim program protocols for the
08:44:15 2 GCCF?

08:44:16 3 A. Yeah. To a lesser extent, but still they had input.

08:44:20 4 Q. Please pull up Demonstrative 33508. And this is TREX 230442
08:44:30 5 entitled "GCRO LC Review Economic Analysis, August 2nd, 2011." Is
08:44:38 6 this a document you consulted regarding BP's involvement in
08:44:41 7 establishing claims program protocols for the GCCF?

08:44:44 8 A. Yes, it is. You see here that the highlighted text here
08:44:49 9 indicates clearly that BP was afforded the opportunity to review and
08:44:52 10 comment on the GCCF claim methodology and on special claims paid out
08:45:00 11 by the GCCF.

08:45:02 12 Q. Was BP involved in establishing claim program protocol for the
08:45:07 13 court supervised settlement program?

08:45:08 14 A. Yes, they were. The nature of the interaction here is the
08:45:12 15 negotiated -- the structure of the settlement program, the BP
08:45:16 16 attorneys, the BP representatives negotiating with the Plaintiff
08:45:20 17 Steering Committee. So this sorts of things that are embodied here;
08:45:25 18 the nature, the kinds of claims that would be considered, the
08:45:29 19 mechanics for evaluating them, and for quantifying those future
08:45:33 20 damages or any future damages, all that was part and parcel that
08:45:37 21 emerged from this negotiating process.

08:45:40 22 Q. Did BP have the opportunity to review claims paid by the
08:45:44 23 settlement program?

08:45:44 24 A. Yes, they did.

08:45:45 25 Q. Please pull up Demonstrative 33509. This is TREX 231876,

08:45:53 1 report by the claims administrator of the *DEEPWATER HORIZON* economic
08:45:56 2 and property damages settlement, Status Report No. 23. Dr. Mason,
08:46:02 3 how did this document inform your understanding of BP's ability to
08:46:05 4 review settlement program claims?

08:46:09 5 A. So as the heading here says, as of this date, which is July of
08:46:15 6 2014, roughly 19,000 eligibility notices had been filed that met or
08:46:22 7 exceeded the threshold, \$25,000 threshold that rendered them
08:46:27 8 eligible for appeal by BP. And all of those nearly 19,000 notices,
08:46:32 9 BP had filed appeals on almost 4,000, which comes to just shy of a
08:46:37 10 21 percent appeal rate.

08:46:40 11 Q. Please pull down the demonstrative. In the BP claims program,
08:46:45 12 did some of the payments represent future losses?

08:46:48 13 A. No. The BP claims program is just for past losses.

08:46:51 14 Q. How about the GCCF?

08:46:53 15 A. For a chunk of the GCCF payments, they're just past losses.
08:47:00 16 For final claims payments, they embodied perspective future losses.

08:47:04 17 Q. And in the settlement program, did some amount of claims paid
08:47:08 18 represent future losses?

08:47:09 19 A. Right, yes, some of the payments is for perspective future
08:47:13 20 losses under the settlement program.

08:47:15 21 Q. How are the payments for future losses calculated?

08:47:18 22 A. So there are quantified by use of what's called risk transfer
08:47:23 23 premium, or RTP. That's meant to provide something of an estimate
08:47:29 24 of those future perspective damages produced with input that it was
08:47:37 25 offered up by experts, including economic experts.

08:47:41 1 Q. Why, in your understanding, did the GCCF and settlement program
08:47:47 2 allow claimants to collect payments for future harms that haven't
08:47:51 3 yet occurred?

08:47:52 4 A. Well, the alternative here is to imagine sort of an ongoing
08:48:00 5 sequence of claims evaluations, you know, it's on an ongoing basis.
08:48:08 6 Every so often the claimants have to go through the process of
08:48:11 7 obtaining the documentation, coming back in, having it evaluated.
08:48:15 8 All of the things I just described are what economists would call
08:48:19 9 transactions costs. So an alternative to having the payment settled
08:48:25 10 via this estimate of future perspective payments, is to have the
08:48:29 11 sequence of events with these large transaction costs. So the
08:48:36 12 alternative to have -- to bearing those transactions costs settle
08:48:38 13 things at that point in time with an estimate of future damages.

08:48:42 14 Q. Is it valid to rely on the GCCF and settlement program claims
08:48:46 15 payments in your analysis of the severity of economic harm when some
08:48:52 16 portion of those payments represents future harm?

08:48:54 17 A. I believe it is.

08:48:55 18 Q. Why?

08:48:56 19 A. Because, as I noted a moment ago, there was input delivered
08:49:01 20 into the process from economics experts. From an economist's
08:49:06 21 perspective, I'm thinking about the stream of damages that's going
08:49:09 22 to obtain over time. The expectation of those harms, converted into
08:49:17 23 current dollars, a technique that we call discounting, generates
08:49:21 24 this thing called expected present discounted future value, and
08:49:26 25 couched in today's dollars, that's a valid measure that comes to

08:49:30 1 recognize that as a valid measure of that prospective future harm.

08:49:34 2 Q. Is there any evidence that the future harm that was expected
08:49:38 3 when the settlement program was negotiated, in fact, came to
08:49:42 4 fruition?

08:49:42 5 A. I believe there was.

08:49:45 6 Q. Did you -- in what sectors?

08:49:48 7 A. I would talk about two here today: One was real estate, one
08:49:53 8 was tourism.

08:49:55 9 Q. Did you prepare a demonstrative illustrating ongoing harm in
08:50:00 10 the real estate sector?

08:50:01 11 A. I did.

08:50:01 12 Q. Please pull up Demonstrative 33520.

08:50:04 13 MR. JARRETT: Your Honor, just for record purposes, this
08:50:06 14 will be the subject matter directed to BP's objection. I understand
08:50:09 15 your ruling earlier.

08:50:10 16 THE COURT: All right. Sure, I'll take that under
08:50:12 17 advisement.

08:50:14 18 BY MS. KING:

08:50:15 19 Q. And, Dr. Mason, this is Figure 1 from your Round 3 report,
08:50:20 20 correct?

08:50:20 21 A. That's right.

08:50:21 22 Q. What methodology did you use in creating this graph?

08:50:25 23 A. So the analysis that leads into this graph, we call this
08:50:31 24 technique differences-in-differences. The general idea is that I
08:50:36 25 want to assess the effect of some particular event, like an oil

08:50:41 1 spill. I have a group of individuals or counties, here this is
08:50:46 2 counties, that was exposed to the spill. I have a group that was
08:50:50 3 not exposed to the spill. I track these things over time. The
08:50:54 4 differences across time amongst the exposed counties as compared to
08:50:59 5 the differences among time experienced by the unexposed counties,
08:51:04 6 the differences between those two differences, then, gives us
08:51:09 7 information about the impact associated with this particular effect,
08:51:14 8 the oil spill. Filtering out background things.

08:51:19 9 Here, I think, the important background thing that I
08:51:22 10 would worry about is that the particular period of time that we're
08:51:26 11 thinking about, here the spill takes place in April 2010, which is
08:51:30 12 very close to kind of the depths of the great recession. So going
08:51:35 13 forward from that particular point in time, the U.S. economy,
08:51:39 14 generally, is recovering from the recession, tourism, real estate
08:51:44 15 recovering from the recession, and so that is -- so that is rising
08:51:50 16 tide, if you like. And the boats that are being lifted by that
08:51:53 17 rising tide would be things like real estate incomes.

08:51:57 18 And that -- you've seen that indication for the Florida
08:52:00 19 Atlantic Coast counties not exposed to the oil spill. You kind of
08:52:05 20 see how their incomes are going up between 2010 and 2012. By
08:52:13 21 contrast, counties, for instance, the Florida panhandle counties --
08:52:17 22 that's the bottom line here with diamonds -- that were exposed to
08:52:23 23 the oil spill, they don't rise anywhere near as rapidly. The
08:52:26 24 differences between those two effects filters out the effect
08:52:31 25 associated with things like recovery from the recession and gives

08:52:35 1 us -- leaving us with the appraisal that this is coming from the oil
08:52:40 2 spill.

08:52:40 3 Gulf Coast counties who were on the Gulf Coast, counties
08:52:42 4 not nearly as exposed as the panhandle counties lie somewhere in
08:52:47 5 between these. They experienced greater recovery than the panhandle
08:52:51 6 counties, but they did experience some exposure. They don't recover
08:52:54 7 quite as rapidly as the Atlantic Coast counties.

08:52:57 8 Q. Does this graph have an implication for the reliability of
08:53:02 9 claim payments that are included in a future recovery factor?

08:53:05 10 A. Right. The idea that the claims future perspective claims were
08:53:12 11 manifested, it's borne out by the evidence in this graph. So the
08:53:16 12 presumption at the start that's built into the analysis, built into
08:53:21 13 the -- built into the claims process as dictated by the input from
08:53:26 14 the economic experts, I believe. It's corroborated by this
08:53:29 15 information.

08:53:29 16 Q. Did you include in your -- did you analyze other state's data
08:53:34 17 in your report other than Florida?

08:53:36 18 A. Other than Florida, I did not. The point -- this was meant to
08:53:39 19 be a targeted response to Dr. Scott's claims in his second round
08:53:46 20 report; his broad claims about general recovery in the Gulf Coast
08:53:50 21 area. So I've got here an example that calls into question that
08:53:54 22 broad-based claim. That was my purposes with this diagram.

08:53:57 23 Q. Did you prepare a demonstrative illustrating ongoing harm in
08:54:02 24 any other sector, Dr. Mason?

08:54:03 25 A. Yes, I did.

08:54:04 1 Q. Please pull up Demonstrative 33519. And how does this
08:54:14 2 demonstrative support your opinion regarding ongoing harm after
08:54:20 3 2011?

08:54:21 4 A. It's built up from the same idea. It's predicated upon this
08:54:26 5 differences-in-differences technique. Same general idea as before.
08:54:31 6 We're coming out of the great recession. Tourism is recovering in
08:54:37 7 the U.S., generally, after 2010. Kind of bottoms out in 2010 and
08:54:43 8 then increases after that. The tourism activity increases after
08:54:48 9 that.

08:54:48 10 And so we would expect to see increases commensurate with
08:54:52 11 that, or parallel to that, across parts of the exposed areas, parts
08:55:00 12 of the Gulf Coast. Point related to that coming from Dr. Scott's
08:55:07 13 reports -- or excuse me, from presentation of Dr. Scott made arguing
08:55:13 14 that there was this sort of recovery in many of the states in the
08:55:17 15 southeast. So this particular -- this particular demonstrative has
08:55:24 16 two diagrams; one for each of two cohorts. On the right is
08:55:28 17 information for Florida.

08:55:29 18 It's parallel to the analysis that I talked about a
08:55:33 19 minute ago. I'm comparing here an exposed set of counties, the
08:55:37 20 Florida panhandle illustrated in blue, to a controlling set of
08:55:42 21 counties not exposed to the oil spill, Florida Atlantic Coast here
08:55:47 22 illustrated in red. And each of these bars is telling us the degree
08:55:52 23 to which revenue for available room. We can think of that as the
08:55:56 24 average room rate for a typical hotel in a county. Blue panhandle,
08:56:03 25 red Atlantic Coast. Compared to 2009.

08:56:07 1 And so you see here that there's sort of this steady
08:56:11 2 growth in revenue per available room, RevPAR, for the typical hotel
08:56:17 3 in Florida Atlantic Coast. A more sluggish recovery for the typical
08:56:22 4 hotel in the Florida panhandle.

08:56:24 5 The difference, as with the preceding story, illustrating
08:56:26 6 that the exposed counties are falling ever farther behind these
08:56:32 7 controlled counties.

08:56:33 8 The illustration on the left is for Mississippi. It's
08:56:35 9 comparing the exposed counties on the Gulf Coast against controlled
08:56:40 10 counties Mississippi inland. Again, the exposed counties
08:56:43 11 illustrating blue, the control counties illustrated in red. You see
08:56:47 12 a steady growth in the inland counties year on year; compared to
08:56:52 13 2009, nowhere near. There's a fast increase in 2010. Perhaps, this
08:56:56 14 is an indication of spill response workers coming into the area.

08:57:00 15 But, nevertheless, from 2011 onward you see that the
08:57:04 16 growth in Mississippi is much slower on the Gulf Coast than there is
08:57:08 17 inland.

08:57:11 18 Q. This demonstrative shows Mississippi and Florida data, as you
08:57:14 19 mentioned, Dr. Mason. Did you also analyze hotel revenue data for
08:57:18 20 Louisiana or Alabama in your reports?

08:57:20 21 A. No, I did not. Again, the graphs that are included here, the
08:57:27 22 information that is conveyed by these diagrams, this was produced in
08:57:34 23 response to claims made by Dr. Scott in his Round 1 report, kind of
08:57:38 24 broad-based claims about general recovery. It's meant to be a
08:57:42 25 targeted response, a targeted rebuttal.

08:57:45 1 THE COURT: Tell me again, what is the scale on the left?
08:57:48 2 Is that dollars?

08:57:49 3 THE WITNESS: Oh sorry. Yeah, U.S. dollars.

08:57:51 4 THE COURT: Not percentages?

08:57:53 5 THE WITNESS: Right. Let me pick an example here.

08:57:55 6 Florida Atlantic Coast 2010, RevPAR in 2010 is about, you know,
08:58:02 7 \$2.60 larger --

08:58:05 8 THE COURT: Larger than it was. You're comparing all of
08:58:07 9 this to '09?

08:58:08 10 THE WITNESS: All of these are compared, yeah. All four
08:58:10 11 of these are compared to 2009, right, that's correct.

08:58:13 12 THE COURT: Okay.

08:58:14 13 BY MS. KING:

08:58:14 14 Q. Did you analyze the statistical significance of the trends
08:58:17 15 noted in these two graphs, Dr. Mason?

08:58:20 16 A. Yes, I did. In the Round 3 report, I evaluated the statistical
08:58:24 17 significance of this. The numbers involved here -- the data that
08:58:28 18 lead into these numbers indicate that the difference between
08:58:31 19 Atlantic Coast and panhandle on the one hand -- Atlantic Coast and
08:58:38 20 panhandle Florida on one hand, inland and Gulf Coast for Mississippi
08:58:41 21 on the other. These differences are statistically important.

08:58:45 22 Q. Dr. Mason, are all economic harms included in the \$10 billion
08:58:50 23 total that you mentioned earlier?

08:58:52 24 A. No, they're not. It's just a subset.

08:58:54 25 Q. Please pull up Demonstrative 33511. Which damages were

08:59:02 1 excluded from all programs, Dr. Mason?

08:59:04 2 A. So the programs don't include natural resource damages;
08:59:10 3 examples of which might be things like ecosystem services,
08:59:14 4 recreation use losses. They don't include any losses suffered by
08:59:17 5 the states, for instance, forgone tax revenues. They don't include
08:59:26 6 consequential losses.

08:59:27 7 You can take an example of a consequential loss, there
08:59:31 8 might be somebody who is thinking about taking their vacation on the
08:59:34 9 Gulf of Mexico. They decide, on the basis of the oil spill, that
08:59:37 10 they don't want to go to that hotel in the Gulf of Mexico. They go
08:59:40 11 somewhere else instead. Maybe they go to North Carolina, maybe they
08:59:44 12 go to New Jersey, whatever, they go some place else. They don't go
08:59:47 13 to their first choice. They go to their second choice. They're
08:59:53 14 worse off. The satisfaction they would have had from the first
08:59:55 15 choice, they don't realize that they have to settle for second best.
08:59:58 16 That's a consequential loss.

09:00:01 17 Q. Which economic harms were excluded from the Court's supervised
09:00:03 18 settlement program?

09:00:04 19 A. The settlement program excludes harms to menhaden fishers and
09:00:09 20 processes relating to that. It excludes harm suffered by real
09:00:13 21 estate developers; banking, financial and insurance industries;
09:00:16 22 gaming industry; those involved in the selling of marketing of BP
09:00:21 23 branded fuel; shareholders in BP stock; enterprises involved in the
09:00:27 24 oil and gas industry that might have suffered any harms associated
09:00:30 25 with the spill or responses to it, for example, various moratorium.

09:00:34 1 Q. Are there any other economic harms that wouldn't be included in
09:00:38 2 the 10 billion total?

09:00:39 3 A. Right. Any individual that did not file a claim, for whatever
09:00:43 4 reason, they didn't have the paperwork, they reckoned that it was
09:00:48 5 going to be so difficult to put everything together in comparison to
09:00:51 6 the amount of money that they might be able to receive as a claim,
09:00:54 7 they opted out. Those sorts of individuals, their losses aren't
09:00:58 8 reflected in this. The fact that they didn't file claims doesn't
09:01:03 9 mean that they didn't suffer harm.

09:01:04 10 It also doesn't include any claims that have not been
09:01:08 11 reviewed. The information that's embodied in the report, my first
09:01:13 12 report, included information up through July 1, 2014. So claims
09:01:19 13 that had not been reviewed as of July 2014, they can't be included
09:01:23 14 in this estimate.

09:01:24 15 Q. Did you prepare a demonstrative summarizing the claims that
09:01:28 16 were not yet reviewed as of July 2014?

09:01:30 17 A. Yes, I did.

09:01:32 18 Q. Please pull Demonstrative 33510. How do these pie charts
09:01:38 19 inform your opinion regarding settlement of program claims not yet
09:01:41 20 reviewed?

09:01:42 21 A. The top left panel here -- top left quarter panel provides
09:01:51 22 information on the set of claims that had been filed as of that
09:01:55 23 date, about 280,000. Around about 280,000 claims. Out of those,
09:02:04 24 86,000 had yet to be reviewed. That's about 30, 31 percent.

09:02:09 25 That 31 percent -- 30, 31 percent of those total claims,

09:02:13 1 the 86,000 that have yet to be reviewed, include some important
09:02:20 2 categories. Particularly, here, I think it's noteworthy that
09:02:24 3 Business Economic Loss category, which a moment ago I mentioned was
09:02:28 4 the largest dollar value of all of the claims categories, there's
09:02:34 5 just a little bit more than 100,000 claims in that category that had
09:02:37 6 been filed as of July.

09:02:39 7 Out of those, a little over 45,000 yet to be reviewed,
09:02:42 8 that's in the general vicinity of 45 percent not yet reviewed.

09:02:48 9 There are these other categories for which the outstanding
09:02:51 10 claims to be reviewed are well in excess of 50 percent substantive
09:02:55 11 claims, wetland and property claims.

09:02:58 12 MS. KING: Mr. Jackson, please pull down the slide.

09:02:58 13 BY MS. KING:

09:03:01 14 Q. Did BP's expert, Dr. Scott, agree with you that the economic
09:03:05 15 harm resulting from the *DEEPWATER HORIZON* oil spill was severe?

09:03:09 16 A. He does not.

09:03:09 17 Q. Why not?

09:03:11 18 A. In his view, the harm -- such harms as were experienced were
09:03:18 19 relatively short-lived in nature and were mitigated by BP's various
09:03:24 20 expenditures.

09:03:25 21 Q. Was any effect from BP's spending reflected in the analysis
09:03:31 22 that you conducted, Dr. Mason?

09:03:33 23 A. Yeah. It would be incorrect to say that I neglected the effect
09:03:41 24 of BP's spending. To the extent that expenditures that they
09:03:47 25 undertook reduced damages, then that would be manifested in lower

09:03:53 1 possible claims that would be made that would be offered up by
09:03:56 2 claimants. That is to say that there would be lower claims paid
09:04:00 3 out. So the number that I came up with, I think, needs to be
09:04:04 4 regarded as net of those, the effects associated with those
09:04:09 5 prophylactic expenditures by BP.

09:04:11 6 Q. Dr. Mason, you mentioned you were asked to analyze the report,
09:04:17 7 the initial report of Anadarko's expert, Dr. Sunding, as well.
09:04:22 8 Which of his arguments did you analyze?

09:04:25 9 A. There were two particular points to Dr. Sunding's report that I
09:04:33 10 evaluated and commented on. One was the conceptual nature of
09:04:39 11 optimal deterrence; and the second was his empirical analysis of the
09:04:48 12 effects that he alleges stemming from the naming of Anadarko as a
09:04:53 13 defendant in December of 2010 upon the Gulf of Mexico non-operators,
09:05:00 14 particularly as manifested in capital or capital flight from the
09:05:05 15 Gulf.

09:05:06 16 Q. Let's turn first to Dr. Sunding's argument you mentioned
09:05:10 17 regarding optimal deterrence. Please pull up Demonstrative 33515.
09:05:16 18 What does Dr. Sunding argue regarding optimal deterrence?

