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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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

THIS DOCUMENT RELATES TO:
#10-4536

UNITED STATES OF AMERICA

v.

BP EXPLORATION &
PRODUCTION INC.,
ANADARKO EXPLORATION &
PRODUCTION LP, ANADARKO
PETROLEUM CORPORATION,
MOEX OFFSHORE 2007 LLC,
TRITON ASSET LEASING GMBH,
TRANSOCEAN HOLDINGS LLC,
TRANSOCEAN OFFSHORE
DEEPWATER DRILLING INC.,
TRANSOCEAN DEEPWATER INC.,
AND QBE UNDERWRITING LTD.,
LLOYD'S SYNDICATE 1036

Civil Action No. 10-MD-2179
Section J
New Orleans, Louisiana
January 22, 2015

DAY 3, AFTERNOON SESSION
TRANSCRIPT OF TRIAL PROCEEDINGS
HEARD BEFORE THE HONORABLE CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

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8 Proceedings recorded by mechanical stenography using
9 computer-aided transcription software.

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Gardner Walkup, Jr.
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01:05 1 you so you don't have to lean forward as much, if you'd like.

01:05 2 Okay. Before you start, I want to confirm, I
01:05 3 actually see no *Daubert* motion or no motions pertaining to this
01:05 4 witness. Is that correct?

01:05 5 **MS. KIRBY:** That's correct, Your Honor.

01:05 6 **THE COURT:** So I owe you guys an apology. I accused
01:05 7 you of filing a *Daubert* motion on every witness yesterday, and
01:05 8 now I've overlooked that you -- there's actually none on this
01:05 9 one. So you get a gold star today.

01:05 10 All right.

01:05 11 **MS. HIMMELHOCH:** Your Honor, for the record, they did
01:05 12 file a motion in limine, but you've already ruled on it.

01:05 13 **THE COURT:** Okay.

01:05 14 **MS. FLICKINGER:** Right. That motion in limine was --

01:06 15 **THE COURT:** All right. Maybe -- maybe you'll get a
01:06 16 bronze star maybe.

01:06 17 **MS. KIRBY:** No, we won that one.

01:06 18 **THE COURT:** Oh, you won that one. Oh, okay.

01:06 19 All right. Let's go.

01:21 20 **DIRECT EXAMINATION**

01:06 21 **BY MS. FLICKINGER:**

01:06 22 **Q.** Mr. Walkup, would you please state your occupation.

01:06 23 **A.** I'm a management consultant.

01:06 24 **Q.** Okay. In what particular area?

01:06 25 **A.** I focus most of my work in energy, with a particular

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01:06 1 concentration on oil and gas.

01:06 2 Q. What were you asked to do in this case?

01:06 3 A. To render an opinion on the role of nonoperating parties
01:06 4 generally in E&P and with a focus on deepwater.

01:06 5 Q. Is your résumé attached to your expert report?

01:06 6 A. Yes, it is.

01:06 7 Q. And is that version accurate and up to date?

01:06 8 A. It's accurate given the slight update that I provided
01:06 9 during deposition regarding my current position which I just
01:06 10 started, you know, the middle of last year.

01:06 11 Q. Did you prepare a summary of the relevant aspects of your
01:06 12 background?

01:06 13 A. I have.

01:06 14 MS. FLICKINGER: Okay. Could we please call up,
01:06 15 Mr. Jackson, D-33150.

01:07 16 And the first build, thank you.

01:07 17 BY MS. FLICKINGER:

01:07 18 Q. Is this the summary that you have prepared?

01:07 19 A. Yes, it is.

01:07 20 Q. All right. What experience do you have in decision making
01:07 21 in exploration and production?

01:07 22 A. So the majority of my consulting practice focuses on
01:07 23 helping my clients make tough decisions. And like I said
01:07 24 before, E&P is where we focus our attention.

01:07 25 So for about 15 years, I've been in the principal

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01:07 1 positions of principal partner -- I guess "partner" is the more
01:07 2 common word, and I guess "principal" is more legal.

01:07 3 But that's included at firms, my current firm,
01:07 4 Berkeley Research Group. The -- prior to that, at IHS,
01:07 5 Cambridge Energy Research Associates. Strategic Decisions
01:07 6 Group before that, SDG. PricewaterhouseCoopers, PWC. Prior to
01:07 7 that, Applied Decision Analysis.

01:07 8 So our work is global in nature. We've helped on
01:07 9 investments, in significantly more than 25 countries on
01:08 10 investments exceeding \$300 billion. So -- and that's been over
01:08 11 the entire 15 years.

01:08 12 During this period, I've also been publishing. And
01:08 13 what my focus is, is in the stage-gate decision processes and
01:08 14 valuation. And I've also contributed to the technical
01:08 15 community by sitting on different committees, chairing
01:08 16 different committees at the SPE, Society of Petroleum
01:08 17 Engineers. The committee I tend to sit on is called the
01:08 18 management and economics subcommittee.

01:08 19 **THE COURT:** Is your -- mine was off. Is your
01:08 20 microphone on?

01:08 21 **MS. FLICKINGER:** It is.

01:08 22 **THE COURT:** Okay. I got a text from someone saying
01:08 23 they were having trouble hearing you. But if it's on, okay.

01:08 24 **MS. FLICKINGER:** It's on.

01:08 25 **THE DEPUTY CLERK:** It's all the way up, too.

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01:08 1 THE COURT: The volume's up? Okay. Let's go.

01:08 2 BY MS. FLICKINGER:

01:08 3 Q. Okay. What experience do you have in decision making in
01:08 4 exploration and production?

01:09 5 MS. FLICKINGER: Could we have the next build,
01:09 6 please.

01:09 7 BY MS. FLICKINGER:

01:09 8 Q. Have you worked with E&P companies in deepwater
01:09 9 strategies?

01:09 10 A. Yeah. Again, most -- my deepwater experience goes to my
01:09 11 consulting experience. And that's included 10 -- about 10
01:09 12 deepwater engagements, working for both super majors and
01:09 13 independents. As I mentioned before, it's a global practice,
01:09 14 so I've worked in the Gulf of Mexico, but other places.

01:09 15 A lot of the work that we've done has been to help
01:09 16 operators develop strategies to partner with nonoperators.

01:09 17 Q. Okay. Do you have specific experience with well
01:09 18 operations?

01:09 19 A. I do. Before getting into consulting, I spent about 13, a
01:09 20 little bit more, years with Chevron. I'm a petroleum engineer
01:09 21 by background. I started my career in Chevron's research
01:09 22 center, and I was responsible for supporting their corporate
01:09 23 well testing. Well testing, pressure transient analysis.

01:09 24 And I supported that both from a fundamental research
01:10 25 perspective but also what we call tech service, and that meant

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01:10 1 going out in the field and helping operating companies conduct
01:10 2 these well tests, which included both exploration and
01:10 3 production wells, and included both operated and nonoperated
01:10 4 wells.

01:10 5 Following that experience, I was secondment to Caltex
01:10 6 in Indonesia that was a joint venture at the time between
01:10 7 Chevron and Texaco.

01:10 8 And there, as a reservoir engineer in that part of
01:10 9 the -- of Sumatra, I was responsible for reviewing many
01:10 10 hundreds of well completions.

01:10 11 So this is both on new wells and workovers. I
01:10 12 finished my technical part of my career here in New Orleans
01:10 13 doing three wells, exploration wells in the Gulf of Mexico,
01:10 14 where my primary responsibility was at the subsequent
01:10 15 operations and objective depth in these exploration wells.

01:10 16 **MS. FLICKINGER:** All right. Your Honor, the United
01:10 17 States offers Mr. Gardner Walkup as an expert in the
01:10 18 decision-making process used in the E&P industry, exploration
01:11 19 and production industry, and as in exploration with respect to
01:11 20 the role of nonoperators in the oil and gas industry and, in
01:11 21 particular, in deepwater activities.

01:11 22 **THE COURT:** Any questions on qualifications?

01:11 23 **MS. KIRBY:** Yes, Your Honor, I think I want to voir
01:11 24 dire him, if you don't mind.

01:11 25 **THE COURT:** All right. Go ahead.

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01:11 1 MS. KIRBY: All right.

01:11 2 THE COURT: Wait. You need to get to the microphone.
01:11 3 You want to just do it as part of your examination? It is a
01:11 4 bench trial. I mean, you know, I think it would be easier that
01:11 5 way.

01:11 6 MS. KIRBY: Sure.

01:11 7 THE COURT: Yeah, okay.

01:11 8 BY MS. FLICKINGER:

01:11 9 Q. Mr. Walkup, did you write any expert reports in this
01:11 10 matter?

01:11 11 A. Yes, I did.

01:11 12 MS. FLICKINGER: Okay. Could we please call up
01:11 13 D-33151. And on this -- on this slide are TRES-013200, which
01:11 14 is Mr. Walkup's Round 1 report, August 15th, 2014;
01:12 15 TRES-231646-R, which is Mr. Walkup's Round 2 report,
01:12 16 September 12th, 2014; and TRES-233288-R, Mr. Walkup's Round 3
01:12 17 report, September 26th, 2014.

01:12 18 BY MS. FLICKINGER:

01:12 19 Q. Mr. Walkup, are these copies of your three reports?

01:12 20 A. Yes, they are.

01:12 21 Q. And are your Round 2 and Round 3 reports, which is
01:12 22 TRES-231646-R and TRES-233288-R, have those been redacted to
01:12 23 comply with the Court's order excluding evidence of Anadarko's
01:12 24 culpability?

01:12 25 A. Yes, they have been.

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01:12 1 Q. Do you adopt all of the opinions in your reports as your
01:12 2 direct testimony in this case?

01:12 3 A. Yes.

01:12 4 MS. FLICKINGER: Okay. And at this point, we won't
01:12 5 move them into evidence. We'll marshal them in at a later
01:12 6 time.

01:12 7 Mr. Walkup, can we turn to your opinions in the
01:12 8 case -- could we please call up D-33152, Mr. Jackson. Put up
01:12 9 the first build.

01:12 10 BY MS. FLICKINGER:

01:12 11 Q. Is this a summary of your opinions?

01:13 12 A. Yes, it is.

01:13 13 Q. Okay. Could you just walk us through your main opinions
01:13 14 here.

01:13 15 A. So there's going to be four of these.

01:13 16 The first one is that nonoperators decide to pursue a
01:13 17 focused, active participation and that this improves the
01:13 18 quality of deepwater activities.

01:13 19 The second opinion is that Anadarko's public position
01:13 20 that nonoperators are passive investors is inconsistent with
01:13 21 the current industry practice.

01:13 22 Thirdly, that industry participants are aware of
01:13 23 Anadarko's public position and they're very aware of what's
01:13 24 going on in this case, and the combination of the two are going
01:13 25 to inform future decisions regarding this nonoperator active

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01:13 1 participation.

01:13 2 And then, finally, that a material Clean Water Act
01:13 3 penalty will incentivize nonoperators to pursue more active
01:13 4 participation -- I'm sorry, to pursue active participation,
01:13 5 while the lack of a penalty will make passive behavior more
01:13 6 likely.

01:13 7 **MS. KIRBY:** Your Honor, I have an objection.

01:14 8 I believe that the final build on this slide
01:14 9 makes my point that this testimony is nothing other than
01:14 10 culpability in disguise. In other words, the government has an
01:14 11 expert who's taking the position that even though you already
01:14 12 have ruled Anadarko has done nothing wrong, breached no duty,
01:14 13 it should be materially penalized for apparently saying that it
01:14 14 was a passive nonoperator or apparently not actively
01:14 15 participating.

01:14 16 **THE COURT:** Well, I'm going to overrule -- overrule
01:14 17 your objection for now. It seems to me we're talking about two
01:14 18 different things here. Because, yes, I ruled that as a matter
01:14 19 of law, Anadarko could not be held negligent in the limitation
01:14 20 where we determined fault, an allocation of fault.

01:15 21 On the other hand, now we're dealing with
01:15 22 penalties under the Clean Water Act, which don't necessarily
01:15 23 require a finding of fault. It's just -- as you know, it's a
01:15 24 strict liability statute and a -- so it doesn't require a
01:15 25 finding of fault.

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01:15 1 The statute, it seems to me, allows a penalty to
01:15 2 be imposed even in the absence of any fault whether by an --
01:15 3 even by an operator. An operator, you know, there are many
01:15 4 cases where owners of vessels and so forth are liable under the
01:15 5 Clean Water Act even though someone else might have been
01:15 6 negligent in -- or no one may have been negligent in causing
01:15 7 the spill.

01:15 8 So I think the lack of culpability, the lack of
01:15 9 negligence is a factor that I should consider, but I don't
01:15 10 think it means that the Court can't impose a penalty. And I'm
01:15 11 going to take all of this into account. Okay?

01:16 12 All right. Go ahead.

01:16 13 **MS. FLICKINGER:** Thank you, Your Honor.

01:16 14 **BY MS. FLICKINGER:**

01:16 15 **Q.** Are you aware, Mr. Walkup, that Anadarko is calling two
01:16 16 experts to testify concerning various issues related to
01:16 17 nonoperators?

01:16 18 **A.** Yes, I am.

01:16 19 **Q.** Okay. And who are they? What are their names?

01:16 20 **A.** Dr. Sunding and Mr. Arnold.

01:16 21 **Q.** And will you also, on your direct examination, be
01:16 22 responding to their opinions concerning nonoperators?

01:16 23 **A.** Yes, I will.

01:16 24 **Q.** Let's turn to an outline of your testimony.

01:16 25 If we could call up D-33153, Mr. Jackson.

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01:16 1 Did you prepare this slide?

01:16 2 A. I did.

01:16 3 Q. Okay. Can you just please summarize what you will be
01:16 4 covering today?

01:16 5 A. So the first topic that I think is important to discuss is
01:16 6 what the industry approach is to decision making. As we'll --
01:16 7 as I'll summarize, it's about decision quality and how the
01:16 8 industry has implemented different approaches to ensure
01:17 9 decision quality. And the reason it's important, as I
01:17 10 mentioned in my opinion, is that the -- that nonoperator's
01:17 11 decision on active participation is a conscious decision. And
01:17 12 so to understand how that decision is influenced, it's useful
01:17 13 to understand how decisions are made in this industry.

01:17 14 The second part of this that I've put in the
01:17 15 outline -- if we could have the next build -- is about the
01:17 16 active participation that I'm talking about. You know, the
01:17 17 focused active participation of the nonoperators. I think it's
01:17 18 important to describe why they participate, to provide some
01:17 19 supporting evidence for that active participation, discuss
01:17 20 briefly how it is they participate, and then finally to
01:17 21 summarize the range of operator/nonoperator relationship.

01:17 22 After that, I will then respond to Dr. Sunding and
01:17 23 Mr. Arnold, and then I'll provide a very short conclusion to
01:18 24 try to sum it all up.

01:18 25 Q. Okay. If we could have D-33153.1, please.

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01:18 1 Okay. Let's talk about the standard decision-making
01:18 2 process used in the E&P industry first. Why is the industry
01:18 3 approach to decision making of importance to your opinions
01:18 4 concerning nonoperators in this case?

01:18 5 A. So there's essentially two reasons. One is, as I've
01:18 6 mentioned on this outline, active participation and the degree
01:18 7 of active participation is an active decision.

01:18 8 Secondly, the way that they participate or where they
01:18 9 focus is a decision, and it's part of the decision steps. And
01:18 10 that's -- you'll -- is the rationale for behind their focus.
01:18 11 So I think those are the two reasons it's important to talk
01:18 12 about it.

01:18 13 Q. Okay. Did you prepare a slide summarizing some of the key
01:18 14 points you would like to make about industry decision making?

01:18 15 A. Yes, I have.

01:19 16 Q. If we could turn to D-33154. And the first build, please.

01:19 17 Is this your slide, Mr. Walkup?

01:19 18 A. Yes, it is.

01:19 19 Q. What are some of the fundamental challenges facing the
01:19 20 industry in deepwater E&P activities?

01:19 21 A. So the fundamental challenge for making decisions in E&P
01:19 22 is to understand the extreme level of uncertainty that exists
01:19 23 in this business. You know, all businesses have uncertainty,
01:19 24 but the level of uncertainty in E&P is extremely high. And I
01:19 25 think -- you know, there's the common stories, the exploration

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01:19 1 wells can cost a hundred, \$200 million and there's maybe one
01:19 2 out of three chances you're going to see it. Development
01:19 3 decisions are taken that five, \$10 billion of development and,
01:19 4 you know, at that time you maybe have actually directly seen
01:19 5 less than a millionth of the reservoir.

01:19 6 So the challenge is how do you make good decisions
01:19 7 under such uncertainty, and there's a good bit of literature
01:19 8 and academic work under -- under this that is -- results in the
01:20 9 common approach that people use when this is the common
01:20 10 challenge.

01:20 11 Q. So how does industry address that challenge of
01:20 12 uncertainty?

01:20 13 Could we have the second build, please.

01:20 14 A. So the industry practice is based on the concept of
01:20 15 decision quality, decision analysis. It's also called decision
01:20 16 engineering. And it really particularly is in response to
01:20 17 making decisions where there's a lot of uncertainty.

01:20 18 The -- there are formal processes that go through
01:20 19 this. And without going into any great detail about that, the
01:20 20 point I'm going to try to make on this simple slide is that you
01:20 21 go step by step. You get buy-in along the way. You do what we
01:20 22 call "build decision quality stepwise." And at each step,
01:20 23 you're -- you're making sure that you're -- that you're
01:20 24 improving the quality of that decision along the way.

01:20 25 So the key steps in the process, not all of them, but

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01:20 1 the key steps are, firstly, make sure the great alternatives
01:21 2 are created or identified.

01:21 3 The second one is to collect your information after
01:21 4 you know what the alternatives are because the information and
01:21 5 it's -- because it's uncertain, that information has to be
01:21 6 probabilistic. But the relevant information is that
01:21 7 information which is going to discriminate between
01:21 8 alternatives. So you need your alternatives first, and then
01:21 9 the information is relevant to your choice.

01:21 10 To be able to choose between alternatives once you
01:21 11 have the probabilistic information about those, you need to be
01:21 12 very clear about, well, what makes one choice better than
01:21 13 another, and this is the area of multiple decision metrics.
01:21 14 And it's common on our -- in this business that it's not just a
01:21 15 single decision metric that you make, and that you can include
01:21 16 multiple decisions.

01:21 17 Economic profit is always one of them -- is always
01:21 18 one of the points. But there are other metrics that are used
01:21 19 that are included in that decision as well. And, you know, HSE
01:21 20 performance is one of those that can be used.

01:22 21 Finally, it's an analytical approach. A lot of
01:22 22 research shows it's really hard to do all this probability in
01:22 23 your head. And as a result, it's an analytical approach that
01:22 24 this business uses to make these tough decisions.

01:22 25 So it's when you're going through this process, a lot

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01:22 1 of effort, obviously, gets at the level of the probabilistic
01:22 2 information about the occurrence, the probability of something
01:22 3 happening, plus the range of outcomes that might happen. But
01:22 4 when this is done right, and done well, it includes both
01:22 5 technical uncertainties and, importantly, nontechnical
01:22 6 uncertainties.

01:22 7 Q. What would -- what are nontechnical uncertainties?

01:22 8 A. So nontechnical uncertainties are what's sometimes called
01:22 9 in the industry "aboveground uncertainties," can include things
01:22 10 like the ability to get an air current or the uncertain outcome
01:22 11 of litigation.

01:22 12 Q. How would you classify, for example, the chance of being
01:22 13 assessed the Clean Water Act penalty in the place of a spill?

01:22 14 A. That's one of these nontechnical uncertainties.

01:23 15 And then, finally -- and we'll talk about this here
01:23 16 just in a bit -- the overall decision quality process is really
01:23 17 focused on the design, the design phases of making decision in
01:23 18 the business.

01:23 19 Q. Okay. Do industry participants have a process to
01:23 20 implement some of these concepts?

01:23 21 A. They -- they do.

01:23 22 Q. What's it called?

01:23 23 A. It's called a -- it's usually called a "stage-gate
01:23 24 process," sometimes called a phased process, but stage-gate
01:23 25 process is the most common name.

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01:23 1 Q. All right. Is there a diagram that shows that process?

01:23 2 A. Yes, I've put one together.

01:23 3 Q. Could we call up TREX-232848.

01:23 4 Okay. And this is an article entitled, "The Good,
01:23 5 the Bad, and the Ugly of the Stage-Gate Project Management
01:24 6 Process in the Oil and Gas Industry." It's written by
01:24 7 Mr. Walkup.

01:24 8 Could we call out 232848.10.1.

01:24 9 Mr. Walkup, could you -- could you please explain
01:24 10 this graph to us?

01:24 11 A. There's actually quite a bit on this graph, so I'll take
01:24 12 it piece by piece.

01:24 13 Firstly, what we're seeing in these different shaded
01:24 14 columns are the different stages. Now, the names can change
01:24 15 slightly from company to company, but the number of stages are
01:24 16 pretty consistent across the industry.

01:24 17 And the first stage is what's commonly called the
01:24 18 "feasibility stage." There are some very unique decisions that
01:24 19 are made in that stage versus all the rest of them. And in
01:24 20 particular, the decisions that are being made are, is can you
01:24 21 even do this project?

01:24 22 The second stage is selection. And then selection is
01:24 23 where you're deciding what's the best way to do this project.
01:24 24 During definition, once you know what the best choice is, then
01:25 25 you're adding additional definition to that. And so these

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01:25 1 first three phases are called "front-end loading," and this is
01:25 2 really the design phase.

01:25 3 Execution, once -- at the end of definition, if you
01:25 4 decide to go through, you usually make what's called an "FID
01:25 5 decision," a final investment decision, and that kicks off
01:25 6 execution. And this is where you build your project and then
01:25 7 you operate your project.

01:25 8 So these columns are not time. So -- and execution
01:25 9 can take many years; operations, hopefully decades. But this
01:25 10 front-end loading piece of the decision process and the project
01:25 11 management process can take months. So it's not time that's
01:25 12 being represented here, it's the decisions.

01:25 13 At the end of every stage, you have a stage-gate
01:25 14 decision. So it's -- this is really focused on making sure
01:25 15 that the decision at the end of each stage is as high quality
01:25 16 as possible.

01:25 17 Q. Okay. What does "value" mean on the vertical axis?

01:26 18 A. So on my prior slide, I mentioned that the decision
01:26 19 metrics that are included in here are -- can commonly be
01:26 20 multi-attribute, meaning that there can be multiple things that
01:26 21 you care about to define what's the best decision. And so
01:26 22 that's what I mean about value.

01:26 23 And what you can see in this slide is a general
01:26 24 belief in the industry is, how do you influence value? And to
01:26 25 do that, I need to explain the four curves on this chart.

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01:26 1 On the bottom there's -- on the bottom part of the
01:26 2 chart is a project which has done not a very good job at
01:26 3 front-end loading, meaning the decision quality during planning
01:26 4 isn't very high.

01:26 5 **MS. KIRBY:** Excuse me, Your Honor. Mr. Walkup is
01:26 6 presently testifying about something that was excluded as a
01:26 7 result of the motion in limine and is now redacted from the
01:26 8 report.

01:27 9 **MS. FLICKINGER:** This graph is actually taken from
01:27 10 his article, which is cited in Round 1, page 10, footnote 9.
01:27 11 And it's a graph that's taken from his article. And,
01:27 12 moreover -- so this is -- this is footnoted and cited in
01:27 13 Round 1.

01:27 14 **THE COURT:** Well, I don't -- I frankly don't recall
01:27 15 what was excluded.

01:27 16 **MS. FLICKINGER:** And also --

01:27 17 **THE COURT:** Is it in the report as redacted? Is this
01:27 18 from the report as redacted?

01:27 19 **MS. FLICKINGER:** Well, first of all, it doesn't have
01:27 20 anything to do with culpability. And, secondly, it's cited in
01:27 21 his -- it's an appendix to his article, which we just drew up,
01:27 22 which is in be Round 1, footnote 9.

01:27 23 **MS. KIRBY:** I'll withdraw the objection, Your Honor.

01:27 24 **THE COURT:** Okay. All right. Thank you.

01:27 25 **THE WITNESS:** I think I was at the point where I was

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01:27 1 explaining the bottom curves.

01:27 2 So on the bottom two, you see that when you get
01:27 3 to execution, you have two cases. One is great execution, the
01:27 4 other one's not so great execution. The upper two curves are a
01:27 5 case where you have really good design and then, again,
01:28 6 not-so-good execution and great execution.

01:28 7 And so the -- what you're seeing in here is a
01:28 8 concept that the way that management and the way the the way
01:28 9 the companies, the enterprise can really affect value is by --
01:28 10 is through making good decision in front-end loading. And
01:28 11 since value is multi-attribute, it definitely includes the
01:28 12 influence of safety.

01:28 13 You'll hear me say that I have an opinion that
01:28 14 the decisions made during design can greatly influence safety
01:28 15 issues.

01:28 16 **THE COURT:** I've looked over your report. And from
01:28 17 what -- and based on -- and following up on what you just said,
01:28 18 I want to understand where you're going with this. Is it your
01:28 19 opinion that a nonoperator would generally expect to have more
01:28 20 input, influence, whatever, on design decisions, you know, how
01:29 21 to design the well, so to speak, as opposed to operating
01:29 22 decisions?

01:29 23 **THE WITNESS:** That's -- that's where I'm going.

01:29 24 **THE COURT:** That's the gist of it?

01:29 25 **THE WITNESS:** Yeah, because I keep saying focused

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01:29 1 active participation. And the -- what I'm trying to
01:29 2 demonstrate is when you make a decision to where to focus, you
01:29 3 want to focus where you're going to have the best impact,
01:29 4 right.

01:29 5 **THE COURT:** Uh-huh.

01:29 6 **THE WITNESS:** And so this is demonstrating that it --
01:29 7 that's why it's going to be in design.

01:29 8 **THE COURT:** Okay. Go ahead.

01:29 9 **BY MS. FLICKINGER:**

01:29 10 **Q.** Okay. Mr. Walkup, if you haven't covered this, how do
01:29 11 decisions change across this process as you move from stage to
01:29 12 stage?

01:29 13 **A.** So as you move from one stage -- let's say you're in
01:29 14 select. The decisions around the detail design are what we
01:29 15 would call "tactical" when they're in selection. Right? The
01:29 16 strategic decisions that you're making during selection are
01:29 17 going to be should I -- should I -- you know, what development
01:29 18 plan should I go. There's a range of development plans, so let
01:29 19 me define the development plan, I'll nail that down in
01:30 20 selection.

01:30 21 I'm not going to worry about the detailed design
01:30 22 during selection, I'll worry about that during -- so the
01:30 23 decision about what you're doing gets more and more and more
01:30 24 defined. You know, at the end of feasibility, you've got like
01:30 25 one that will basically work, but it's not good enough. At the

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01:30 1 end of selection, you've got the development plan, but you
01:30 2 can't yet quite build it. Then at the end of definition,
01:30 3 you've got -- you've got that one that you chose at the end of
01:30 4 selection that you can go ahead and build.

01:30 5 So the decisions are maturing as you move through,
01:30 6 the detail is maturing as you go through.

01:30 7 Q. How did this stage-gate decision-making approach inform
01:30 8 your opinions concerning the operator and nonoperator
01:30 9 relationship?

01:30 10 A. So the -- it's the point we just made, which is
01:30 11 nonoperators are going to focus on design because this is the
01:30 12 value.

01:30 13 Q. If we could turn up D -- turn up D-33153.2.

01:31 14 All right. Now we're at the point on the outline --
01:31 15 let's turn to your opinion that nonoperators actively
01:31 16 participate, and let's talk about why they actively
01:31 17 participate.

01:31 18 Did you prepare a slide that summarizes some of these
01:31 19 points?

01:31 20 A. Yes, I have.

01:31 21 Q. Okay. Could we call up D-33155.

01:31 22 Is this your slide?

01:31 23 A. Yes, it is.

01:31 24 Q. So this is nonoperating party active participation. Let's
01:31 25 review each of these drivers.

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01:31 1 Why does a nonoperator who seeks strategic learning
01:31 2 actively participate?

01:31 3 A. So strategic learning has to do with -- and it's been
01:31 4 particularly important in deepwater. Let me start with that.
01:31 5 Deepwater started with -- with really the single operator, but
01:31 6 then at the -- really the -- that catalyzed the business, but
01:31 7 then it was the super majors really that were doing deepwater.

01:31 8 As more people became involved in deepwater through
01:31 9 the nonoperating party role, they learned the business, and
01:32 10 they did that on purpose so that they could build their
01:32 11 capabilities through their participation. And it takes active
01:32 12 participation to learn. It's not simply reading the answer.
01:32 13 It's about how do you move through that stage-gate process, how
01:32 14 do you take uncertainties, how do you come up with good
01:32 15 alternatives, and how do you evaluate them. Being part of that
01:32 16 process is what you learn, and that allows you a greater
01:32 17 opportunity set to operate elsewhere.

01:32 18 And so you went from where the Miocene started, which
01:32 19 is very few super majors, you got more people involved, you
01:32 20 have a much bigger operating group. I mean, until, in fact,
01:32 21 the independents were dominating that part of the deepwater in
01:32 22 the Gulf of Mexico.

01:32 23 You've kind of seen this whole wave turn over again,
01:32 24 the super majors for the -- or the bigger companies doing the
01:32 25 deeper tertiary play. And, again, my expectation is that

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01:32 1 you'll -- that that part of the deepwater will continue to
01:32 2 mature, nonoperators will come in and more people will learn
01:33 3 the business and you'll see that cycle repeat itself.

01:33 4 So that's the reason for people to -- for nonop- --
01:33 5 not people, but for nonoperating parties to be actively engaged
01:33 6 through focused active participation in deepwater activities.

01:33 7 Q. Okay. Could we turn to the next one.

01:33 8 Why does a driver of financial exposure lead
01:33 9 nonoperators to actively participate?

01:33 10 A. So this -- this builds on this idea -- well, again, it's
01:33 11 deepwater focused. And I think it's not a secret that
01:33 12 deepwater is really very expensive. You know, hundreds of
01:33 13 millions of dollars for a well, billions and billions for
01:33 14 development. Because the pool of players has grown and gotten
01:33 15 smaller and some -- because they learn through strategic
01:33 16 learning, the risks associated to their balance sheet, their
01:33 17 ability to pay a dividend and cover cash calls is put at risk
01:33 18 by the size and scale of these investments. So the reason to
01:34 19 be actively participating is to ensure that those risks to your
01:34 20 business are being appropriately managed.

01:34 21 Q. Okay. How does investor relations differ from financial
01:34 22 exposure?

01:34 23 A. So there's a little bit of relationship here, but this is
01:34 24 particularly a function of senior management and their
01:34 25 relationship with the equity community. And it has to -- it's

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01:34 1 based on the idea of no surprises. You know, having been on a
01:34 2 senior management team and preparing for quarterly meetings
01:34 3 with the analysts, the last thing you want is to surprise the
01:34 4 equity community. There's a lot of rules as to how information
01:34 5 flows.

01:34 6 But -- so in order to be -- to ensure that the
01:34 7 management team is not put in the position of no surprises,
01:34 8 nonoperating parties will be actively pursuing participation to
01:34 9 ensure that everybody knows what's going on.

01:34 10 Q. Okay. Turning to technical risk management, why does a
01:35 11 nonoperator manage -- dealing with technical risk actively
01:35 12 participate?

01:35 13 A. So technical risks, you know, are endemic to the industry,
01:35 14 but there are certain kinds of risks in deepwater that are key.
01:35 15 Very, very expensive. I've already said that.

01:35 16 The reason deepwater works is because the reservoirs
01:35 17 are high kH reservoirs. That means permeability thickness.
01:35 18 Well, the thickness is what the thickness is. You can't change
01:35 19 that. Well, you can change the effective thickness with, you
01:35 20 know, different wellbore configurations, but you can affect
01:35 21 what -- how well you are able to access the k, the
01:35 22 permeability.

01:35 23 You do -- you can't damage these wells. You drill so
01:35 24 few wells that ensuring that the completions result in high
01:35 25 rate wells is the only way you can make money in deepwater.

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01:35 1 So where you're going to make sure you're focusing is
01:35 2 making sure you have access to that high kH. Because if you
01:36 3 don't -- if you damage the well in the zone of interest, the
01:36 4 costs for remediation are extremely high. So there's
01:36 5 particular focus that's specific to deepwater at that point to
01:36 6 make sure that you have access to that high kH.

01:36 7 Q. Okay. So what does reputational risk management refer and
01:36 8 why is that another driver for nonoperating parties to actively
01:36 9 participate?

01:36 10 A. So deepwater is a competitive business, but deepwater
01:36 11 isn't found everywhere around the world. It's found in a
01:36 12 limited number of places. And competition for access to those
01:36 13 places is tough, and it's getting tougher.

01:36 14 So the -- the challenge of being associated with a
01:36 15 bad outcome in one place is going to affect your ability to
01:36 16 access resources in another place. Resource access is a key
01:36 17 strategic competitive advantage for companies, and they don't
01:36 18 want to put that at risk.

01:36 19 So this idea that you -- you know, bad acts in one
01:36 20 place are going to carry over to other places. And so that --
01:37 21 this is -- this is a reason to make sure that you're -- you're
01:37 22 actively participating in a focused way.

01:37 23 Q. Okay. Could we please call up D-33153.3.

01:37 24 Okay. And now we'll turn to the next topic in the
01:37 25 outline, support for nonoperator active participation.

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01:37 1 Mr. Walkup, what categories of support have you found
01:37 2 to support that these drivers, in fact, do lead nonoperators to
01:37 3 actively participate?

01:37 4 A. So -- so what I've put together to discuss our three
01:37 5 areas, first, is some -- some examples from the literature.
01:37 6 Secondly, to summarize my personal experience. And then,
01:37 7 thirdly, is to demonstrate that there are -- it's kind of the
01:37 8 active participation of nonoperating parties is memorialized in
01:37 9 some of the -- in the JOA, the common model form JOA that's
01:37 10 used in deepwater.

01:37 11 Q. Okay. Let's look at examples of support in the
01:37 12 literature.

01:38 13 And if you -- Mr. Jackson, if you could please call
01:38 14 up TREC-232806. This is an article entitled, "Getting
01:38 15 Deepwater Right, Strategies for the Nonoperator." It's by
01:38 16 Mr. Jefferis.

01:38 17 Mr. Walkup, did you cite this article in your report?

01:38 18 A. Yes, I did.

01:38 19 Q. Why did you cite this article in your report?

01:38 20 A. Well, there's a couple of reasons, but one in particular
01:38 21 is -- is who wrote it. Shell was really the company that
01:38 22 catalyzed the business to start with, and it started the
01:38 23 business as the operator. But by 2002, when this paper was
01:38 24 written, they had generated their own experience being a
01:38 25 nonoperator.

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01:38 1 So here you have one of the very most experienced
01:38 2 deepwater players, certainly at that time, expressing what
01:38 3 they -- you know, what the authors represent their lessons
01:38 4 learned through that becoming nonoperator -- nonoperating
01:38 5 parties and sharing the best practices associated with that.

01:38 6 Q. Okay. Is there a specific quote that you wish to bring to
01:38 7 the Court's attention today?

01:38 8 A. Yes, there is. May I -- there is.

01:38 9 Q. Okay. Could we call up TREN-232806.1.1.

01:39 10 Is this the quote?

01:39 11 A. It is.

01:39 12 Q. Can you explain it?

01:39 13 A. So I've highlighted three elements here, and all three of
01:39 14 them collectively will go to focused active participation and
01:39 15 the positive influence of that -- of that activity.

01:39 16 And the first one is the fact that this active
01:39 17 participation from the very beginning is not just about profit,
01:39 18 it includes safety and the belief that this nonactive -- this
01:39 19 active participation improves safety.

01:39 20 The active part of it is expressed in No. 5. And
01:39 21 this is what they're recommend is that when you're a
01:39 22 nonoperating party, what you need to do is take a tough look at
01:39 23 everybody's strengths and weaknesses, the operators,
01:39 24 yourselves, the rest of the parties that are involved in the
01:39 25 enterprise.

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01:39 1 After having done that, then you need to identify
01:39 2 what they call the critical activities. And those are the
01:39 3 places where either you have a good strength that's needed
01:40 4 because of the particular risk or where somebody might be weak,
01:40 5 and that's how you focus your attention.

01:40 6 So it's focused, it's active, it improves HS&E.
01:40 7 That's why I chose this paper.

01:40 8 Q. Okay. Could we call up TREX-232808.

01:40 9 This is an article entitled, "Changing Dynamics in
01:40 10 Deepwater Ownership," and it's written by Mr. Herman.

01:40 11 Mr. Walkup, did you cite this article in your
01:40 12 recorder?

01:40 13 A. Yes, I did.

01:40 14 Q. And why did you cite this article in your reports?

01:40 15 A. Well, again, for a couple of reasons. And it's important,
01:40 16 it's not just Mr. Herman from Chevron. It's actually a
01:40 17 panel -- a panel discussion amongst a group of companies
01:40 18 talking about different roles of nonoperating parties.

01:40 19 And the first reason I did that is because it is a
01:40 20 breadth of companies and it demonstrates the active
01:40 21 participation by nonoperating parties by very large deepwater
01:41 22 players, Chevron and Petrobras. Petrobras is a Brazilian
01:41 23 company. Offshore Brazil is one of the key deepwater water
01:41 24 areas in the globe. So it does a good job showing the breadth
01:41 25 of the players.

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01:41 1 The other reason I've shown it is because it's very
01:41 2 explicit that it also occurs during exploration. This is not
01:41 3 something that just happens during development, but it's
01:41 4 something that happens during exploration. By this -- by
01:41 5 saying "this," I mean the active participation of nonoperating
01:41 6 parties.

01:41 7 Q. Could we call up TREX-232804.

01:41 8 This is another article entitled, "Typhoon Offshore
01:41 9 Safe and Clean: Authentic Leadership to Produce an Incident
01:41 10 and Injury-Free Environment," and it's by Mr. Visser and some
01:41 11 others, other gentlemen.

01:41 12 Mr. Walkup, did you cite this article in your report?

01:41 13 A. Yes, I did.

01:41 14 Q. And why did you cite this article in your reports?

01:41 15 A. So this is a good example where it talks about maybe the
01:41 16 softer side of nonop- -- the contributions of nonoperating
01:41 17 parties to leadership and culture of safety, and this paper
01:42 18 talks about that benefit. In this case, it was Chevron and BHP
01:42 19 that put together a team to achieve both those ends.

01:42 20 Q. How is this paper relevant to Mr. Arnold's position that
01:42 21 nonoperator involvement is detrimental to safety?

01:42 22 A. It's contrary to that opinion and -- and contrary
01:42 23 certainly -- my opinion is aligned with theirs that it's a net
01:42 24 contribution to safety, the focused active participation of
01:42 25 nonoperating parties.

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01:42 1 Q. Could we call up TREN-232867.

01:42 2 This is an article entitled, "HSE Assessments of
01:42 3 Non-Operated Joint Ventures" -- or HES Assessments -- by
01:42 4 Chevron, the audit group.

01:42 5 Did you cite this article in your report?

01:42 6 A. Yes, I have.

01:42 7 Q. Again, why did you cite this article in your report?

01:42 8 A. What I find interesting about this article, this is
01:42 9 post-Macondo. And what the authors describe is an
01:42 10 enterprise-wide effort. So this is across all of Chevron's
01:43 11 nonoperated businesses, what they call NOJV, nonoperated joint
01:43 12 ventures. Even when they're not joint ventures, that's just
01:43 13 what they call them. Across all of them.

01:43 14 They decided that they were going to proactively put
01:43 15 together a team and go to those places where the -- you know,
01:43 16 go to the operators and conduct an assessment, much like what
01:43 17 Shell described: strengths, weaknesses, key risks, where do we
01:43 18 think we can help, what do we think are the weak parts, and
01:43 19 have that conversation with the -- with the operator.

01:43 20 And, you know, their -- their recognition -- so I
01:43 21 think it's interesting not only because it's so proactive and
01:43 22 so across the entire portfolio; but, in fact, the results that
01:43 23 they -- they hadn't completed it across the entire enterprise
01:43 24 by the time they wrote this paper, but all indications were
01:43 25 that they were seeing very positive responses from the

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01:43 1 operator, which is consistent with my experience of the way
01:43 2 that this industry collaborates.

01:44 3 Q. Okay. Could we call up TREX-232812.

01:44 4 This is an article entitled, "Jubilee Project
01:44 5 Overview."

01:44 6 Did you cite this article in your report, Mr. Walkup?

01:44 7 A. Yes, I did.

01:44 8 Q. And why did you cite this article in your report?

01:44 9 A. So this is a -- the Jubilee project, there's actually a
01:44 10 technical operator and -- well, there's -- it's a complicated
01:44 11 situation. But the three companies had participated in what's
01:44 12 called an "integrated project team," an IPT, and that -- that
01:44 13 will be a confusing term because it's not always used
01:44 14 consistently.

01:44 15 It also sometimes means an intergraded project team.
01:44 16 And even sometimes I get tripped up on it because I started
01:44 17 with the integrated, but we'll -- we'll get to that in a little
01:44 18 bit. But -- so I don't want to confuse the Court here too much
01:44 19 that this -- this is all three companies.

01:44 20 And in this case, Anadarko was the nonoperating
01:44 21 party, formed this IPT to manage the development of a project
01:44 22 with great success. And this talks about the role of all
01:45 23 parties, including the nonoperating parties, to provide not
01:45 24 just the technical positions but leadership positions.

01:45 25 And the role of the IPT in building the culture --

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01:45 1 building the leadership and the culture responsible for HS&E,
01:45 2 and it just does a good job of explaining all of that in terms
01:45 3 of what the role of the IPT is and as a form -- one of the
01:45 4 possible forms of active participation by nonoperating parties.

01:45 5 **MS. FLICKINGER:** Could we call up TREX-232857,
01:45 6 please?

01:45 7 **BY MS. FLICKINGER:**

01:45 8 **Q.** This is an article entitled "The Role of a Nonoperating
01:45 9 Partner in contributing to HSE Excellence," and it's written by
01:45 10 Mr. Lawrie.

01:45 11 Did you cite this article in your report?

01:45 12 **A.** Yes. This is my final example of -- you know, in the
01:45 13 literature. And it's -- I chose this one because it's very
01:45 14 good at being explicit about, well, what did you do? And they
01:46 15 talk about the different roles, including auditing, including
01:46 16 visiting contractors, trying to build the culture that -- hey,
01:46 17 listen, safety is important to everybody, and their role in
01:46 18 that.

01:46 19 So I thought it was really good in terms of how
01:46 20 explicit it was about the -- about the role of nonoperating
01:46 21 parties.

01:46 22 **Q.** Is there a specific quote that you would like to read
01:46 23 today?

01:46 24 **A.** Yeah, I think there is.

01:46 25 **MS. FLICKINGER:** Can we call out 232857.8.1, please?

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01:46 1 BY MS. FLICKINGER:

01:46 2 Q. Mr. Walkup, would you like to read this quote?

01:46 3 A. Well, I know -- because we've talked about a number of
01:46 4 this. I'll focus on -- we could read the whole thing, but
01:46 5 where it starts with "But."

01:46 6 But what is clear is that a nonoperating party,
01:46 7 companies can play a significant role in the development of
01:46 8 HS&E excellence in any project, regardless of the size of their
01:46 9 investment.

01:46 10 That's the key, and I think it summarizes the whole
01:46 11 literature piece that supports all three pieces. It's active,
01:47 12 it's participating, and it makes things better. So that's why
01:47 13 I put that selection of literature together.

01:47 14 Q. In your opinion, Mr. Walkup, are these articles that we
01:47 15 just looked at a reliable source for information concerning
01:47 16 industry norms in the operator and nonoperator relationship?

01:47 17 A. Yeah, I believe that they are useful.

01:47 18 Q. And why is that?

01:47 19 A. You know, this is a fast-moving industry, and the industry
01:47 20 publishes quite a bit. And so these type of technical papers
01:47 21 are relied on. As you see, they weren't all SPE papers; they
01:47 22 came from a number of different technical organizations. The
01:47 23 OTC, which the Offshore Technical Conference. There may have
01:47 24 been some other organizations represented there. But because
01:47 25 collaboration is such an important piece of -- of our business,

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01:47 1 that the literature is pretty easy to access.

01:47 2 Q. Okay. Now, let's turn to your personal experience with
01:48 3 nonoperator active participation. Did you prepare a slide
01:48 4 summarizing your relevant experience?

01:48 5 A. Yes, I have.

01:48 6 MS. FLICKINGER: Can we call that up, please. It's
01:48 7 D-33156.

01:48 8 BY MS. FLICKINGER:

01:48 9 Q. What kinds of operational experience with active
01:48 10 participation by nonoperators do you have, Mr. Walkup?

01:48 11 A. So this is -- this is my operational experiences where
01:48 12 there was some interaction with nonoperating parties. When I
01:48 13 was in Indonesia, there was none of that. There was no
01:48 14 nonoperating party.

01:48 15 But in my well testing -- again, well testing
01:48 16 pressure transient analysis, that is an -- an activity taking
01:48 17 at objective depth if it's an exploration well. I think the
01:48 18 same language is used on development wells. I've been involved
01:48 19 in hundreds of these as the -- I was Chevron's expert in this
01:48 20 area, and so I provided support to both onshore, offshore,
01:48 21 exploration and development. And it included cases where, you
01:48 22 know, we were the operator.

01:48 23 So what I observed directly was input during
01:49 24 particularly the design process from nonoperators about that
01:49 25 design of those operations at objective depth.

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01:49 1 As well as when we were not the operator and some of
01:49 2 these important steps came up -- and these are actually really
01:49 3 expensive operations because well testing means that you've
01:49 4 reached a depth, and if it's -- if it's in an exploration well,
01:49 5 the rig is there, so you're testing while the rig is there.
01:49 6 And sometimes these tests can take many days. So, you know,
01:49 7 there is a lot of attention to the design of the test. So
01:49 8 there's a lot of input during the design process, and that's
01:49 9 what I've observed personally.

01:49 10 Q. Does your --

01:49 11 A. Sorry.

01:49 12 Q. Does your completion experience include temporary
01:49 13 abandonment experience?

01:49 14 A. Yes, it does.

01:49 15 Q. Okay.