09:05:20 19 A. Well, Dr. Sunding's claim is that \$4 billion that was paid from
09:05:27 20 Anadarko to BP provides the appropriate share of damages as to
09:05:35 21 deliver optimal deterrence. In my view, that claim is an overreach
09:05:42 22 on the grounds that the total amount from the oil spill remains
09:05:47 23 unknown. It was unknown at the time of the settlement; it was
09:05:51 24 unknown at the time of my filing my report. In large measure
09:05:54 25 because of these, this subset that I didn't incorporate into the

09:06:00 1 appraisal.

09:06:01 2 Q. Do you have any other disagreement with Dr. Sunding's argument
09:06:06 3 concerning optimal deterrence?

09:06:08 4 A. Yes. So let's, for the sake of argument, grant the first
09:06:14 5 point, that that sum of the \$4 billion is appropriate. And that's
09:06:18 6 built up from the damages that they believe to have been realized at
09:06:22 7 the time.

09:06:23 8 The process of pursuing hydrocarbons in the Gulf of Mexico
09:06:29 9 entails some risks. Individuals who are in the Gulf of Mexico
09:06:35 10 region are exposed to that risk. There could be a blowout, there
09:06:39 11 could be another blowout, there could be other oil spills. There
09:06:43 12 could be damages possibly from those particular phenomenon. Those
09:06:48 13 future potential risks mean that individuals who are there today are
09:06:53 14 exposed to that future risk.

09:06:54 15 To the extent that those individuals are averse to risk --
09:06:57 16 and I think the general presumption in the economics profession is
09:07:03 17 that most individuals are averse to risk -- they have to be
09:07:07 18 compensated for that. They need to be paid a risk premium. That's
09:07:11 19 on top of the damages that are incorporated here in this 4 million
09:07:16 20 number that Dr. Sunding came up with.

09:07:19 21 There's a further point and that is that the literature to
09:07:24 22 which Dr. Sunding refers in coming up with his arguments generally
09:07:29 23 takes the perspective -- it generally provides kind of an
09:07:35 24 abstraction template, if you like, in which there's one party or one
09:07:39 25 entity that might be undertaking actions that expose another party

09:07:45 1 to some sort of harm. So the interactions are between one entity
09:07:50 2 that might be causing the harm, one party that might be experiencing
09:07:53 3 the harm.

09:07:55 4 In this particular problem, though, there are multiple
09:07:59 5 parties involved in this entity that might be exposing society to
09:08:02 6 this harm. And in my view, it's important to take into account the
09:08:07 7 interactions of those parties within the entity that's exposing
09:08:11 8 society to that harm. It's the sort of thing -- there are papers in
09:08:15 9 the literature that do, in fact, think about things from that
09:08:19 10 perspective. Dr. Sunding opted to put this in a kind of one-on-one
09:08:24 11 frame work.

09:08:24 12 Q. Dr. Mason, you mentioned that you also analyzed Dr. Sunding's
09:08:29 13 empirical analysis concerning capital flight in the period after
09:08:34 14 Anadarko was named as a defendant. Did you prepare a demonstrative
09:08:40 15 summarizing your analysis of these points?

09:08:42 16 A. I did.

09:08:42 17 Q. Please pull up Demonstrative 33535. What does Dr. Sunding
09:08:51 18 argue regarding firm entry and exit?

09:08:55 19 A. Well, Dr. Sunding's thinking here is that you have this
09:09:05 20 pattern. So he evaluates net entry, net exit over the course of
09:09:15 21 31 years, looking to see whether there's been reduction in entry --
09:09:22 22 I'm sorry, an increase in exit. So if you think of it this way: An
09:09:26 23 increase in net exit of non-operators in the entire Gulf of Mexico.
09:09:31 24 He wants to see if this particular phenomenon is more pronounced
09:09:38 25 after December of 2010. Is there a correlation between the naming

09:09:46 1 of Anadarko as a defendant and this pattern of net exit.

09:09:52 2 There's a saying in the economics profession popularized
09:09:57 3 in pretty much every econometrics class that I've been involved in
09:10:01 4 as a teacher and a student, causation -- I'm sorry, "Correlation is
09:10:06 5 not causation." He has not established causation here. And, in
09:10:11 6 fact, acknowledges as much in his Round 3 report.

09:10:16 7 He's not established causation in large measure because
09:10:19 8 he's offering up one explanation. Other phenomenon that you can
09:10:26 9 think of as having a similar sort of time profile, something that
09:10:31 10 happens after 2010, that would be equally capable of explaining this
09:10:36 11 pattern, the blowout itself. Perhaps parties involved in deepwater
09:10:44 12 operations, non-operators who are involved in deepwater Gulf of
09:10:49 13 Mexico reassess the risk of a future blowout on the basis of this
09:10:54 14 particular event. It would be natural to do so. Most individuals
09:10:58 15 think of things in that sort of way.

09:11:00 16 So we observe, for example, if there's an unfortunate
09:11:06 17 event like an airplane crash, it's not uncommon for people to think
09:11:09 18 that, kind of discretely, think now that flying is riskier.
09:11:15 19 Similarly here, maybe it was the case that some parties now thought,
09:11:20 20 this operation's riskier, let me go some place that's safer.

09:11:24 21 There's also the possibility that they chose to redeploy
09:11:30 22 their resources to a different part of the oil patch where they
09:11:35 23 thought that they might be able to make more money, that the
09:11:40 24 prospects would be more profitable. Either they would have -- they
09:11:44 25 would be more prolific in production or less expensive. And an

09:11:48 1 obvious example here is the emerging type oil, shale oil bonanza
09:11:55 2 that really kind of took hold in a big way starting in late 2010,
09:12:01 3 early 2011.

09:12:03 4 Either of those events would be equally capable of
09:12:06 5 explaining the particular pattern that Dr. Sunding has identified.
09:12:11 6 He didn't rule out either one of those.

09:12:13 7 Q. Do you, Dr. Mason, do you have any disagreements concerning
09:12:18 8 technical aspects of Dr. Sunding's empirical analysis concerning
09:12:23 9 firm entry and exit?

09:12:24 10 A. Yes. There are some technical concerns that I would bring up.
09:12:31 11 The first is -- so perhaps I should back up here a minute.

09:12:36 12 The root data that he uses in this analysis identifies
09:12:43 13 when, as a calendar date, when an individual non-operator enters or
09:12:49 14 exits the Gulf. So July 4th, 2012. He converts that observation to
09:13:00 15 an annual observation. So there is a firm that made a change in
09:13:04 16 2012 and then he counts up the number of firms that entered or
09:13:08 17 exited in each of these years from 1983 to 2013. That means he's
09:13:14 18 got 31 separate observations, 31 annual observations.

09:13:18 19 Thirty-one is a relatively small sample size for the
09:13:22 20 particular econometric technique that he is employing in this
09:13:27 21 analysis. There are analyses that might be using a sample size that
09:13:33 22 was in that neighborhood. The technique that he is using is known
09:13:37 23 to be somewhat -- to have somewhat poor properties when one applies
09:13:44 24 it to sample sizes that small.

09:13:47 25 Secondly, I think more significantly, over the 30-odd

09:13:52 1 years that we're talking about here, it's simply implausible that
09:13:56 2 there weren't important technological changes, and these are changes
09:14:00 3 that occurred in the oil and gas industry. For instance, as I think
09:14:07 4 of a very sharp example, there's this fracking boom. The fracking
09:14:12 5 revolution changed the mind-set in the U.S. from one of a nation
09:14:16 6 that was importing oil to one that might, perhaps, be exporting oil.
09:14:22 7 Sometimes that sort of thing is called a "breakthrough technology."
09:14:26 8 It's a technological leap. It's a big discrete change.

09:14:30 9 Dr. Sunding's methodology for getting at things
09:14:32 10 like technological changes to include a time trend, something that
09:14:38 11 makes -- you can think of this as sort of the characterizing a
09:14:42 12 gradual increase in technological capabilities over time.

09:14:45 13 By contrast, what we really are seeing are
09:14:47 14 these sort of stair-step effects: Big increase in technology and
09:14:51 15 then we go along for awhile and there's another big leap through.
09:14:54 16 The technique that he used is really not appropriate for
09:14:58 17 characterizing those technological leaps.

09:15:01 18 Finally -- and I think this is most
09:15:04 19 substantive -- firms are presumably involved in these operations.
09:15:08 20 They're looking to make money. They make big expenditures when they
09:15:14 21 enter the industry. They have to put down a lot of money. They're
09:15:17 22 doing this because they have this anticipation of large rewards.
09:15:21 23 The rewards are going to be related to future prices. Future
09:15:26 24 expected prices are really important driving factor in dictating a
09:15:32 25 pattern of entry or exit. Future expected prices can be proxied, I

09:15:39 1 think quite adequately, by publicly available information. New York
09:15:45 2 Mercantile Exchange has this particular financial instrument they
09:15:50 3 call "futures" that are for oil at some future date. So he could
09:15:55 4 have gathered information on these future prices and included that
09:15:58 5 into his analysis.

09:16:02 6 This point that I made in my Round 2 rebuttal,
09:16:06 7 and he elected for some reason not to do that.

09:16:12 8 Q. Does Dr. Sunding rely upon any other data in support of his
09:16:19 9 opinion regarding capital flight and the time period following
09:16:23 10 Anadarko's naming as a defendant?

09:16:25 11 A. Yeah. He has an analysis of concentration of lease shares.

09:16:31 12 Q. Did you prepare a demonstrative illustrating your opinion
09:16:34 13 regarding this concentration analysis?

09:16:36 14 A. I did.

09:16:37 15 Q. Please pull up Demonstrative 33533. Do you agree, Dr. Mason,
09:16:48 16 that capital is fleeing the Gulf in the period following the time
09:16:52 17 when Anadarko was named as a defendant?

09:16:54 18 A. I do not.

09:16:55 19 Q. Why not?

09:16:57 20 A. Well, simply put, the degree to which market power in the Gulf
09:17:11 21 of Mexico is measured by new leases, adjusted for lease ownership,
09:17:16 22 that measure of market power, market concentration, has remained
09:17:20 23 relatively stable across time before and after the naming of
09:17:27 24 Anadarko.

09:17:27 25 So this slide here illustrates that point. It makes use

09:17:33 1 of a particular instrument, a particular index that industrial
09:17:38 2 economists use to measure the concentration of market power within
09:17:42 3 an industry, sometimes called a Herfindahl Index or HHI. It's built
09:17:50 4 up from the shares of firms involved in that industry in a
09:17:56 5 particular metric that we think is interesting. Here, the metric
09:18:00 6 that I used was new leases adjusted for ownership shares. So each
09:18:05 7 of these five years -- 2009, '10, '11, '12, '13 -- there's a certain
09:18:10 8 number of new leases that are acquired.

09:18:18 9 For each of those leases, there might be a pattern of
09:18:21 10 ownership. Some firms might own -- maybe there's lease here that
09:18:27 11 one firm owns 75 percent, another firm owns 25 percent. I added up,
09:18:32 12 across all of the firms in the Gulf, in each of these years, the
09:18:35 13 number of leases that they held, number of new leases that they
09:18:40 14 held, taking into account these fractional ownerships.

09:18:43 15 And then you take the amount, the number of fractional
09:18:47 16 leases held by the particular firm, divide that by the total number
09:18:51 17 of leases. That's the share of new leases attributable to that
09:18:54 18 firm. The Herfindahl index is built up from those market shares.

09:18:59 19 And so you see here that the numbers that we're talking
09:19:04 20 about, they're relatively stable all across from 2009 to 2013.
09:19:10 21 There is not a marked increase in market concentration. If there
09:19:15 22 were capital fleeing the Gulf, we would expect to see increases in
09:19:20 23 the concentration measure and we don't.

09:19:22 24 Q. Did Dr. Sunding conduct the same concentration analysis that
09:19:26 25 you did?

09:19:26 1 A. No. He had -- he used the same fundamental metric, this
09:19:33 2 Herfindahl index, but he used it in a different kind of a way. So
09:19:39 3 whereas I looked at the industry for the Gulf of Mexico, oil and gas
09:19:43 4 industry measured by leases as a whole, his approach was to look at
09:19:48 5 each individual lease. I think you might -- it might be instructive
09:19:54 6 to think of this approach as saying each lease is it's own separate
09:19:58 7 island.

09:19:58 8 For each lease he wants to know, you know, what's the
09:20:02 9 pattern of ownership? To what extent is ownership concentrated or
09:20:08 10 consolidated within that individual lease? So then he compares
09:20:12 11 these many different islands to see whether or not the pattern of
09:20:18 12 ownership within an individual lease changes after December of 2010.
09:20:23 13 That's his approach.

09:20:24 14 I think the more appropriate approach is to look at the
09:20:27 15 market as a whole. That's the difference between the way we look at
09:20:30 16 this.

09:20:31 17 Q. Let's turn now, Dr. Mason, to your opinions regarding BXP and
09:20:37 18 Anadarko's role in the Gulf of Mexico and national economies. What
09:20:43 19 opinion did you reach regarding the two firms' role in the Gulf of
09:20:47 20 Mexico economy?

09:20:47 21 A. I came to the conclusion that both BXP and Anadarko were of
09:20:53 22 moderate importance in the Gulf of Mexico economies.

09:20:56 23 Q. Did you prepare a demonstrative summarizing how you analyzed
09:21:01 24 that economic role?

09:21:02 25 A. I did.

09:21:03 1 Q. Please pull up Demonstrative 33522. And what did you do in
09:21:12 2 order to analyze BPXP and Anadarko's role in the Gulf of Mexico
09:21:15 3 economy?

09:21:16 4 A. Okay. So the analysis here, as I inquired into their economic
09:21:27 5 role, starts by appraising the share of the market associated with
09:21:31 6 each of these two firms in the Gulf of Mexico oil and gas industry
09:21:38 7 as appraised by a handful of metrics.

09:21:44 8 I also evaluated the role of the oil and gas industry
09:21:48 9 generally within the Gulf of Mexico. It comprises a fraction of
09:21:54 10 economic activity in each of the states. I evaluated those
09:21:57 11 fractions.

09:21:59 12 BP's argument is that its expenditures benefit the
09:22:03 13 regional and national economy. I think it's important to bear in
09:22:06 14 mind that it undertakes these expenditures, as firms do, in the
09:22:12 15 pursuit of profit. Other firms put into sort of a similar situation
09:22:18 16 with similar resources available to them would make similar kinds of
09:22:23 17 expenditures if it would deliver similar sorts of benefits.

09:22:27 18 And it's important here to note that within
09:22:31 19 this industry, the results that I came up with indicate that the
09:22:35 20 Gulf of Mexico oil and gas industry is not highly concentrated.
09:22:39 21 That's an indication that there's relative fluidity here that firms
09:22:44 22 can enter and exit relatively easily and that firms compete
09:22:48 23 vigorously for access to the resources in the Gulf.

09:22:53 24 Q. Regarding your first point --

09:22:55 25 THE COURT: Excuse me. Are you saying, essentially, if BP

09:22:57 1 didn't have these leases, some other oil company would?

09:23:01 2 THE WITNESS: Yeah. I think so.

09:23:02 3 THE COURT: And be producing?

09:23:04 4 THE WITNESS: Sure. Those -- if those leases are
09:23:08 5 attractive, somebody else will snatch them up.

09:23:12 6 THE COURT: Okay. Go ahead.

09:23:12 7 BY MS. KING:

09:23:14 8 Q. Dr. Mason, did you prepare a demonstrative summarizing your
09:23:18 9 market share analysis for BPXP?

09:23:19 10 A. Yes, I did.

09:23:20 11 Q. Please pull up Demonstrative 33501. How does this slide
09:23:29 12 illustrate your conclusion that BPXP is modestly important in the
09:23:34 13 Gulf oil and gas industry?

09:23:35 14 A. Okay. So this demonstrative articulates BPXP's share of the
09:23:43 15 Gulf of Mexico oil and gas industry using six separate metrics that
09:23:49 16 I think are germane to this investigation, relevant
09:23:54 17 characterizations of the Gulf industry. Ranging from the lease
09:23:59 18 acquisition at the outset through the boreholes, the wells that were
09:24:05 19 drilled, the production platforms that are in place, the
09:24:07 20 hydrocarbons that are produced, the employment that goes along with
09:24:11 21 this, up to the royalties that are paid.

09:24:15 22 For three of these metrics, the top three, the analysis is
09:24:19 23 undertaken at a particular point in time, July of 2014. For three
09:24:24 24 of these analysis, for three of these metrics, I'm evaluating
09:24:28 25 information over the course of three years after the oil spill, 2011

09:24:33 1 through 2013.

09:24:35 2 In every case, for all six of these metrics, the industry
09:24:39 3 level, the number that goes for the industry that comes from
09:24:41 4 publicly available information. For the top three, those items
09:24:46 5 identified in July of 2014, BP's number comes from publicly
09:24:53 6 available information. For the bottom three metrics, BP's number
09:24:58 7 comes from documents that BP provided.

09:25:03 8 You see here that the shares attributable to BP range from
09:25:08 9 a little bit over 8 to a little bit under 20.5 percent. So 8 to
09:25:14 10 20 percent, let's say; kind of centered around something in the
09:25:17 11 neighborhood of 10 to 15 percent.

09:25:20 12 To take a point, I think hydrocarbon production
09:25:22 13 is probably the most natural of these things to think about, that's
09:25:25 14 really the focus of all of this activity. It's about 11 percent.

09:25:31 15 Q. Did you prepare a slide summarizing your market share analysis
09:25:35 16 of Anadarko's role in the Gulf oil and gas industry?

09:25:39 17 A. I did.

09:25:39 18 Q. Please pull up Demonstrative 33502. How does this slide
09:25:44 19 support your conclusion that Anadarko was modestly important in the
09:25:49 20 Gulf oil and gas industry?

09:25:50 21 A. So, similar mechanics to the preceding slide. The metrics,
09:25:58 22 boreholes, permanent production platforms, leases held, hydrocarbon
09:26:03 23 production, and royalties. I calculated Anadarko's share of the
09:26:07 24 Gulf of Mexico oil and gas industry, the top three as in the
09:26:10 25 preceding slide, at a point in time, July 2014; the bottom two over

09:26:15 1 the three-year period from 2011 to 2013.

09:26:21 2 Again, as with the BP slide, the top three, there's
09:26:25 3 publicly available information for the contribution of the number
09:26:28 4 for the firm. There's publicly available information for the
09:26:31 5 industry as a whole. For the bottom two -- now Anadarko did not
09:26:37 6 provide information on hydrocarbon production. So, there, I used
09:26:42 7 the publicly available information for their number, as well as the
09:26:46 8 publicly available information for the industry number.

09:26:50 9 For the royalty contribution, they did provide
09:26:53 10 information. I used their royalty number in comparison to the
09:26:55 11 publicly available information for industry royalties.

09:27:00 12 These numbers are a bit smaller than those for BP. They
09:27:04 13 kind of range from 3 percent plus change for royalties to 14 and
09:27:08 14 change for permanent production platforms. But generally not large.

09:27:12 15 Q. Dr. Mason, you mentioned that the oil and gas industry
09:27:17 16 represents a fraction of economic activity in the Gulf region. Did
09:27:21 17 you prepare a demonstrative summarizing that opinion?

09:27:24 18 A. Yes, I did.

09:27:25 19 Q. Please pull up Demonstrative 33521. And how does this
09:27:33 20 demonstrative inform your opinion regarding BXP and Anadarko 's
09:27:37 21 role in the Gulf economy?

09:27:38 22 A. So this slide shows us, for each of the five Gulf Coast states,
09:27:45 23 that fraction of the state's GDP, the typical measure of economic
09:27:53 24 activity, that fraction, that percentage of the state's GDP that's
09:27:55 25 attributable to the oil and gas industry activities. So these

09:27:59 1 numbers range from about 3 percent for Florida to 35 and a half
09:28:04 2 percent for Louisiana.

09:28:07 3 So if you want to assess the effect of a particular
09:28:11 4 company, maybe it's BPXP, you take the information from their role
09:28:16 5 in the oil and gas industry, combine them with the role of the oil
09:28:21 6 and gas industry within the state. Those two things together,
09:28:24 7 multiply those two numbers together and that gives you a sense for
09:28:26 8 the contribution of BP for that state.

09:28:29 9 So let's take Louisiana, it's the biggest of
09:28:31 10 these states. I'll say 36 percent. Hydrocarbon production was
09:28:35 11 about 11 percent. BP's share of hydrocarbon production is about 11
09:28:40 12 percent of the industry. You multiple 11 percent and 36 percent,
09:28:44 13 you get something that's a little bit less than 4 percent.

09:28:47 14 So in that interpretation, BP's contribution to
09:28:51 15 the Louisiana state GDP runs in the neighborhood of 4 percent and
09:28:55 16 the other states are a bit smaller. It's a bit smaller for Texas,
09:29:01 17 and markedly smaller for the other three states.

09:29:03 18 Q. You mentioned your opinion that the Gulf of Mexico oil and gas
09:29:06 19 industry is unconcentrated. Did you prepare a demonstrative
09:29:09 20 explaining your analysis of market concentration for the Gulf oil
09:29:13 21 and gas industry?

09:29:14 22 A. I did.

09:29:15 23 Q. Please pull up Demonstrative 33517. How did you conduct the
09:29:20 24 analysis shown in this slide?

09:29:22 25 A. Okay. So this slide has four metrics to appraise the Gulf of

09:29:30 1 Mexico oil and gas industry. For each of these four metrics -- as a
09:29:35 2 few slides back, we talked about the Herfindahl index. I calculated
09:29:40 3 the Herfindahl index for each of these four metrics: Two of them
09:29:43 4 are over a period of time, leases and production. The production
09:29:46 5 here is by operator, so it doesn't control for ownership patterns.
09:29:52 6 But nevertheless it tells us something about the nature of the
09:29:55 7 industry, I think.

09:29:56 8 So over this five-year period of time for leases and
09:30:00 9 production, snapshot in time in July 2014 for deepwater production,
09:30:08 10 permanent production platforms, and subsea boreholes. So two of
09:30:11 11 these things are over a period of time; two of these things in
09:30:13 12 deepwater. In all four of these cases, I've calculated the
09:30:16 13 Herfindahl index for the Gulf of Mexico industry. This slide places
09:30:21 14 them in a particular context. Industrial organization economists, I
09:30:26 15 have the view -- so this Herfindahl index is telling us something
09:30:30 16 about it. As I said, it's the degree of concentration within the
09:30:33 17 market, the degree to which -- you can think of it, I think,
09:30:37 18 truthfully as a -- industries that are not concentrated, there's
09:30:41 19 relatively easy entry and exit, resources are fairly fluid. The
09:30:45 20 general consensus amongst industrial economists is that a threshold
09:30:50 21 for an unconcentrated industry is the number 1,500 for the
09:30:54 22 Herfindahl index.

09:30:56 23 It's noteworthy here that all four of these
09:30:58 24 metrics fall comfortably below this threshold for an unconcentrated
09:31:03 25 industry. So this is indicating that, by this interpretation, the

09:31:07 1 Gulf of Mexico oil and gas industry is relatively fluid. Entry and
09:31:12 2 exit is unconcentrated.

09:31:13 3 Q. How is fluid entry and exit in the Gulf of Mexico oil industry
09:31:19 4 relevant to your analysis of Anadarko and BPXP's role in the Gulf of
09:31:26 5 Mexico economy?

09:31:26 6 A. The idea that this industry is unconcentrated, that it's
09:31:31 7 characterized by a relatively fluid entry or exit means that firms
09:31:40 8 placed in the position of developing similar resources to those that
09:31:45 9 BP or Anadarko are developing would make similar efforts to develop
09:31:52 10 those resources. They would make similar expenditures; similar
09:31:56 11 expenditures on capital, similar expenditures on labor, and thereby
09:32:01 12 deliver similar benefits to the Gulf of Mexico economy.

09:32:11 13 MS. KING: Thank you, Dr. Mason. I pass the witness.

09:32:14 14 THE COURT: All right. I'll honor someone's request.
09:32:16 15 Ms. Himmelhoch, I guess. We'll go ahead and take our 15-minute
09:32:19 16 recess now.

09:32:20 17 THE MARSHAL: All rise.

09:32:22 18 (WHEREUPON, A RECESS WAS TAKEN.)

09:56:57 19 (OPEN COURT.)

09:56:58 20 THE COURT: Please be seated everyone.

09:57:01 21 MR. JARRETT: Good morning, your Honor, Keith Jarrett for
09:57:03 22 BP.

09:57:04 23 THE COURT: Good morning.

09:57:05 24 CROSS-EXAMINATION

09:57:07 25 BY MR. JARRETT:

09:57:07 1 Q. Good morning, Professor Mason, I'm Keith Jarrett. I am one of
09:57:10 2 BP's lawyers. We have not met before. I did see this morning we
09:57:15 3 use the same coffee shop.

09:57:18 4 I am going to talk about three subjects today. And the
09:57:20 5 first one I am going to talk about is something you've expressed
09:57:24 6 some opinions on, and it's the concept of mitigation. And the first
09:57:31 7 point on mitigation, I want to talk about tourism grants. You're
09:57:34 8 familiar that BP granted some tourism grants?

09:57:37 9 A. Yes, I am.

09:57:38 10 Q. Can we pull up TREX 13323.1.1. Dr. Mason, this is BP
09:57:52 11 announcing tourism grants back in May of 2010. You were aware that
09:57:56 12 they gave the grants at about that time?

09:57:59 13 A. That's correct.

09:57:59 14 Q. And if you read it today, it says, "BP is today announcing
09:58:03 15 grants to each of the states of Florida, Alabama, Mississippi, and
09:58:06 16 Louisiana to help their governors promote tourism around the shores
09:58:10 17 of the Gulf of Mexico over the coming months. This is part of our
09:58:15 18 ongoing commitment to help mitigate the economic harm of the oil
09:58:19 19 spill."

09:58:20 20 Now, you're aware that BP gave these grants voluntarily
09:58:27 21 to the four states mentioned?

09:58:28 22 A. I understand that they were not obligated to do so.

09:58:35 23 Q. And you also understand that they gave 25 million to Florida at
09:58:39 24 that time and 15 million each to the other three states: Alabama,
09:58:43 25 Mississippi, and Louisiana?

09:58:44 1 A. That's correct.

09:58:45 2 Q. And the grants totaled -- in total for 2010, they totaled
09:58:51 3 \$87 million, and BPXP gave an additional 92 million thereafter. Are
09:58:57 4 you familiar with that?

09:58:58 5 A. Yes. Right. Yes.

09:59:00 6 Q. Let's pull up D-35369. Dr. Mason, you will recognize this
09:59:14 7 exhibit, 35369, as a table that comes from Dr. Loren Scott's report,
09:59:22 8 don't you?

09:59:22 9 A. That's correct.

09:59:22 10 Q. You've seen it before?

09:59:23 11 A. Yes.

09:59:24 12 Q. Dr. Loren Scott is BP's economic expert, your counterpart
09:59:29 13 actually, right?

09:59:30 14 A. That's correct.

09:59:31 15 Q. And he is a professor emeritus at LSU. Do you know him?

09:59:36 16 A. The first time I met him was at his deposition.

09:59:41 17 Q. When you add up all of the tourism promotion grants that BPXP
09:59:45 18 made, they totaled \$230,371,337. And you have not taken issue with
09:59:54 19 those data, have you, sir?

09:59:55 20 A. No, I have not.

09:59:56 21 Q. And you have, in connection with your work on this case, you've
10:00:03 22 reviewed the testimony of Dr. Harry Luton, have you not, sir?

10:00:11 23 A. I believe I looked at Mr. Luton's deposition.

10:00:16 24 Q. You did. And so you told us.

10:00:18 25 A. Yeah. I didn't know if that's what you were referring to or if

10:00:22 1 you meant something else, but that's what I have reviewed.

10:00:24 2 Q. Let's pull up D-35343. This is some testimony. Dr. Harry
10:00:34 3 Luton is an employee at the Bureau of Ocean Energy Management, you
10:00:38 4 knew that?

10:00:39 5 A. I recall that, yes.

10:00:40 6 Q. He is a Ph.D. in social sciences?

10:00:43 7 A. I knew he was a Ph.D., I couldn't have told you the particular
10:00:47 8 field.

10:00:48 9 Q. He testified on behalf of the United States at its 30(b)(6)
10:00:53 10 deposition, you probably don't know what that is, but he was
10:00:56 11 designated by the government to testify on the topic of economic
10:00:59 12 harm. You're aware of that?

10:01:01 13 A. In broad strokes.

10:01:03 14 Q. This is what Dr. Luton testified to with regard to the grants.
10:01:09 15 And we can all read it. Essentially, it says: "In some cases, BP
10:01:13 16 funds to promote tourism that supported local events like fishing
10:01:17 17 tournaments or fishing rodeos contributed to a doubling of
10:01:20 18 attendance from the 2009 pre-spill attendances at those events."

10:01:26 19 He answered: "Yes, it contributed to it."

10:01:28 20 Do you see that?

10:01:29 21 A. Sure.

10:01:29 22 Q. Then it says: "In some cases, BP tourism grant money was used
10:01:33 23 by states or counties to promote new events and new tourist
10:01:37 24 opportunities."

10:01:37 25 He agreed with that. Do you see that?

10:01:39 1 A. I do.

10:01:39 2 Q. And he acknowledged that these moneys contributed to inflows of
10:01:44 3 tourism and tourism money, and then he noted that this grant money
10:01:48 4 had a positive contributing impact to the economy. Do you see that?

10:01:52 5 A. Yes, I do.

10:01:53 6 Q. And as I appreciate what you've told us, you agree with
10:01:59 7 Dr. Luton that BXP's tourism grants had a positive mitigating
10:02:05 8 effect on harm?

10:02:06 9 A. I am not disagreeing that the payments had a mitigating effect
10:02:12 10 on harm. As I indicated during direct, it's kind of the net damages
10:02:17 11 that I was focused on.

10:02:18 12 Q. And your reports don't do anything about trying to put a
10:02:21 13 quantification on that positive effect, do they, sir?

10:02:23 14 A. No, they do not. Nor, to the best of my recollection, do
10:02:28 15 Dr. Scott's.

10:02:29 16 Q. I want to stay on the topic of mitigation. I'm going to switch
10:02:32 17 from tourism grants to the Vessels of Opportunities program. I know
10:02:36 18 you're familiar with that, are you not, sir?

10:02:38 19 A. That's correct.

10:02:39 20 Q. Let's pull up TREX 13067.15.1. Again, Dr. Mason, you recognize
10:02:49 21 this Table 7 from Dr. Scott's report where he cumulates the spending
10:02:53 22 on the Vessels of Opportunity program, calls it out by state, and
10:02:58 23 totals it up at \$594,400,000.

10:03:04 24 A. That's right.

10:03:05 25 Q. And you have not taken any issue with those numbers either,

10:03:08 1 have you, sir?

10:03:09 2 A. No.

10:03:09 3 Q. And, in fact, you understand that this, too, was a voluntary
10:03:13 4 program undertaken by BPXP to mitigate economic losses?

10:03:17 5 A. Well, yeah, my understanding was that they weren't obligated to
10:03:23 6 do that. I would like to make clear that this is not a legal
10:03:26 7 conclusion. I don't profess any particular expertise there, but as
10:03:29 8 a lay person, that was sort of my understanding.

10:03:31 9 Q. Yeah. Yeah.

10:03:33 10 And you also agree that this program benefited the
10:03:37 11 fishermen who participated in mitigating economic losses?

10:03:40 12 A. Pardon me. What -- yes, what I agree to is that those who
10:03:47 13 received payments from this, they benefited. But other people who
10:03:52 14 didn't receive payments, you know, not so much.

10:03:54 15 Q. That sounds pretty obvious. If you participated, you
10:03:57 16 benefited; if you didn't, you didn't benefit, right?

10:03:59 17 A. Yeah, I mean, I think you're right, it does sound pretty
10:04:03 18 obvious. But nevertheless it's the case not everybody received
10:04:07 19 these payments; but those who did, they benefited.

10:04:09 20 Q. And it's also your opinion, is it not, that from an economic
10:04:13 21 perspective, the VOO program that we describe here blunted the
10:04:18 22 adverse effects from the spill on employment?

10:04:20 23 A. Yes. I believe it's true, so -- insofar as individuals,
10:04:29 24 fishermen who participated, their employees had access to these
10:04:34 25 moneys and this economic activity. It would have had -- it would

10:04:37 1 have blunted, as you put it, the economic effects of the spill.

10:04:40 2 Q. So we've talked about tourism grants, we've talked about the
10:04:45 3 VOO program. Still on the topic of mitigation, I want to talk about
10:04:49 4 spill response and claims payments.

10:04:51 5 Can we pull up D 35364, please. Again, Dr. Mason, these
10:04:59 6 are two tables; they come from Dr. Scott's report. You have seen
10:05:04 7 these before, have you not?

10:05:05 8 A. Yes, I saw Dr. Scott's report, yes.

10:05:08 9 Q. And you have not in your reports disputed any of the numbers
10:05:12 10 set out in these two tables, have you, sir?

10:05:14 11 A. No.

10:05:14 12 Q. Well, if we look at the first table, this is a topic that you
10:05:18 13 discussed somewhat on direct and quite lengthy, I believe, and it
10:05:24 14 talks about BPXP's claims payments to the Gulf coast states. Do you
10:05:27 15 see that?

10:05:27 16 A. Sure.

10:05:27 17 Q. And it lists the dollars by state, and it totals up to
10:05:32 18 \$10.1 billion spent in the states of Louisiana, Mississippi,
10:05:37 19 Alabama, and Florida. And do you agree with that?

10:05:39 20 A. Yes, I don't disagree with the numbers that are in that table,
10:05:45 21 correct.

10:05:45 22 Q. And then we have Table 6 from Dr. Scott's report, which
10:05:49 23 discusses the BPXP spill response spending, and we notice that that
10:05:53 24 totals \$14.1 billion of total spending through 2014 -- for the
10:05:59 25 second quarter of 2014. And you don't dispute those numbers either,

10:06:03 1 did you, sir?

10:06:03 2 A. You're correct, I don't dispute those numbers. In contrast,
10:06:10 3 though, to a few of the examples that you gave earlier, as a lay
10:06:16 4 person, not speaking here legal expertise, my understanding is that
10:06:22 5 these spendings were not voluntary.

10:06:24 6 Q. I didn't ask you that but I am going to get to that.

10:06:27 7 But you don't dispute the numbers, right?

10:06:28 8 A. No.

10:06:29 9 Q. And you don't dispute that BPXP spent almost 12 and a half
10:06:34 10 billion dollars in the year 2010 alone?

10:06:36 11 A. That's what the chart says, yes.

10:06:39 12 Q. Can you pull up, please, TREX 13118. Do you recognize this
10:06:50 13 exhibit, Dr. Mason?

10:06:53 14 A. Yes, I do.

10:06:53 15 Q. This is a document you cited in your materials. It's a labor
10:06:59 16 market impact study that was authored by Joseph Aldy, correct?

10:07:03 17 A. That's right.

10:07:04 18 Q. Dr. Aldy is also a Ph.D. economist like yourself, is he not?

10:07:09 19 A. Yes, he is.

10:07:10 20 Q. Do you know him?

10:07:10 21 A. I do.

10:07:11 22 Q. He actually was a special assistant to the president at one
10:07:13 23 time, wasn't he?

10:07:14 24 A. Yes, he was for -- my recollection was for a year or two.

10:07:18 25 Q. And he's a professor at Harvard?

10:07:20 1 A. Yes, he is an assistant professor at Harvard.

10:07:23 2 Q. And Dr. Aldy, in this exhibit, in the study, he examined and
10:07:31 3 analyzed the effects of BP's cleanup expenditures and their claims
10:07:34 4 payments, didn't he?

10:07:36 5 A. Yeah.

10:07:37 6 Q. Let's pull up, if we could, please, TREX 13118.24.1. This is
10:07:44 7 an excerpt from that study that Dr. Aldy performed. Section 4.12
10:07:54 8 reads: "The clean-up activities and compensation for economic
10:07:57 9 damages provided by BP could counter at least some of the impacts of
10:08:01 10 lost income on economic activity. BP's expenditures in the Gulf
10:08:06 11 states for damage compensation and clean-up were quite significant.
10:08:10 12 By June 1, 2010, BP reported spending nearly a billion dollars for
10:08:16 13 clean-up, and the clean-up tab increased to more than \$3 billion by
10:08:20 14 July 5. On September 17, BP" -- this is back in 2010 -- "BP
10:08:25 15 reported having spent clean-up spending of nearly \$10 billion."

10:08:30 16 That's what he wrote?

10:08:31 17 A. That's what he wrote.

10:08:32 18 Q. And you don't dispute either the figures or the conclusions, do
10:08:36 19 you, sir?

10:08:36 20 A. I don't -- if by "conclusions," you mean the passage here that
10:08:41 21 you've highlighted?

10:08:42 22 Q. Yes, sir.

10:08:43 23 A. I don't dispute that.

10:08:44 24 Q. And, in fact, not only do you not dispute it, you agree that it
10:08:48 25 could have countered some of the impacts of lost income?

10:08:51 1 A. Dr. Aldy's analysis demonstrates no net effects of what you say
10:08:57 2 is correct. I should clarify here: No net effect in the year 2010.

10:09:03 3 Q. What Dr. Aldy found is that there was no loss of employment on
10:09:08 4 a net basis in 2010.

10:09:11 5 A. Kind of weighing it -- yes. Kind of weighing against what
10:09:15 6 damages might have occurred from the spill, the benefits -- such as
10:09:20 7 they were -- from these various activities, more or less, they
10:09:23 8 canceled out in his analysis.

10:09:24 9 Q. And importantly, you don't disagree with that finding, do you,
10:09:28 10 sir?

10:09:28 11 A. I don't disagree that the activities in 2010 came out -- the
10:09:34 12 labor market activities kind of came out as a wash.

10:09:38 13 Q. Let's pull up, if we could, please, D-35344. This is some more
10:09:47 14 testimony from Dr. Luton that you reviewed. And here Dr. Luton is
10:09:52 15 being asked about moneys that BP was paying for spill response and
10:09:58 16 claims, and the question was: "Your understanding is that BP's
10:10:03 17 payment of substantial amounts of money early after the spill and
10:10:06 18 getting it to individuals and businesses quickly minimized the
10:10:11 19 spill's impact on those individuals and businesses, right?"

10:10:14 20 His answer was: "Yes."

10:10:16 21 "And BP started paying claims right away, didn't it?"

10:10:19 22 And his answer was: "Yes."

10:10:24 23 You reviewed that testimony?

10:10:25 24 A. Yes, that's correct.

10:10:26 25 Q. And it's true that you agree with Dr. Luton, and, in fact, you

10:10:32 1 have written in your reports that it was not only the amount but the
10:10:35 2 timing of the payments that was so important and so positive?

10:10:40 3 A. I agree with the prophylactic effect. I am not -- I wouldn't
10:10:52 4 be comfortable with the word "minimized" here. Mitigated but not
10:10:56 5 minimized.

10:10:57 6 Q. Mitigated. That's the whole subject we're talking about,
10:10:59 7 right?

10:11:00 8 A. It is.

10:11:00 9 Q. We talked about tourism payments -- tourism grants minimizing
10:11:05 10 or mitigating economic impact; the VOO program mitigating economic
10:11:10 11 impact; spill response mitigating economic impact; and early claims
10:11:15 12 payments mitigating economic impact, correct?

10:11:17 13 A. We are. But for an economist -- well, I am just going to say I
10:11:21 14 think it's important -- it's not -- I am not just sort of splitting
10:11:25 15 semantic hairs. There is a difference between "minimize" and
10:11:28 16 "mitigate."

10:11:28 17 Q. Fair enough.

10:11:30 18 As a final subject on this mitigation topic, I want to
10:11:34 19 talk about employment. I think you've already confirmed for us that
10:11:39 20 Dr. Aldy concluded that the employment was a "wash" was your words,
10:11:43 21 and you're in agreement with that?

10:11:45 22 A. In the year 2010, there was no -- he measured no net effect.

10:11:50 23 Q. Thank you, sir. I am going to -- that's the first topic. One
10:11:54 24 down.

10:11:54 25 So I am going to turn to a second topic and this topic is

10:11:57 1 economic harm. This is a topic you discussed on direct. Your
10:12:04 2 evaluation was qualitative, correct, sir?

10:12:07 3 A. That's correct.

10:12:07 4 Q. "Qualitative" means so you can use words like "serious" or
10:12:11 5 "severe" rather than numbers like 5 or 10, right?

10:12:14 6 A. So the general idea here is to give the big picture -- I think
10:12:22 7 that's consistent with what you just said -- not to give a precise
10:12:28 8 numerical evaluation.

10:12:30 9 Q. You were not trying to give a precise numerical evaluation; you
10:12:34 10 were only trying to give a rough estimate, as I read your stuff?

10:12:36 11 A. Indeed. Yes. Particularly -- I like to emphasize that this is
10:12:42 12 not meant to be precise; it's meant to be a rough estimate.