01:49 16 A. Particularly here in the Gulf of Mexico. So they were
01:49 17 exploration wells. We wanted to test them, so we had to
01:49 18 complete them, not just a temporary -- so we actually had to
01:50 19 perf -- case and perf them. But then we had to temporary
01:50 20 abandon them as well.

01:50 21 So those were the series of activities that we took
01:50 22 there. We went through, I'd say, at least 12 months of design,
01:50 23 and there was a lot of input from the nonoperating parties.

01:50 24 MS. FLICKINGER: Okay. Can we have the next build,
01:50 25 please.

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01:50 1 **BY MS. FLICKINGER:**

01:50 2 **Q.** What relevant consulting experience do you have with
01:50 3 active participation of nonoperators?

01:50 4 **A.** So I want to be really clear. In my consulting
01:50 5 experience -- well, I think just one exception, maybe limited
01:50 6 others -- we worked for -- I've worked for the operators. But
01:50 7 we've worked for the operators in deepwater specifically to
01:50 8 develop strategies so that they can have very effective
01:50 9 participation by their nonoperating parties.

01:50 10 So in the first case, I was working with a very large
01:50 11 company that had done a lot of Miocene but hadn't done any of
01:50 12 the deeper tertiary stuff, but they wanted to operate.

01:50 13 But they knew that there were some non -- some other
01:51 14 operators out there that had more experience in the high
01:51 15 pressure/high temperature, HP/HT stuff. And they wanted to
01:51 16 bring them in too as nonoperating parties, and we talked about
01:51 17 that and thought through that process of going through that.

01:51 18 The second example was with a small company, great
01:51 19 lease position in the deepwater, but with no rigs. And so they
01:51 20 were really looking at, should we capture a rig through
01:51 21 partnering with a nonoperating party who had a lease -- or I
01:51 22 mean had a rig? Or should they commit to a long-term build and
01:51 23 get their own rig? You wouldn't actually own the rig, but
01:51 24 you'd have it for a long time under contract.

01:51 25 Worked with, again, a super major in this next case

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01:51 1 where their IPT was focused on one field, but there was several
01:51 2 fields that were very nearby. And so the decisions we were
01:51 3 looking at was how to pull that together so that you could
01:51 4 build more of a hub strategy and bring these people in as
01:51 5 partners. And one of the choices was to retain operatorship
01:52 6 and bring them in as nonoperators.

01:52 7 In this particular case, it actually turned out the
01:52 8 other way; they ended up becoming, after I worked with them,
01:52 9 the nonoperator.

01:52 10 And the final case working, again, with a very large
01:52 11 company around a deepwater lease and facility where the deep --
01:52 12 where the existing facility -- in other words, the first field
01:52 13 was on decline, and so there was excess capacity at this
01:52 14 facility.

01:52 15 And so the strategy we helped them think through was,
01:52 16 well, is there exploration potential on this lease? And, in
01:52 17 fact, their nonoperating party had a better exploration record
01:52 18 than they did. So the question was, what's the right way to
01:52 19 think about putting together a business model to bring that
01:52 20 expertise, that exploration expertise into the common benefit
01:52 21 of both parties?

01:52 22 Q. Okay. So now, in terms of support for active
01:52 23 participation, we've covered the literature, we've covered your
01:53 24 personal experience.

01:53 25 Let's turn to support from the industry operating

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01:53 1 agreements.

01:53 2 **MS. FLICKINGER:** Could we please call up D-33157.
01:53 3 This is a slide that has the following three documents on it,
01:53 4 TREX-085006 --

01:53 5 **THE COURT:** Let me turn this on. Let me interrupt
01:53 6 here for a second because I want to see where we're going with
01:53 7 this.

01:53 8 Is this witness being called by the government
01:53 9 essentially to rebut what I understand is Anadarko's argument
01:53 10 that it would be bad public policy to impose a Clean Water Act
01:53 11 penalty on a nonnegligent nonoperator? Is that -- is that what
01:53 12 this -- the bottom line is here?

01:53 13 **MS. FLICKINGER:** Yes. He's offering an affirmative
01:53 14 opinion, and it's related to the opinions of Mr. Arnold, who,
01:54 15 among other things, contends that having nonoperators actively
01:54 16 participate is detrimental to safety.

01:54 17 And then they also intend to call an economist
01:54 18 who posits economic theories of deterrence and also did an
01:54 19 imperical study.

01:54 20 **MS. KIRBY:** Your Honor, if I may. Mr. Walkup
01:54 21 proffered an affirmative opinion which was not rebutting
01:54 22 anyone. And it was an opinion that because Anadarko said it
01:54 23 was a passive investor, it should get a material penalty. All
01:54 24 right.

01:54 25 Round 2, there was some rebuttal of Mr. Arnold

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01:54 1 and I think Mr. Sunding a little bit in Round 3.

01:54 2 But Round 1, no. This was an affirmative
01:54 3 opinion that had nothing to do with anything any expert for
01:54 4 Anadarko said.

01:54 5 **THE COURT:** Well, maybe I misunderstood. I thought
01:54 6 Anadarko all along has contended that not only was it not
01:55 7 negligent as a matter of law, which I agreed with, but that it
01:55 8 should not have any penalty imposed because it was only a
01:55 9 passive nonoperating partner.

01:55 10 Is that -- and that to do otherwise would
01:55 11 somehow be bad for the way the industry operates.

01:55 12 That's not what you're arguing in this case?

01:55 13 **MS. KIRBY:** We certainly have argued that Anadarko
01:55 14 was an investor, not the operator. The operator had exclusive
01:55 15 control, under the contract, over the drilling.

01:55 16 But we haven't put an expert on. There's no
01:55 17 expert that says, you know, Anadarko shouldn't get a penalty
01:55 18 because -- only because it was nonculpable, for instance.

01:55 19 There are experts who say other things. No
01:55 20 expert is taking, you know, issue with your rulings, basically.

01:55 21 **THE COURT:** No, but I'm trying to understand the
01:56 22 basis of your affirmative case, if you want to call it that, as
01:56 23 to other than not being -- not negligent, why Anadarko should
01:56 24 not have some penalty imposed. What's the basis for that?

01:56 25 **MS. KIRBY:** The basis for our case is, one, because

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01:56 1 the factors don't warrant it. So if we go through all eight
01:56 2 factors, we say it's not warranted here.

01:56 3 And what Mr. Arnold says in particular is if you
01:56 4 do a material penalty, as the government is arguing, you can
01:56 5 actually inadvertently cause safety problems on the rig.

01:56 6 **THE COURT:** Well, that's exactly where I was going.
01:56 7 That's the point I was trying to get to.

01:56 8 So this witness is, as I understand it, at least
01:56 9 part of his testimony is to rebut, contradict, whatever you
01:56 10 want to call it, that opinion.

01:57 11 Is that part of what you're doing here?

01:57 12 **THE WITNESS:** Yes.

01:57 13 **MS. KIRBY:** If I may, he does not purport to be an
01:57 14 expert in safety. He has admitted in his deposition that he's
01:57 15 not expert in safety and that's not what he was proffered for.

01:57 16 **THE COURT:** Okay. I'm going to let him continue.
01:57 17 I'm just trying to get an understanding of where we're heading
01:57 18 with all of this.

01:57 19 Again, I'll restate this, but we're dealing with
01:57 20 the Clean Water Act. It's a strict liability penalty for
01:57 21 owners or operators of a facility or a vessel. There are,
01:57 22 obviously, enhanced penalties based on degrees of negligence or
01:57 23 fault. But even with a totally innocent -- that is,
01:57 24 nonnegligent -- owner or operator of a facility from which oil
01:57 25 is discharged into navigable waters is liable or exposed to

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01:58 1 penalties under the Clean Water Act.

01:58 2 Now, in considering the level of penalties to be
01:58 3 imposed, the Court takes a lot of factors into account. And,
01:58 4 again, I'm not prejudging anything here, but it goes without
01:58 5 saying that Anadarko was a part owner of this facility. You
01:58 6 owned 25 percent of it.

01:58 7 And I can't speak for why -- how or why Congress
01:58 8 enacted the law the way they did, but I imagine that part of
01:58 9 the reason is if you own it, you invest in it, you profit from
01:58 10 whatever profits are to be determined.

01:58 11 And if Anadarko, for example, is a 25 percent
01:58 12 owner, any profits from that well, you would get 25 percent of
01:58 13 it, and I guess you'd pay 25 percent of the costs, I'm
01:58 14 assuming.

01:58 15 So, you know, I'm having a little trouble with
01:59 16 the argument, I guess, that just because you're a nonnegligent
01:59 17 operator -- I mean owner, you shouldn't be imposed any penalty
01:59 18 at all.

01:59 19 We can quibble about the -- argue about the
01:59 20 level of the penalties, which I'm sure there will be a lot of
01:59 21 that.

01:59 22 I'm not saying we're wasting time here, but I
01:59 23 understand the arguments on both sides, but my job is to
01:59 24 enforce a law passed by Congress. Congress decides the policy,
01:59 25 and their policy is that a -- even a nonnegligent owner can be

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01:59 1 subject to penalties under the Clean Water Act.

01:59 2 So go ahead. Continue on.

01:59 3 **MS. FLICKINGER:** Okay. We'll try and move this
01:59 4 forward then.

01:59 5 **THE COURT:** Yes.

01:59 6 **MS. FLICKINGER:** I'm going to enter the operating
01:59 7 agreements. So it's TREX-085006, AAPL model form of offshore
01:59 8 deepwater operating agreement. I'm going to call that the
01:59 9 model form. TREX-232798, which is Exhibit K to that model
01:59 10 agreement. And TREX-280000, which is ratification and joinder
01:59 11 of operating agreement for the Macondo prospect, which is the
01:59 12 joint operating agreement from Macondo.

01:59 13 And, again, this is from Anadarko's exhibit
01:59 14 list. So I don't think it presents a culpability issue.

02:00 15 **BY MS. FLICKINGER:**

02:00 16 **Q.** Mr. Walkup, do you recognize these documents?

02:00 17 **A.** Yes, I do.

02:00 18 **Q.** Do you work with these documents in your consulting
02:00 19 practice?

02:00 20 **A.** Somewhat. Not from a legal perspective. But when we're
02:00 21 trying to develop alternatives or value somebody's assets and
02:00 22 businesses, you need to know what their flexibility is. So to
02:00 23 that extent, you know, we get familiar with these.

02:01 24 But, again, I want to be careful. I'm not lawyer,
02:01 25 and these are contracts, and that's not what we do. We don't

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02:01 1 ever render any kind of legal opinion.

02:01 2 THE COURT: So you're not here, sir, to opine as
02:01 3 to -- you're not trying to say what Anadarko's legal
02:01 4 responsibilities were in this case?

02:01 5 THE WITNESS: No, not in any way.

02:01 6 THE COURT: Okay. Go ahead.

02:01 7 MS. FLICKINGER: So he's talking about how co-owners
02:01 8 actively participate even when they don't have fault.

02:01 9 THE COURT: Well, but they're -- you know, that could
02:01 10 be different in every case. Contracts -- I don't -- is
02:01 11 there -- is there a standard uniform joint operating agreement
02:01 12 that exists in every case?

02:01 13 THE WITNESS: It's not exactly -- I'm sorry, I
02:01 14 shouldn't answer. I'm sorry.

02:01 15 THE COURT: Go ahead, go ahead.

02:01 16 THE WITNESS: So the model form is pretty close to
02:01 17 that. It's put together by industry. There will be six,
02:02 18 seven, ten different companies that over a couple years kick it
02:02 19 around, get -- you know, get input from a lot of other people,
02:02 20 and it goes through cycles and lawyers and stuff.

02:02 21 And so it's a pretty stable format. Now, I will
02:02 22 tell you, though, that it's pretty much always
02:02 23 backwards-looking. And because the emphasis to change it is
02:02 24 when current practices, are -- you know, are changing and
02:02 25 everyone's got to scrub this thing up.

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02:02 1 But the model form gets -- once it's out there,
02:02 2 it is -- in my experience, it's common to be the basis -- for
02:02 3 example, the one that I read for this case is very much like
02:02 4 the model form. You just fill in the blanks, but there's a lot
02:02 5 of negotiating that goes into filling the blanks. Right?

02:02 6 So the model form is in -- for the Gulf of
02:02 7 Mexico. There's one for on the -- there's a shelf version,
02:02 8 there's a deepwater version, there's an onshore version, I
02:02 9 think.

02:02 10 And that -- you know, time is money in this
02:02 11 business. Right? And so this is an effort to make the --
02:03 12 bringing the enterprise together much quicker. Otherwise, it
02:03 13 could take years, like it does sometimes overseas where they
02:03 14 don't have model forms.

02:03 15 **THE COURT:** So I think -- I think I understand. I'll
02:03 16 put it in my words, not yours. You believe that if there is no
02:03 17 penalty imposed on a nonoperator in these circumstances, that
02:03 18 it would -- it could lead to the nonoperators being less --
02:03 19 less involved or less interested in, have less incentive to be
02:03 20 involved in the planning, safety, and so forth in drilling?

02:03 21 **THE WITNESS:** Precisely. Particularly given the
02:03 22 specifics of -- you know, this isn't an abstract case; this is
02:03 23 a real case. Right? So there -- there's an industry, there
02:04 24 are some events which happened; and I'm trying to capture, what
02:04 25 is industry going to do with these facts based on the way we

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02:05 1 Q. It's Ky Kirby.

02:05 2 A. Thank you.

02:05 3 Q. All right. You're not a registered professional --
02:05 4 professional engineer, are you?

02:05 5 A. No.

02:05 6 Q. You have never published any textbooks or field manuals?

02:05 7 A. No.

02:05 8 Q. You haven't written any handbooks since you left Chevron
02:05 9 in 1997?

02:05 10 A. I -- I have contributed to -- in my clients. Nothing
02:06 11 that's in the public domain.

02:06 12 Q. You haven't received any awards from the National Academy
02:06 13 of Engineering?

02:06 14 A. No.

02:06 15 Q. How about the National Academy of Construction?

02:06 16 A. No.

02:06 17 Q. How about the Society of Petroleum Engineers?

02:06 18 A. I remember I was given something after I sat on -- as
02:06 19 chair for -- I think it might have -- I don't remember if it
02:06 20 was an award or just a thanks kind of thing, so ...

02:06 21 Q. All right. How about any awards from the American
02:06 22 Petroleum Institute?

02:06 23 A. No.

02:06 24 Q. You wouldn't position yourself as a safety expert?

02:06 25 A. What I've said is I have relevant experience in safety,

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02:06 1 particularly at operations at objective depth. And so -- and
02:06 2 so the safety with regards to well testing and other
02:06 3 operations, that's at objective depth.

02:06 4 But I'm not a -- my career isn't as a safety
02:07 5 engineer. So in that sense I have relevant safety experience,
02:07 6 but I'm not what I would interpret "safety expert" means.
02:07 7 Because there's people who have that. That's their job.
02:07 8 That's what they do. They're a safety engineer. I'm not one
02:07 9 of those.

02:07 10 But I have been in charge of those operations in
02:07 11 safety because I'm out there -- was out there and participated.
02:07 12 That was an important part of my job.

02:07 13 Q. Mr. Walkup, during your deposition, you did say you would
02:07 14 not position yourself as a safety engineer, didn't you -- I
02:07 15 mean expert?

02:07 16 A. I think I said "expert," not "engineer."

02:07 17 Q. All right. And you also said that you wouldn't position
02:07 18 yourself as a safety management expert; right?

02:07 19 A. I think that's not exactly what I said. I think I said I
02:07 20 had relevant experience.

02:07 21 MS. KIRBY: Let's bring up Mr. Walkup's deposition,
02:07 22 page 15, and let's begin at line 8.

02:07 23 BY MS. KIRBY:

02:07 24 Q. You can see --

02:07 25 A. Yeah.

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02:07 1 Q. "Same answer for safety management?

02:08 2 "ANSWER: Again, relevant experience, but I wouldn't
02:08 3 position myself as a safety management expert."

02:08 4 That's what you said, isn't it?

02:08 5 A. Yes. I think that's what I just said. I said -- I didn't
02:08 6 say no. I said I have relevant experience at a leadership
02:08 7 position. This particular one, I was on the executive
02:08 8 leadership at AES. But I'm not a safety expert in the context.

02:08 9 And what I meant here was there really are people,
02:08 10 that's their career and that's -- my -- my career is broader
02:08 11 than that, but it has been an important element of -- of the
02:08 12 different positions that I've held.

02:08 13 Q. You're familiar with the acronym SEMS, S-E-M-S?

02:08 14 A. Yes.

02:08 15 Q. And that stands for Safety and Environmental Management
02:08 16 Systems?

02:08 17 A. Yes.

02:08 18 Q. And you do not consider yourself an expert in SEMS; is
02:08 19 that right?

02:08 20 A. That, I would agree with. I have some experience. Again,
02:08 21 I have some experience, but I'm not a SEMS expert.

02:08 22 Q. Now, before this case, at least, you have never been asked
02:09 23 to advise BSEE or any of the federal agencies on offshore
02:09 24 safety, have you?

02:09 25 A. No.

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02:09 1 Q. You shared with us your personal experience, and you put
02:09 2 up a demonstrative, D-33156. I think it was the first build.

02:09 3 If we could bring that up again, I'd like to go
02:09 4 through that, if you don't mind.

02:09 5 Apologies for the delay.

02:09 6 THE COURT: Is that something the government had on
02:09 7 the screen?

02:09 8 MS. KIRBY: Yeah, it was something the government
02:09 9 had.

02:09 10 THE COURT: Can you bring it back up?

02:09 11 MS. KIRBY: Can you bring up 33156?

02:09 12 MS. HIMMELHOCH: We're working on it, Your Honor. We
02:09 13 had to switch back over.

02:09 14 BY MS. KIRBY:

02:09 15 Q. Okay. Well, while -- while they're going that, let me
02:09 16 just go through your -- your relevant hands-on experience.
02:09 17 Okay?

02:09 18 You were with Chevron from '84 to '89; right?

02:10 19 THE COURT: I think it's on the screen now.

02:10 20 MS. KIRBY: Okay.

02:10 21 THE WITNESS: Yes, ma'am.

02:10 22 BY MS. KIRBY:

02:10 23 Q. You were with Chevron from 1984 to 1989; right?

02:10 24 A. Yes.

02:10 25 Q. You started your career in 1984?

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02:10 1 A. Started in '84; and in '89, I went to Caltex, which was a
02:10 2 JV of Chevron and Texaco. So I'm still with Chevron.

02:10 3 Q. Right. And in '89, that was when you went to Indonesia;
02:10 4 right?

02:10 5 A. Yes.

02:10 6 Q. And from '89 to '94, you were in Indonesia; right?

02:10 7 A. Yes.

02:10 8 Q. And you told us there's no nonoperators in Indonesia;
02:10 9 right?

02:10 10 A. The relationship -- you have the -- the JV, Caltex is the
02:10 11 operator. The government of Indonesia was -- I don't know the
02:10 12 legal framework, but they were not on a -- they weren't with us
02:10 13 day to day, but we certainly had to interact with them on what
02:10 14 we wanted to do.

02:10 15 In fact, the last year I was there, I spent a lot of
02:11 16 time directly interfacing with the government regarding some of
02:11 17 the terms in your production sharing contract. So that's the
02:11 18 structure of the business.

02:11 19 Q. If I recall, my question was: You told us there were no
02:11 20 nonoperators in Indonesia?

02:11 21 Didn't you tell us that during your direct
02:11 22 examination?

02:11 23 A. Oh, just today?

02:11 24 Q. Yes.

02:11 25 A. Yeah. I think I -- that sounds like what I meant -- I

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02:11 1 mean, the government is not a traditional nonoperating party
02:11 2 since they -- well, they play -- they have a different role,
02:11 3 but they are -- you know, in this case they got 88 percent of
02:11 4 the conventional oil that was produced.

02:11 5 So it was -- I don't know what the legal term is for
02:11 6 what their role is, but it's different than what I would think
02:11 7 of as a nonoperating party.

02:11 8 **THE COURT:** It might be a tax, huh?

02:11 9 **THE WITNESS:** It was -- it was a beneficial
02:11 10 relationship for both, so I'm not criticizing the relationship.
02:11 11 But it's a very different relationship than what I -- when I
02:11 12 refer to a nonoperating party, it's a pretty different
02:12 13 relationship, given their authority and regulatory power and
02:12 14 all the other things they can do as the government.

02:12 15 **BY MS. KIRBY:**

02:12 16 **Q.** Sir, you came back to Chevron in '94; right?

02:12 17 **A.** Yes.

02:12 18 **Q.** From Indonesia; right?

02:12 19 **A.** Yes.

02:12 20 **Q.** And you stayed there until 1997; right?

02:12 21 **A.** That's correct.

02:12 22 **Q.** And that was the last time that you have been on an
02:12 23 offshore rig was when you were with Chevron; right?

02:12 24 **A.** An offshore rig, that's correct.

02:12 25 **Q.** And, in fact, you've never been on a deepwater drilling

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02:12 1 rig at all; right?

02:12 2 A. I have not.

02:12 3 Q. Okay. Now, after you left Chevron in 1997 or since then,
02:12 4 you've primarily been a management consultant; right?

02:12 5 A. Correct.

02:12 6 Q. Okay. And the only work that you have done for a
02:12 7 nonoperator has been as a consultant in connection with a
02:12 8 transaction matter; right?

02:12 9 A. That's correct. I didn't -- I hadn't remembered that in
02:12 10 the deposition, so I think I had to send that over
02:12 11 post-deposition.

02:12 12 Q. Right. You put an errata in where you said, oh, by the
02:13 13 way, I remembered this; right?

02:13 14 A. Yeah, that's right.

02:13 15 Q. Okay. Now, you haven't been on a drilling rig since 1997,
02:13 16 so obviously you don't consider yourself an expert in what
02:13 17 realtime data is conveyed from rigs to nonoperating partners,
02:13 18 right, or parties?

02:13 19 A. The technology has continued to evolve. Yes -- no. I'm
02:13 20 sure it's changed much since I was on a rig.

02:13 21 Q. Now, you were testifying for a bit about the model
02:13 22 operating agreement. And I'm going to try to refer to it by
02:13 23 the same TREX number, TREX being trial exhibit number, that
02:13 24 Ms. Flickinger did. Unfortunately, I had written it down as
02:13 25 one of the other duplicates. I think it was 085006 when

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02:13 1 Ms. Flickinger referred to it.

02:14 2 I can bring up another version of it.

02:14 3 **MS. FLICKINGER:** Which one do you want?

02:14 4 **MS. KIRBY:** I want the model operating agreement.

02:14 5 Okay. Here we are.

02:14 6 **THE COURT:** Identify the TREX number.

02:14 7 **MS. KIRBY:** Yeah, it's -- what I have here is
02:14 8 TREX-085006.2. I think I'm going to have to default to the
02:14 9 version I have written about because I think the jump sites are
02:14 10 going to be different.

02:14 11 Okay. Let's go to -- let's see, where is it --
02:14 12 TREX-13204.

02:14 13 All right. Now, before we get into the
02:14 14 provisions of this at all, I just want to double check that I
02:14 15 understand a few things.

02:15 16 While you feel like you have a lot of experience with
02:15 17 operating agreements, you don't consider yourself an expert
02:15 18 in -- in them; right?

02:15 19 **A.** The -- to be an expert in a contract, in my mind, you have
02:15 20 to be a lawyer. So, no, I'm not an expert at the contract.

02:15 21 **Q.** And you've told Judge Barbier that you don't mean to be
02:15 22 providing a legal interpretation; right?

02:15 23 **A.** I do not -- I'm sorry, can you repeat what you just said?
02:15 24 I didn't quite --

02:15 25 **Q.** You don't mean to be providing us with a legal

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02:15 1 interpretation; is that right?

02:15 2 A. Correct.

02:15 3 Q. All right. And you believe, nonetheless, that the model
02:15 4 form, according to your report, contains some certain best
02:15 5 practices; is that right?

02:15 6 A. I think I indicated -- I've been trying to be consistent
02:15 7 that it tends to have -- to be kind of a lagging indicator of
02:15 8 practices, just because of the way it gets renewed.

02:16 9 It's a dialogue between many companies and, you know,
02:16 10 they don't always agree. And so I think I've been consistent
02:16 11 that it's a lagging indicator that may contain current
02:16 12 practices and some best practices.

02:16 13 But I don't think it's a definitive documentation of
02:16 14 best practices. I think I've been consistent with that.

02:16 15 Q. In fact, if I wanted to find a definitive documentation of
02:16 16 all of the best practices, I'd have to look in a bunch of
02:16 17 different places; right?

02:16 18 A. I -- I have -- I'd agree strongly with that, yes.

02:16 19 Q. And you could look at professional journal articles,
02:16 20 possibly; right?

02:16 21 A. You could.

02:16 22 Q. And trade association articles; right?

02:16 23 A. Yes.

02:16 24 Q. Peer-reviewed articles; right?

02:16 25 A. That would be -- there's --

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02:16 1 Q. Professional journal articles? Sorry about that.

02:16 2 A. There's -- there's -- there's many sources. I mean, one
02:16 3 of the -- partner meetings is a -- is a great place to hear
02:17 4 about good practices.

02:17 5 Q. Expert interviews?

02:17 6 A. Expert interviews? So I've been through -- what do you
02:17 7 mean "expert interviews"?

02:17 8 Q. Well, I'm just harkening back to your deposition, and I
02:17 9 think that you said expert interviews could be one of those
10 sources.

02:17 11 A. Okay. So that's something that we do in our consulting
02:17 12 practice. That's -- when -- I think that's what I was
02:17 13 referring to, when we go and interview experts. I now realize
02:17 14 that might be confusing with the -- the role of an expert here.
02:17 15 So I'd have to go look where that was. But that's why I
02:17 16 stopped you, because when I heard that term, it was like, well,
02:17 17 wait a minute, that's -- I don't remember the context. I don't
02:17 18 remember what that answer is. But that can mean two things to
19 me.

02:17 20 Q. I understand. But your point about this form being
02:17 21 apparently a lagging indicator is that what you think are best
02:17 22 practices may not be in here in this contractual relationship,
02:17 23 assuming these provisions are adopted by the parties to a
02:17 24 contract; right?

02:18 25 A. The -- it -- if it -- yes, I -- I think it's not a perfect

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02:18 1 form. It's a good starting place. You know, sometimes people
02:18 2 change, and sometimes they don't. But it -- its purpose is to
02:18 3 make the -- bringing together the enterprise more efficient.
02:18 4 And then, you know, obviously, it should be a good agreement,
02:18 5 too, right, because there will be disagreements down the road,
02:18 6 which there are. And, you know, hopefully you minimize those.
02:18 7 So it should be a good working document, too.

02:18 8 But the reason it's -- there is a model form -- all
02:18 9 contracts, I guess, should do that. Its main purpose, though,
02:18 10 is one of efficiency. And so, I guess there's a tradeoff, you
02:18 11 know. And the fact that it's put together by multiple
02:18 12 companies, you know, there's probably some compromises that go
02:18 13 on, that people, when they bring it into their certain
02:19 14 circumstance, would change.

02:19 15 Q. Sure. That's what contracts are; they're compromises
02:19 16 between people, aren't they?

02:19 17 A. Again, in my layman's view, that sounds like that's
02:19 18 probably right.

02:19 19 Q. All right. Now, let's look at some of the provisions in
02:19 20 this agreement that you were testifying about before. Let's go
02:19 21 to TREX-13204.32.1.

02:19 22 This is Article 5, Rights and Duties of Operator.
02:19 23 And specifically 5.1, Exclusive Right to Operate. Right?

02:19 24 A. I'm sorry, what's the --

02:19 25 Q. That's one of the provisions; right?

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02:19 1 A. This -- I don't remember this one by -- by heart, but I'm
02:19 2 assuming it's in that model form and that's what it says.

02:19 3 Q. And the model form says the operator is an independent
02:19 4 contractor, not subject to the control or direction of
02:19 5 nonoperating parties, doesn't it?

02:20 6 A. Yes. It says that, yes.

02:20 7 Q. Now, as far as well design goes -- you were testifying
02:20 8 about well design before -- non-operators can come into
02:20 9 ownership at different stages of a project, can't they?

02:20 10 A. By "project," what do you mean?

02:20 11 Q. Well, let's say a development of a well, exploration of a
02:20 12 well, development of a well. There's different stages of a
02:20 13 well; right?

02:20 14 A. So, yes, the drilling of a well, so that project
02:20 15 management process that I showed earlier, my paper focused on
02:20 16 the whole project. But that same project management process is
02:20 17 used for drilling wells, and specifically in deepwater. So a
02:20 18 single well can be a project. You know, the 10 billion-dollar
02:20 19 field development and pipelines, that can be a project.

02:20 20 So the way the business -- the way the industry talks
02:20 21 is that you can have projects of different scale, but because
02:20 22 the challenge to any project is the same -- and that's
02:20 23 uncertainty -- the process that you use is the same, which is
02:21 24 the stage-gate process. So, yes, drilling a well follows that
02:21 25 same -- can follow that same decision process.

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02:21 1 Q. Okay. But my question really was: Non-operators can come
02:21 2 into a project at different stages? They don't have to be
02:21 3 there from the very beginning, do they?

02:21 4 A. Oh, I'm sorry. I misunderstood your question. I
02:21 5 apologize. You mean -- so somebody can buy somebody else's
02:21 6 shares, their -- you go back and -- yes, the --

02:21 7 Q. Exactly. Exactly.

02:21 8 A. Yes, they do. And that's part of my practice is to, you
02:21 9 know, hopefully be involved at some of those.

02:21 10 Q. And, in fact, a non-operator can come into a project after
02:21 11 drilling already has started; right?

02:21 12 A. Yes.

02:21 13 Q. And that would be -- the design's already done; right?

02:21 14 A. The design of what?

02:21 15 Q. The design of the well.

02:21 16 A. I don't want to be difficult, but what do you mean by "the
02:21 17 well"?

02:21 18 Q. Well, let's -- let's assume it's an exploratory well,
02:22 19 okay?

02:22 20 A. Okay.

02:22 21 Q. Now, you've told us about how you think the nonoperator
02:22 22 should have active participation in the design of that well
02:22 23 before it goes out offshore and starts -- before they start
02:22 24 drilling, the operator starts drilling; right?

02:22 25 A. So could you repeat the question because it had a lot of

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02:22 1 parts. I'm sorry.

02:22 2 Q. Okay. One, you have an exploratory well that's being
02:22 3 designed. Right?

02:22 4 A. Okay.

02:22 5 Q. And then the operator starts drilling; right?

02:22 6 A. Okay.

02:22 7 Q. All right. A nonoperator can then come into the project;
02:22 8 right?

02:22 9 A. Okay.

02:22 10 Q. The design, it's already done at that time; right?

02:22 11 A. Again, design of what?

02:22 12 Q. The design of an exploratory well.

02:22 13 A. Well, then the answer would be no. Because the well,
02:22 14 depending on what your operation to subjective depth -- not
02:22 15 subjective depth, objective depth are. So, you know, in my
02:22 16 experience, what the testing program would be, that's going to
02:23 17 depend on what you see in the -- when you get to TD. And so
02:23 18 you'll finish the temporary abandonment design, the completion
02:23 19 design, the testing design, you've done some of it, but you're
02:23 20 not going to finish that design until you get to TD and you've
02:23 21 run your logs, and based on that is going to be the -- you'll
02:23 22 finish up the completion design, the temporary abandonment
02:23 23 design, the testing design.

02:23 24 So that's why I wanted to make sure I understood your
02:23 25 question with regards to what, you know, you were talking

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02:23 1 about. So, no, the entire well is not complete. The design is
02:23 2 not complete by that point.

02:23 3 Q. Sure. Now, you do understand that well design goes
02:23 4 through some approval processes with regulatory authorities;
02:23 5 right?

02:23 6 A. I -- I -- I understand that in a general sense. That's
02:23 7 never been part of my job.

02:23 8 Q. All right. So you're not really familiar with at what
02:23 9 stage designs must be put before regulators and when they're
02:23 10 approved and how they have to be --

02:24 11 A. The only --

02:24 12 Q. -- submitted if they're revised, any of that?

02:24 13 A. Only in a general sense. I mean, my recollection is, you
02:24 14 know, you certainly need -- you know, pre-spud, you obviously
02:24 15 need one. I'm pretty sure we had to get one when we were going
02:24 16 to complete the zone. So I thought they were -- my
02:24 17 recollection -- but again, I'm not an expert -- there were
02:24 18 multiple points at that -- in that process.

02:24 19 Q. So pre-spud means before drilling starts; right?

02:24 20 A. Yes.

02:24 21 Q. And you do at least remember that there has to be some
02:24 22 form of approval before drilling starts; right?

02:24 23 A. Yes, that's -- that's my understanding.

02:24 24 Q. Okay. Now, let's look at TREN-13204.61. Again, it's the
02:24 25 model operating agreement, and it's specifically

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02:24 1 Section 10.1.2, which is about automatic revision of the well
02:24 2 plan; right?

02:24 3 A. Yes.

02:24 4 Q. And this provision states that during the drilling of an
02:24 5 exploratory well, the well plan may be revised by the operator
02:24 6 as is necessary for it to employ prudent oilfield practices or
02:25 7 to conduct safe operations, and those revisions will not
02:25 8 require the approval of the participating parties -- those
02:25 9 would be nonoperating parties; right? Right?

02:25 10 A. Yes.

02:25 11 Q. As long as the operator's revisions carry out the scope
02:25 12 and intent of the approved well plan and AFE; right?

02:25 13 A. That's what it says, yes.

02:25 14 Q. All right.

02:25 15 A. But can I --

02:25 16 Q. Now --

02:25 17 A. There's more to this than just this little blowout.
02:25 18 Because I'm -- if my memory serves me correctly, there's a part
02:25 19 of this that says that there are conditions that -- that are --
02:25 20 they can't do it under all conditions. Let me -- let me
02:25 21 remember this one for just a second, please. Because you've
02:25 22 taken it -- it's hard for me to put it in the context of the
02:25 23 whole contract when it's --

02:25 24 MS. KIRBY: Well, if we could take the call-out down
02:25 25 for a moment, please.

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02:25 1 **THE WITNESS:** Because many of these automatic
02:25 2 revisions are contingent on a couple of conditions. Like you
02:26 3 can't change the nature of the plan itself, and I think there's
02:26 4 a cost overrun provision. So I think it's -- there are a
02:26 5 couple of caveats to their ability to do this. But, you know,
02:26 6 we're looking at just a really small part of this.

02:26 7 **BY MS. KIRBY:**

02:26 8 **Q.** Can you see Section 10.2 now in its entirety?

02:26 9 **A.** 10.2? No, this is 10.1.

02:26 10 **Q.** I'm sorry. 10.1.2, can you see it in its entirety on the
02:26 11 screen now?

02:26 12 **A.** I see it in its entirety right now.

02:26 13 **Q.** And -- and that's just exactly what I read to you a moment
02:26 14 ago, isn't it?

02:26 15 **A.** Well, as long as the operator's revisions carry out the
02:26 16 scope -- that was the first thing I was saying -- and intent of
02:26 17 the approved well plan, except as provided in Article 6.2.2,
02:26 18 which is maybe the cost overrun thing I was talking about.

02:27 19 So those are the two caveats that I was referring to.

02:27 20 **Q.** I understand. But my question was, that's exactly what I
02:27 21 read to you a moment ago, isn't it?

02:27 22 **A.** Was that in the yellow part, too, the -- if I missed that,
02:27 23 then -- then I missed it. Because those -- I'm pretty sure
02:27 24 those are the caveats I was talking about.

02:27 25 **Q.** All right. This provision that we're looking at right

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02:27 1 now, Section 10.1.2, is consistent and reflects typical
02:27 2 industry practice, doesn't it?

02:27 3 A. Yes.

02:27 4 Q. Now, you have -- you have mentioned integrate -- I think
02:27 5 it was integrated project teams. I want to talk about that for
02:27 6 a minute.

02:27 7 A. Yes, ma'am.

02:27 8 Q. A good -- we talked about how a project, a well, goes
02:27 9 through different stages; right?

02:27 10 A. Yes.

02:27 11 Q. And tell me if this is a good high-level summary, if you
02:27 12 will, of those phases that the project goes through: Explore,
02:28 13 appraise, develop, and operation?

02:28 14 A. No.

02:28 15 Q. No. All right. Now, if we can bring up your deposition
02:28 16 at 104 -- page 104.

02:28 17 Okay. Well, is that -- were you asked this question:

02:28 18 "QUESTION: Is that generally the stages of -- of a
02:28 19 project, explore, appraise, develop, and operate, at least
02:28 20 the initial stages?

02:28 21 "ANSWER: I -- I would -- it's a good high-level
02:28 22 summary."

02:28 23 Were you asked that question, and did you give that
02:28 24 answer? Yes or no?

02:28 25 A. By answering yes or no, I don't think I'll be giving the

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02:28 1 whole truth as I understand it. The -- when this question was
02:28 2 asked --

02:28 3 **THE COURT:** I think -- first of all, sir, I think
02:28 4 what she's asking you, is that what you said in your
02:28 5 deposition.

02:28 6 **THE WITNESS:** Thank you. And that's what I assumed,
02:28 7 too.

02:28 8 **THE COURT:** Okay. Go ahead.

02:29 9 **THE WITNESS:** When the question was asked in the
02:29 10 deposition, it was asked in a different context. Explore,
02:29 11 appraise, develop, operate are in the -- in the JOA, and it's
02:29 12 talking about the development of the entire lease.

02:29 13 When you -- this is why I stopped you earlier
02:29 14 and asked you when you mean a project, when you're in the
02:29 15 project -- and I'll mention this later in the deposition -- a
02:29 16 project gets in -- so these are phases. A project gets
02:29 17 segmented into stages, as I mentioned to you before: The
02:29 18 feasibility, select, decide, execute, and operate.

02:29 19 Now, there's obviously some overlap here, and
02:29 20 that's one of the things that the contract brought in 2002 was
02:29 21 this idea on whether decision quality was being brought to the
02:29 22 big project. The -- you know, the many wells, the platform,
02:29 23 pipelines, and things like that. So later on, develop will get
02:29 24 blown up.

02:29 25 But the way you asked me the question today was

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02:29 1 in the context of a single well. And within the context of a
02:30 2 single well, we follow the same stage-gate process that I
02:30 3 showed you earlier.

02:30 4 So there is a distinction between the two, and
02:30 5 the context that this question was asked to me at deposition is
02:30 6 different than the one you asked to me today.

02:30 7 **BY MS. KIRBY:**

02:30 8 **Q.** A lease goes through various stages: Explore, appraise,
02:30 9 develop, and operation; right?

02:30 10 **A.** At a high level, it can do that and it can recycle through
02:30 11 that. You can have multiple cycles through that because you
02:30 12 can find another exploration opportunity on that same lease.

02:30 13 **Q.** All right. I understand. But the bottom line is those
02:30 14 are the -- in that order, those are the phases, if you will,
02:30 15 exploration, then appraisal, then development, then operation;
02:30 16 right?

02:30 17 **A.** As -- as defined within this JOA, and as I talked about in
02:30 18 the deposition, the language in the industry can vary, but
02:31 19 within the context of this JOA, yes, these are the -- these are
02:31 20 the -- I'm sorry. Phases and stages, it gets very -- it's
02:31 21 loose language.

02:31 22 So within the JOA, yes, these are the different
02:31 23 phases that are -- they define the set of actions that are done
02:31 24 in each of these -- you know, what the voting rights are and
02:31 25 all the things that go along with this contract. And in --

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02:31 1 in -- in a general sense, outside the context of the JOA when
02:31 2 we have conversations around a project, the language can be
02:31 3 different.

02:31 4 Q. Now, the vast majority of deepwater activities take place
02:31 5 during the development of -- the development phase; right?

02:31 6 A. When you say -- can -- I think I'll agree, but I just want
02:31 7 to make sure we're agreeing with each other when you said
02:32 8 "activities," because, you know, in terms of production,
02:32 9 obviously that doesn't happen, but most of the capital is
02:32 10 spent. We saw earlier huge dollars of -- are spent. Most of
02:32 11 that -- most of those dollars are spent in the -- in the
02:32 12 execute stage of the development. So, yes.

02:32 13 But in terms of activities generally, you know, you
02:32 14 hope to produce these things for -- you know, deepwater is not
02:32 15 as long as some fields, but, you know, 10, 15 years. So
02:32 16 there's a lot of activity that goes on over 10 or 15 years. So
02:32 17 I -- I'm not sure how you're defining "activities," and that's
02:32 18 why I was trying to be clear about the capital.

02:32 19 Q. All right. Well, let me ask a question, okay, and maybe
02:32 20 we can clear it up. Development is -- happens after there has
02:32 21 been a discovery; right? Do you think that's fair?

02:33 22 A. I -- I think that's -- I think -- it's not actually all --
02:33 23 yes, in deepwater for sure.

02:33 24 Q. And someone has decided that it's commercially feasible,
02:33 25 and so they then begin to engage in development; is that right?

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02:33 1 A. That's correct. That's correct.

02:33 2 Q. And a feasibility team is often formed in order to
02:33 3 participate or help the operator in the development stage;
02:33 4 right?

02:33 5 A. The feasibility team is, as per the JOA, to help the
02:33 6 enterprise make a decision as to whether or not to go to the
02:33 7 select phase.

02:33 8 Q. Let's go up to TREG-13204.18.3, please. And we're calling
02:33 9 out Section 2.32.

02:33 10 This is the feasibility stage in the model operating
02:34 11 agreement; right? Right?

02:34 12 A. Oh, yes.

02:34 13 Q. All right. And it says this is the stage of a development
02:34 14 phase which the operator, with the assistance of the
02:34 15 feasibility team, will attempt to find at least one scenario
02:34 16 for the development of hydrocarbons; right?

02:34 17 A. That's what it says in this portion of the definition --
02:34 18 this portion of the contract.

02:34 19 Q. Right. Now let's go to 2.33, which is just below that on
02:34 20 the same page; and we see here that a feasibility team is a
02:34 21 group of people, employees, contractors, and/or consultants of
02:34 22 the participating parties or their respective affiliates that
02:34 23 assist the operator during the feasibility stage.

02:34 24 That's what it says; right?

02:34 25 A. That's what's happening during the stage, yes.

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02:34 1 Q. Uh-huh. And Integrated Project Teams are the same as
02:35 2 feasibility teams, aren't they?

02:35 3 A. So I wish the language were that consistent. Sometimes a
02:35 4 feasibility team doesn't have any participating parties in it,
02:35 5 and in which case, it could still be an IPT, because then it
02:35 6 would be an Integrated Project Team. I know it's confusing,
02:35 7 but that's just -- that's the way the language is.

02:35 8 But this would be -- yes, this could be an IPT. The
02:35 9 feasibility team -- the feasibility team could be an IP --
02:35 10 Integrated Project Team.

02:35 11 Q. In your experience, it is the same; right?

02:35 12 A. Is what the same? I'm sorry.

02:35 13 Q. A feasibility team, in your experience, is the same as
02:35 14 a -- an IPT team?

02:35 15 A. If a feasibility team -- let me see if -- I think I'm
02:35 16 going to -- if a feasibility team is formed and if that
02:35 17 feasibility team has members from multiple companies, then that
02:36 18 would be an Integrated Project Team.

02:36 19 Q. And we've already agreed that the feasibility team, under
02:36 20 the Model OA, occurs at the development stage of a project?

02:36 21 A. It is the first stage of the development --

02:36 22 Q. And --

02:36 23 A. -- of the project.

02:36 24 Q. And the Macondo well was still in the exploratory phase at
02:36 25 the time of the blowout under the operating -- the model

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02:36 1 operating agreement; right?

02:36 2 A. So -- so, yes, it was. Can I -- can I add something?
02:36 3 Because this was something I was going to say, and we got
02:36 4 short.

02:36 5 **THE COURT:** Go right ahead.

02:36 6 **MS. KIRBY:** If I may, just -- you know, at some
02:36 7 point, I think the time needs to count against them, Your
02:36 8 Honor.

02:36 9 **THE COURT:** Count it against me. Let him answer. Go
10 ahead.

02:36 11 **THE WITNESS:** So one of the points I was going to
02:36 12 make was IPTs are a great way to -- to be actively
02:36 13 participating. It's very easy because you are there, you're
02:37 14 like -- the whole -- the whole team is together. Right.
02:37 15 That's one way for active participation. It's not the only
02:37 16 way.

02:37 17 And, in fact, in my experience, because it was
02:37 18 before much of the -- my operating experience, but it continues
02:37 19 to today, you can be actively participating without an IPT.

02:37 20 **THE COURT:** Okay.

02:37 21 **THE WITNESS:** Okay. So that's -- that was just an
02:37 22 idea that I wanted to get out. I didn't want to sound
02:37 23 argumentative. I apologize.

02:37 24 **BY MS. KIRBY:**

02:37 25 **Q.** No need to apologize. Okay. Now, let's look at

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02:37 1 TREX-13204.82.1.

02:37 2 And we see here that according to the Model OA, the
02:37 3 feasibility team operates under the direction of the operator;
02:37 4 is that right?

02:37 5 A. Yes. That's what it says.

02:37 6 Q. And now let's look at 13204.82.2, which is another part of
02:37 7 Section 12.2 of the Model OA. It says: "The operator may,
02:37 8 from time to time, revise the membership of the feasibility
02:38 9 team at its sole discretion, as long as the revisions are
02:38 10 necessary to accomplish the scope of work set forth in the
02:38 11 feasibility AFE." Right?

02:38 12 A. Yes. And, you know, what I -- what I said at the
02:38 13 deposition, this is -- is that I'm not sure this is one of the
02:38 14 cases where that model form is matching common practice in
02:38 15 the -- in that -- in the next stage you'll see that it's a
02:38 16 project manager who has this as opposed to the operator. Now,
02:38 17 the project manager is appointed by the operator.

02:38 18 But one of the things that is going on that is more
02:38 19 current practice is that the continuity of the project manager
02:38 20 is pretty important. In fact, it's highly correlated to cost
02:38 21 overruns when there's not continuity. And so I believe the --
02:38 22 it's probably more contemporary to -- it's not the operator,
02:39 23 it's the project manager who's playing this role.

02:39 24 But I agree, this is what it says. I'm just trying
02:39 25 to express my understanding of the state of practice currently.