10:12:45 13 Q. You're familiar with the concept of uncertainty in economics?

10:12:49 14 A. Certainly.

10:12:50 15 Q. That's a concept that we lay people might call "margin of
10:12:54 16 error," correct?

10:12:54 17 A. Well, that kind of depends upon the application. "Uncertainty"
10:13:00 18 might mean many different things. It might, within the particular
10:13:04 19 context, mean "margin of error."

10:13:07 20 Q. Just to confirm the concept of uncertainty here, you're not
10:13:12 21 prepared to offer an opinion as to the margin of error on your rough
10:13:16 22 estimate because you didn't see the underlying data to make a
10:13:19 23 personal analysis about that; isn't that fair?

10:13:21 24 A. Right. So, yeah, if I understand your question correctly, what
10:13:25 25 you're basically saying is: I've got this number, I can't tell you

10:13:30 1 anything about kind of a statistical range that the estimate of the
10:13:36 2 subset might fall in. Never my intent to do that, didn't offer any
10:13:40 3 information on that. What you get is a rough estimate.

10:13:43 4 Q. We agree on that?

10:13:45 5 A. Well, I think what I just said agreed with your question.

10:13:48 6 Q. Yes, sir.

10:13:49 7 A. Possibly there were some differences around the edges.

10:13:51 8 Q. No, I think we're in agreement.

10:13:54 9 So what you did do, as you explained in detail, is you
10:13:59 10 looked at aggregated claims data; that is, claims that had been
10:14:03 11 paid?

10:14:04 12 A. I looked at aggregated claim payment or -- I used the whole
10:14:10 13 universe of the claims, but it's the payments, the aggregation of
10:14:13 14 payments that made its way into this analysis, yeah.

10:14:16 15 Q. And you understood that these were OPA payments, correct? Oil
10:14:21 16 Pollution Act payments?

10:14:22 17 A. Yes. Now, if I can add a qualifier? Again, I am not
10:14:27 18 offering -- the answer is yes but not as a legal interpretation.

10:14:32 19 Q. In none of your three reports that you issued have you offered
10:14:38 20 any opinion about the value of any uncompensated economic harm; you
10:14:42 21 just noted that that exists?

10:14:43 22 A. That's right. I mean -- yeah, there's the fact that -- for
10:14:49 23 example, that there are these outstanding claims payments. I can't
10:14:53 24 tell you with any degree of certainty what fraction of those would
10:14:56 25 be paid. I think that would be imprudent for me to do that.

10:14:59 1 Nevertheless, you've got this set of payments that's outstanding,
10:15:02 2 you know. You ball-park figures, the fraction of similar payments
10:15:07 3 that were granted, you know, as a rough estimate again. I don't
10:15:12 4 think it's unreasonable to imagine that those outstanding payments
10:15:16 5 will have something that looks about like that. 20 percent were
10:15:19 6 paid -- maybe 20 percent of the outstanding payments were paid,
10:15:22 7 maybe 50, maybe 50.

10:15:24 8 I don't have an analysis of that. I can't give you -- I
10:15:27 9 can't confirm for you, yes, what it will be. But I think that's a
10:15:32 10 reasonable interpretation an empirical economist would draw.

10:15:36 11 Q. My question was: Your three reports don't have any information
10:15:39 12 about that and you haven't offered an opinion about that?

10:15:42 13 A. About the way that --

10:15:43 14 Q. About the way --

10:15:44 15 A. -- on projects from?

10:15:46 16 Q. About any evaluation of uncompensated damage, yes.

10:15:49 17 A. No, I don't have anything to say about the uncompensated
10:15:54 18 damage; just noted that there was this share that was left, you
10:15:59 19 know, in particular, this large share of business claims.

10:16:02 20 Q. Understood.

10:16:02 21 As a final point on this little subset of questions, you
10:16:07 22 agree with me that to the extent that the Clean Water Act penalties
10:16:11 23 are designed in part to serve as a deterrent, do you agree that from
10:16:16 24 an economic perspective OPA payments can serve a deterrent function
10:16:21 25 in cases like this?

10:16:22 1 A. Okay. So again, yes, the answer is yes. But, I am looking --
10:16:29 2 I mean, I am answering this question from the perspective of
10:16:33 3 somebody who dabbles in economic theory. I'm thinking this is kind
10:16:37 4 of a conceptual economic exercise. I am not a legal scholar, I
10:16:43 5 don't avow any expertise associated with that. So from the
10:16:46 6 perspective of an economist, these things might serve similar
10:16:50 7 deterring roles, which isn't necessarily the same thing as saying
10:16:55 8 they serve the same role.

10:16:57 9 Q. In fairness, you weren't qualified as a legal expert, only an
10:17:01 10 economic expert, and my question was focused on economics and we do
10:17:04 11 have an agreement on that point?

10:17:04 12 A. On the economic interpretation, you could think of each of
10:17:08 13 these things as offering a deterring role.

10:17:10 14 Q. Thank you, Doctor.

10:17:13 15 Changing subjects. I want to talk now about your tourism
10:17:19 16 analysis. First, let's pull up, if we could, D 33 -- I'm sorry,
10:17:26 17 35368.

10:17:41 18 MR. JARRETT: Your Honor, after yesterday, I was hoping to
10:17:45 19 not go into any technological issues today. I think we got it.

10:17:45 20 BY MR. JARRETT:

10:17:48 21 Q. Dr. Mason, you will recognize these figures on this exhibit,
10:17:54 22 D-35368, as also being figures from Dr. Loren Scott's materials,
10:18:00 23 correct?

10:18:00 24 A. Yes. These are figures from Dr. Scott's materials.

10:18:04 25 Q. This is where Dr. Scott took the annual revenue per available

10:18:11 1 room, that's the same metric that we saw you use in the analysis
10:18:14 2 that you talked about on direct, correct?

10:18:17 3 A. Yeah, he uses -- these are graphs based on the so-called RevPAR
10:18:22 4 thing.

10:18:23 5 Q. RevPAR, revenue per available room, that's an acronym?

10:18:27 6 A. That's the acronym, that's right.

10:18:29 7 Q. He presented this figure -- these are Figures 3, 7, 8 and 11,
10:18:36 8 if I can read that right.

10:18:38 9 And these are for all four of the affected states, the
10:18:42 10 Florida panhandle, Alabama, Mississippi, and Louisiana. Correct?

10:18:46 11 A. That's right.

10:18:47 12 Q. And you have not disputed any of the numbers in Dr. Scott's
10:18:55 13 tables that we see here?

10:18:56 14 A. Right. I am not -- correct, I am not disagreeing with the
10:19:03 15 figures, the representation of the numbers. I disagree with the
10:19:08 16 interpretation. As I indicated on direct, we're coming out of The
10:19:13 17 Great Recession, we would expect to see increases. If, for example,
10:19:19 18 in RevPAR, so viewed in this particular light, just all by
10:19:22 19 themselves here, just thinking about these figures, they really
10:19:26 20 don't tell me a whole lot.

10:19:27 21 Q. Dr. Scott, please, I just asked you about the data. You don't
10:19:32 22 dispute the data?

10:19:33 23 THE DEFENDANT: Dr. Mason.

10:19:35 24 MR. JARRETT: Dr. Mason, yeah, correct. Thank you, Judge.

10:19:37 25 THE WITNESS: Dr. Scott might be better looking.

10:19:37 1 BY MR. JARRETT:

10:19:41 2 Q. I think he is going to talk about this himself, but you don't
10:19:43 3 dispute the data, correct?

10:19:45 4 A. Yeah. As I said a moment ago, I don't disagree with the data;
10:19:48 5 I disagree with the interpretation.

10:19:50 6 Q. And what the data that Dr. Scott has presented shows is that
10:19:55 7 hotel revenue measured by this metric has increased year over year
10:20:01 8 since 2010, correct?

10:20:02 9 A. It does show that, but as noted a moment ago, that's what you
10:20:08 10 would expect to happen on the ground; tourism is recovering after we
10:20:11 11 come out of the recession.

10:20:12 12 Q. And Dr. Scott made that conclusion for all four of the states
10:20:16 13 presented here?

10:20:17 14 A. I am not sure he made that conclusion for the Mississippi Gulf
10:20:24 15 Coast. I know he made that conclusion for the other states. But --

10:20:31 16 Q. Mississippi was a casino-related issue, wasn't it?

10:20:35 17 A. Yeah, he made that claim that there was some kind of a link to
10:20:38 18 casinos.

10:20:39 19 Q. And in fairness, you didn't even know that there were casinos
10:20:43 20 in the Mississippi Gulf Coast, did you?

10:20:45 21 A. So in fairness here, I don't avow the kind of expertise that he
10:20:53 22 has for the regional economies. I had seen -- he provided, I
10:20:57 23 believe, his background information for that claim, he provided some
10:21:01 24 visuals that illustrated the location and the identity of casinos in
10:21:07 25 the various states.

10:21:08 1 And as I recall, there are casinos all over the state of
10:21:13 2 Mississippi. But that's a separate question, I think.

10:21:15 3 Q. And the casino industry data shows that it's been in a slump
10:21:20 4 for several years, correct?

10:21:21 5 A. Now, that's something I just can't tell you about because
10:21:25 6 that's not --

10:21:26 7 Q. We'll ask Dr. Scott about it.

10:21:28 8 A. Right, it's not to my area of expertise.

10:21:30 9 Q. Well, Dr. Scott, from viewing these datas, made a conclusion
10:21:33 10 that the tourism industry had recovered, and you decided that you
10:21:38 11 wanted to test that theory and that's what we talked about earlier
10:21:41 12 today on direct, right?

10:21:42 13 A. I evaluated that conclusion in the rebuttal report and the
10:21:47 14 response report, correct.

10:21:48 15 Q. Let's pull up TREX 13319.14.1. So this is an excerpt from your
10:22:01 16 report, Dr. Mason, do you see that?

10:22:03 17 A. Yes.

10:22:04 18 Q. It comes from your third report and you're describing how you
10:22:07 19 went about trying to perform this test of Dr. Scott's analysis. And
10:22:12 20 you said that what you did was you compared changes in a variable of
10:22:18 21 interest in a study area against changes in the same variable in a
10:22:22 22 nearby but unaffected area. Correct?

10:22:25 23 A. That's what this quote says, that's right. This is the
10:22:29 24 so-called difference-in-difference method.

10:22:31 25 Q. And the general idea is that comparable areas should have

10:22:34 1 similar affects across time?

10:22:36 2 A. That's the way that we interpret the difference-in-difference
10:22:40 3 approach.

10:22:40 4 Q. So what you did in this tourism industry analysis was you
10:22:45 5 analyzed tourism in two states, using the same RevPAR data that
10:22:49 6 Dr. Scott used, correct?

10:22:51 7 A. Yes.

10:22:51 8 Q. You analyzed the data in the state of Mississippi, correct,
10:22:55 9 sir?

10:22:55 10 A. Yes, that's right.

10:22:56 11 Q. And you compared RevPAR data for the Gulf Coast area to RevPAR
10:23:02 12 data from the inland counties, correct?

10:23:05 13 A. Yeah, the comparison here is between RevPAR for a typical hotel
10:23:10 14 in a Gulf Coast county to RevPAR data for a typical hotel in inland
10:23:15 15 Mississippi.

10:23:16 16 Q. And then you did the same thing from Florida in that you
10:23:19 17 compared the Florida panhandle, the affected area, with the Atlantic
10:23:23 18 coast of Florida, the unaffected area?

10:23:26 19 A. That was the general logic.

10:23:28 20 Q. Could you pull up D-33519. This was the chart that you showed
10:23:42 21 on direct, the results of your analysis comparing Mississippi Gulf
10:23:46 22 Coast and Mississippi inland, and the Florida panhandle to the
10:23:49 23 Florida Atlantic coast, right?

10:23:51 24 A. That's right.

10:23:54 25 Q. Can you now pull up the one that we had before, which was

10:23:56 1 D-33512.

10:24:00 2 Is was also a chart that you used on direct. Do you recall this?

10:24:03 3 This is where you were showing where GCCF claims payments went?

10:24:08 4 A. That's right.

10:24:09 5 Q. One of the assumptions we just talked about that underlies your

10:24:18 6 model is that you were comparing affected areas against unaffected

10:24:22 7 areas, correct?

10:24:24 8 A. That's right.

10:24:25 9 Q. Well, if we look at this chart, it looks to me like, for

10:24:29 10 Mississippi, that the area on the Gulf Coast is affected and the

10:24:33 11 inland area is also affected.

10:24:37 12 A. So this is not identifying the type of claim, the source from

10:24:43 13 where the claims came, the kind of line of business. You're

10:24:48 14 correct, your assertion here that there are claims from inland

10:24:52 15 Mississippi is obviously indicated by this graph. That does not

10:24:56 16 mean that those claims came from hotels. There's no way we can

10:25:00 17 know, looking at this.

10:25:01 18 Q. You don't know?

10:25:02 19 A. I just -- yeah.

10:25:03 20 Q. What we do know is that you had, you compared one affected area

10:25:07 21 to another affected area?

10:25:11 22 A. Yeah. So I think it's fair to say here that there are some

10:25:16 23 areas that are clearly more heavily affected; those are the ones

10:25:21 24 that are in the treatment group. There are other areas that are

10:25:24 25 clearly less affected; those are the areas that are in the un -- are

10:25:29 1 in the control group.

10:25:30 2 Q. But in fairness to me, "less affected" doesn't mean
10:25:33 3 "unaffected"?

10:25:34 4 A. It's the same idea, though. The rising tide idea still applies
10:25:40 5 to the affect as you see heavier damages in areas that are more
10:25:44 6 directly affected, that still is an indication that there is an
10:25:48 7 impact from the spill on those counties.

10:25:50 8 Q. "Less affected" doesn't equal "unaffected," we agree on that?

10:25:54 9 A. "Less affected" doesn't equal "unaffected." But the fact
10:25:58 10 remains that if there was no impact from the spill, you should see
10:26:01 11 similar patterns in those places.

10:26:03 12 Q. We'll talk about that, too.

10:26:04 13 But also for Florida, this is where you compared the
10:26:09 14 panhandle region -- that's this, right (INDICATING)?

10:26:11 15 A. Yes.

10:26:11 16 Q. -- against the Atlantic coast region, right?

10:26:15 17 A. That's right.

10:26:15 18 Q. And here, from this chart, Exhibit 33512, we can also see that
10:26:21 19 you compared one affected area to another affected area, correct?

10:26:26 20 A. I have the same response to the question a moment ago: The
10:26:31 21 bulk of the impacts were in the panhandle area, we don't know that
10:26:35 22 those counties on the Atlantic coast, the claims payments that we're
10:26:39 23 speaking of right now, came from hotels.

10:26:42 24 And let me just, let me add something else on top of this.
10:26:47 25 The GCCF program did not run through past -- I believe it was 2012.

10:26:56 1 So to the extent that your criticism applies here, it doesn't have
10:27:02 2 direct bearing on observations from 2013. Just as a side point.

10:27:06 3 But I still think, as a matter of practice, as kind of an
10:27:11 4 applied econometric exercise, the best approach might be to compare
10:27:17 5 unaffected with affected. But that doesn't make a comparison of
10:27:22 6 more affected and less unaffected invalid. It still provides us
10:27:28 7 information, it still delivers insight, it still shows us that that
10:27:31 8 was a pattern in the effects, that there was a greater effect by
10:27:34 9 those counties for which there was a greater exposure to the spill.

10:27:39 10 Q. The resulting calculations that you made are compromised by the
10:27:49 11 fact that you didn't have an unaffected county comparison, you'll
10:27:53 12 give me that?

10:27:54 13 A. I think, I mean, the idea of the difference-in-difference
10:27:57 14 approach is that there is something that's different between the two
10:28:01 15 places. So here is something that I think is different is that the
10:28:06 16 coastal counties were more heavily exposed. If the oil spill
10:28:11 17 doesn't have an affect, then the fact that they're more heavily
10:28:15 18 exposed is irrelevant. If we see a difference, then that they were
10:28:20 19 more heavily exposed no longer is irrelevant.

10:28:22 20 Q. That's one of your assumptions that -- one of your assumptions
10:28:27 21 was we're going to compare an affected area to an unaffected area.

10:28:32 22 Another assumption that you made in your analysis is that
10:28:36 23 you would anticipate that the rate of increase in revenue per
10:28:40 24 available room should run parallel. Isn't that what you said, that
10:28:47 25 they should be comparable?

10:28:48 1 A. Yes. Okay. So what I said was you would expect to see similar
10:28:52 2 patterns in these different places.

10:28:55 3 Are we speaking of RevPAR right here?

10:28:58 4 Q. Yes, sir, RevPAR.

10:28:59 5 A. So I would expect to see similar patterns in tourism activities
10:29:05 6 across the board if there were no affect attributable to the oil
10:29:12 7 spill.

10:29:13 8 Q. What is -- in economic theory, what's the concept of
10:29:16 9 "robustness"?

10:29:17 10 A. The concept of robustness means that alternative explanations
10:29:25 11 don't greatly adversely impact the conclusion that you draw.

10:29:34 12 Q. It's the ability of an economic model to remain valid under
10:29:39 13 differences, right?

10:29:41 14 A. I think that's a fair assumption in very broad strokes.

10:29:46 15 Q. I looked back at some of the articles you wrote, most recently
10:29:48 16 an article called "Junk Processes and Natural Gas Markets." You
10:29:52 17 used the whole concept of robustness to test your hypothesis, don't
10:29:57 18 you?

10:29:57 19 A. That's a pretty standard fair and published applied econometric
10:30:02 20 work.

10:30:02 21 Q. Nowhere in your three reports that you have presented have I
10:30:06 22 seen you undergo a robustness analysis of your assumption about
10:30:13 23 markets in unaffected and affected areas should be trending the
10:30:17 24 same. You did not do a robustness analysis, did you, sir?

10:30:22 25 A. I didn't do a robustness analysis. I don't think anybody

10:30:26 1 else -- any of the other economic experts undertook a robustness
10:30:31 2 analysis.

10:30:32 3 Q. So the point I would make is: When you write something for
10:30:35 4 peer-reviewed literature, like your article you just talked about,
10:30:38 5 you do test your assumption. And for this purpose in this paper,
10:30:41 6 you did not test your assumption, correct?

10:30:43 7 A. Yes. But it's important, I think really critically important
10:30:49 8 here to keep in mind the time frame. So the particular analysis
10:30:54 9 that you're speaking of, I believe, this is coming from -- I don't
10:30:58 10 remember now if you were referring to something from the Round 2 or
10:31:02 11 Round 3 report. Doesn't much matter. Not a whole lot of time.

10:31:06 12 The typical paper that I write, I work on -- for
10:31:09 13 publication as part of my academic duties, I would work on that for
10:31:12 14 a good while, and polish it, and think about it. That sort of
10:31:19 15 opportunity simply not available under the time frame. If I have
10:31:23 16 two weeks to write a response report, I can't do all of those
10:31:27 17 robustness checks.

10:31:29 18 But it is, nevertheless, evidence that's offered up in
10:31:32 19 rebuttal to claims made by Dr. Scott.

10:31:35 20 Q. One way you might have tested the robustness is to go back in
10:31:39 21 time and see if the Florida panhandle and the Florida Atlantic Coast
10:31:45 22 tracked in parallel prior to the spill; that would have been an easy
10:31:48 23 way to do it, right?

10:31:49 24 A. I think what you're saying is I could have made a comparison
10:31:54 25 between those areas for, I don't know, 2008, something like that.

10:31:59 1 Q. Yeah. Over time to see -- that was your assumption. That --
10:32:02 2 your assumption was that they should parallel over time. And my
10:32:05 3 criticism is you didn't check it over time, you only checked it from
10:32:10 4 the spill forward and you didn't run any robustness check; that's
10:32:14 5 all correct, right, sir?

10:32:15 6 A. Okay. So what's correct is that there's no robustness check.
10:32:19 7 What's not correct is that there's no controlling for the source of
10:32:22 8 things that you're thinking about. The whole point to using
10:32:25 9 information from a period prior to the event, here the oil spill, is
10:32:31 10 to provide that sort of a context. That's why we do these
10:32:36 11 difference-in-difference effects.

10:32:38 12 Q. On this analysis that we've talked about where you did your
10:32:44 13 RevPAR analysis for the states of Mississippi and Florida, your
10:32:49 14 reports didn't present any analysis for the other two relevant
10:32:52 15 states, Louisiana or Alabama, did it?

10:32:54 16 A. That's right. I didn't. And again, as I indicated on direct,
10:32:57 17 that's because I was offering this up as a targeted rebuttal to
10:33:01 18 broad claims made by Dr. Scott.