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02:39 1 Q. And this -- this provision is consistent with your view of
02:39 2 industry practice, isn't it?

02:39 3 A. Oh, with the -- except with what I just said. Right, it's
02:39 4 the operator --

02:39 5 Q. Well, this provision is consistent with your review of
02:39 6 industry practice; right?

02:39 7 A. I thought I just -- I thought I just modified that. I
02:39 8 thought that current industry practice is it's -- it's --
02:39 9 functionally, it's not the operator during feasibility.
02:39 10 It's -- they will appoint a project manager, and that the
02:39 11 project team is -- is -- is the entity which is --

02:39 12 Q. You don't need to explain it to me again. I understood
02:39 13 what you said the first time.

02:39 14 A. Oh, okay. Okay.

02:39 15 Q. Now, you're not personally aware of any situations where
02:40 16 an IPT was created to address issues in exploratory operations
02:40 17 in deepwater United States, are you?

02:40 18 A. Not -- I can't base -- my personal experience, no.

02:40 19 Q. No. All right. Now, you didn't get to it today in your
02:40 20 testimony, but it's in your report, so I'm going to talk to you
02:40 21 about this because I know they're going to move it in.

02:40 22 In your report, you talked to us about UK and Norway
02:40 23 regulations; right?

02:40 24 A. Yes.

02:40 25 Q. Okay.

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02:40 1 A. Actually, I talk about a very small portion of those
02:40 2 regulations.

02:40 3 Q. Great. And I'm not going to even ask you what they're
02:40 4 about. I just want to talk about your experience with them.
02:40 5 Okay?

02:40 6 So you have no experience in how UK regulations are
02:40 7 enforced; right?

02:40 8 A. Correct.

02:40 9 Q. And you have no experience with how UK regulations are
02:40 10 interpreted; right? By the UK authorities, I mean.

02:41 11 A. Okay. Because there's a -- yeah. If you -- with that
02:41 12 added phrase, yes.

02:41 13 Q. Okay. And, you know, same is true with the Norway
02:41 14 regulations, no experience with how they're enforced or
02:41 15 interpreted. Right?

02:41 16 A. Okay. On the interpreted, I believe in deposition, and it
02:41 17 is the case, that Petoro, who's part of the government, it's --
02:41 18 they are the nonoperating party for the government in all their
02:41 19 properties. It was a client of ours. I did not run that
02:41 20 engagement, my partner did.

02:41 21 And so to the extent that -- and I -- and we
02:41 22 collaborated and we've had conversations, so I have some
02:41 23 understanding of at least the government's representative on --
02:41 24 in Norway, but I -- I was not -- so it was through my -- it was
02:41 25 through conversations with my partner, not me and -- and the

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02:41 1 government.

02:42 2 Q. Right. Let me just see if I can pin it down here. You
02:42 3 personally have not dealt directly with those regulations;
02:42 4 right?

02:42 5 A. So I have dealt --

02:42 6 THE COURT: Excuse me. Excuse me. Why are we even
02:42 7 talking about this? Why are we talking --

02:42 8 MS. KIRBY: Because it's in his report, Judge, and --

02:42 9 THE COURT: Well, it seems to me totally irrelevant.
02:42 10 We're talking about the Gulf of Mexico, it is in the United
02:42 11 States. So ...

02:42 12 MS. KIRBY: Well, okay. If -- if we can have that
02:42 13 part redacted, stricken, I won't ask any more questions.

02:42 14 MS. FLICKINGER: I'd like to say, Mr. Arnold talks a
02:42 15 lot about --

02:42 16 THE COURT: Okay. I'm going to say it's irrelevant,
02:42 17 so let's move on to something else. Okay.

02:42 18 BY MS. KIRBY:

02:42 19 Q. Now, you don't have any experience -- or you don't
02:42 20 consider yourself an expert in the U.S. regulations that apply
02:42 21 offshore; right?

02:42 22 A. I'm not an expert at regulations.

02:42 23 Q. Right. So you've given us no opinions on what those
02:42 24 regulations require here; right?

02:43 25 A. I don't believe I have.

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02:43 1 Q. Now, you -- you do admit that nonoperating parties'
02:43 2 ability to contribute to on-site operational decisions is
02:43 3 limited because of the time-sensitive nature of certain
02:43 4 decisions; right?

02:43 5 A. Certain decisions. Not all decisions, but certain
02:43 6 decisions, absolutely.

02:43 7 Q. And you agree that there are also safety issues that
02:43 8 require the decisions on the rig to be highly centralized in
02:43 9 order to ensure timeliness in those decisions; right?

02:43 10 A. Again, could you repeat the question. I'm sorry. Repeat
02:43 11 the question.

02:43 12 Q. You agree that there are also safety issues that require
02:43 13 that decisions on the rig are centralized in order to ensure
02:43 14 timeliness in those decisions?

02:43 15 A. I not only agree, but I've experienced that in my own --
02:43 16 as being that person.

02:43 17 Q. All right. Now, let's see if we can get some more
02:43 18 agreements and maybe speed through this.

02:43 19 Nonoperating parties do not actively participate,
02:44 20 under your theories, in assessing why circulating pressure is
02:44 21 low; right? Yes or no?

02:44 22 A. Well, I'm -- my opinions or my -- you said my theories,
02:44 23 and I'm wondering, do you mean what I've already said?

02:44 24 Q. Yes or no, not -- nonoperating parties do not actively
02:44 25 participate in assessing why circulating pressure is low?

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02:44 1 **THE COURT:** She's asking if you agree or disagree
02:44 2 with that statement.

02:44 3 **THE WITNESS:** I -- I agree with that statement.
02:44 4 Thank you.

02:44 5 **BY MS. KIRBY:**

02:44 6 **Q.** All right. Nonoperating parties do not actively
02:44 7 participate in verifying whether a float collar converted;
02:44 8 right?

02:44 9 **A.** Not verifying it, no.

02:44 10 **Q.** Or interpreting a negative pressure test?

02:44 11 **A.** Not a negative pressure test, no.

02:44 12 **Q.** Or in monitoring the well for a kick?

02:44 13 **A.** No.

02:44 14 **Q.** Deciding whether to divert flow to a mud gas separator?

02:44 15 **A.** No.

02:44 16 **Q.** Deciding whether to activate emergency disconnects?

02:45 17 **A.** No.

02:45 18 **Q.** Repairing and maintaining a blowout preventer?

02:45 19 **A.** Say that last one again.

02:45 20 **Q.** Nonoperating parties do not actively participate in
02:45 21 repairing and maintaining a blowout preventer?

02:45 22 **A.** So the maintenance of the blowout preventer will have a
02:45 23 schedule. The schedule might depend on the conditions or the
02:45 24 design of the well. You know, if you've got a really tough
02:45 25 well with, you know, H₂S or high pressure, high temperature.

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02:45 1 So to the extent that the design phase sets the --
02:45 2 you know, some criteria for -- for testing, it -- then that --
02:45 3 you know, so -- but in the physical testing of it, that's going
02:45 4 to be done by a contractor.

02:45 5 Q. Let's bring up your deposition because I think we have a
02:45 6 mixed answer here.

02:45 7 205, line 7:

02:45 8 "QUESTION: What about repairing and maintaining the
02:45 9 BOP?

02:45 10 "ANSWER: No."

02:45 11 A. Okay. This was definitely a part of the deposition where
02:46 12 we had -- I guess what I've heard is called "clean." It wasn't
02:46 13 clear if these set of questions were at any time, in the sense
02:46 14 were -- you know, are they affected by design or are they just
02:46 15 operations.

02:46 16 So I am willing to agree -- not concede, but agree
02:46 17 that the actual operations of doing it are not something the
02:46 18 nonoperating party is going to be involved in. But to the
02:46 19 extent that something is affected by the design, then they
02:46 20 had -- they likely had some role in it.

02:46 21 Q. I'm just having it all put up there for context for you.
02:46 22 Do you agree that when I asked you the -- or when you were
02:46 23 asked the question, "Is it industry practice for a nonoperating
02:46 24 party to actively participate in testing" -- I'm sorry, "in
02:46 25 repairing and maintaining the BOP," you said "No"?

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02:46 1 A. Yeah. Again, I'm elaborating on what I was saying at
02:47 2 deposition. At deposition I was saying, no, they don't do the
02:47 3 actual repairing, they don't do the actual maintaining, but the
02:47 4 maintenance schedule might be part of the design and they might
02:47 5 have had influence to that. So I'm just elaborating further on
02:47 6 what I provided there.

02:47 7 Q. Okay. You went through earlier today with Ms. Flickinger
02:47 8 maybe five articles or so that you apparently cite in your
02:47 9 report; correct?

02:47 10 A. That's -- yes.

02:47 11 Q. I'm not going to hold you to the number because I'm just
02:47 12 estimating.

02:47 13 A. That's what I was --

02:47 14 Q. None of those articles were peer-reviewed, were they,
02:47 15 external peer-review?

02:47 16 A. I don't think any of those were externally peer-reviewed.

02:47 17 Q. And you're not an economist, are you?

02:47 18 A. And, again, I think I said this at the deposition, I'm not
02:47 19 an economist, but I have a lot of experience in certain areas
02:47 20 or disciplines like valuation, particularly real option
02:47 21 valuation, and decision making, rational decision making and
02:48 22 other kinds of, you know, utility --

02:48 23 Q. You do not --

02:48 24 A. -- theory.

02:48 25 Q. I'm sorry.

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02:48 1 A. So I'm not an economist. I do have relevant experience.
02:48 2 So I think I'm -- I think I've been pretty consistent on that.
02:48 3 I'm not an economist, a general economist, particularly as it
02:48 4 was defined in the deposition, which was a certain kind of
02:48 5 definition, which I thought was, in retrospect, a pretty narrow
02:48 6 definition.

02:48 7 Q. You do not claim to be an expert in economics, do you?

02:48 8 A. Not -- not in the general field of economics. I have
02:48 9 expertise in certain areas.

02:48 10 Q. Now, you prepared your own analysis to, in your words,
02:48 11 "gain insight on non-operator participation in Gulf
02:48 12 operations," didn't you?

02:48 13 A. I can't remember those words, but I'm not going to -- I
02:48 14 mean, they're close enough. I don't know if I'd say
02:48 15 Gulf operations, maybe Gulf of Mexico deepwater operations.

02:49 16 Q. All right. Well, let's just go to TREN-231646-R.6.1.
02:49 17 This is your September 15th, 2014 report. And here you tell
02:49 18 us, "I conducted an analysis to gain insights on NOP
02:49 19 participation," right?

02:49 20 A. Yes, that's what I -- what I said.

02:49 21 Q. And, essentially, you tell us in this section of your
02:49 22 report that nonoperating party participation is not falling as
02:49 23 Dr. Sunding has found; isn't that right?

02:49 24 A. It was a very different analysis, so I'm not going to
02:49 25 equate it. I think it -- I think it makes a very clear

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02:49 1 distinction between what's going on in the Gulf of Mexico and
02:50 2 deepwater, but it was focused on projects. And so it's not
02:50 3 focused on changes in leasehold position, which is a very small
02:50 4 piece of capital flows in the Gulf of Mexico, deepwater.

02:50 5 It's -- I mean, that's -- I was focusing on projects, which is
02:50 6 where billions of dollars flow, not one or \$2 million.

02:50 7 Q. Well --

02:50 8 A. So this was focused on -- this was focused on projects,
02:50 9 not leases. And what it -- and I can talk -- so I'm not going
02:50 10 to say it's the same thing as his analysis because it was
02:50 11 different.

02:50 12 Q. Right. Now, for purposes of your analysis, you relied on
02:50 13 no other data besides that in a Credit Suisse report; right?

02:50 14 A. That's right.

02:50 15 Q. You didn't talk to anybody about Credit Suisse about --
02:50 16 with regard to this report; right?

02:50 17 A. I didn't talk to anybody at Credit Suisse.

02:50 18 Q. No. You didn't ask them, what's the deal with this
02:51 19 report, where did you get your information; right?

02:51 20 A. That's -- that is correct.

02:51 21 Q. No one on your staff did; right?

02:51 22 A. Nope. Not as -- not as -- no.

02:51 23 Q. And you didn't do an independent review of the data
02:51 24 either; right?

02:51 25 A. No. I viewed it as information that was at the level of

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02:51 1 usability that investors would do. That's a common --
02:51 2 something I do commonly in my practice.

02:51 3 So, yes, it -- you know, there are -- so I took it to
02:51 4 the level of information that an investor would.

02:51 5 Q. Let's tell Judge Barbier what you did. Okay?

02:51 6 You used the Credit Suisse report to compute equity
02:51 7 ownership information in Gulf of Mexico fields for two
02:51 8 categories of projects; right? Those that started in 2010 or
02:51 9 earlier and those that started in 2010 or later; right?

02:51 10 A. That's not the only way we segmented it. We --

02:51 11 Q. Did you do that?

02:51 12 A. I did that and another thing.

02:52 13 Q. Okay. And the percentage of equity ownership that you
02:52 14 were developing is the same as percentage of leasehold
02:52 15 interest; right?

02:52 16 A. And it wasn't fields; it was projects. There's a
02:52 17 difference between fields and projects.

02:52 18 Q. Okay. Well, let's look at the Credit Suisse report, which
02:52 19 is at TREN-13207.28.1, Appendix 12, Figure 30.

02:52 20 This is the Credit Suisse report, isn't it?

02:52 21 A. Yes.

02:52 22 Q. And it says, "Key Gulf of Mexico fields by stage." Right?

02:52 23 A. That's correct.

02:52 24 Q. And it calls these fields, doesn't it?

02:52 25 A. It calls them fields, but they're projects.

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02:52 1 Q. All right. So you used a report that you disagreed with
02:52 2 right off the bat?

02:52 3 A. I -- this is, I would suggest, semantics in the context of
02:52 4 this -- this article, but I don't think it's semantics between
02:52 5 what's happening in this trial.

02:53 6 Q. The other thing it says is key, "key Gulf of Mexico
02:53 7 fields." So it's not all fields, is it?

02:53 8 A. I didn't test to see if it was all projects or not, no.

02:53 9 Q. All right. So what you did, you used this particular
02:53 10 page, 13207.28.1, Figure 30, and you took the equity -- I'm
02:53 11 sorry, the project names. You took the project names, the
02:53 12 start dates, and the operator identities from that figure,
02:53 13 right, along with -- well, that's where you got that
02:53 14 information; right?

02:53 15 A. So this is the article, and we put it into a spreadsheet.
02:53 16 So I didn't do anything with -- I did the analysis -- we did
02:53 17 the analysis with the spreadsheet, not with this.

02:53 18 Q. Yeah. You took the project names, right, or the field
02:53 19 names, whatever you want to call them?

02:54 20 A. Yes.

02:54 21 Q. Okay. Start dates; right? You needed that because you
02:54 22 had to figure out if it was before 2011 or after; right?

02:54 23 A. Okay. Yes. I mean -- sorry.

02:54 24 Q. Okay. And the operator identities; right?

02:54 25 A. Yes.

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02:54 1 Q. Because you wanted to know who was an operator, who
02:54 2 wasn't -- well, you wanted to know who was for each field?

02:54 3 A. I needed to know more than who the operator was. I also
02:54 4 wanted to know what the share of the operator was.

02:54 5 Q. Okay.

02:54 6 A. And who the nonoperators were.

02:54 7 Q. Now, if we turn the page to 13207.29, we see Figure 31;
02:54 8 right?

02:54 9 A. Yep. Yes.

02:54 10 Q. And this one gives us key field of Mexico fields
02:54 11 ownership; right?

02:54 12 A. Correct.

02:54 13 Q. And percentages; right?

02:54 14 A. Correct.

02:54 15 Q. And I should stop here and say this report is dated
02:54 16 August 15th, 2013, isn't it? Do you recall?

02:54 17 A. I don't recall, but it -- that sounds right. Well, there
02:55 18 it is, so, yes.

02:55 19 Q. Right. And just -- you don't know when the data that
02:55 20 appears on these two tables was collected, do you?

02:55 21 A. No. We -- as we discussed in deposition, I assumed that
02:55 22 these were all relatively accurate as of the 15th, but I don't
02:55 23 know when they actually collected this data.

02:55 24 Q. You don't even know if it was all collected on the same
02:55 25 day; right?

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02:55 1 A. That's, I think, consistent with what I said.

02:55 2 Q. But it's fair to say, isn't it, that this is really a
02:55 3 snapshot in time; right?

02:55 4 A. So this -- it's a -- it is a snapshot in time of
02:55 5 ownership, but because this bears on what I was doing, it's --
02:55 6 it's not a snapshot of future spending because this all went to
02:55 7 this idea of capital flow and capital flight or not.

02:55 8 So this isn't -- this is a -- it was a very simple
02:56 9 analysis to look at where is the capital flowing to and the
02:56 10 nature of the operators and nonoperators associated with the
02:56 11 real capital flows in this business, which is projects.

02:56 12 So it -- because it looks at -- and this is the other
02:56 13 way we segmented it. It wasn't just between 2011 or 2010 and
02:56 14 later. It was also by projects which are in operation,
02:56 15 projects which are in construction, which means they had passed
02:56 16 FID, which is, you know, that after the first three gauges in
02:56 17 the stage-gate, and then projects that are in pre-FID, which
02:56 18 means people are still making decisions about those.

02:56 19 And so the point being that I was looking at was is
02:56 20 there a change in the proportion of the nonoperator holding in
02:56 21 the old projects versus the ones that are -- they're still
02:56 22 looking at doing. So that's the level of what investigation
02:56 23 that I was looking at.

02:56 24 Q. Okay. Let me drill it down. When you tell us that
02:57 25 there's been no change and you give us your tables and

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02:57 1 information, you're not saying that it never changed -- nobody
02:57 2 ever exited the market. You're not trying to do that kind of
02:57 3 analysis; right?

02:57 4 A. Well, first off, I didn't say there was no change. But
02:57 5 you're correct on your second part of your statement, which --
02:57 6 or question, is I was not trying to analyze transactions.
02:57 7 That's -- which is the -- you know, you need a transaction for
02:57 8 people to change ownerships. I wasn't looking at transactions;
02:57 9 I was looking at ownership of projects that were in place
02:57 10 before Macondo, those that were after Macondo. Those that are
02:57 11 in operation or they've committed the capital versus those that
02:57 12 haven't.

02:57 13 My expectation was if there weren't going to be a lot
02:57 14 of -- if nonoperating parties all of a sudden hated the
02:57 15 deepwater Gulf of Mexico that you would have fewer nonoperating
02:58 16 parties on those projects, which are in the first three stages.
02:58 17 And that's not what I found.

02:58 18 Q. So when you tell us what the equity shares are for
02:58 19 projects that were started before 2010, you're just telling us
02:58 20 in your report what those equity shares are for the projects as
02:58 21 of August 15th, 2013; right?

02:58 22 A. Correct.

02:58 23 Q. You are not telling us what the equity shares were when
02:58 24 the project started; right?

02:58 25 A. No. I was at -- again, assuming at or near the date of

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02:58 1 the report, which I -- and I don't know exactly what date they
02:58 2 collected them. So at or near the date of the report was my
02:58 3 assumption, it was the equity holding at that moment.

02:58 4 Q. And the same deal as for your category of 2011 and later.
02:58 5 You're not telling us what the equity shares were when those
02:58 6 projects started, you're just telling us what the equity shares
02:58 7 were as of August 15th, 2013; right?

02:58 8 A. That's right.

02:58 9 Q. So bottom line is we can't tell from your analysis what
02:59 10 happened to equity shares after Anadarko and MOEX were sued in
02:59 11 December of 2010 with regard to nonoperators; right?

02:59 12 A. So can you say -- I'm sorry. Could you repeat that,
02:59 13 because I'm not sure you can't get some insight to that. But,
02:59 14 please, I have to hear the question again.

02:59 15 Q. Your analysis does not tell us what changes in nonoperator
02:59 16 equity shares there were after December 2010?

02:59 17 A. I -- that was not the intention of the analysis. But the
02:59 18 way you asked the question is can it show that.

02:59 19 Q. I said it does not show it.

02:59 20 A. Well, again, that's what I'm hesitating on because I can
03:00 21 tell you it was not designed to show that, but there actually
03:00 22 is some information about that.

03:00 23 Q. Well, let's start with this. You don't tell us what the
03:00 24 ownership of a project is when it starts; right?

03:00 25 A. I'm telling you what the ownership is at that date.

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03:00 1 Q. And you don't tell us of any changes before then and
03:00 2 whatever your cutoff is for your categories, do you?

03:00 3 A. It's a static picture of ownership.

03:00 4 Q. All right. Now, when a nonoperator engages in active
03:00 5 participation, as you call it, but a spill occurs nonetheless,
03:00 6 you would not advocate a material penalty against a
03:00 7 nonoperator, would you?

03:00 8 A. I'm sorry. Say that again.

03:00 9 Q. Here's the hypothetical: You have a nonoperator, it
03:00 10 engages in active participation, as you refer to it, all right,
03:00 11 but a spill happens anyway. Would you advocate a material
03:01 12 penalty against that nonoperator?

03:01 13 A. I have not made an opinion on that. To do so, I would
03:01 14 have to think on it. And I'm -- so I'm not rendering an
03:01 15 opinion on it.

03:01 16 Q. I see. So you don't have any idea of whether your theory
03:01 17 requires a qualitative assessment of a nonoperator's conduct;
03:01 18 is that right?

03:01 19 A. My opinion is specific to the industry conditions that
03:01 20 actually exist and not a hypothetical. So it has to do with
03:01 21 the case that is here and the things that have led up to this
03:01 22 case. And that's what my opinion is, not about a hypothetical
03:01 23 case that I haven't looked at.

03:01 24 Q. All right. Does your opinion -- does it matter to your
03:01 25 opinion what caused the spill?

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03:01 1 THE COURT: You know, I think we're getting into
03:02 2 asking this expert to do what's really my job and what this
03:02 3 whole case is about, this whole trial is about. And I'm not
03:02 4 sure he's one to even respond to that type of question.

03:02 5 MS. KIRBY: I understand, Your Honor. I'm just
03:02 6 trying to show that he's really advocating, essentially,
03:02 7 culpability. I have no further questions.

03:02 8 THE COURT: Okay. Thank you.

03:02 9 I assume BP has no questions of this witness?

03:02 10 MR. REGAN: That's right, Your Honor. No questions.

03:02 11 THE COURT: Okay. Any redirect?

03:02 12 MS. FLICKINGER: Yes, sir.

03:02 13 THE COURT: It's not required.

03:02 14 MS. FLICKINGER: I'm going to keep it really short, I
03:02 15 hope.

03:02 16 THE COURT: How many questions?

03:02 17 MS. FLICKINGER: Five.

03:02 18 THE COURT: Five? Okay. I'm counting.

03:02 19 MS. FLICKINGER: Five topics.

03:02 20 THE COURT: Five by topic? No, five.

03:02 21 MS. FLICKINGER: I'll try to keep things --

03:02 22 THE COURT: Come on, let's keep -- you know, we've
03:02 23 been on this a long time. Let's -- you know, this is, what,
03:02 24 two hours? I think we need to wrap this up. Let's move on.
03:03 25 Come on.

GARDNER WALKUP, JR. - REDIRECT

03:03 1 MS. FLICKINGER: Okay.