10:33:02 19 Q. To use your words from the deposition, however, you acknowledge
10:33:07 20 that those results for the states of Alabama and Louisiana would
10:33:12 21 have expository value?

10:33:15 22 A. Yeah, I said that in the deposition.

10:33:18 23 Q. That means it can explain some things?

10:33:22 24 A. It could. And if the purpose of this report was to do what
10:33:25 25 Dr. Scott did in his Round 1 report, that would be a different

10:33:28 1 question. If the purpose -- the purpose of that Round 2 report was
10:33:32 2 to rebut some of his claims. As such, I didn't feel any particular
10:33:38 3 need to redo all of his work.

10:33:43 4 Q. Even though you thought that the Court might be interested in
10:33:47 5 seeing those data from Louisiana and Alabama, you do agree with
10:33:51 6 that, right?

10:33:52 7 A. The Court could have interest in that. But again, the point of
10:33:56 8 that report, of the Round 2 report was to respond, to offer a
10:34:01 9 criticism or to rebut claims made -- broad claims made by Dr. Scott
10:34:06 10 in his Round 1 report. And similarly, the stuff in the Round 3
10:34:12 11 report responds to claims he made in his Round 2 report.

10:34:15 12 Q. You also acknowledged that you did two more of these RevPAR
10:34:20 13 analyses that didn't find their way into your report?

10:34:23 14 MS. KING: Objection, this calls for information that's
10:34:26 15 clearly outside of the scope of direct and outside of the report.
10:34:29 16 The question is about information that's not in Dr. Mason's reports.

10:34:34 17 MR. JARRETT: This was asked and answered in the
10:34:36 18 deposition, your Honor so it's not a surprise.

10:34:39 19 MS. KING: I objected.

10:34:40 20 THE COURT: Overruled.

10:34:40 21 BY MR. JARRETT:

10:34:41 22 Q. So you presented data for two states. You did some analysis --
10:34:45 23 some other analysis for other states that you didn't present?

10:34:50 24 A. So what came up in the deposition, we went through this long
10:34:57 25 list of questions. Ms. King made similar objections on the grounds

10:35:04 1 that anything to do with stuff that wasn't in the reports was work
10:35:08 2 product between us. And the culmination of that was a yes/no
10:35:14 3 question, "Did you look at other states? Any other states?
10:35:19 4 Anywhere?" It didn't specify. I recall it didn't specify. I said,
10:35:23 5 "Yes"; which is to say that there was some other work that wasn't in
10:35:27 6 the report. Didn't say where. We didn't say how many.

10:35:32 7 Q. I get you.

10:35:34 8 A. We didn't say in particular the two states that you're leading
10:35:36 9 up to.

10:35:37 10 Q. I get you. You did some other analyses for other states that
10:35:41 11 didn't make it into your report, that's all I asked.

10:35:44 12 A. There is some work that wasn't in the report.

10:35:46 13 Q. Let's pull up, if we could, please, D-35363. You'll recognize
10:35:58 14 this, Dr. Mason, as Dr. Scott's replication of your analysis for the
10:36:03 15 two missing states - Alabama and Louisiana. Do you see that?

10:36:06 16 A. Yes.

10:36:07 17 Q. He did the same analysis that you did for Mississippi and
10:36:12 18 Florida, but he did it for Alabama and Louisiana, correct?

10:36:17 19 A. That's right.

10:36:17 20 Q. And you do not challenge the data that Dr. Scott presented in
10:36:20 21 these two figures, do you, sir?

10:36:22 22 A. No, I don't. But I would like to point out here, observing
10:36:30 23 that -- the effect that I was interested in -- and I should stress
10:36:36 24 here. I didn't do these analyses in the reports that you're talking
10:36:40 25 about here. Observing that there are places where there is an

10:36:44 1 effect doesn't undercut -- I'm sorry. Observing places as with
10:36:49 2 Alabama and Louisiana in Dr. Scott's Round 3 report where there is
10:36:53 3 no negative effect doesn't undercut the result that I presented that
10:36:57 4 there were other places where there wasn't a negative effect.

10:37:00 5 Q. Doctor, please, I haven't asked you anything yet about
10:37:04 6 Mississippi or Florida. I am focused on Alabama and Louisiana. You
10:37:09 7 don't dispute the data here from Dr. Scott that comes from Alabama
10:37:12 8 and Louisiana?

10:37:14 9 A. I am not disputing the data that he used in these figures.

10:37:18 10 Q. And, in fact, if you look at the results of this analysis, this
10:37:23 11 shows that for the states of Alabama and Louisiana on the coast, the
10:37:27 12 recovery and the tourism industry was very robust and outpaced the
10:37:34 13 recovery and increases on tourism from inland Louisiana and inland
10:37:38 14 Alabama respectively, correct, sir?

10:37:40 15 A. So let me offer up this interpretation. It's correct that
10:37:49 16 there's a clear pattern, as you described, in Louisiana. As a
10:37:56 17 qualifier to this, the data that's used in this particular data set
10:38:00 18 excludes a variety of parishes along the Gulf Coast; particularly,
10:38:06 19 the ones that are to the west. And I think it's Plaquemine is how
10:38:14 20 you pronounce it, not included in this data set. But with that
10:38:19 21 qualifier understood, then he sees a pattern for Louisiana.

10:38:24 22 Alabama's a little bit choppy. It still is,
10:38:28 23 apparently, a pattern, but to my eye it really is colored by the
10:38:32 24 effects from 2010, which, I think, most likely are coming from spill
10:38:35 25 response. That doesn't mean -- I am just offering you a qualified,

10:38:39 1 yes, I suppose.

10:38:40 2 Q. Focus on Alabama a minute. It did really well in 2010, the
10:38:45 3 tourism industry on the coast because of all of spill response
10:38:47 4 efforts, that's essentially what we're looking at, right?

10:38:50 5 A. That would be my guess. As I said, I didn't think about that
10:38:53 6 in great length. I know that's an argument that Dr. Scott made.

10:38:57 7 Q. And of course, it went back to a more normal trend in 2011, had
10:39:05 8 year-over-year increases and outpaced the year-over-year increases
10:39:10 9 in the inland counties, correct?

10:39:11 10 A. That's the indication from this graph, that's right.

10:39:13 11 Q. And for Louisiana, the same phenomenon is true, which is you
10:39:17 12 have year-over-year increases in tourism that outpaced the inland
10:39:23 13 county -- the inland parishes for us, right?

10:39:25 14 A. You're seeing that for Louisiana. And again, as I noted a
10:39:27 15 moment ago, I am not telling you that I disagree that there were --
10:39:31 16 that possibly gains in Louisiana and Alabama doesn't change the fact
10:39:34 17 that there were losses in the other places I looked.

10:39:38 18 Q. I am going to switch for a minute, now, to -- you did a similar
10:39:43 19 analysis for real estate. Do you remember that?

10:39:45 20 A. I did.

10:39:45 21 Q. And your third report is where that analysis appears for the
10:39:50 22 first time, correct?

10:39:51 23 A. That's right.

10:39:52 24 Q. And the data you used for your real estate analysis was not
10:39:56 25 data that you had used in either of your first two reports, correct?

10:39:59 1 A. It's data that I didn't use in either of the first or second
10:40:04 2 report; though, as, I think I clearly indicated during the direct
10:40:09 3 testimony, the methodology that I used in analyzing the real estate
10:40:17 4 data is the same as the methodology that I used in analyzing the
10:40:21 5 RevPAR data. And that, in particular, that analysis was offered up
10:40:26 6 in direct rebuttal to a claim that Dr. Scott made, a broad claim
10:40:32 7 that Dr. Scott made in his Round 2 report.

10:40:34 8 Q. Two points about that. Point No. 1 is, Dr. Scott never said
10:40:40 9 anything in any of his reports about real estate, correct?

10:40:43 10 A. He made just general comments about broad recovery. Damages,
10:40:48 11 such as they were, quickly disappeared.

10:40:52 12 Q. Listen to my question. He never made any presentation about
10:40:56 13 real estate, correct?

10:40:57 14 A. He didn't make any specific presentation about real estate, but
10:41:01 15 I still think that the -- the remark that I made is on point here.
10:41:05 16 He did make these broad claims about general recovery.

10:41:10 17 Q. Second question about your answer a moment ago. To the extent
10:41:14 18 that your real estate analysis parallels your tourism analysis,
10:41:21 19 rather than me having to go through all of those questions before
10:41:25 20 about the assumptions and whether they are flawed or not flawed, you
10:41:29 21 went about it the same way, correct?

10:41:32 22 A. So, yes, similar approach, and I have similar observations to
10:41:37 23 make here. In its purest form, I would want a treated and a
10:41:43 24 non-treated. What I really need was differences in level of
10:41:46 25 exposure and that, likewise, I think, is the case here.

10:41:51 1 Q. One cleanup question on this, Doctor, before we move to a
10:41:54 2 different subject, and that relates to the -- your comment about
10:41:58 3 Dr. Scott's data for Louisiana on RevPAR data. You're aware that
10:42:03 4 when he used RevPAR data from Louisiana, some parishes don't even
10:42:07 5 report data; isn't that true?

10:42:09 6 A. I understand that the Scott Travel data set does not include
10:42:15 7 observations or, at least, the data that was provided to me, which,
10:42:19 8 as I understand it, was the data that counsel provided to Dr. Scott,
10:42:25 9 it does not include information for those parishes. And the
10:42:31 10 offer -- the explanation that was offered is nobody lives there.
10:42:35 11 There aren't any hotels there or something along those lines.

10:42:38 12 And as I indicated in the deposition, it really isn't -- I
10:42:44 13 don't know what to make of the claim, you know, there's a small
10:42:47 14 population there. I don't see how that's relevant. Because at
10:42:51 15 least, in my state, A, all of the counties have small population.
10:42:55 16 It's the least populated state in the union; but B, the big tourism
10:42:59 17 state -- I'm sorry, the big tourism county in our state, Teton
10:43:03 18 County, which is near Yellowstone Park and Teton National Park is
10:43:06 19 one of the smallest populated counties in the state. One of the
10:43:10 20 smallest populated counties in the west. Does the number of people
10:43:14 21 who lives there matter for this? Maybe yes, maybe no.

10:43:18 22 Q. It's not the people, sir, it's the data. The data from Smith
10:43:21 23 don't exist for the parishes that you're making that comment about,
10:43:26 24 right?

10:43:26 25 A. That I can't tell you. I can only say that the data provided

10:43:32 1 to me do not include that. You may be right, but all I know is that
10:43:36 2 this is the data that I was given, that your firm gave to Dr. Scott
10:43:40 3 that Dr. Scott gave to us.

10:43:42 4 Q. Have you ever been to Cameron Parish, sir?

10:43:45 5 A. My experience in Louisiana is largely restricted to this fine
10:43:49 6 community that we're in right now.

10:43:50 7 Q. Okay. I am going to change subjects for a moment. Could you
10:43:56 8 pull up D-35362. Again, Dr. Mason, you will recognize this figure
10:44:07 9 as coming out of the Dr. Scott's report?

10:44:10 10 A. Yes.

10:44:11 11 Q. And again, you don't dispute the accuracy of any of the numbers
10:44:16 12 that Dr. Scott has portrayed in this table that we're looking at
10:44:20 13 here, correct?

10:44:21 14 A. I believe that the numbers that he has tabulated here are
10:44:30 15 correct. So I'll just leave it at that.

10:44:35 16 Q. Importantly, for my question, you have confirmed that the
10:44:41 17 \$430 million figure shown in this third column represents the
10:44:45 18 average annual industry -- fisheries industry revenue over the
10:44:50 19 period shown from 2007 to 2009?

10:44:54 20 A. Have I confirmed that? My recollection is I did go through his
10:44:58 21 data and crosscheck some of his numbers. I cannot tell you that to
10:45:02 22 a certainty today.

10:45:03 23 Q. I think you told us that number is in the ball park.

10:45:07 24 A. Okay.

10:45:08 25 Q. And then, also, Dr. Scott calculated the decline in the fishing

10:45:14 1 industry in 2010, and he determined that number to be about almost
10:45:22 2 \$112 million back in 2010. Do you see that?

10:45:26 3 A. Right. Yes, I see that. And let me make something clear here.
10:45:37 4 There's this AVG, and I am not sure if that means average over 2007
10:45:45 5 through 2009 or averaging across all of the components within this
10:45:51 6 industry. But what you say is, at least, a fair characterization of
10:45:56 7 this figure.

10:45:56 8 Q. And you did not dispute this figure again?

10:45:58 9 A. I didn't dispute this figure.

10:45:59 10 Q. And you can see that on the column on the left is the
10:46:05 11 \$2.3 billion seafood compensation fund that BPXP established,
10:46:10 12 correct?

10:46:11 13 A. That's right. Though, if we recall, one of the demonstratives
10:46:17 14 that I brought up during direct indicated the payments, at that
10:46:23 15 point in time, for seafood compensation. And it was more in the
10:46:28 16 neighborhood of a billion as opposed to 2.3. But I don't dispute
10:46:33 17 the 2.3 in the seafood compensation fund.

10:46:37 18 Q. Your point is that BP committed the money, but it hadn't all
10:46:40 19 been distributed yet?

10:46:41 20 A. What I just said?

10:46:43 21 Q. Yeah.

10:46:43 22 A. Yeah, that was my point.

10:46:45 23 Q. My point is going to be, it's true that BP's settlement fund of
10:46:50 24 \$2.3 billion for the fishing industry is 20 times the loss of that
10:46:56 25 industry in 2010.

10:46:58 1 A. Well, the ratio that you're thinking of, 20-fold certainly is
10:47:06 2 right. The loss part I am going to disagree with. It's not
10:47:13 3 industry revenue changes, it's profits that matter. This
10:47:16 4 information involved in this figure differs from profits because it
10:47:20 5 doesn't tell us much about costs.

10:47:21 6 Q. Fair enough.

10:47:22 7 A. The general magnitudes here, it's apparent that the seafood
10:47:27 8 compensation fund is bigger than one year's worth of losses.

10:47:30 9 Q. All right. Thank you, Doctor. We can pull that down. Thanks,
10:47:36 10 Donnie.

10:47:37 11 We've covered two topics. This is the last topic. The
10:47:41 12 last topic I want to talk about is BXP's impact on the economy in
10:47:46 13 the community.

10:47:49 14 First of all, you understand that this trial is being
10:47:51 15 held so that the Court can gather evidence that might be relevant to
10:47:55 16 any decision to impose penalties in the Clean Water Act?

10:47:58 17 A. I understand that the purpose of this trial is to determine a
10:48:09 18 penalty under the Clean Water Act, yes.

10:48:11 19 Q. Can you pull up D-35372. In connection with your preparation
10:48:21 20 to render opinions in the case, in this trial, Dr. Mason, did you
10:48:25 21 review any of the Fifth Circuit decisions in the case called *Citgo*,
10:48:30 22 *United States of America v. CITGO Petroleum Corporation*?

10:48:36 23 A. No, I did not.

10:48:38 24 MS. KING: Objection. Four corners rule. This is outside
10:48:41 25 his report. He said he didn't review any of these documents.

10:48:44 1 MR. JARRETT: I am going to ask him facts about it, Judge.

10:48:47 2 THE COURT: Go ahead, overruled.

10:48:49 3 MS. KING: He's also calling for a legal interpretation.

10:48:52 4 MR. JARRETT: I won't be calling for a legal
10:48:55 5 interpretation. You'll see. I'm calling for a fact.

10:48:57 6 THE COURT: Okay. Go ahead.

10:48:57 7 BY MR. JARRETT:

10:48:59 8 Q. I want to read the first sentence from the district court case,
10:49:04 9 Dr. Mason. It says, "*CITGO* argues that the Court should consider
10:49:07 10 its positive impact and role in the community in calculating the
10:49:11 11 penalty assessed and the Court agrees."

10:49:14 12 My first question is: You haven't presented any opinions
10:49:18 13 concerning BXP's positive impact in the community, have you, sir?
10:49:24 14 You weren't asked to do it and you haven't done it?

10:49:28 15 A. An assessment of the expenditures, for instance?

10:49:30 16 Q. The positive impact in the community, have you expressed any
10:49:34 17 opinion on that? That's all I'm asking.

10:49:36 18 A. Well, I am going to disagree with that on the grounds that the
10:49:47 19 information, as we discussed during direct, things that were
10:49:51 20 expenditures made to the degree that those lowered harms, to the
10:49:55 21 degree that they lowered damages, that those reduced the claim
10:49:59 22 effects, and I did include that. And I did include in the reports a
10:50:04 23 statement, roughly, like the one that I just made as a predicate to
10:50:08 24 that particular conclusion.

10:50:10 25 Q. Okay. That's good. Then we agree that BXP makes a positive

10:50:15 1 impact in the community?

10:50:17 2 A. I just said that expenditures that they make that lowered --
10:50:23 3 that lowered damages would have been reflected in lowered claims.

10:50:26 4 Q. The opinions you expressed on direct in terms of your analysis
10:50:32 5 of BXP's roles were really BXP's role in the Gulf of Mexico oil
10:50:39 6 and gas industry, right?

10:50:41 7 A. The focus was, indeed, on their economic role in the oil and
10:50:49 8 gas industry. Indirect information, though, I think, that's sort of
10:50:53 9 in general. Direction comes by combine it with the role of the
10:50:56 10 industry and the state's economy.

10:50:58 11 Q. I'm going to come to that, too. I'm going to take the slide
10:51:02 12 down, but you'll notice that also one of the things that the Court
10:51:05 13 looked at was employment. And you haven't offered any opinion on
10:51:09 14 BXP's role in employment, have you, sir?

10:51:12 15 A. Well, I don't think it's right. There was one metric in my
10:51:16 16 analysis that was focused on labor markets.

10:51:17 17 Q. Okay. I'm familiar with that. I'm going to talk about that
10:51:21 18 then.

10:51:24 19 The way you went about doing your analysis was to
10:51:28 20 determine BXP's market share in the oil and gas industry in the
10:51:34 21 Gulf of Mexico using several different metrics, correct?

10:51:37 22 A. That's right.

10:51:38 23 Q. You expressed BXP's market share in terms of a fraction of the
10:51:45 24 Gulf of Mexico industry as a whole, right?

10:51:46 25 A. In several different metrics, correct.

10:51:52 1 Q. And in determining the Gulf of Mexico oil and gas industry, you
10:51:57 2 used all of that, both shallow water and deepwater, right?

10:51:59 3 A. There's some from shallow water, there's some from deepwater.

10:52:04 4 Q. Would you pull up TREX 13319.21.1. This is an excerpt from
10:52:14 5 your report where you write, "A better measure of a firm's
10:52:18 6 importance to the Gulf economy would place that firm in a proper
10:52:23 7 context, comparing that firm against its peers; as such, the measure
10:52:28 8 is tied to the firm's market share." Those are your words, sir?

10:52:32 9 A. Those are my words.

10:52:34 10 Q. And you wrote that we should compare BPXP's importance by
10:52:38 11 looking and comparing it against its peers. Do you see that?

10:52:42 12 A. Yes.

10:52:42 13 Q. Have you identified who BPXP's peers are?

10:52:46 14 A. Well, my interpretation to peers are firms that are engaged in
10:52:51 15 the practice of extracting hydrocarbons. So the market has defined
10:53:00 16 firms that are producing oil and gas.

10:53:01 17 Q. Have you presented any data on how those firms' metrics --
10:53:10 18 those peers' metrics compare to BPXP?

10:53:12 19 A. On an individual basis there is no such comparison as you just
10:53:17 20 articulated. Though, I would suggest that the Herfindahl indices
10:53:23 21 get at that sort of question.

10:53:24 22 Q. We're going to talk about that HHI indices in a minute.

10:53:29 23 But my point is if you're going to compare it to a peer,
10:53:31 24 you have to know what the peers are doing. And you did it on an
10:53:35 25 aggregated basis. You aggregated all of their peers. You didn't

10:53:38 1 identify a peer by name and you didn't present any data for any
10:53:41 2 individual peer, correct?

10:53:42 3 A. That's correct. But you'll notice here that the word
10:53:47 4 immediately preceding the semicolon is pluralized, by which it's
10:53:53 5 referring to a group. The group here being the industry.

10:53:56 6 Q. Got it. Let's look at TREX 13327.1.1. You'll recognize that
10:54:07 7 this is the data that comes from BSEE?

10:54:12 8 A. I recognize it. I am trying to get the context of the year.
10:54:15 9 This is 2009.

10:54:17 10 Q. This is 2009.

10:54:18 11 A. Yes.

10:54:18 12 Q. I'll represent to you that this exhibit includes multiple
10:54:21 13 years. This is the first page of the exhibit.

10:54:23 14 A. Sure, okay. Yeah. This representation for 2009 looks, at
10:54:30 15 least, vaguely familiar to me.

10:54:31 16 Q. And, in fact, you're familiar with the data you told us in your
10:54:36 17 deposition?

10:54:36 18 A. I used this -- this is the information I used, in particular,
10:54:39 19 for that range to do with hydrocarbon production from '09 to '13.

10:54:47 20 Q. The data on this table is actually sorted by quantity of
10:54:53 21 production, correct?

10:54:54 22 A. Yes, it's oil production. Oil production operator ranked by
10:54:59 23 volume, that's right.

10:55:00 24 Q. And who was -- in the year 2009, what company was the largest
10:55:06 25 producer of oil in the Gulf of Mexico?

10:55:10 1 A. The largest producer in 2009 was BP Exploration & Production.
10:55:17 2 Though, as I indicated in deposition and, I think, in one of the
10:55:24 3 reports, 2009 and 2010 were unusual years for a variety of reasons.
10:55:30 4 If we think about other years, particularly earlier years, BPXP's
10:55:36 5 standing wasn't nearly quite so dramatic.

10:55:39 6 Q. I'm only asking about 2009.

10:55:43 7 A. I understand.

10:55:43 8 Q. I didn't bring any other year up. In 2009, they were the
10:55:48 9 largest producer of oil in the Gulf of Mexico?

10:55:49 10 A. They were in 2009.

10:55:52 11 Q. And by a very, very wide margin, correct, sir?

10:55:55 12 A. I'm having a little trouble reading the fine print, but I am
10:55:58 13 not going to dispute that they were big.

10:56:01 14 Q. In fact, I am going to put my glasses on so I can read it.

10:56:04 15 A. Okay.

10:56:04 16 Q. If we look over -- I think, it's the fifth column, the column
10:56:07 17 that says, "Total Oil," that's the pertinent column, right?

10:56:10 18 A. I believe that's correct.

10:56:12 19 Q. And BPXP produced -- I have a hard time reading that, too. Is
10:56:17 20 that 187 million barrels of oil that year?

10:56:23 21 A. I think that's right. Let's just say that that's right rather
10:56:27 22 than -- okay.

10:56:27 23 Q. 187.

10:56:28 24 A. Thanks for the blowing up here. Yeah.

10:56:32 25 To cut to the chase here, yes, they are on the order of

10:56:36 1 twice as large as the No. 2 in this particular year.

10:56:39 2 Q. Thank you. That's exactly the question I was going to go to.

10:56:43 3 The next peer is Shell and they were -- had doubled the production
10:56:48 4 of Shell in 2009, correct?

10:56:50 5 A. In that year they were twice as large as Shell.

10:56:53 6 Q. And if we were to go through all of years, BPXP is always
10:56:59 7 either the No. 1 oil producer or the No. 2 oil producer for the
10:57:03 8 entire Gulf of Mexico over the whole period under study, correct,
10:57:07 9 sir?

10:57:08 10 A. I think that's right. It's certainly in the top group. But on
10:57:13 11 point to the comment that I made earlier here, really it's not their
10:57:18 12 standing, are they No. 1? Are they No. 2? It's the share. It's
10:57:22 13 the nature of the concentration with the industry, it's the degree
10:57:25 14 to which resources are likely to be able to flow, to move around
10:57:30 15 amongst firms. That's what matters.

10:57:32 16 Q. We're going to talk a little bit about that, but I wanted to
10:57:36 17 compare to the peers here, Shell and Chevron. We see that it was a
10:57:40 18 much larger produce in 2009 than either of those peers, correct?

10:57:45 19 A. Again, yes, it's bigger than Shell, yes. It's bigger than
10:57:50 20 Chevron. Again, it's the standing within the industry. The group
10:57:53 21 of peers is the others, it's not just any particular other.

10:57:57 22 Q. I understand your point. Let's pull up D-35374. Again,
10:58:08 23 Dr. Mason, you'll recognize this as a chart from the report of
10:58:13 24 Dr. Scott. Figure 19, do you see that?

10:58:15 25 A. Yes.

10:58:15 1 Q. And this is where Dr. Scott has accumulated -- using the very
10:58:20 2 data that we just saw -- he's accumulated production over a
10:58:23 3 five-year period from 2009 to 2013, and he's presented the results
10:58:28 4 of those data on this chart. And you do not dispute these data
10:58:32 5 either, do you, sir?

10:58:33 6 A. I don't dispute these data. I would offer an interpretation to
10:58:39 7 this. This information is for oil production earlier when I talked
10:58:44 8 about things -- it's an oil and gas industry. I talked about
10:58:48 9 hydrocarbon production which combined oil and gas into what's called
10:58:54 10 barrels of oil equivalent.

10:58:55 11 Q. That's different data. We're not talking about these data, oil
10:58:58 12 production?

10:58:58 13 A. It's coming from the very documents that you just referred to.

10:59:02 14 Q. And these data come from the same documents that you used,
10:59:05 15 correct?

10:59:06 16 A. Yes, they do.

10:59:08 17 Q. And it shows that for the five-year period at issue, BPXP was
10:59:13 18 50 percent more -- had 50 percent more production than its next
10:59:17 19 highest peer, correct?

10:59:19 20 A. They do show that they are one-and-a-half times the size of
10:59:22 21 Shell. They also show that they're on the order of a quarter of the
10:59:26 22 oil production sector. I think none of that is inconsistent with
10:59:31 23 the remark that I made earlier on, which identified their share of
10:59:37 24 the hydrocarbon production over this period of time as being in the
10:59:41 25 range of 11 percent.

10:59:42 1 Q. Let's talk, now, about your market concentration analysis that
10:59:48 2 you did. That was -- when Dr. -- Dr. Scott used Figure 19 to reach
10:59:55 3 his conclusion that BPXP was an important participant in the oil and
11:00:01 4 gas economy, correct?

11:00:03 5 A. I'm sorry. Could you repeat that?

11:00:05 6 Q. Sure. Dr. Scott used Figure 19, among other metrics, to
11:00:10 7 conclude that BPXP was an important player in the oil and gas
11:00:13 8 industry, did he not?

11:00:14 9 A. I believe that was the conclusion he drew from this and the
11:00:17 10 similar documents.

11:00:18 11 Q. And you wanted to test his characterization of BPXP's role as
11:00:24 12 significant, and you wanted to do that through this HHI analysis,
11:00:30 13 correct?

11:00:31 14 A. Okay. So the analysis of the rule as regards shares, that's in
11:00:40 15 Round 1. The evaluation of his claims here, that's in Round 2. And
11:00:46 16 in that Round 2 report I did present information based on
11:00:52 17 Herfindahl.

11:00:54 18 Q. And what you decided to do was to check and see whether there
11:00:59 19 were any -- and I'm using your phrase here -- barriers to
11:01:02 20 participation in the industry, correct?

11:01:03 21 A. So the way that the industrial economists interpret this
11:01:11 22 particular piece of information, Herfindahl index, is that it gives
11:01:16 23 us insights into the degree of fluidity that barriers of
11:01:22 24 participation.

11:01:23 25 Q. You concluded ultimately based on your analysis, your HHI

11:01:29 1 analysis that the market for production fell into the range of
11:01:36 2 unconcentrated, correct?

11:01:38 3 A. That's right, it did.

11:01:39 4 Q. And you also concluded that since the oil production by your
11:01:45 5 assessment was competitive, that BXP's role "could be replicated by
11:01:52 6 other firms seeking to develop other similar resources," that's what
11:01:58 7 your conclusion was?

11:01:59 8 A. That's my conclusion. And I think I would go so far as to say
11:02:02 9 I think a similar conclusion would be drawn by other industrial
11:02:05 10 economists.

11:02:05 11 Q. Well, let's talk about that, because I had obviously never
11:02:10 12 heard of the HHI so I looked it up, and the literature that I read
11:02:14 13 suggests that the calculations are sensitive to the definition of
11:02:16 14 the relevant market; that's true, isn't it?

11:02:19 15 A. So the nature of the market you choose does -- there is the
11:02:29 16 possibility that it would have an affect on the conclusions that you
11:02:34 17 draw. And that is a big part of why I provided information for six
11:02:39 18 separate metrics and six separate themes, if you would like, within
11:02:45 19 the Gulf of Mexico oil and gas industry.

11:02:48 20 Q. You defined it for six metrics but the market was the same for
11:02:52 21 all six; the market was always the entire Gulf of Mexico, both
11:02:56 22 shallow water and deep, correct, sir?

11:02:58 23 A. Oh, that's right. I mean, but, you know, it's hydrocarbon
11:03:03 24 production that we care about. The source of the production where
11:03:06 25 it should happen to come from, I don't know why that matters.

11:03:09 1 Q. We'll talk about whether it matters in just a second. But you
11:03:13 2 agree with me that BPXP's operations are focused in deepwater, not
11:03:17 3 shallow water, right?

11:03:18 4 A. I do understand that they are focused in deepwater.

11:03:22 5 Q. And you also recognize that oil companies operating in the Gulf
11:03:25 6 of Mexico have segmented themselves by depth, some operate in
11:03:28 7 shallow water, some that don't operate in deepwater, and vice versa?

11:03:34 8 A. I think that's a fair, general characterization that there's
11:03:37 9 something like a segmentation.

11:03:38 10 Q. Let's pull up D-35365. Dr. Mason, this is a report that
11:03:52 11 Dr. Walkup has issued in this case. You've met Dr. Walkup -- or
11:03:57 12 Mr. Walkup maybe I think it is?

11:03:59 13 A. I believe it is Mr. Walkup. I have not met him, we happened to
11:04:03 14 ride up to the elevator together but we didn't exchange words.

11:04:05 15 Q. And you cited his report in your report, did you not?

11:04:09 16 A. That's right. I relied on information from him to some great
11:04:14 17 length. The gentleman is, so far as I understand it, he is an
11:04:19 18 expert in the E&P business.

11:04:21 19 Q. He is an expert in the E&P business. These are two bullet
11:04:25 20 points that we pulled up from his report, and the first one says,
11:04:29 21 "The industry trend of Gulf of Mexico E&P participants evolving
11:04:35 22 towards the more technically challenging, and more costly lower
11:04:40 23 tertiary projects, which is changing the mix of market participants
11:04:44 24 with majors playing a bigger role and smaller independents leaving
11:04:48 25 the market." Do you see that?

11:04:50 1 A. I do see that, yes.

11:04:53 2 Q. What he's talking about, lower tertiary, that's deepwater?

11:04:57 3 A. That's right.

11:04:57 4 Q. So what he is identifying here is that majors -- what he means
11:05:01 5 by majors, the major oil companies like BPXP, the Chevrans, et
11:05:05 6 cetera, correct?

11:05:06 7 A. I think that's his interpretation, right.

11:05:09 8 Q. He is saying that the majors play a bigger role and that the
11:05:14 9 smaller independents are leaving the deepwater because of more
11:05:19 10 technically challenging and more costly projects offshore in
11:05:23 11 deepwater, correct?

11:05:26 12 A. Yeah, I think what he is saying here is that they are playing a
11:05:30 13 bigger role, not in the market as an economist would interpret it.
11:05:34 14 And I think since -- I am not going to pretend that I am an expert
11:05:38 15 in E&P, I think he would agree that he is not an expert in
11:05:42 16 economics.

11:05:42 17 So the market as I interpret it is for hydrocarbons. But
11:05:47 18 the part of the market that is focused in deepwater, he is saying
11:05:49 19 that's where the majors are going and the smaller companies not so
11:05:54 20 much.

11:05:54 21 Q. And the second bullet point that Dr. Walkup or Mr. Walkup says
11:05:59 22 is, even more on point, where he says, "The cost of global deepwater
11:06:04 23 activities has rapidly increased since 2010 resulting in a portfolio
11:06:10 24 reallocation away from deepwater for some players, particularly
11:06:15 25 smaller companies." That's what we just talked about, right?

11:06:17 1 A. It is.

11:06:18 2 Q. What we have -- you talked earlier about being aware that there
11:06:22 3 was market segmentation between deepwater and shallow water. What
11:06:27 4 Dr. Walker has given us is the reasons why there are market
11:06:31 5 segmentation, it's more technically challenging in deepwater and
11:06:34 6 it's more costly, right?

11:06:36 7 A. That's what he was saying.

11:06:38 8 But it's important to bear in mind here that the place
11:06:41 9 where the production is coming from doesn't matter, it's all going
11:06:47 10 into the same market. There's no point in saying, oh, it's more
11:06:50 11 expensive to produce in, I don't know, let's pick a state, Oklahoma
11:06:55 12 than it is in Texas so we should have two separate interpretations
11:06:58 13 of the market for oil, or for hydrocarbons, one for Oklahoma one for
11:07:03 14 Texas.

11:07:03 15 It's the market including all of the participants. The
11:07:07 16 fact that it's more expensive in some places than it is in others,
11:07:10 17 is really neither here nor there. It's the aggregation of all of
11:07:14 18 these sources that matters, the market is defined by all of the
11:07:18 19 participants.

11:07:18 20 Q. Let's talk about that a minute. Because you would agree with
11:07:22 21 me that in the field of economics things like technological
11:07:27 22 challenges and high capital costs constitute what's known as
11:07:32 23 barriers to participation?

11:07:36 24 A. It is possible that technological challenges and that sort of
11:07:40 25 thing do serve as a barrier to participation. But again, we're

11:07:45 1 talking about barrier to participation in this particular segment,
11:07:51 2 this particular geographic segment of a bigger market. My argument,
11:07:57 3 the claim that I made was not that I didn't speak to insofar as
11:08:05 4 surmounting those technological hurdles, I talked about
11:08:09 5 participation in the oil and gas industry generally in the Gulf of
11:08:12 6 Mexico.

11:08:12 7 Q. To remind us where we started this whole discussion, when you
11:08:16 8 wanted to challenge Dr. Scott's characterization of BPXP's role as
11:08:20 9 significant, you sought to test that opinion by seeing whether there
11:08:25 10 are, "barriers to participation." That's what you wrote on your
11:08:31 11 Round 2 report at page 25. Isn't that right, sir?

11:08:34 12 A. Yes, and again -- and again, I'm challenging his claim about
11:08:40 13 their role in the oil and gas market in the Gulf of Mexico region.

11:08:44 14 Q. Well, the market where they operate in deepwater we have just
11:08:48 15 seen that there are at least two barriers to participation, correct,
11:08:52 16 sir?

11:08:53 17 A. For that segment there may be barriers to participation. It's
11:08:57 18 not the same thing, it's miles away from saying there are barriers
11:09:01 19 to participation in the Gulf of Mexico oil and gas industry.

11:09:06 20 Q. You will agree that if one did an HHI calculation limited to
11:09:11 21 the Gulf of Mexico deepwater production, the market segment there
11:09:14 22 has a higher concentration for the reasons that Mr. Walkup has
11:09:18 23 identified?

11:09:19 24 A. So -- pardon me. So if we think about the information that I
11:09:30 25 conveyed during the direct testimony, there were particular metrics

11:09:36 1 that I incorporated in the last slide that were germane to a
11:09:41 2 conversation about deepwater. We may have a disagreement about what
11:09:45 3 deepwater means. It may be that you mean -- you may have some
11:09:50 4 definition. For example, I've heard 1,000 meters offered up as a
11:09:54 5 definition for deepwater.

11:09:56 6 The interpretation I used in that analysis was the
11:09:59 7 interpretation, my understanding of the interpretation that's coming
11:10:05 8 from BOEM 1,000 feet. I suppose reasonable people could disagree on
11:10:09 9 that semantic, but I do offer that information about what's going on
11:10:12 10 in the BOEM interpretation of deepwater.

11:10:15 11 Q. Would you pull up Dr. Mason's deposition at page 188, lines
11:10:19 12 four through 22. You remember that you were asked the very question
11:10:25 13 I just asked you, Doctor, in your deposition. The question was,
11:10:30 14 "Q. In the hypothetical world in which one wanted to do an HHI
11:10:34 15 calculation limited to the Gulf of Mexico deepwater, would you agree
11:10:38 16 with me that the market segment is likely to show a higher
11:10:42 17 concentration, fewer participants, and therefore a higher HHI?" And
11:10:46 18 what was your answer? You said, "right."

11:10:48 19 "So in the hypothetical that you have in mind, we're
11:10:51 20 focussing our attention solely on the deepwater, there are market
11:10:55 21 concentrations, statistics that support your statement." That's
11:10:59 22 correct, sir, right?

11:10:59 23 A. I did say that. I don't think that's inconsistent though with
11:11:03 24 what I said a minute ago.

11:11:04 25 Q. Some of us might disagree.

11:11:06 1 A. Huh?

11:11:08 2 Q. I said some of us might disagree.

11:11:09 3 A. So I probably should have said yes --

11:11:12 4 THE COURT: Wait, wait, wait. Mr. Jarrett, you shouldn't
11:11:15 5 give commentary on a witness's testimony.

11:11:18 6 MR. JARRETT: Yes, sir.

11:11:19 7 THE COURT: And don't talk over each other.

11:11:22 8 THE WITNESS: Whose turn is it?

11:11:23 9 THE COURT: Go ahead, yours.

11:11:24 10 THE WITNESS: I should have said yes, but. Point taken.

11:11:28 11 MR. JARRETT: You did not conduct --

11:11:30 12 THE COURT: Wait, wait, let him finish.

11:11:31 13 THE WITNESS: I want to say the but.

11:11:32 14 THE COURT: Go ahead.

11:11:33 15 THE WITNESS: Yes, I should have acknowledged this, you're
11:11:35 16 correct. But that doesn't change my observation that in the direct
11:11:41 17 testimony I did, in fact, provide some evidence related to an
11:11:46 18 interpretation of deepwater participation, at least some parties
11:11:52 19 interpretation, BOEM's, for instance.

11:11:54 20 THE COURT: I think we can move on to something else.

11:11:56 21 MR. JARRETT: Thank you, your Honor, I intend to.

11:11:59 22 BY MR. JARRETT:

11:11:59 23 Q. I want to explore a different subject now, which is BPXP's
11:12:04 24 positive economic impact. Can we pull up slide D-35367. Again,
11:12:14 25 Dr. Mason, these are two tables that come from Dr. Scott's report

11:12:19 1 where he has accumulated BPXP's Capital Expenditures and its
11:12:25 2 operational expenditures for the five-year period 2009 to 2013. You
11:12:31 3 have reviewed this summary table of these Capital Expenditures and
11:12:35 4 operational expenditures for the period indicated?

11:12:39 5 A. Can I clarify the question?

11:12:41 6 Q. Sure.

11:12:41 7 A. Are these drawing from his Round 1 report? I think the answer
11:12:44 8 is yes.

11:12:45 9 Q. Yes, sir.

11:12:46 10 A. Yes, I have reviewed these.

11:12:47 11 Q. And you don't dispute the numbers in this table, correct?

11:12:50 12 A. No, I don't dispute the numbers that he's presented here.

11:12:57 13 Q. Can you explain for us lay people the difference between
11:13:00 14 capital expenditures and operational expenditures?

11:13:03 15 A. Can I explain it?

11:13:05 16 Q. Yes.

11:13:06 17 A. His terminology I would guess, I don't know this because I
11:13:14 18 couldn't -- I have to say I couldn't determine this to a certainty
11:13:17 19 from his report.

11:13:18 20 But my understanding was that what he was distinguishing
11:13:23 21 between here was the capital expenditures I think most economists
11:13:29 22 would agree with what that means. I think operational expenditures
11:13:33 23 here has to do with labor expenditures.

11:13:37 24 But there may be other things in this, too, that I have to
11:13:40 25 say I wasn't quite clear on. So, you know, it could it be -- there

11:13:45 1 might have been annual rental payments for things that we might,
11:13:48 2 that some economist might have wanted to lump into capital
11:13:53 3 expenditures.

11:13:53 4 So I am going to say in very broad strokes, the one on the
11:13:57 5 left capital, the one on the right labor.

11:13:59 6 Q. And I want to focus a minute on the question that was asked by
11:14:03 7 the court in *Citgo*, or the issue, is whether there was a positive
11:14:08 8 impact by these expenditures. You see BXP in terms of Capital
11:14:12 9 Expenditure spent 13.3 billion over the period involved, and you
11:14:16 10 would agree that those \$13.3 billion had a positive impact on the
11:14:21 11 economy of the Gulf Coast?