03:03 2 REDIRECT EXAMINATION

03:03 3 BY MS. FLICKINGER:

03:03 4 Q. We talked a little bit about the joint operating agreement
03:03 5 earlier and Ms. Kirby also asked you some questions about it
03:03 6 and she showed you one key provision.

03:03 7 Are there some key provisions that in your opinion,
03:03 8 Mr. Walkup, demonstrate an industry standard of active
03:03 9 participation as you've defined it?

03:03 10 A. Within the JOA?

03:03 11 Q. Within the JOA.

03:03 12 A. Yeah. In my -- in my understanding, and I've already said
03:03 13 that I'm not a lawyer and stuff, so -- but in terms of
03:03 14 capturing the standard active participation, there are -- I
03:03 15 can't remember the numbers right now, but there's certainly a
03:03 16 place where they talk about HS&E. And then it's -- it's a
03:03 17 collaborative effort. There is a place -- in fact, there is an
03:03 18 appendix about it that talks to what the nonoperating party can
03:03 19 do in doing those things, which in my mind is active
03:03 20 participation.

03:03 21 So it memorializes that you can do this, this, and
03:04 22 this. Well, doing this, this, and that is active
03:04 23 participation. Things like --

03:04 24 MS. KIRBY: Your Honor, if I may. I think we're
03:04 25 beyond the scope of cross.

GARDNER WALKUP, JR. - REDIRECT

03:04 1 THE COURT: I'll sustain the objection.

03:04 2 BY MS. FLICKINGER:

03:04 3 Q. Okay. Let's move on to another topic. Ms. Kirby had
03:04 4 asked some questions about nonoperators acquiring an interest
03:04 5 after the well was spudded --

03:04 6 A. Yes.

03:04 7 Q. -- and so on and so forth. And you're aware that in the
03:04 8 oil and gas industry, sometimes people do acquire interest at
03:04 9 different stages in the process.

03:04 10 What kind of activity would you expect those
03:04 11 nonoperators to do before they acquire those interests?

03:04 12 A. So one of the forms of active participation that I
03:04 13 mentioned is this idea of -- I called it auditing it, and I
03:04 14 meant it in very loosely terms.

03:04 15 What happens at that transaction -- and this is based
03:04 16 on my own experience because in consulting, we provide these
03:04 17 transaction services -- is to do due diligence and to
03:05 18 understand what's happened, to look at the performance of the
03:05 19 operations, look at the -- the plans and then look at, you
03:05 20 know, the difference between the two.

03:05 21 So there's an active participation prior to becoming
03:05 22 part of it and it's pretty detailed, actually.

03:05 23 Q. Okay. Could we call up D -- there was also some
03:05 24 discussion about what's a design activity and what's an
03:05 25 operational activity.

GARDNER WALKUP, JR. - REDIRECT

03:05 1 Could we call up D-33165, please. Yes -- nope.

03:05 2 MS. KIRBY: I'm sorry. Judge, I don't think --

03:05 3 again, I think we're beyond the scope of cross. I think we're
03:05 4 going back on direct.

03:06 5 MS. FLICKINGER: I'm sorry. It's D-33161.

03:06 6 BY MS. FLICKINGER:

03:06 7 Q. Do you recognize this table?

03:06 8 A. Yes, I do. I put it together.

03:06 9 Q. All right. And in your opinion, are these activities
03:06 10 design decisions or operational decisions?

03:06 11 A. I put this list together as -- it's particularly my
03:06 12 experience that I've had in casing design, casing -- the casing
03:06 13 program, the cementing design, cementing program, temporary
03:06 14 abandonment. These all are impacted by design. And these are
03:06 15 design -- design stage decisions.

03:06 16 Q. Okay. And another issue between you and Mr. Arnold, in
03:06 17 particular, is the kind of nonoperator participation that comes
03:06 18 at the later stages, and his opinion and Anadarko's opinion is
03:06 19 distinguishable from the case at hand because Macondo was an
03:06 20 exploration well. And Ms. Kirby was asking some questions
03:07 21 about that as well.

03:07 22 Are these activities -- can you look at these
03:07 23 activities and identify whether this would take place in an
03:07 24 exploration well or a development well or an appraisal well?

03:07 25 A. If an exploration well is a keeper and is either temporary

GARDNER WALKUP, JR. - REDIRECT

03:07 1 abandoned or -- then, no, you can't tell the difference.

03:07 2 They're the same. Once it becomes a keeper, the activities

03:07 3 going forward are -- are at least with regards to these are

03:07 4 very similar. There may be other elements about permitting and

03:07 5 other things that I'm not familiar with.

03:07 6 Q. So these activities could take place in an exploration

03:07 7 well as well as a development well?

03:07 8 A. Yes, they can.

03:07 9 Q. Okay. Could we pull up D-33165. There it is.

03:07 10 There was also some discussion on your cross about

03:07 11 IPTs and the feasibility study and how it's all

03:07 12 distinguishable.

03:07 13 Do you think there's only active participation by

03:07 14 nonoperators at the later stages, or do you think it also

03:08 15 pertains to outside the framework of an IPT or the JOA?

03:08 16 A. So there's two parts to that. Number one, active

03:08 17 participation does not require an IPT. There are ways to

03:08 18 interact and to actively participate outside an IPT. So

03:08 19 that's, I think, the first part.

03:08 20 The second part goes to this exploration well and

03:08 21 development wells, they happen in both. But I was -- I did say

03:08 22 that I haven't, in the U.S., identified an IPT in the

03:08 23 exploration stage. So -- but you can have participation in

03:08 24 both wells -- in both kinds of wells.

03:08 25 Q. Okay. And my last question: Is the Macondo Joint

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03:08 1 Operating Agreement the same as the model form operating
03:08 2 agreement?

03:08 3 What differences have you found between the Macondo
03:08 4 Joint Operating Agreement and the model form operating
03:08 5 agreement?

03:08 6 **THE COURT:** Wait a minute. Wait a minute. Now, I
03:09 7 don't think we're going to go there. Okay?

03:09 8 **MS. FLICKINGER:** Okay.

03:09 9 **THE COURT:** The agreement's in the record and I can
03:09 10 read it. It's a legal contract. I don't think -- with all due
03:09 11 respect to Mr. Walkup, I don't need someone else to tell me
03:09 12 what it says. Okay?

03:09 13 **MS. FLICKINGER:** All right. Thank you. I have no
03:09 14 further questions, Your Honor.

03:09 15 **THE COURT:** Thank you.

03:09 16 Okay. Thank you, sir.

03:09 17 **THE WITNESS:** Thank you.

03:09 18 **THE COURT:** We'll take a 15-minute recess.

03:09 19 **THE DEPUTY CLERK:** All rise.

03:09 20 (WHEREUPON, the Court took a recess.)

03:32 21 **THE DEPUTY CLERK:** All rise.

03:32 22 **THE COURT:** Please be seated, everyone.

03:32 23 Okay. Government may call its next witness.

03:32 24 **MS. HIMMELHOCH:** Your Honor, the government calls its
03:32 25 last two witnesses by deposition video -- not its last two

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03:32 1 witnesses, but those that are by deposition video. Together
03:32 2 they are -- they run approximately 25 minutes. The first will
03:32 3 be Douglas Suttles and the second will be Steven Bray.

03:32 4 And I double-checked them, so we shouldn't have
03:32 5 the same problem again.

03:32 6 **THE COURT:** All right.

03:33 7 (WHEREUPON, the videotaped deposition of **Douglas**
03:33 8 **Suttles** was played.)

03:43 9 **MS. HIMMELHOCH:** Your Honor, now we'll transition to
03:43 10 the deposition of Steven Bray.

03:43 11 **THE COURT:** All right.

03:43 12 (WHEREUPON, the videotaped deposition of **Steven Bray**
03:43 13 was played.)

03:57 14 **MS. HIMMELHOCH:** That's it, Your Honor.

03:57 15 **THE COURT:** All right. Who's your next live witness?

03:58 16 **MS. HIMMELHOCH:** Technical difficulties, Your Honor.
03:58 17 Just a second.

03:58 18 **MR. GLADSTEIN:** United States calls Dr. Fredric
03:58 19 Quivik.

03:58 20 Richard Gladstein for the United States. This
03:58 21 is on direct examination, Your Honor.

03:58 22 (WHEREUPON, **FREDRIC QUIVIK, PH.D.**, having been duly
03:58 23 sworn, testified as follows:)

03:58 24 **THE DEPUTY CLERK:** Please take a seat. Please state
03:58 25 and spell your name for the record.

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1 DIRECT EXAMINATION

03:58 2 BY MR. GLADSTEIN:

03:58 3 Q. Dr. Quivik, please tell the Court what you were asked to
03:58 4 do in this case.03:58 5 A. I've been asked to state and spell my name first. My name
03:58 6 is Fredric Lincoln Quivik, F-R-E-D-R-I-C, L-I-N-C-O-L-N,
03:58 7 Q-U-I-V-I-K.03:59 8 Q. Please tell the Court what you were asked to do in this
03:59 9 case.03:59 10 A. The Department of Justice asked me to research and analyze
03:59 11 the organization of the BP operations in the Gulf of Mexico at
03:59 12 the Macondo well and in the response to the Macondo disaster
03:59 13 for purposes of analyzing the extent to which BXP and other BP
03:59 14 entities did and did not manage facets of those operations.03:59 15 Q. Thank you. Have you prepared a slide that summarizes your
03:59 16 background?

03:59 17 A. Yes.

03:59 18 MR. GLADSTEIN: Please bring up D-32900.

03:59 19 BY MR. GLADSTEIN:

03:59 20 Q. Is this the slide?

03:59 21 A. Yes.

03:59 22 Q. Please briefly summarize your employment experience for
03:59 23 the Court.03:59 24 A. I am professor of history in the department of social
03:59 25 sciences at Michigan Technological University, and I've been

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04:00 1 teaching there for five years.

04:00 2 And for the past 20 years, I've had my own consulting
04:00 3 business through which I have worked as an expert witness in a
04:00 4 variety of environmental cases.

04:00 5 Q. Please briefly summarize your education for the Court.

04:00 6 A. I have a Ph.D. in history and sociology of science from
04:00 7 the University of Pennsylvania, and I have previous degrees
04:00 8 from Columbia University, the University of Minnesota, and
04:00 9 St. Olaf College.

04:00 10 Q. What is your area of expertise?

04:00 11 A. My area of expertise is history of technology and
04:00 12 especially industrial history; and within that, I have an
04:00 13 expertise in the ways that large industrial enterprises manage
04:00 14 themselves to conduct their operations.

04:00 15 Q. How do you conduct your work as an expert historian?

04:00 16 A. I use the historical method.

04:00 17 Q. What is the historical method?

04:00 18 A. The historical method is a method -- a well-established
04:00 19 method used by reputable historians to make inquiries about the
04:01 20 past, to find sources of information about the past, and to
04:01 21 draw conclusions about the past.

04:01 22 The historical method allows a historian to formulate
04:01 23 research questions, and those research questions guide an
04:01 24 investigation of source materials, guide analysis of those
04:01 25 materials, allow an historian to develop hypotheses and then to

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04:01 1 test those hypotheses against the evidence in those materials
04:01 2 and, finally, to draw conclusions or opinions.

04:01 3 And I should also add that a narrative history should
04:01 4 have adequate citations to allow the reader to verify the
04:01 5 conclusions the historian has drawn.

04:01 6 Q. Can the historical method be applied to cases where the
04:01 7 events in question happened relatively recently in time, such
04:02 8 as the Macondo disaster?

04:02 9 A. Yes. And, in fact, I used the historical method in this
04:02 10 case. I used the historical method to analyze sources of
04:02 11 information that are similar to sources I've used in previous
04:02 12 cases.

04:02 13 I analyzed sources that have been created recently,
04:02 14 deposition testimony. I analyzed sources of information that
04:02 15 are BP documents that were created at about the time of the
04:02 16 events in question, such as, for instance, BP correspondence.
04:02 17 For instance, correspondence to Andrew Inglis, who is the chief
04:02 18 executive officer of the upstream segment, describing
04:02 19 difficulties that were taking place at the Macondo well
04:02 20 prior -- just prior to the -- the blowout. And then I analyzed
04:02 21 documents that were created much earlier in time, such as
04:02 22 Articles of Incorporation of subsidiary companies.

04:03 23 Q. Have you been qualified and testified in other
04:03 24 environmental litigation as an expert regarding the historical
04:03 25 relationship between parent and subsidiary corporations?

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04:03 1 A. Yes. I've testified in four environmental cases. And I
04:03 2 would note that for two of those cases, *U.S. v. Newmont* and
04:03 3 *U.S. v. Sterling Centrecorp*, management of operations in an
04:03 4 instance with the parent subsidiary corporations, those
04:03 5 questions were at the heart of my expert testimony and my
04:03 6 expert opinions.

04:03 7 In those cases, I also used, among other sources,
04:03 8 deposition testimony of living witnesses.

04:03 9 MR. GLADSTEIN: Your Honor, at this time, we tender
04:03 10 Dr. Quivik as an expert in industrial history with particular
04:03 11 expertise in the ways large-scale industrial enterprises
04:04 12 organize themselves to manage their operations.

04:04 13 THE COURT: Do you want to say something, Mr. Regan?

04:04 14 MR. REGAN: Yes, Your Honor, with permission, I'd
04:04 15 like three questions of the witness.

04:04 16 THE COURT: Go ahead. Okay, you can do it from
04:04 17 there.

VOIR DIRE EXAMINATION

04:04 18 BY MR. REGAN:

04:04 19 Q. Dr. Quivik, using this historical method, one of the
04:04 20 things you did is evaluate the credibility of witness testimony
04:04 21 and documents; correct?
04:04 22

04:04 23 A. In this case, that was not really an issue. I -- I do
04:04 24 that in other cases where that's -- that's necessary to do to
04:04 25 assess the reliability of sources, because sources may be in

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04:04 1 conflict.

04:04 2 Q. Let me try it one more time, Mr. Quivik. In -- one of the
04:04 3 things you did in this case is evaluate the credibility of
04:04 4 documents and testimony; correct?

04:04 5 A. It was -- well, I looked at them. I saw that they were
04:05 6 either BP documents or BP -- testimony of BP witnesses, and I
04:05 7 assumed that they were credible.

04:05 8 Q. You evaluated the credibility of documents and witness
04:05 9 testimony to ascertain, as a historian, whether you believed
04:05 10 that the statement was accurate or not, truthful or not,
04:05 11 credible or not; correct?

04:05 12 A. At the level I've just described that I did, yes.

04:05 13 MR. REGAN: If I may have one more question,
04:05 14 Your Honor?

04:05 15 THE COURT: Go ahead.

04:05 16 BY MR. REGAN:

04:05 17 Q. You did this to arrive at a historical judgment as to a
04:05 18 fact as to who was managing facets of the operations of the
04:05 19 Macondo well to arrive at a factual answer; correct?

04:05 20 A. Well, to develop my opinions as to those facts, yes.

04:05 21 MR. REGAN: Your Honor, I have no objection to
04:05 22 Professor Quivik testifying about the history of BP, from the
04:06 23 Anglo-Persian times, that he developed secondary sources for
04:06 24 that, and he has a section of that in his report.

04:06 25 But a substantial part of what he is doing is

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04:06 1 reading depositions and documents, making credibility judgments
04:06 2 and doing, in essence, what we just did in court here with the
04:06 3 video, watching the testimony of a witness and then reaching a
04:06 4 judgment about what that witness said, did not say, and why the
04:06 5 witness may have said or not said something.

04:06 6 And with respect to Professor Quivik, I don't
04:06 7 challenge his qualifications as a historian, but we have a
04:06 8 fact-finder in this case, and that is Your Honor. I don't
04:06 9 think that this is proper expert testimony. Those cases that
04:06 10 he's testified in, the activity that was at issue was tens, if
04:06 11 not fifties, if not 70 or 80 years in the past from when the
04:06 12 trial took place. The only way to learn the facts was to have
04:06 13 a historian go back and try to recreate them. That is not this
04:06 14 case.

04:07 15 **THE COURT:** Are those the cases you have listed in
04:07 16 your CV, I guess on that slide? Superfund -- it looks like
04:07 17 Superfund cases; right?

04:07 18 **THE WITNESS:** Yes, Your Honor.

04:07 19 **THE COURT:** Is that the type of -- your testimony was
04:07 20 in the nature of what Mr. Regan just described?

04:07 21 **THE WITNESS:** I'm not sure of the nature --

04:07 22 **THE COURT:** Well, as I understand it, these were
04:07 23 cases where there were obviously environmental cases where
04:07 24 there were waste -- waste pits or hazardous waste sites or so
04:07 25 forth where there might have been -- somebody had to go back

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04:07 1 and figure out who -- who operated at these sites, who -- who
04:07 2 did what over 20, 30, 40, 50 years, perhaps, in some cases. Is
04:07 3 that kind of what you did?

04:07 4 **THE WITNESS:** That was part of it, Your Honor, yes.

04:07 5 **THE COURT:** Yeah.

04:08 6 **THE WITNESS:** In the case of Sterling Centrecorp, in
04:08 7 that one, there was ongoing --

04:08 8 **THE COURT:** What -- what --

04:08 9 **THE WITNESS:** Excuse me, Your Honor. I'm sorry.

04:08 10 **THE COURT:** What type of expert -- BP has a similar
04:08 11 expert?

04:08 12 **MR. REGAN:** No, Your Honor, BP has an expert in --

04:08 13 **THE COURT:** I saw -- I saw a reference to Daines.

04:08 14 **MR. REGAN:** You did.

04:08 15 **THE COURT:** What kind of expert is he?

04:08 16 **MR. REGAN:** He's a corporate governance professor,
04:08 17 and he's speaking about the role of boards at companies. And
04:08 18 he's in response to what Professor Quivik is doing. So if
04:08 19 corporate governance is not an issue -- and I don't believe it
04:08 20 really should be, given that the United States has made it
04:08 21 quite clear that they are not seeking to pierce that corporate
04:08 22 veil in this case, and they are not seeking to name another BP
04:08 23 entity as an operator in this case.

04:08 24 Professor Daines from Stanford is simply talking
04:08 25 about the issues raised by Professor Quivik are normal, that's

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04:08 1 how companies work, that's how wholly-owned subsidiaries work,
04:08 2 that's how boards work, it's all normal stuff.

04:08 3 **MR. GLADSTEIN:** May I respond, Your Honor?

04:08 4 **THE COURT:** Go ahead.

04:08 5 **MR. GLADSTEIN:** Thank you, Your Honor.

04:08 6 Dr. Quivik's central expert opinion is that not
04:09 7 only BPXP, but the BP Group, conducted and managed the
04:09 8 operations at the Macondo well and the response to the blowout.

04:09 9 **THE COURT:** What is he going to base that on?

04:09 10 **MR. GLADSTEIN:** What does he base it on?

04:09 11 **THE COURT:** Yeah.

04:09 12 **MR. GLADSTEIN:** He bases it on the testimony he has
04:09 13 reviewed, the documents that -- that he has reviewed, and this
04:09 14 is consistent with the -- the Dean/Dairy line of cases, and
04:09 15 it's relevant to the question of the economic impact on the
04:09 16 violator.

04:09 17 So, in other words, what this Dean/Dairy line of
04:09 18 cases looks at is what was the role of the parent in the
04:09 19 operations of the subsidiary related to the pollution at issue.
04:09 20 That's one prong. That's what Dr. Quivik is here for.

04:09 21 The other prong is to what extent did the
04:09 22 subsidiary retain its finances. That is what Dr. -- Mr. Ratner
04:10 23 is here for. What Dr. Quivik is doing is applying his
04:10 24 historical expertise, the same expertise that the courts in the
04:10 25 *Newmont* case and the court in the *Sterling Centrecorp* case

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04:10 1 relied on in reaching their decisions related to
04:10 2 parent/subsidiary relationships.

04:10 3 As you will see, in his examination, he -- he is
04:10 4 analyzing the information, and that's what was in our papers,
04:10 5 Your Honor. It's not just a recitation of the facts. You'll
04:10 6 see that from -- from the examination. And we would ask that
04:10 7 he -- he be allowed to proceed. And if you believe that the
04:10 8 questions are not appropriate, we'll either speed it up or go
04:10 9 to a different line of questions.

04:10 10 **MR. REGAN:** I have a solution, Your Honor, that I
04:10 11 would propose.

04:10 12 **THE COURT:** Okay. Go ahead.

04:10 13 **MR. REGAN:** The facts and arguments about those facts
04:10 14 that are presented in Professor Quivik's report, those can be
04:11 15 presented in exactly the same fashion in the Department of
04:11 16 Justice's post trial findings, because they're coming from the
04:11 17 exact same source of information.

04:11 18 The question of the meaning of those facts, how
04:11 19 they -- how they relate to the operations of Macondo, I
04:11 20 believe, is Your Honor's job. They can argue the facts, and
04:11 21 you can decide, just like you decide with us on all our papers,
04:11 22 have we presented the facts in accordance with how you've heard
04:11 23 them.

04:11 24 **THE COURT:** Well, I mean, experts routinely rely on
04:11 25 facts and evidence that, you know, other people testified to,

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04:11 1 to come to some opinion. I guess I'm still grappling with
04:11 2 whether -- whether this is really expert testimony or not, or
04:11 3 is it just somebody attempting to recap all the -- all the
04:11 4 evidence for me in this case.

04:11 5 If -- I'm not going to sit here and listen to
04:11 6 somebody tell me what everybody said in this case that's
04:11 7 already in evidence. I can tell you that, so ...

04:12 8 **MR. GLADSTEIN:** Yeah, I think -- Your Honor, I
04:12 9 believe it's the former. One of the courts that they relied on
04:12 10 in their papers, the *Marvel Characters* case, the specialized
04:12 11 knowledge of an historian can aid the trier of fact to, quote,
04:12 12 "help identify, gauge the reliability of, and interpret" --
04:12 13 that's what we're talking about -- "interpret the evidence that
04:12 14 would otherwise elude, mislead, or remain opaque to a
04:12 15 layperson."

04:12 16 You just saw on this screen the chief operating
04:12 17 officer of BP Exploration and --

04:12 18 **THE COURT:** I have a pretty good feel for how BP
04:12 19 operates, I think, by now. You know, I can -- I think I have
04:12 20 an understanding of the relationships. And you all can argue
04:12 21 what the implications of that are. But I'm going to let this
04:12 22 start, but I've got to tell you, I'm having trouble seeing how
04:12 23 this is going to be helpful to me as a fact finder.

04:12 24 **MR. REGAN:** Thank you, Your Honor.

04:12 25 **MR. GLADSTEIN:** Thank you, Your Honor.

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04:12 1 THE COURT: Okay. You better keep this focused
04:12 2 and -- and short.

04:12 3 MR. GLADSTEIN: Got it, Your Honor.

04:12 4 THE COURT: Yeah.

04:13 5 DIRECT EXAMINATION CONTINUED

04:13 6 BY MR. GLADSTEIN:

04:13 7 Q. Dr. Quivik, have you prepared a series of demonstrative
04:13 8 slides that summarize your key opinions, the bases for your
04:13 9 opinions, and the evidence for those opinions?

04:13 10 A. Yes.

04:13 11 MR. GLADSTEIN: Please bring up slide D-32901.