11:14:23 12 A. Yes, I agree that the capital expenditures would deliver
11:14:31 13 benefits to the Gulf Coast area. Some qualifier as I offered up
11:14:38 14 during direct though, I think other firms would be inclined to make
11:14:42 15 those capital expenditures if they were placed in the position of
11:14:46 16 developing similar kinds of resources.

11:14:48 17 Q. Same questions about the operational expenditures, sir, you see
11:14:52 18 that Dr. Scott is calculated a total of 8.8 billion in operational
11:14:57 19 expenditures over the same period, correct?

11:14:58 20 A. I see that.

11:14:59 21 Q. And again, to answer the question from the *Citgo* court, whether
11:15:03 22 that had a positive impact for the Gulf Coast economy, your answer
11:15:07 23 to that question is yes, correct, sir?

11:15:10 24 A. It's much the same answer as for the CAPEX stuff, yes. There
11:15:16 25 are benefits as with any other firm making expenditures to the left

11:15:21 1 on capital, to the right on what we might think of as variable costs
11:15:26 2 of labor probably, similar benefits.

11:15:30 3 And again, as the same qualifier as before, it's my view
11:15:34 4 that similar labor expenditures -- are you having trouble hearing
11:15:46 5 me? My lectures aren't this long. I believe that firms put in a
11:15:50 6 position of developing similar resources would make similar
11:15:54 7 operational expenditures delivering similar benefits as to BPXP.

11:15:59 8 Q. Have you identified any other peer of BPXP that has made this
11:16:05 9 sort of capital or operational contributions to the economy in your
11:16:09 10 reports?

11:16:09 11 A. No, I have not. It's largely because, as I said before, my
11:16:16 12 focus was on things like their share and things like the
11:16:20 13 concentration measures, not rank orderings or anything of the like.

11:16:24 14 Q. Can you pull up slide D-33521. This was a slide that we saw in
11:16:39 15 your direct testimony that you prepared, Dr. Mason?

11:16:41 16 A. That's right.

11:16:42 17 Q. I want to focus on the State of Louisiana down here, where you
11:16:47 18 have identified the oil and gas industry as being 35 and a half
11:16:50 19 percent of the state GDP, correct?

11:16:53 20 A. Yes.

11:16:54 21 Q. And you commented that based on the math that you did that BPXP
11:16:58 22 accounts for four percent of the State of Louisiana's economy,
11:17:02 23 correct?

11:17:02 24 A. I said interpreting their role coming from hydrocarbon
11:17:08 25 production that that translates to four percent.

11:17:11 1 Q. Can you put a dollar value on that for us, sir?

11:17:13 2 A. No.

11:17:14 3 Q. If I ask you to assume that the Louisiana GDP is \$216 billion,
11:17:20 4 could you multiply that by four percent for us?

11:17:23 5 A. On the stand, in my head?

11:17:25 6 Q. I can do it for you.

11:17:26 7 A. Give me the numbers again and I'll take my best step.

11:17:29 8 Q. \$216 billion is Louisiana's GDP and BPXP is responsible for
11:17:35 9 four percent of that. Can you do that math?

11:17:37 10 A. I'm going to say it's something like eight or nine billion.

11:17:41 11 Q. Thank you, sir. Have you identified any other company that
11:17:43 12 makes that sort of positive economic contribution to the State of
11:17:48 13 Louisiana?

11:17:48 14 A. No. But, again, my focus wasn't on the role played by any
11:17:53 15 specific company but rather -- but the group as a whole, the BPXP's
11:17:59 16 role in the industry on the level of concentration and the like.

11:18:04 17 Q. Thank you, Doctor. I am going to turn to my last subject
11:18:07 18 you'll be pleased to know.

11:18:10 19 You've specifically analyzed BPXP's spending on labor and
11:18:14 20 employment, did you not, sir?

11:18:16 21 A. I did evaluate their spending on labor and vendors. My
11:18:22 22 understanding is they don't have employees.

11:18:24 23 Q. Yes, sir.

11:18:25 24 A. So I am just quibbling with that term, but I think we're
11:18:29 25 talking about the same thing.

11:18:30 1 Q. You analyzed their contributions to labor and wages and
11:18:34 2 employment, that's really the way I took your report to be.

11:18:37 3 A. That's fair enough.

11:18:38 4 Q. And you compared that data to the oil and gas industry spending
11:18:42 5 on wages in the Gulf of Mexico region, correct?

11:18:45 6 A. Right, built up from, you know, kind of BLS, Bureau of Labor
11:18:51 7 Statistics data for things that like I thought made sense to include
11:18:55 8 as part of the expenditures for the oil and gas industry.

11:18:58 9 Q. Can you TREX 13318.23.2. Do you recognize this, Dr. Mason, as
11:19:08 10 an excerpt from your report?

11:19:10 11 A. Yes.

11:19:11 12 Q. This is how you went about identifying those people in the oil
11:19:15 13 and gas industry in the Gulf Coast who should be included in your
11:19:21 14 analysis, correct?

11:19:22 15 A. Yes.

11:19:22 16 Q. And you identified 14 separate categories of workers who were
11:19:26 17 in the industry by your calculations?

11:19:29 18 A. Yes. These 14 -- I am going to take your word for it that
11:19:34 19 there's 14 here.

11:19:35 20 Q. I added them up.

11:19:37 21 A. Okay. That's great. These are --

11:19:43 22 Q. You said in your --

11:19:44 23 A. I'm not done. These are particular occupations that seemed to
11:19:49 24 me to be likely to be related to the oil and gas industry.

11:19:51 25 Q. Understood. And could you pull up TREX 13318.23.1. This is

11:20:02 1 also from the same page of that, of your report where you said, "For
11:20:06 2 this list of occupations, I determined the total number of
11:20:08 3 individuals employed in the five-state region for each of the five
11:20:12 4 years 2009-2013." Correct?

11:20:16 5 A. That's right.

11:20:17 6 Q. How many people was that?

11:20:19 7 A. Oh, I can't tell you that today. I know it's in the report
11:20:23 8 but --

11:20:23 9 Q. It's not in the report, sir.

11:20:25 10 A. Oh, it isn't. Well, then that was -- I just -- I gave you the
11:20:31 11 fractions. Are you sure it's not in the report? I thought there
11:20:35 12 was a table that identified that.

11:20:36 13 Q. I looked for it.

11:20:37 14 A. I really thought that there was a table that identified the
11:20:39 15 number of employees.

11:20:40 16 Q. There's a table that identifies the dollars but I couldn't
11:20:42 17 find --

11:20:43 18 A. Oh, okay. I'm sorry. My apologies, I misheard your question.
11:20:50 19 I did not tabulate the number of workers, that part is correct. I
11:20:53 20 did tabulate -- the point here was to compare to the BXP data which
11:20:58 21 showed moneys, didn't show employees there, showed moneys. And so I
11:21:04 22 calculated moneys, the share of moneys.

11:21:05 23 Q. Yeah, but to do that it says you determined the total number of
11:21:10 24 people, individuals employed.

11:21:12 25 A. It does.

11:21:13 1 Q. You added them up and then you went and found out what their
11:21:16 2 wages was to accumulate the total amount of spending, right? I'm
11:21:20 3 just asking you what the number was of the people that you added up.

11:21:24 4 A. I didn't put it in the report. But I think if you carry on,
11:21:27 5 this goes onto the next page, you'll see that I then said I
11:21:32 6 multiplied those individuals by the average wage within that
11:21:35 7 particular subsector, and then added all of that up. So that's all
11:21:39 8 involved in the calculations, it didn't make its way into the
11:21:42 9 report.

11:21:42 10 Q. It's a couple of hundred thousand people, wasn't it, sir?

11:21:45 11 A. That could be about right.

11:21:46 12 Q. Let's turn to TREX 13318.25.1. This is how you presented
11:21:54 13 results of your analysis, right, sir?

11:21:56 14 A. That's -- the presentation here is kind of obscuring the part
11:22:03 15 of the page where I could identify the context, but it looks right
11:22:08 16 to me.

11:22:08 17 Q. I'm taking it right from your report, sir, I can't remember
11:22:12 18 what page it's on. I guess it would be page 26 from your report?

11:22:18 19 A. Looks like five, 25.

11:22:21 20 Q. Twenty-five.

11:22:21 21 A. Yeah, okay.

11:22:22 22 Q. So what you did to explain this is for those five-year periods,
11:22:28 23 2009 to 2013, you first of all, you added up the people we just
11:22:33 24 talked about, the couple hundred thousand people, and you calculated
11:22:36 25 or accumulated their earnings and you put that in this category

11:22:40 1 called Gulf of Mexico labor earnings; and you did it for each of the
11:22:44 2 years and then you added it up?

11:22:47 3 A. It's in broad strokes correct.

11:22:49 4 Q. And then you looked at some BPXP information in terms of their
11:22:54 5 expenditures and you identified what they spent on wages here in
11:23:00 6 this second column, and then the third column you identified from
11:23:04 7 their payments to vendors how much went to labor, correct?

11:23:08 8 A. I think that's right.

11:23:09 9 Q. And we see that cumulatively over that five-year period, BP
11:23:16 10 spent what looks to be, if my math is right, \$1.25 billion on wages,
11:23:23 11 9.38 billion on labor for vendors; is that right?

11:23:27 12 A. I think you are your math is reasonably close there.

11:23:30 13 Q. And that out of the total spending of these two, couple hundred
11:23:36 14 thousand people, the total cumulative spending is 46.17 billion and
11:23:46 15 you determined that 20 percent of that was attributable to BP,
11:23:49 16 correct?

11:23:49 17 A. Yes. To clarify that 20.32 that you're identifying here, that
11:23:53 18 is the fraction that is found by summing the first two, 1.25 billion
11:24:00 19 and 9.38 billion and dividing it by 46.178 billion.

11:24:06 20 Q. Said another way, would it be fair to say that one out of every
11:24:09 21 five employees in the Gulf of Mexico oil and gas industry can trace
11:24:12 22 their earnings to BPXP, either directly or through BPXP vendors?

11:24:17 23 A. That's what 20 percent means here. But just to make a point,
11:24:25 24 two points really: First, about nine to one it's vendor, not direct
11:24:32 25 employees. And those people that we're talking about here, it says

11:24:41 1 before, if I am a firm developing similar resources, I am going to
11:24:45 2 be making similar expenditures with my vendors as did BP in this
11:24:52 3 setting.

11:24:53 4 Q. And if the number is a couple hundred thousand people and BP is
11:24:56 5 responsible for 20 percent of those people wages, that's as much as
11:25:01 6 40,000 individuals, correct, sir, in the Gulf state region?

11:25:04 7 A. You can say that, I think that's right. Would you mind giving
11:25:07 8 that again?

11:25:07 9 Q. Sure. I said, if there was a couple hundred thousand people
11:25:09 10 who traced their -- who fall in this category of business, the Gulf
11:25:13 11 of Mexico oil and gas industry labor, and if BPXP is responsible for
11:25:20 12 20 percent of their wages, that's as much as 40,000 individuals,
11:25:25 13 right?

11:25:25 14 A. That's right. It's 40,000 individuals. But if I am going to
11:25:28 15 use the same kind of delineation between these, ten percent of those
11:25:33 16 40, they're going to be -- my understanding is that the wage bill
11:25:37 17 comes from BP employees that are subcontracted out to BPXP, so those
11:25:42 18 people, they're in one category. The other category, those are the
11:25:46 19 vendors. So 90 percent of those 40,000, so 36,000, these are people
11:25:52 20 that are going to be hired by somebody who is exploiting those
11:25:55 21 resources.

11:25:56 22 Q. From the perspective of those 40,000 people who trace their
11:26:00 23 earnings to BPXP, you would agree that BPXP has a very major and
11:26:05 24 positive impact on employment in the Gulf of Mexico labor market,
11:26:09 25 wouldn't you, sir?

11:26:10 1 A. The individual who is getting paid certainly appreciates the
11:26:14 2 check, I would think.

11:26:16 3 But again, my point here is that in particular those
11:26:21 4 vendors, they're going to take -- they will take jobs from people
11:26:24 5 who offer them employment. And they're subcontracting out, they're
11:26:29 6 providing services. If somebody else was developing those
11:26:32 7 hydrocarbon resources, that somebody else would be looking to that
11:26:35 8 vendor pool.

11:26:36 9 So I think it's too much to say that those individuals owe
11:26:42 10 their livelihood to BP. They may owe their livelihood to the oil
11:26:47 11 and gas industry.

11:26:48 12 Q. Have you identified any other private employer in the Gulf
11:26:52 13 state region that's responsible for labor earnings of 40,000 people?

11:26:57 14 A. No. And again, it's much as before here, it's not the
11:27:03 15 particular standing kind of in the rank ordering thing, it's the
11:27:09 16 percentage of.

11:27:11 17 MR. JARRETT: Your Honor, I may be done. Let me ask.
11:27:14 18 Thank you, your Honor. Thank you, Dr. Mason. I appreciate your
11:27:18 19 patience with me.

11:27:19 20 THE COURT: All right. Any redirect?

11:27:21 21 MS. KIRBY: Your Honor, I'm sorry.

11:27:24 22 THE COURT: No, I'm sorry.

11:27:26 23 MS. KIRBY: I do have some cross-examination.

11:27:28 24 THE COURT: Good. Come on up -- come on down.

11:27:32 25 THE WITNESS: Would you mind taking a break in 20 minutes?

11:27:37 1 THE COURT: How long do you think you might be, Ms. Kirby?

11:27:41 2 I'm not trying to cut you off.

11:27:41 3 MS. KIRBY: Depends in part of Dr. Mason. I know. I

11:27:44 4 think it will be pretty quick actually.

11:27:47 5 THE WITNESS: It's the break issue.

11:27:48 6 THE COURT: You need a break now or can you wait?

11:27:49 7 THE WITNESS: If we're going to be done in 20 minutes I'll

11:27:53 8 wait.

11:27:53 9 THE COURT: We're definitely breaking at ten to,

11:27:55 10 regardless of where we are. Are you okay?

11:27:58 11 THE WITNESS: I'll hold. I'll hold my horses.

11:28:01 12 THE COURT: All right.

11:28:02 13 CROSS-EXAMINATION

11:28:03 14 BY MS. KIRBY:

11:28:03 15 Q. Dr. Mason, just to pin this down. Your analysis regarding

11:28:11 16 Anadarko's modest importance in the Gulf was pretty much the same as

11:28:16 17 your analysis with regard to BP, that is you looked at its position

11:28:22 18 in the oil and gas industry, right?

11:28:24 19 A. I used the same sort of methodology, the same sort of -- the

11:28:28 20 market share idea. It's much the same. There was modest difference

11:28:33 21 because BP provided information on labor and vendors and Anadarko

11:28:37 22 didn't. I think that's just a little tiny difference.

11:28:41 23 Q. You didn't see any of the information that Anadarko provided

11:28:43 24 regarding payments to suppliers and so on?

11:28:47 25 A. Yeah -- well, there wasn't -- it wasn't -- what I want to say

11:28:54 1 here is that I didn't trace through things to the degree of accuracy
11:28:58 2 that would have made me comfortable providing that particular
11:29:01 3 metric.

11:29:02 4 Q. Sure. I understand.

11:29:04 5 Now, you in your Demonstrative 33502 share with us your
11:29:13 6 evaluation of Anadarko's importance in the oil and gas industry,
11:29:17 7 right?

11:29:17 8 A. Yes.

11:29:17 9 Q. And with regard to hydrocarbon production, you, I believe, told
11:29:25 10 us in your report that you did not have the same information from
11:29:29 11 Anadarko that you got from BP, so you went to a Bureau of Ocean
11:29:35 12 Energy Management document and looked at Anadarko's production
11:29:39 13 reported there, right?

11:29:40 14 A. That's right.

11:29:40 15 Q. And let's just pull up TREX 13327, please. Now, you recall
11:29:48 16 this document from your earlier testimony?

11:29:50 17 A. This is the 2009 ranked by oil?

11:29:54 18 Q. Right.

11:29:55 19 A. Yes.

11:29:55 20 Q. And if we can just callout the top of the document through the
11:30:00 21 first six, seven entries. We talked about how BP was No. 1 there,
11:30:05 22 right?

11:30:05 23 A. In oil.

11:30:06 24 Q. Right. And we see there that Anadarko is actually No. 6,
11:30:10 25 right?

11:30:11 1 A. In oil.

11:30:12 2 Q. All right. Now, if we take this down. There's a lot of
11:30:17 3 companies on this list, aren't there?

11:30:18 4 A. There are.

11:30:19 5 Q. Do you know how many there are that were in your peer group, by
11:30:22 6 the way?

11:30:23 7 A. Off the top of my head I can't give you a precise number. But
11:30:26 8 my recollection is that this information goes to multiple pages.

11:30:30 9 Q. Well, don't you think that's important when you're looking at
11:30:33 10 percentages to know how many people are in the peer group that
11:30:37 11 you're looking at?

11:30:38 12 A. No, I don't really think so. I mean, the question is: What is
11:30:41 13 the industry? Not, what are the number of firms within the
11:30:45 14 industry.

11:30:46 15 Q. So if there's 200 peers in the industry and somebody has, say,
11:30:51 16 a nine percent share, you don't think that's anything other than
11:30:56 17 modest?

11:30:56 18 A. It's nine percent of the market.

11:30:58 19 Q. I see. Actually, that reminds me. Mr. O'Rourke said during
11:31:07 20 his opening that he thought oil and gas companies were fungible and
11:31:11 21 one could replace another easily. Is that your opinion?

11:31:15 22 A. I think that the remark that I made earlier on was that the
11:31:20 23 degree -- to the degree that we learned something from these
11:31:25 24 concentration measures, it tells us that resources are fungible,
11:31:29 25 that firms can enter and exit easily, and that similar firms placed

11:31:34 1 in similar context would make similar efforts, would undertake
11:31:38 2 similar expenditure.

11:31:39 3 Q. Don't you think that's the key, similar firms placed in similar
11:31:43 4 concepts -- contexts? I'm sorry.

11:31:46 5 A. Sure.

11:31:47 6 Q. Right.

11:31:47 7 A. We may quibble about what "similar" means, but I -- what I
11:31:55 8 meant by that, I meant firms that were undertaking exercises to
11:31:59 9 extract oil and gas.

11:32:00 10 Q. With respect to Anadarko, how many firms are in similar
11:32:04 11 contexts with regard to deepwater drilling as Anadarko?

11:32:08 12 A. Deepwater Gulf of Mexico as defined how?

11:32:15 13 Q. Well, how many firms can just take over the same kind of
11:32:18 14 drilling operations that Anadarko does? Do you think that matters
11:32:22 15 whether you have that skill?

11:32:23 16 A. It's kind of the same question that I offered in the first part
11:32:31 17 of cross. I don't particularly think that the segment called
11:32:38 18 deepwater is of qualitative significant difference to the Gulf of
11:32:44 19 Mexico. It's hydrocarbons. That's of particular importance in my
11:32:49 20 estimation for natural gas; but it's hydrocarbons that matter, not
11:32:53 21 where they came from.

11:32:55 22 Q. Do you know if the Bureau of Ocean Energy Management agrees
11:33:00 23 with your assessment that deepwater is the same as oil from anywhere
11:33:04 24 else?

11:33:05 25 A. Do I know if BOEM thinks that oil from deepwater is the same as

11:33:10 1 oil from anywhere else?

11:33:11 2 Q. That drilling for oil in deepwater is the same as drilling for
11:33:15 3 it anywhere else.

11:33:16 4 A. Well, I don't know if BOEM says that drilling is the same.

11:33:25 5 The -- I say that the hydrocarbon production -- hydrocarbons are
11:33:30 6 hydrocarbons. Oil is oil. Gas is gas.

11:33:33 7 Q. I think I heard you say earlier that if BP or Anadarko wasn't
11:33:40 8 in the market, then some other company would just rapidly snap up
11:33:44 9 the leases that they didn't take, right?

11:33:47 10 A. I think that's in response to the judge's question. I said if
11:33:51 11 there are attractive resources there, I think somebody else would be
11:33:54 12 interested in picking them up.

11:33:56 13 Q. And we were talking about snapping up deepwater leases, right?

11:34:00 14 A. That, I think, was the context of the question the judge posed.

11:34:05 15 Q. Can we at least agree that if you're snapping up deepwater
11:34:08 16 leases you probably need to have some understanding of how to drill
11:34:15 17 in deepwater?

11:34:16 18 A. Well, it's an asset. I think if you were planning to extract
11:34:25 19 from there, then you would have to be either knowledgeable or
11:34:30 20 envisioned being able to partner with somebody who could do that.
11:34:34 21 But it's an asset. It has value. I would expect that firms would
11:34:39 22 be attracted to that proposition.