04:13 12 BY MR. GLADSTEIN:

04:13 13 Q. Is this the slide?

04:13 14 A. It is.

04:13 15 Q. What are your key opinions?

04:13 16 A. I have two key opinions --

04:13 17 THE WITNESS: And, Your Honor, just to lay the
04:13 18 groundwork for these two, as you heard in Mr. Suttles'
04:13 19 testimony --

04:13 20 THE COURT: No, no, wait a minute. Why don't you
04:13 21 answer your lawyer's question -- not your lawyer, I'm sorry.
04:13 22 The government lawyer's question.

04:13 23 THE WITNESS: Okay.

04:13 24 THE COURT: Give us your two opinions.

04:13 25 THE WITNESS: Okay. The BP Group conducts and

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04:13 1 manages its global businesses through an organizational
04:13 2 structure that operates without regard to legal subsidiaries.

04:13 3 And the BP Group, and not only BXP, has
04:13 4 conducted and managed operations in the Gulf of Mexico,
04:13 5 including at the Macondo well and the response to the Macondo
04:13 6 disaster.

04:13 7 **BY MR. GLADSTEIN:**

04:13 8 **Q.** Let's turn to your first opinion. Have you prepared a
04:14 9 slide that summarizes the bases for your first opinion?

04:14 10 **A.** Yes.

04:14 11 **MR. GLADSTEIN:** Please bring up slide D-32902.

04:14 12 **BY MR. GLADSTEIN:**

04:14 13 **Q.** Is this the slide?

04:14 14 **A.** Yes.

04:14 15 **Q.** Please summarize the bases for your first opinion.

04:14 16 **A.** There are four bases for this opinion. The first is to
04:14 17 manage its global operations, BP has divided its global
04:14 18 enterprise into three business segments: upstream, downstream,
04:14 19 and alternative energy.

04:14 20 The second is that delegations of authority and
04:14 21 direction in BP's organizational structure for managing
04:14 22 operations function without regard to the numerous subsidiary
04:14 23 corporations that BP owns throughout the world, including BXP.

04:14 24 The third is that BP p.l.c. board of directors has
04:14 25 provided oversight of BP's operations throughout the world,

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04:14 1 including at the Macondo well and of BP's response to the
04:14 2 blowout.

04:14 3 And the fourth is that BP has developed centralized
04:15 4 common processes, management and financial systems that apply
04:15 5 to the entire BP Group, including in the Gulf of Mexico.

04:15 6 Q. Turning to the bases for your first opinion, have you
04:15 7 prepared a slide that summarizes evidence that supports your
04:15 8 first basis?

04:15 9 A. Yes.

04:15 10 MR. GLADSTEIN: Please turn to D-32903.

04:15 11 BY MR. GLADSTEIN:

04:15 12 Q. Before we go there, I see that I neglected to ask you to
04:15 13 identify your reports. Let's do that first.

04:15 14 Please identify TREX-13210.

04:15 15 A. That's my expert report submitted in August of 2014.

04:15 16 Q. Thank you.

04:15 17 MR. GLADSTEIN: Please bring up TREX-13235.

04:16 18 THE WITNESS: That's my Round 2 response report
04:16 19 submitted September 12th, 2014.

04:16 20 MR. GLADSTEIN: Please bring up TREX-13211.

04:16 21 THE WITNESS: And that's my Round 3 rebuttal report,
04:16 22 submitted September 26th, 2014.

04:16 23 BY MR. GLADSTEIN:

04:16 24 Q. Do you adopt these reports as your testimony today?

04:16 25 A. Yes.

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04:16 1 Q. Thank you.

04:16 2 Okay. I believe we were on D-32903. What does
04:16 3 D-32903 show?

04:16 4 A. The first basis for my first opinion is that to manage its
04:16 5 global operations, BP has divided its global enterprise into
04:16 6 three business segments: upstream, downstream, and alternative
04:17 7 energy.

04:17 8 And I derived evidence for this basis from BP annual
04:17 9 reports and testimony of Lamar McKay and Andrew Inglis.

04:17 10 MR. REGAN: Your Honor, just as an example, I would
04:17 11 say that's not opinion testimony. That's just a summary of
04:17 12 facts that are in the record. I'm not going to object to all
04:17 13 these questions. But this is really the issue that I have in
04:17 14 terms of responding to this witness, because it's just a
04:17 15 recitation of facts that are organized and --

04:17 16 THE COURT: Well, I think this is -- No. 1 on this
04:17 17 screen is part of the -- his basis for his opinion. That's not
04:17 18 his opinion --

04:17 19 MR. REGAN: Fair enough.

04:17 20 THE COURT: -- as I recall.

04:17 21 MR. GLADSTEIN: Exactly, Your Honor.

04:17 22 THE COURT: Okay. Go ahead.

04:17 23 MR. GLADSTEIN: Yes, Your Honor.

04:17 24 THE COURT: Go ahead. Continue.

04:17 25 MR. GLADSTEIN: So I will be brief here because --

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04:17 1 THE COURT: Go ahead. Go ahead. Just keep going
04:17 2 with it.

04:17 3 MR. GLADSTEIN: Okay. Thank you.

04:17 4 BY MR. GLADSTEIN:

04:17 5 Q. Can we turn, then, to -- the second basis for your first
04:18 6 opinion, D-32904?

04:18 7 MR. GLADSTEIN: Please bring up D-32904.

04:18 8 BY MR. GLADSTEIN:

04:18 9 Q. Can you identify D-32904?

04:18 10 A. Yes. The second basis for my opinion is that the
04:18 11 delegations of authority and direction in BP's organizational
04:18 12 structure for managing operations function without regard to
04:18 13 the numerous subsidiary corporations that BP owns throughout
04:18 14 the world, including BPXP.

04:18 15 And I found evidence for this basis in organizational
04:18 16 charts, BP annual reports, SFN guidance -- that's a kind of BP
04:18 17 document -- and then deposition testimony of Mr. Inglis and
04:18 18 Mr. McKay.

04:18 19 Q. Can we please -- you mentioned the SFN guidance. What is
04:18 20 the SFN guidance?

04:18 21 A. SFN stands for corporate structure and finance note. And
04:19 22 the guidance is a document that spells out how this SFN will be
04:19 23 created.

04:19 24 In the BP system, decisions about undertaking
04:19 25 projects are made through the segment -- or the nonlegal

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04:19 1 organizational units in the segment. And their proposals are
04:19 2 made. Top executives at the segment level make decisions to
04:19 3 undertake projects, to commit group resources to those
04:19 4 projects. Once those decisions are made, then people in
04:19 5 centralized functions in the BP Group -- we heard Mr. Bray talk
04:19 6 about the fact that he's part of the legal function. That's a
04:19 7 centralized function.

04:19 8 There are other centralized functions in the
04:19 9 BP Group, one called tax, one called treasury. And people in
04:20 10 those functions then make a decision about which legal entity
04:20 11 to pass the financing for the project through.

04:20 12 **MR. GLADSTEIN:** Could we please bring up
04:20 13 TREX-12435.1.1.US.

04:20 14 **BY MR. GLADSTEIN:**

04:20 15 **Q.** Can you identify this document?

04:20 16 **A.** Yes. There is an excerpt from the SFN guidance, and this
04:20 17 quote that's highlighted spells out what I've just described.

04:20 18 It says: "The choice of whether to make the
04:20 19 investment," and then in parentheses, "Is this a good
04:20 20 investment of group resources," that choice "belongs therefore
04:20 21 with the segment or function within whose plan that investment
04:20 22 lies. However, the choice of legal entity through which to
04:21 23 make that investment and how to finance that investment ('From
04:21 24 which BP legal entity will the funds be applied, and in what
04:21 25 form?') is reserved to treasury and tax, and is governed by the

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04:21 1 SFN process."

04:21 2 **THE WITNESS:** So, in other words, Your Honor, what
04:21 3 this is saying is in the BP Group, it's not a matter of a
04:21 4 company like BXPX deciding it wants to drill a well and then
04:21 5 going to look for financing or investment in its project.
04:21 6 Rather, the decision lies with the segment, and the segment
04:21 7 makes a decision to commit group resources to the project. And
04:21 8 then people in tax and treasury decide to run that financing
04:21 9 through a particular legal entity. If it's a well in the Gulf
04:21 10 of Mexico, more than likely it will be run through BXPX.

04:22 11 And so the BP Group is not investing in BXPX;
04:22 12 it's investing in a well.

04:22 13 **BY MR. GLADSTEIN:**

04:22 14 **Q.** Thank you.

04:22 15 Returning to the bases for your first opinion, have
04:22 16 you prepared a slide that summarizes the evidence in support of
04:22 17 your third basis?

04:22 18 **A.** Yes.

04:22 19 **MR. GLADSTEIN:** Please bring up slide D-32905.

04:22 20 **BY MR. GLADSTEIN:**

04:22 21 **Q.** And what does this slide show?

04:22 22 **A.** The third basis for my opinion is that the BP p.l.c. board
04:22 23 of directors has provided oversight of BP's operations
04:22 24 throughout the world, including at the Macondo well and
04:22 25 oversight of BP's response to the blowout.

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04:22 1 And I found evidence for that basis in BP annual
04:22 2 reports, minutes of the BP p.l.c. board of directors, and then
04:23 3 committee minutes of board committees and executive committees.

04:23 4 Q. You mentioned the BP annual report.

04:23 5 MR. GLADSTEIN: Could we please bring up
04:23 6 TRENK-6033.92.1.US.

04:23 7 BY MR. GLADSTEIN:

04:23 8 Q. What does this show?

04:23 9 A. This is an excerpt from the 2010 annual report. And this
04:23 10 excerpt has the BP board of directors saying that they met
04:23 11 25 times as they responded to the events in the Gulf of Mexico
04:23 12 and other matters associated with the Macondo blowout.

04:23 13 And then, "During the summer, we formed" -- and this
04:23 14 is the BP group, the BP board of directors -- "we formed the
04:23 15 Gulf of Mexico committee, whose primary responsibility was
04:23 16 oversight of the Gulf Coast Restoration Organization and whose
04:23 17 work is described later in this report."

04:23 18 Q. Thank you.

04:23 19 Returning to the bases for your first opinion, have
04:24 20 you prepared a slide that summarizes evidence that supports
04:24 21 your fourth and final basis?

04:24 22 A. Yes.

04:24 23 MR. GLADSTEIN: Please bring up D-32906.

04:24 24 BY MR. GLADSTEIN:

04:24 25 Q. Please summarize that basis and evidence.

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04:24 1 A. This fourth basis is that BP has developed centralized
04:24 2 common processes, management, and financial systems that apply
04:24 3 to the entire BP Group, including the Gulf of Mexico.

04:24 4 And I found evidence for that basis in common
04:24 5 processes, manuals and handbooks, OMS manuals and handbooks,
04:24 6 SFN guidance again, and the testimony of Messrs. Bucknall,
04:24 7 Smith, and Robertson.

04:24 8 Q. You mentioned the common process manuals and the OMS
04:24 9 manuals. Is there any mention of subsidiaries in those
10 manuals?

04:24 11 A. No.

04:24 12 Q. Did you prepare a slide that shows your second opinion?

04:24 13 A. Yes.

04:24 14 MR. GLADSTEIN: Please bring up D-32907.

04:24 15 BY MR. GLADSTEIN:

04:24 16 Q. What is your second opinion?

04:25 17 A. My second opinion is that the BP Group, and not only BPXP,
04:25 18 has conducted and managed operations in the Gulf of Mexico,
04:25 19 including at the Macondo well and the response to the Macondo
04:25 20 disaster.

04:25 21 Q. Have you prepared a slide that summarizes the basis for
04:25 22 your second opinion?

04:25 23 A. Yes.

04:25 24 MR. GLADSTEIN: Please bring up slide D-32908.
25

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04:25 1 **BY MR. GLADSTEIN:**

04:25 2 **Q.** Please summarize the bases for your second opinion.

04:25 3 **A.** I have five. The first is the delegations of authority
04:25 4 pass from the top of BP's global upstream segment to the Gulf
04:25 5 of Mexico SPU -- and that's strategic performance unit -- which
04:25 6 managed operations in the Gulf of Mexico and at the Macondo
04:25 7 well.

04:25 8 The second is that the chain of ownership between BP
04:25 9 p.l.c. and BPXP exists without reference to BP's operations in
04:25 10 the Gulf of Mexico.

04:25 11 The third is that the BPXP board of directors
04:25 12 provided no oversight of BP's operations in the Gulf of Mexico
04:26 13 before the Macondo disaster and only minimal oversight there
04:26 14 after the disaster.

04:26 15 The fourth is that BPXP does not have its own
04:26 16 employees; BP workers and managers in the Gulf of Mexico did
04:26 17 not consider themselves BPXP employees; and no one in the
04:26 18 drilling and completions organization was an employee or
04:26 19 officer of BPXP.

04:26 20 And my fifth basis for this second opinion is that
04:26 21 the response to the Macondo disaster was initiated, organized,
04:26 22 and directed by the BP Group, not only by BPXP.

04:26 23 **Q.** Thank you.

04:26 24 Turning to the bases for your second opinion, have
04:26 25 you prepared a slide that summarizes evidence that supports

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04:26 1 your first basis?

04:26 2 A. Yes.

04:26 3 MR. GLADSTEIN: Please bring up slide D-32909.

04:26 4 BY MR. GLADSTEIN:

04:26 5 Q. Please summarize that basis and evidence.

04:26 6 A. The basis is the delegations of authority pass from the
04:26 7 top of BP's global upstream segment to the Gulf of Mexico SPU,
04:26 8 which managed operations in the Gulf of Mexico and at the
04:26 9 Macondo well.

04:27 10 And I found evidence for this basis in BP annual
04:27 11 reports, organizational charts, OMS manuals and handbooks, SFN
04:27 12 guidance, and the testimony of a number of BP officials.

04:27 13 Q. Thank you.

04:27 14 MR. GLADSTEIN: Please bring up slide D-32909.2.

04:27 15 BY MR. GLADSTEIN:

04:27 16 Q. What does this slide show?

04:27 17 A. This is an organizational chart that I prepared that shows
04:27 18 just the organization of the drilling and completions unit for
04:27 19 those people who were directly working on the Macondo well at
04:27 20 the time of the *Deepwater Horizon* disaster.

04:27 21 There were two -- two chains of command. There are
04:27 22 the drilling engineers, and those are the individuals on the
04:27 23 left who planned and designed the well and then provided
04:28 24 engineering support to the drilling operation.

04:28 25 And on the right, you can see the names of the

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04:28 1 wellsite leaders, two of whom were on board the *Deepwater*
04:28 2 *Horizon* at the time of the disaster.

04:28 3 In this chart, I've got those two arrows on the right
04:28 4 and the left.

04:28 5 **THE WITNESS:** And this is important to point out,
04:28 6 Your Honor, that delegations of authority in the BP enterprise
04:28 7 extend from the board of directors down through the chief
04:28 8 executive officer of the group -- at the time it was Tony
04:28 9 Hayward -- then down through the segments, down to the SPUs,
04:28 10 and finally to this organization. And people doing this work
04:28 11 are accountable back up through this organization.

04:28 12 There's no mention in BP's delegations of
04:28 13 authority of people having been delegated authority from a
04:28 14 subsidiary like BPXP, and no documentation of these people
04:28 15 being accountable to a subsidiary like BPXP.

04:29 16 **BY MR. GLADSTEIN:**

04:29 17 **Q.** All right. Are any of the persons listed employees or
04:29 18 officers of BP --

04:29 19 **MR. REGAN:** Your Honor, may I -- pardon me.

04:29 20 **THE COURT:** Wait, wait.

04:29 21 **MR. GLADSTEIN:** Sorry, Your Honor.

04:29 22 **THE COURT:** Wait.

04:29 23 **MR. REGAN:** Your Honor, with respect, a number of the
04:29 24 issues about who was at Macondo, what their responsibilities
04:29 25 were, what their accountabilities were with respect to the

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04:29 1 drilling of the well were tried in this very courtroom. And
04:29 2 there's -- I think, at least in the Phase One ruling, there's
04:29 3 comments about that. And we also had some comments about the
04:29 4 response in the Phase Two rulings.

04:29 5 So to the extent that the witness wants to talk
04:29 6 about generic flow of authority and accountability, I don't
04:29 7 object to that. But to the extent that the witness is here to
04:29 8 make specific representations about authorities at Macondo
04:29 9 leading up to April of 2010, I think we've tried that case.

04:29 10 **THE COURT:** Well, yeah, I agree with you. But as
04:29 11 long as this doesn't go on too long, I'll let it go. I think
04:29 12 the witness can say what his appreciation of the organizational
04:30 13 situation was.

04:30 14 **MR. GLADSTEIN:** Your Honor, I am cognizant and I'm
04:30 15 trying to move this along.

04:30 16 **THE COURT:** Go ahead.

04:30 17 **BY MR. GLADSTEIN:**

04:30 18 **Q.** Are any of the persons listed employees or officers of
04:30 19 BPXP on this demonstrative?

04:30 20 **A.** No, none of these people are BPXP employees, and none of
04:30 21 these people are officers.

04:30 22 **THE WITNESS:** And I would call your attention,
04:30 23 Your Honor, especially to Patrick O'Bryan. His title is vice
04:30 24 president for drilling and completion, but he was not a BPXP
04:30 25 officer.

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04:30 1 **BY MR. GLADSTEIN:**

04:30 2 **Q.** Thank you. Turning back to the bases for your second
04:30 3 opinion, have you prepared a slide that summarizes evidence
04:30 4 that supports your second basis?

04:30 5 **A.** Yes.

04:30 6 **MR. GLADSTEIN:** Please bring up slide D-32910.

04:30 7 **BY MR. GLADSTEIN:**

04:30 8 **Q.** What does that show?

04:30 9 **A.** My second basis is that the chain of ownership between BP
04:30 10 p.l.c. and BPXP exists without reference to BP's operations in
04:30 11 the Gulf of Mexico.

04:30 12 And I found evidence for this in a BP chain of
04:30 13 ownership chart that BP produced; articles of incorporation of
04:31 14 some of subsidiaries; the AR01 reports -- and these are reports
04:31 15 that BP submitted to an English governmental agency -- and then
04:31 16 deposition testimony of Mr. Inglis and Mr. McKay.

04:31 17 **Q.** Thank you.

04:31 18 Returning to the bases for your second opinion, have
04:31 19 you prepared a slide that summarizes evidence that supports
04:31 20 your third basis?

04:31 21 **A.** Yes.

04:31 22 **MR. GLADSTEIN:** Please bring up D-31911.

04:31 23 **BY MR. GLADSTEIN:**

04:31 24 **Q.** Is this the slide?

04:31 25 **A.** Yes.

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04:31 1 Q. What does the slide show?

04:31 2 A. My third basis is that the BXP board of directors
04:31 3 provided no oversight of BP's operations in the Gulf of Mexico
04:31 4 before the Macondo disaster and only minimal oversight after
04:31 5 the disaster.

04:31 6 And I found evidence for this in resolutions that the
04:31 7 BXP board of directors passed by consent, in lieu of meeting,
04:31 8 for the period 2005 to 2010.

04:32 9 I noted, as Mr. Bray, testified, that the BXP board
04:32 10 of directors did not meet at all during 2010, either before or
04:32 11 after the disaster.

04:32 12 I found evidence in the BXP board of directors
04:32 13 resolutions and then minutes of meetings from 2011 to 2014, the
04:32 14 deposition testimony of Mr. Bray, and the expert report of
04:32 15 Professor Daines.

04:32 16 Q. What was the composition of the BXP board of directors
04:32 17 before the Macondo disaster?

04:32 18 A. There were six directors. All six of them were members of
04:32 19 this centralized legal function, and the six were either
04:32 20 attorneys or paralegals.

04:32 21 Q. What did you conclude regarding the role of the BXP
04:32 22 board?

04:32 23 A. I concluded that they, prior to the disaster, limited
04:32 24 their activities to appointing officers of the corporation and
04:33 25 distributing distributions. They provided no oversight of

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04:33 1 operations, nor were they the kinds of people who had
04:33 2 experience to provide oversight of operations.

04:33 3 And then after the disaster -- well, in the following
04:33 4 year, in 2011, then they began to address an additional set of
04:33 5 concerns, including responses to litigation, regulatory
04:33 6 affairs. But they still did not address oversight of
04:33 7 operations in the Gulf of Mexico.

04:33 8 Q. Thank you.

04:33 9 What did Professor Daines conclude regarding the role
04:33 10 of the BXP board?

04:33 11 A. He concluded that the BXP board did not provide strategic
04:33 12 direction, did not set performance standards for operations,
04:34 13 did not provide oversight of capital expenditures of
04:34 14 investments or divestments.

04:34 15 MR. GLADSTEIN: Please bring up TREX-13214.32.1.US.

04:34 16 BY MR. GLADSTEIN:

04:34 17 Q. What does this exhibit show?

04:34 18 A. This is an excerpt from Professor Daines' expert report.
04:34 19 And in this excerpt, he says: "BXP's board does not and
04:34 20 cannot make all decisions affecting BXP's assets. For
04:34 21 example, it does not guide business plans and strategy, set
04:34 22 performance objectives for the Gulf of Mexico business unit,
04:34 23 oversee capital expenditures, or oversee acquisitions and
04:34 24 divestitures."

04:34 25 MR. REGAN: Your Honor, just for completeness, can we

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04:34 1 read the next sentence, the one that starts with "I"?

04:34 2 **THE COURT:** Can you bring that up?

04:34 3 **MS. HIMMELHOCH:** Working on it, Your Honor.

04:35 4 **THE COURT:** What is that? Professor Daines' report?

04:35 5 **MR. REGAN:** Yeah. Because that's -- I think the
04:35 6 witness is testifying about Professor Daines' conclusion, and
04:35 7 his conclusion about those facts is in that sentence that
04:35 8 starts with "I."

04:35 9 **THE COURT:** I'm sure you can point that out,
04:35 10 Mr. Regan.

04:35 11 **MR. REGAN:** I thought it would be faster to do it
04:35 12 right now.

04:35 13 **MR. GLADSTEIN:** The next sentence -- you can correct
04:35 14 me if I'm reading it wrong -- says: "I understand that these
04:35 15 are ordinary course decisions, and ordinary course decisions
04:35 16 are appropriately made by management."

04:35 17 That's what he says.

04:35 18 **MR. REGAN:** Thank you.

04:35 19 **BY MR. GLADSTEIN:**

04:35 20 **Q.** Let's now turn to -- back to the bases of your second
04:35 21 opinion. Have you prepared a slide that summarizes evidence
04:35 22 that supports your fourth basis?

04:35 23 **A.** Yes.

04:35 24 **MR. GLADSTEIN:** Please bring up slide D-32912.
25

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04:36 1 **BY MR. GLADSTEIN:**

04:36 2 **Q.** Please summarize your -- that basis and evidence.

04:36 3 **A.** My fourth basis is that BPXP does not have its own
04:36 4 employees. BP workers and managers in the Gulf of Mexico did
04:36 5 not consider themselves BPXP employees, and no one in the
04:36 6 drilling and completions organization was a BPXP employee or
04:36 7 officer of BPXP.