11:34:43 23 Q. Now, this asset that has value needs to be developed, right?

11:34:52 24 You said somebody else would snap it up and develop it, right?

11:34:55 25 A. It has to be developed to realize that value, correct.

11:34:58 1 Q. Sure. And you do agree that whoever snaps it up and develops
11:35:02 2 it either has to have the talent to drill it in deepwater or find
11:35:08 3 somebody with the talent to do it, right?

11:35:10 4 A. Yeah. It could partner. It could subcontract. It still would
11:35:15 5 be developing that resource.

11:35:16 6 Q. And if you have two companies exit that market, right, two
11:35:20 7 companies have to leave, you have two companies less that can either
11:35:25 8 snap up the lease or develop, correct?

11:35:28 9 A. If there's a -- I think the hypothetical you have is a net exit
11:35:34 10 of two, so that's two less firms in there, then I think what you're
11:35:38 11 saying is right. That is -- this is worth a qualifier. It doesn't
11:35:46 12 really matter -- I mean, unless -- so, the two firms that happened
11:35:52 13 to exit were to put us in a position where the industry had a small
11:35:59 14 number of firms, then that would be meaningful to me. That
11:36:03 15 particular setting would absolutely be one in which the industry
11:36:08 16 became way more concentrated, and as I indicated, I think during
11:36:13 17 direct, the evidence does not seem to suggest that's the case.

11:36:16 18 Q. And just to be clear, when you talk about the industry, you
11:36:20 19 mean any place from which oil production can come?

11:36:24 20 A. In the Gulf of Mexico.

11:36:26 21 Q. Shallow water, deepwater, doesn't matter, right?

11:36:30 22 A. It's, as I said before, oil is oil, gas is gas.

11:36:34 23 Q. Well, let's see here. Now, when you reported Anadarko's share
11:36:38 24 of oil production, you used these BOEM records that only reported
11:36:45 25 production for wells where Anadarko was a designated operator,

11:36:49 1 right?

11:36:50 2 A. I believe that's correct. What's the context we're talking
11:36:55 3 about here?

11:36:55 4 Q. Let's bring it up. Let's bring up -- I'm going to bring your
11:37:01 5 demonstrative, but we can go to your report if we need to.

11:37:04 6 A. The demonstrative is fine.

11:37:06 7 Q. 33502. Hydrocarbon production here.

11:37:09 8 A. Yeah. I think -- the answer to your question is: Yes, I
11:37:13 9 think, I said that, actually, at some point. I don't remember, now,
11:37:15 10 if it was during the direct or cross. But that this was based on
11:37:19 11 operatorship.

11:37:20 12 Q. And it's operatorship. No non-operatorship is reflected in
11:37:25 13 these tables, right? Except for possibly -- oh, no, active leases,
11:37:30 14 which we'll talk about in a minute, okay.

11:37:33 15 A. Could you restate that question? I don't think I quite
11:37:37 16 understood you.

11:37:38 17 Q. Let's start with subsea boreholes. When you did subsea
11:37:43 18 boreholes, you took that information from tables that were reporting
11:37:49 19 based on designated operators, right?

11:37:51 20 A. And you're go -- are you going to ask the same question for all
11:37:54 21 of these?

11:37:54 22 Q. Except for active leases.

11:37:56 23 A. Let me just knock them all off. I think the answer is: Yes,
11:38:00 24 you're right. They're focussing on operatorship.

11:38:03 25 Q. So setting aside active leases then, none of these numbers

11:38:07 1 reflect non-operator ownership or share, right?

11:38:13 2 A. So there is a qualifier here again, and the qualifier is that
11:38:20 3 in a particular setting, one could imagine a party being a
11:38:27 4 non-operator. So there's lots of these things in the Gulf. I could
11:38:30 5 be a non-operator here and an operator there. So to the extent
11:38:34 6 that's the case, then somebody who is non-operator in one venture
11:38:38 7 might be an operator elsewhere. They're not excluded in that
11:38:41 8 particular way.

11:38:42 9 A party that is only a non-operator that is never an
11:38:47 10 operator, then your particular question, I think, the answer is yes.
11:38:50 11 Those parties that are only non-operator, they don't get counted in
11:38:53 12 this.

11:38:53 13 Q. Active leases held. Now, when you included this active leases
11:38:59 14 held, that is a snapshot in time, right, as of whenever the lease
11:39:08 15 was acquired, right?

11:39:11 16 I'm sorry, pardon me. Let me correct myself.

11:39:14 17 Active leases held are leases where there's drilling going
11:39:17 18 on, right?

11:39:18 19 A. My understanding, I believe the report -- this is Round 2, I
11:39:27 20 think -- I believe in the report I might have used the present tense
11:39:34 21 "is going on." That would have been a poor choice of words. Is or
11:39:42 22 was, I believe, is the interpretation that's correct.

11:39:46 23 Q. Right. So it would be "is or was" as of July 2014, right?

11:39:51 24 A. Yes.

11:39:51 25 Q. So if drilling has stopped or if drilling has never started,

11:39:58 1 it's not counted in this active leases, right?

11:40:00 2 A. Okay. So that's why I made that qualifier about incorporating
11:40:04 3 past tense. A place that's been drilled that's now producing
11:40:08 4 hydrocarbons counts as an active lease. At least that was my
11:40:12 5 understanding from that website.

11:40:14 6 Q. That's if it's producing, right?

11:40:17 7 A. Yes.

11:40:17 8 Q. Now, going back to 33502, Demonstrative 33502. Again, with the
11:40:24 9 subsea boreholes, and you drew that information from the table that
11:40:30 10 is called -- I think, it's table -- I'm sorry. I just lost my place
11:40:40 11 because I'm jumping around.

11:40:45 12 That is Table 7 in your September 15, 2014, report. Does
11:40:50 13 that sound right?

11:40:51 14 A. Yeah, okay. So I would like to offer a mea culpa here. Same
11:40:58 15 data, same table, Round 2 and Round 1. I was more careful in the
11:41:04 16 terminology in Round 2 than I was in Round 1, so I was more precise
11:41:11 17 in saying things were "production" as opposed to "drilling". In
11:41:16 18 Round 2 report, it said, "drilling." It should have said,
11:41:19 19 "production."

11:41:20 20 But with that particular caveat noted, I think, you're
11:41:23 21 right.

11:41:24 22 Q. You're talking about the subsea boreholes?

11:41:27 23 A. Uh-huh.

11:41:27 24 Q. Let's go to TREX 13318.49.1. Now, this is the table for subsea
11:41:40 25 boreholes, right?

11:41:41 1 A. That's right.

11:41:42 2 Q. And we see that Anadarko has 13.09 percent; is that right?

11:41:46 3 A. That's correct.

11:41:47 4 Q. And again, this is a snapshot as of July 1, 2004, right?

11:41:53 5 A. Yes.

11:41:53 6 Q. There's what, 24 or so companies on here?

11:41:56 7 A. I think that's right. I don't know if it's exactly 24, but
11:42:01 8 you're generally in the right area.

11:42:03 9 Q. And there's only one other company on this list that has more
11:42:07 10 subsea or a higher percentage of subsea boreholes than Anadarko,
11:42:12 11 right?

11:42:13 12 A. That's right. And I am going to give you the same qualifier as
11:42:16 13 I did a moment ago here. It isn't the particular rank ordering
11:42:20 14 that's important, it's the share.

11:42:23 15 Q. Right. And now, let's go back to 33502. And we see here your
11:42:33 16 assessment of Anadarko's share of permanent platforms, right?

11:42:37 17 A. Yes.

11:42:38 18 Q. 14.29 percent, right?

11:42:40 19 A. Correct.

11:42:41 20 Q. And that is drawn from Table 6 of your September 15, 2014,
11:42:47 21 report?

11:42:47 22 A. Yes.

11:42:49 23 Q. Let's go to TREX 13318.48.1. Here we see the permanent
11:42:58 24 platforms on which you drew your information. We see Anadarko up
11:43:01 25 here at the top at 14.29 percent, right?

11:43:04 1 A. Yeah. Just to be clear here -- yes, you're correct, it's
11:43:09 2 14.29 percent. Just to be clear here, these are listed in
11:43:12 3 alphabetical order, so that's why Anadarko is at the top. That's
11:43:14 4 not to diminish its role, just to explain why it's on the top.

11:43:17 5 Q. And there's only one other company that has as high a
11:43:20 6 percentage as Anadarko, right?

11:43:22 7 A. Yes. Same qualifier, not the rank ordering. It's the
11:43:26 8 percentage.

11:43:26 9 Q. And that's Shell? That is Shell?

11:43:29 10 A. Yes.

11:43:29 11 Q. Thank you. Now, there's something you said in your direct
11:43:35 12 testimony that I want to explore the source of. I don't want to get
11:43:40 13 into your opinion, all right, because really what I'm about to do is
11:43:45 14 voir dire your qualifications for something you said.

11:43:48 15 So you said during direct that you thought it was
11:43:51 16 important, when there were multiple parties involved in an endeavor
11:43:57 17 that was risky, that you assessed the interaction of those parties
11:44:03 18 with one another, right?

11:44:04 19 A. It sounds about right for what I said.

11:44:06 20 Q. And you were talking about Anadarko and BXP, right?

11:44:09 21 A. Well, I was talking about this is a theoretical proposition.
11:44:13 22 The particular application that we're thinking about here, of
11:44:17 23 course, involves Anadarko and BP, but, I believe, the context of
11:44:20 24 that question was the economic modeling.

11:44:25 25 Q. Right. Now, I want to talk about -- and you do, in your

11:44:28 1 report, you didn't testify beyond saying just that today, you didn't
11:44:34 2 testify about it, but in your report you provide us a few pages of
11:44:37 3 opinions on what you think their interaction means, don't you?

11:44:41 4 A. Yes, I do. And if I could add a qualifier to this.

11:44:45 5 Q. And I want to talk about the -- I'm sorry?

11:44:47 6 THE WITNESS: May I?

11:44:47 7 THE COURT: Go ahead.

11:44:49 8 THE WITNESS: I just want to be clear on this, I believe
11:44:52 9 this came up during the deposition. I avow no expertise in the E&P
11:45:02 10 business, production. I am an economist, I offer my insights into
11:45:05 11 the economics in this particular problem. I am pleased that we have
11:45:11 12 access to experts in E&P like Gardner Walkup; and to the extent that
11:45:17 13 I have information there that articulates those things, it's drawn
11:45:21 14 from expert Walkup, or documents such as the JOA.

11:45:26 15 BY MS. KIRBY:

11:45:27 16 Q. Now, returning to the source, the things you relied on to
11:45:31 17 provide your assessment of the interactions. You've already told us
11:45:36 18 you're not an expert in the E&P business, right?

11:45:38 19 A. Correct.

11:45:39 20 Q. So what you were trying to do is look at the interactions of
11:45:42 21 two companies in the E&P business and what those interactions meant,
11:45:46 22 right?

11:45:46 23 A. Thinking about -- this is a theoretical exercise. Thinking
11:45:51 24 about this in relation to the theory that leads to this, correct.

11:45:54 25 Q. And you relied on exactly two sources; one was Mr. Walkup's

11:46:01 1 expert report, right?

11:46:01 2 A. Yes.

11:46:02 3 Q. And the other was the operating agreement between Anadarko and
11:46:06 4 BP, right?

11:46:07 5 A. You got it.

11:46:08 6 Q. So if Mr. Walkup said it in his report, you took that as a
11:46:14 7 given, right?

11:46:15 8 A. My understanding he is an expert in this business. I took his
11:46:20 9 word as characterizing that expertise.

11:46:24 10 Q. And with respect to the operating agreement, before this case
11:46:29 11 you had read one contract in the E&P business, and it was an oil
11:46:35 12 recovery contract, right?

11:46:36 13 A. Your setting is right. It was in a case that I was involved in
11:46:44 14 in assessing the value of carbon dioxide and enhanced oil recovery.
11:46:49 15 The number that you quoted, one, that's not right. There were a set
11:46:52 16 of contracts. I can't tell you the exact number, but I can tell you
11:46:56 17 it was scores of contracts.

11:46:56 18 Q. Scores of oil and recovery contracts?

11:46:59 19 A. Scores of contracts between a firm that's undertaking an EOR
11:47:05 20 venture and some particular entity that's supplying the carbon
11:47:09 21 dioxide that's used to facilitate that.

11:47:12 22 Q. So in other words, you hadn't read an operating agreement like
11:47:15 23 this before?

11:47:15 24 A. Oh, no.

11:47:16 25 Q. That's all I want to establish.

11:47:17 1 So in your report, you purport to tell us what this
11:47:21 2 operating agreement permits Anadarko to do or not do, right?

11:47:26 3 A. Yeah. I mean, you're correct in saying that I am drawing those
11:47:32 4 inferences from material in the JOA and other places from --
11:47:39 5 including Walkup.

11:47:39 6 Q. And you don't personally have any experience at all with a
11:47:42 7 non-operating party who has a working interest the Gulf of Mexico,
11:47:46 8 do you?

11:47:46 9 A. I have no particular experience. Once again, I am relying on
11:47:51 10 input from expert Walkup.

11:47:53 11 Q. And you don't have any independent knowledge about what
11:47:57 12 operating agreements between non-operators and operators mean, do
11:48:02 13 you?

11:48:02 14 A. No, I don't. Again, I rely on input from Walkup and places
11:48:09 15 like the JOA.

11:48:11 16 MS. KIRBY: Your Honor, for the record I am going to move
11:48:14 17 to strike a certain portion of Mr. Mason's expert report, and that
11:48:17 18 is in TREX 133.18 (VERBATIM). It starts at page 36 and goes through
11:48:25 19 39. It is Section 3B of his report. And in it, he purports to
11:48:30 20 characterize the relationship between Anadarko and BPXP using a
11:48:37 21 particular legal term that actually is, in my view, at odds with
11:48:41 22 your prior decision about the relationship; namely, that there was
11:48:46 23 an independent contractorship, which you evaluated when you granted
11:48:52 24 the motion to dismiss the negligence claims.

11:48:57 25 I believe, No. 1, the opinion has no foundation and he

11:48:59 1 has no expertise for providing this opinion. There's no factual
11:49:06 2 foundation, certainly. It's a legal opinion. It's at odds with
11:49:11 3 your prior opinion, and it's irrelevant.

11:49:13 4 THE COURT: All right. I'll take that matter under
11:49:15 5 advisement. You don't have to say anything. I am not deciding
11:49:22 6 anything right now, but we're about to break for lunch. You have
11:49:25 7 about two minutes.

11:49:27 8 MS. KING: Okay. Let me know if you would like a
11:49:29 9 response, your Honor.

11:49:30 10 THE COURT: I'll let you know.

11:49:32 11 MS. KIRBY: Let's see if I can do this in two minutes.

11:49:32 12 BY MS. KIRBY:

11:49:36 13 Q. Let's go back to Demonstrative 33533 real quick. We were
11:49:43 14 talking about using the HHI index here, right?

11:49:47 15 A. Yes.

11:49:50 16 Q. You agree, do you not, that this is all based on your -- this
11:49:56 17 is not trying to reflect any change in ownership shares by
11:50:02 18 non-operators, is it?

11:50:04 19 A. In the manner of the analysis that Dr. Sunding undertook, it's
11:50:08 20 my judgment as to the relevant place to look, but I am not trying to
11:50:15 21 replicate anything that Dr. Sunding did.

11:50:18 22 Q. You're not trying to represent changes in ownership shares by
11:50:22 23 non-operators?

11:50:22 24 A. No. I'm asking whether or not, you know, to the extent that
11:50:26 25 sort of thing mattered, it would manifest itself in greater

11:50:31 1 concentration, at least to justify ownership shares.

11:50:35 2 Q. Your report contains no explicit econometric analysis to
11:50:39 3 contradict Dr. Sunding, does it?

11:50:41 4 A. I have no specific econometrics, correct.

11:50:45 5 Q. And you do agree that Dr. Sunding's data suggests that there
11:50:48 6 has been a net exit by non-operators in the Gulf, correct?

11:50:53 7 A. After the year 2010, that's what I saw in the data.

11:50:58 8 Q. And you have -- while you have offered possible alternative
11:51:03 9 explanations, you did not test those out, did you?

11:51:05 10 A. No, I didn't offer a particular econometric counter example.
11:51:09 11 You know, for the same sort of reason as with my rebuttal to Scott,
11:51:14 12 I wasn't -- I wasn't trying to do Dr. Sunding's work for him, I was
11:51:19 13 offering a criticism.

11:51:21 14 MS. KIRBY: All right. Thank you, Dr. Mason. I have no
11:51:23 15 further questions.

11:51:26 16 THE COURT: Is the government going to have any redirect
11:51:29 17 of this witness?

11:51:30 18 MS. KING: Yes, your Honor.

11:51:31 19 THE COURT: Is it going to take longer than a minute?

11:51:35 20 MS. KING: Five questions.

11:51:38 21 THE COURT: Quickly. Come on, let's go.

11:51:40 22 THE WITNESS: I'll try to keep the answers short. I have
11:51:42 23 a vested interest in this, too.

11:51:44 24 THE COURT: Okay.

11:51:44 25 REDIRECT EXAMINATION

11:51:47 1 BY MS. KING:

11:51:48 2 Q. Dr. Mason, does market share give you more information than
11:51:53 3 rank order when evaluating economic role?

11:51:55 4 A. I think it does. It tells us the importance in -- the way that
11:52:00 5 industrial economists assess importance within an industry, they
11:52:05 6 look to shares. They don't look to the rank ordering.

11:52:08 7 Q. Can we call up Demonstrative 33517, please. You mentioned on
11:52:17 8 cross, Dr. Mason, that some of your concentration analysis was
11:52:21 9 focused on the deepwater segment?

11:52:24 10 A. Yes.

11:52:24 11 Q. And specifically, what portion of your analysis was focused on
11:52:29 12 that segment?

11:52:31 13 A. It's those two bars to the right, deepwater permanent
11:52:34 14 production platforms and deepwater subsea boreholes.

11:52:38 15 Q. And what did your analysis of this segment show?

11:52:41 16 A. That Herfindahl indices that come from those two statistics are
11:52:44 17 way below the cutoff for an unconcentrated market. They're very
11:52:49 18 comfortably in this range of unconcentrated markets.

11:52:52 19 Q. Dr. Mason, you were asked about whether or not you did a
11:53:00 20 robustness study regarding parallel growth between your treatment
11:53:06 21 and control data set. What was the basis for your assumption that
11:53:10 22 the Atlantic versus panhandle or inland versus coast areas should
11:53:16 23 show parallel growth in this 2011, 2012, 2013 period?

11:53:23 24 A. So I picked these comparisons because the two places were in
11:53:28 25 the same state, they would be subject to the same sorts of

11:53:31 1 pressures, same taxes, same tourism spending. With the specific
11:53:35 2 example of Florida, they're both coastal areas. You would expect
11:53:40 3 for things like visitation, you know, tourists that come to stay in
11:53:46 4 hotels, tourists that are drawn to the beach could go to one side of
11:53:51 5 the peninsula -- I should say to the panhandle, go to the Atlantic
11:53:57 6 Coast or the panhandle and be comparable or equal attraction.

11:54:01 7 Q. You were also asked by the Aldy report, Dr. Mason. What time
11:54:04 8 period of data Dr. Aldy help provide on?

11:54:08 9 A. As I indicated -- I think that might have been during the
11:54:13 10 cross -- his analysis only goes through 2010. He has no
11:54:20 11 characterization of what happens in those labor markets after 2010.

11:54:24 12 Q. And his analysis is based on balancing response workers versus
11:54:29 13 negative employment effects from the spill, correct?

11:54:32 14 A. Yes, that's the general idea.

11:54:33 15 Q. And after 2010 --

11:54:35 16 THE COURT: That's about Question No. 8. You said you had
11:54:38 17 five.

11:54:39 18 MS. KING: Final one.

11:54:40 19 BY MS. KING:

11:54:41 20 Q. After 2010, what level of response workers were present?

11:54:44 21 A. Zero.

11:54:47 22 MS. KING: No further questions.

11:54:49 23 THE COURT: All right. Thank you, Doctor.

11:54:51 24 THE WITNESS: Thank you.

11:54:51 25 THE COURT: All right. We'll come back at one o'clock.

11:54:55 1

THE DEPUTY CLERK: All rise.

11:54:57 2

(WHEREUPON, A LUNCH RECESS WAS TAKEN.)

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REPORTER'S CERTIFICATE

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/s/ Karen A. Ibos

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Karen A. Ibos, CCR, RPR, CRR, RMR

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Official Court Reporter

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