04:36 8 I found evidence for that in the responses and
04:36 9 admissions that BP wrote to Department of Justice questions; a
04:36 10 general services agreement that BPXP has with BPAPC, the
04:36 11 drilling and completions organizational chart, BP appointment
04:36 12 histories, performance evaluations of people who worked in the
04:36 13 Gulf of Mexico, the testimony of Doug Suttles and Brian Smith,
04:36 14 the expert report of Professor Daines, and the testimony of a
04:37 15 number of other BP employees.

04:37 16 **Q.** Which BP entity employed the workers in the wells and
04:37 17 engineering sections for the D&C unit for the Gulf of Mexico?

04:37 18 **A.** For the ones we have documentation, it was a subsidiary
04:37 19 called BP America Production, Inc., BPAPC.

04:37 20 **Q.** Which BP entity did the workers testify they were employed
04:37 21 by?

04:37 22 **A.** Most of the ones who testified about their employer said
04:37 23 they were employed by BP America.

04:37 24 **Q.** Did the employees whose deposition testimonies you
04:37 25 reviewed know the role BPXP played in the Gulf?

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04:37 1 A. No.

04:37 2 Q. Okay. Now let's go to your fifth and final basis.

04:37 3 Returning to the bases for your second opinion, have you
04:37 4 prepared a slide that summarizes evidence that supports your
04:37 5 fifth and final basis?

04:37 6 A. Yes.

04:37 7 MR. GLADSTEIN: Please bring up slide D-32913.

04:37 8 BY MR. GLADSTEIN:

04:37 9 Q. Please summarize that basis and evidence.

04:38 10 A. The fifth basis to my second opinion is that the response
04:38 11 to the Macondo disaster was initiated, organized, and directed
04:38 12 by the BP Group and not only by BXP.

04:38 13 And I found evidence for that in BP annual reports,
04:38 14 the Hayward and Dudley announcements in the summer of 2010, the
04:38 15 Gulf of Mexico committee charter, and the deposition testimony
04:38 16 of Mr. Suttles and Mr. Morrison.

04:38 17 Q. You mentioned the BP annual reports.

04:38 18 MR. GLADSTEIN: Please bring up D-32913.1.

04:38 19 BY MR. GLADSTEIN:

04:38 20 Q. What does this exhibit show?

04:38 21 A. This is an excerpt from the 2010 annual report, BP's 2010
04:38 22 annual report.

04:38 23 And it says: "In June 2010, following the Gulf of
04:38 24 Mexico incident, we established the Gulf Coast Restoration
04:38 25 Organization (GCRO) and subsequently equipped it with dedicated

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04:39 1 resources and capabilities to manage all aspects of our
04:39 2 response to the accident. This organization reports directly
04:39 3 to the group chief executive and is overseen by a specific new
04:39 4 board committee."

04:39 5 Q. Thank you.

04:39 6 Turning to your response to Professor Daines --

04:39 7 MR. GLADSTEIN: We're almost through, Your Honor.

04:39 8 BY MR. GLADSTEIN:

04:39 9 Q. -- what was the primary focus of the expert reports of
10 Professor Daines?

04:39 11 A. His reports were on corporate governance and his
12 theoretical ideas for why wholly-owned subsidiaries should or
13 should not do certain kinds of things in their governance
14 practices.

04:39 15 Q. What was the focus of your reports?

04:39 16 A. My reports were on the actual organizational structure for
17 managing operations in the Gulf of Mexico at the Macondo well
18 and in response to the Macondo disaster.

04:39 19 Q. Are you offering any opinion, one way or another, as to
20 whether the activities or relationships between BXP and the
21 BP Group are legally proper or improper?

04:39 22 A. No.

04:40 23 Q. Are you offering any opinion, one way or another, as to
24 whether the activities or relationships between BXP and the
25 BP Group are legally appropriate or inappropriate?

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04:40 1 A. No.

04:40 2 Q. Are you offering any opinion, one way or another, as to
04:40 3 whether the activities or relationships between BPXP and the
04:40 4 BP Group are normal or abnormal?

04:40 5 A. No.

04:40 6 Q. Does Professor Daines agree with your opinion that the
04:40 7 BP Group has conducted and managed operations in the Gulf of
04:40 8 Mexico, not only BPXP?

04:40 9 A. Yes.

04:40 10 Q. Do you have a slide that shows the key facts on which you
04:40 11 and Professor Daines agree?

04:40 12 A. Yes.

04:40 13 MR. GLADSTEIN: Please bring up D-32914A.

04:40 14 BY MR. GLADSTEIN:

04:40 15 Q. Is this the slide?

04:40 16 A. Yes.

04:40 17 Q. What does this slide show?

04:40 18 A. This slide shows the four areas about which
04:40 19 Professor Daines and I agree, that:

04:40 20 BPXP's board does not guide business plans, set
04:40 21 performance, objectives, oversee capital expenditures,
04:40 22 acquisitions or divestments.

04:40 23 That BPXP has no employees.

04:41 24 That more than 2,000 BP Group employees conducted
04:41 25 BPXP's operations in the Gulf of Mexico.

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04:41 1 And that the BP Group manages the finances of the
04:41 2 group centrally, and that BPXP does not have its own external
04:41 3 bank account.

04:41 4 Q. Thank you, Dr. Quivik.

04:41 5 MR. GLADSTEIN: No further questions at this time,
04:41 6 Your Honor.

04:41 7 THE COURT: All right. Mr. Regan.

04:41 8 MR. REGAN: Thank you, Your Honor.
04:41 9 Matt Regan on behalf of BP, and I have Professor Quivik on
04:42 10 cross-examination. May I proceed, Your Honor?

04:42 11 THE COURT: Yes.

12 CROSS-EXAMINATION

04:41 13 BY MR. REGAN:

04:42 14 Q. Professor Quivik, just a few more follow-up questions
04:42 15 about your background.

04:42 16 You were an art major in college; is that correct?

04:42 17 A. Yes.

04:42 18 Q. And then you got a Bachelor's Degree in environmental
04:42 19 design from the University of Minnesota?

04:42 20 A. Yes.

04:42 21 Q. Your Master's is in historic preservation?

04:42 22 A. That's correct.

04:42 23 Q. And you have a Ph.D. in history and sociology of science;
04:42 24 correct?

04:42 25 A. Yes.

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04:42 1 Q. Your specialty is industrial history; correct?

04:42 2 A. Yes.

04:42 3 Q. And I think, as you just confirmed, you are not an expert
04:42 4 in corporate governance. Correct?

04:42 5 A. That's correct.

04:42 6 Q. You've never attended a meeting of a board of directors of
04:42 7 any public company in your life; correct?

04:42 8 A. That's correct.

04:42 9 Q. You've never been the officer or director of a public
04:42 10 company that's been required to report results to, like, the
04:42 11 SEC or --

04:42 12 A. No.

04:42 13 Q. Is that correct?

04:42 14 A. That's correct, I have not.

04:42 15 Q. Okay.

04:42 16 MR. REGAN: If we could bring up TREX-13209.1.1.

04:43 17 BY MR. REGAN:

04:43 18 Q. This is from your background at the University -- at
04:43 19 Michigan Tech, I should say, and we covered a little of this
04:43 20 before. But you prepared this background; correct?

04:43 21 A. Yes.

04:43 22 Q. And just to cut to the chase in the middle, your prior
04:43 23 testimony often involved cases where there are often few, if
04:43 24 any, living witnesses to the causes of the environmental harm
04:43 25 in past decades; correct?

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04:43 1 A. That's correct.

04:43 2 Q. And in those types of cases, you've been accepted as an
04:43 3 expert historian to research and draw conclusions about past
04:43 4 events; correct?

04:43 5 A. Yes.

04:43 6 Q. You've never been admitted as an expert involving
04:43 7 environmental contamination that began ten years prior to the
04:43 8 actual trial of the case; correct?

04:43 9 A. In cases where it was ongoing, but not when it began.

04:43 10 Q. Your focus was always on 50, 60, 70 years earlier, if not
04:44 11 more?

04:44 12 A. In the case of Sterling Corp., it was -- it included a
04:44 13 focus on operations that were going on in the 1970s and '80s.
04:44 14 In the other cases, that's correct.

04:44 15 Q. All right. So like 1915, 1920, the late 1800s?

04:44 16 A. 1930s, 1950s, 1970s.

04:44 17 Q. Okay. You've used what you call an empirical historical
04:44 18 method to draw -- to draw conclusions about facts leading to
04:44 19 and in response to the *Deepwater Horizon* incident; correct?

04:44 20 A. Yes.

04:44 21 Q. And you say your main focus is to determine what BPXP did
04:44 22 or did not do; right?

04:44 23 A. Yes.

04:44 24 Q. You looked at the discovery record; correct?

04:44 25 A. Yes.

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04:44 1 Q. Depositions and documents, as we've already sustained;
04:44 2 correct?

04:44 3 A. Yes.

04:44 4 Q. You looked at briefs that were filed by the parties in the
04:44 5 litigation?

04:44 6 A. Yes.

04:44 7 Q. You reviewed discovery rulings by the Court?

04:44 8 A. Yes.

04:44 9 Q. You reviewed some of Judge Barbier's Phase One and
04:44 10 Phase Two orders; correct?

04:45 11 A. Yes. I have not seen the Phase Two order.

04:45 12 Q. Fair enough.

04:45 13 A. I've heard about it, but I've not read it.

04:45 14 Q. Me too.

04:45 15 And you also looked at some court cases; correct?

04:45 16 The *Best Foods* case from the United States Supreme Court that
04:45 17 involved direct liability of a parent for a subsidiary in a
04:45 18 CERCLA action, you looked at that; correct?

04:45 19 A. I've looked at that a number of times over the years, yes.

04:45 20 Q. And you used the Supreme Court case to help you understand
04:45 21 what it meant to be an operator; correct?

04:45 22 A. Yes, but not so that I can develop a legal opinion, but to
04:45 23 inform myself of the kinds of facts that an attorney or a judge
04:45 24 would be interested in to make that legal determination.

04:45 25 Q. Now, in some cases where you testified, you believe that

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04:45 1 it was necessary to apply speculation as an industrial

04:45 2 historian; fair? I should say to speculate, make it more --

04:46 3 A. I -- I'm not sure. I try to stay away from speculation.

04:46 4 Q. Okay. And in this case, it's your testimony that using
04:46 5 your historical approach, you were -- you did not speculate to
04:46 6 reach any of the opinions you've just testified to; correct?

04:46 7 A. I endeavored not to speculate.

04:46 8 Q. Right. And so if you read the testimony of a witness, you
04:46 9 actually relied on the words on the page; right?

04:46 10 A. Yes.

04:46 11 Q. You didn't make assumptions about what the witness would
04:46 12 have said to questions the witness wasn't asked; right?

04:46 13 A. That was my intent, yes.

04:46 14 Q. You wouldn't have done that; right? That would be
04:46 15 speculation; right?

04:46 16 A. I endeavored not do that, yes.

04:46 17 Q. But, in fact, you did do it, didn't you?

04:46 18 A. I don't believe I did in my expert reports. I believe
04:46 19 that there's at least one instance in my deposition testimony
04:46 20 where I used what I would consider some cumbersome language
04:46 21 that could suggest that.

04:47 22 Q. "Cumbersome language" meaning that you speculated about
04:47 23 what a witness' answer would have been to a question that the
04:47 24 witness wasn't even asked?

04:47 25 A. That's correct.

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04:47 1 Q. And that's part of your testimony here today, part of your
04:47 2 opinions; right?

04:47 3 A. It's not in my expert reports.

04:47 4 Q. Okay. Let's turn to your findings.

04:47 5 As you just expressed at the end of your testimony
04:47 6 about what you are not doing here, you are not expressing an
04:47 7 opinion that there's anything improper with respect to the
04:47 8 relationships that you've described here between BPXP and the
04:47 9 BP Group; correct?

04:47 10 A. That's correct.

04:47 11 Q. Nothing deficient with respect to those relationships;
04:47 12 correct?

04:47 13 A. I'm not expressing an opinion on that topic.

04:47 14 Q. Nothing abnormal about those relationships; correct?

04:47 15 A. Again, I have no opinion on that.

04:47 16 Q. No opinion that anything BPXP or the BP Group did was
04:47 17 inappropriate; correct? Is that correct?

04:47 18 A. That's correct.

04:47 19 Q. No opinion that BPXP or the BP Group should have done
04:47 20 anything differently than the way you've described it today;
04:47 21 correct?

04:48 22 A. That's correct.

04:48 23 Q. No opinion that the corporate governance practices were
04:48 24 either improper, deficient, abnormal, misleading to BPXP;
04:48 25 correct?

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04:48 1 MR. GLADSTEIN: Objection. Compound, Your Honor.

04:48 2 MR. REGAN: Well, I'm trying to move fast. I can ask
04:48 3 them one at a time, Judge.

04:48 4 THE COURT: Can you answer that or do you need --

04:48 5 THE WITNESS: Yes, I'm not rendering value judgments
04:48 6 on those topics.

04:48 7 BY MR. REGAN:

04:48 8 Q. You're not rendering any judgments on that; right? No
04:48 9 opinion; right?

04:48 10 A. My opinion is only what happened historically in terms of
04:48 11 management of operations, but I'm not expressing a judgment on
04:48 12 those.

04:48 13 Q. And reviewing all of this record, you are not opining that
04:48 14 BP's corporate governance practices were improper; correct?

04:48 15 A. That would be a legal opinion and I'm not offering that
04:48 16 opinion.

04:48 17 Q. And you're not offering any opinions that those practices
04:48 18 are deficient, abnormal, or misleading; correct?

04:48 19 A. Correct.

04:49 20 Q. Now, how many shareholders does BPXP have?

04:49 21 A. It has one common shareholder and the last I checked, it
04:49 22 also has a preferred stockholder.

04:49 23 Q. All right. It is a wholly-owned subsidiary; correct?

04:49 24 A. Yes.

04:49 25 Q. BP p.l.c. is a public company with tens of thousands of

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04:49 1 shareholders; correct?

04:49 2 A. Many. I don't know the number.

04:49 3 Q. Okay. Dr. Quivik, there's nothing improper about a
04:49 4 shareholder exercising control over a subsidiary company;
04:49 5 correct?

04:49 6 A. I don't have an opinion on that.

04:49 7 Q. Do you believe there's anything improper about a
04:49 8 shareholder exercising control over a company?

04:49 9 A. No.

04:49 10 Q. And one of the purposes of a wholly-owned subsidiary is so
04:49 11 that the shareholder parent company can control it; correct?

04:49 12 A. I understand that that's one of the reasons for that
04:50 13 relationship.

04:50 14 Q. You looked at BPXP's corporate bylaws; correct?

04:50 15 A. Yes.

04:50 16 Q. You don't have an opinion that there's anything improper
04:50 17 or unusual about the bylaws; correct?

04:50 18 A. That's correct.

04:50 19 Q. You're not opining that the bylaws were ever not followed;
04:50 20 correct?

04:50 21 A. That's correct.

04:50 22 Q. Now, one of the functions of a board, to your
04:50 23 understanding, is to look out for the interest of the
04:50 24 shareholder; correct?

04:50 25 A. That's my understanding, yes.

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04:50 1 Q. And the process of looking out for the interest of a
04:50 2 shareholder is different if you just have one shareholder
04:50 3 versus tens or thousands or hundreds of thousands of public --
04:50 4 shareholders like a public company; correct?

04:50 5 A. That's my understanding, yes.

04:50 6 Q. And where there is just one shareholder or two
04:50 7 shareholders, the wholly-owned subsidiary, the shareholders of
04:50 8 that wholly-owned subsidiary, they can determine their own
04:50 9 preferences, implement their own plans, and easily monitor that
04:51 10 subsidiary; right?

04:51 11 A. Yes.

04:51 12 Q. And the activity of that subsidiary can be effectively
04:51 13 directed and monitored by the sole shareholder or its designee;
04:51 14 correct?

04:51 15 A. That's my understanding, yes.

04:51 16 Q. It's entirely appropriate for the wholly-owned
04:51 17 subsidiary's board to be less active than a public company's
04:51 18 board; right?

04:51 19 A. I don't have an opinion on its appropriateness, but I
04:51 20 understand that that would be the case.

04:51 21 Q. You don't have an opinion as to whether it is or is not
04:51 22 appropriate for a wholly-owned subsidiary to be -- board to be
04:51 23 less active than a public company board?

04:51 24 A. It stands to reason, but to the extent that that would be
04:51 25 an expert opinion or a legal opinion, I'm not offering that

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04:51 1 kind of opinion.

04:51 2 Q. Okay. Well, let's look in your report then.

04:51 3 TREX-13210.34.1.

04:51 4 In this section of your first report, you compared
04:51 5 BPXP's board of directors to the activities of BP p.l.c.'s
04:52 6 board of directors; correct?

04:52 7 A. Yes.

04:52 8 Q. But you have every expectation that there would be a
04:52 9 difference; right?

04:52 10 A. I don't have every expectation. I investigated the
04:52 11 minutes of the two boards to find out what the similarity or
04:52 12 difference was.

04:52 13 Q. So can you explain, then, in this last sentence you say,
04:52 14 "In the large array of documents that BP has produced in this
04:52 15 case, which I review in the next section, I find little
04:52 16 evidence that BPXP's board performs functions with regard to
04:52 17 operations in the Gulf of Mexico that I would expect to see."

04:52 18 Are you an expert in the activities of boards of
04:52 19 directors?

04:52 20 A. I'm not an expert. I'll go back to -- I think it was a
04:52 21 question that Mr. Gladstein asked me of what the purpose of my
04:52 22 report was and -- and the work that I did, and it was to
04:53 23 understand the management of operations.

04:53 24 And so when I say "I expect to see that," what I mean
04:53 25 is: Were BPXP managing operations in the Gulf of Mexico, then

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04:53 1 I would expect to see that the BPXP board of directors would be
04:53 2 developing a corporate strategy, developing an annual plan, an
04:53 3 annual budget, that sort of thing. I'm not saying they should.
04:53 4 I'm just saying I'm looking to see if there's that kind of
04:53 5 activity and if there were, I would have reported that.

04:53 6 Q. Right.

04:53 7 A. But in this case, I saw none and so I reported that.

04:53 8 Q. But, Professor Quivik, you have no idea what would be
04:53 9 appropriate or inappropriate for a wholly-owned subsidiary
04:53 10 board overseeing drilling operations in the Gulf of Mexico,
04:53 11 what would be appropriate for them to act on or not act on;
04:53 12 correct?

04:53 13 A. As I indicated, I'm not opining on what's appropriate; I'm
04:54 14 looking for evidence of management of operations.

04:54 15 Q. Right. So the expectation, when we see that phrase in
04:54 16 your report of what you would expect to see, that's what you
04:54 17 would expect to see as a historian just comparing facts, not as
04:54 18 someone trying to make a judgment as to whether there's
04:54 19 anything remotely wrong with what you're describing?

04:54 20 A. Yes. As I said in one of my response reports to
04:54 21 Professor Daines, I'm not rendering a value judgment on this.
04:54 22 I'm just looking to see if there is evidence that the BPXP
04:54 23 board is engaged in managing operations.

04:54 24 Q. Can you identify any wholly-owned subsidiary board in the
04:54 25 world that is more active than BPXP's board?

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04:54 1 A. I didn't investigate that, and so I can't.

04:54 2 Q. Now, we heard this phrase in your report.

04:54 3 If we can bring -- stay on that same TREX, but
04:54 4 TREX-13210.49.1.

04:55 5 This is a sentence that I believe you put up and you
04:55 6 were talking about the deposition of Mr. Bray. Do you see that
04:55 7 in the bottom half of the paragraph?

04:55 8 A. The second highlighted item?

04:55 9 Q. Yes, sir.

04:55 10 A. Okay. Just a second. Yes.

04:55 11 Q. So you say that Mr. Bray testified that the BPXP board of
04:55 12 directors did not do these activities which you've testified
04:55 13 about in your -- in your direct; correct?

04:55 14 A. Yes.

04:55 15 Q. You don't know of any wholly-owned subsidiary in the world
04:55 16 that actually would act differently with respect to those
04:55 17 activities; correct?

04:55 18 A. Again, that's not the basis of my analysis. I was looking
04:55 19 to see if BPXP was engaged in that kind of management of
04:55 20 operations in the Gulf of Mexico, and I found no evidence of
04:55 21 that.

04:55 22 Q. Right.

04:55 23 A. Not because I thought that they should be or shouldn't be,
04:55 24 just looking for that kind of evidence.

04:55 25 Q. So the level of oversight provided by the BPXP board as

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04:56 1 would be required and customary in the law, you have no idea
04:56 2 whether their activities were or were not consistent?

04:56 3 A. That's correct. I didn't investigate that.

04:56 4 Q. You talked about dividends that were paid by BPXP to its
04:56 5 parent companies; correct?

04:56 6 A. Yes.

04:56 7 Q. Now, prior to the April 20th, 2010 Macondo accident, BPXP
04:56 8 was in a positive net asset position; correct?

04:56 9 A. That's my understanding, yes.

04:56 10 Q. And prior to -- and in that positive net asset position,
04:56 11 it had the ability to pay dividends; correct?

04:56 12 A. Yes.

04:56 13 Q. Dividends are a normal thing -- a normal way for an
04:56 14 investor to make a return on an investment; correct?

04:56 15 A. In my vernacular understanding of that, yes.

04:56 16 Q. You have, again, no criticism of BPXP's payment of
04:56 17 dividends prior to April 20th, 2010; correct?

04:56 18 A. That's correct.

04:56 19 Q. And after April 20th, 2010, how many dividends has BPXP
04:56 20 paid to its parent companies?

04:56 21 A. None.

04:56 22 Q. Have you -- did you see, in your extensive review of the
04:56 23 record, a dollar that left BPXP up to its parents since
04:57 24 April 20th, 2010?

04:57 25 A. Not that I'm aware of, no.

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04:57 1 Q. And the declarations of dividends before the accident, you
04:57 2 reviewed the bylaws and there was nothing unusual about that to
04:57 3 you; correct?

04:57 4 A. I didn't explore unusual, but it didn't strike me as
04:57 5 unusual.

04:57 6 Q. You testified on direct that the BXP board had new
04:57 7 obligations after April 20th, 2010, and you saw evidence of
04:57 8 their activity set commensurate with those obligations?

04:57 9 A. Yes.

04:57 10 Q. And that included reviewing financial information;
04:57 11 correct?

04:57 12 A. Yes.

04:57 13 Q. Reviewing settlement agreements; correct?

04:57 14 A. Yes.

04:57 15 Q. Reviewing documents related to the trust --
04:57 16 20 billion-dollar trust that was set up; correct?

04:57 17 A. Yes.

04:57 18 Q. You have some statements in your reports about BXP
04:57 19 developing financial reports after the accident. Do you recall
04:57 20 those, they're buried in your report somewhere, but the timing
04:58 21 of that?

04:58 22 A. Yes.

04:58 23 Q. And it was entirely appropriate for BXP to start
04:58 24 preparing financial reports after April 20th, 2010, given these
04:58 25 responsibilities that they are managing; correct?

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04:58 1 A. Again, given that my use of the word "appropriate" is not
04:58 2 an expert or legal opinion, but at -- with that caveat, I agree
04:58 3 with you.

04:58 4 Q. You're aware of who held the lease -- well, let me ask it
04:58 5 this way. We'll put up your chart, D-32012.

04:58 6 To confirm, this is an organizational chart that you
04:58 7 created; right?

04:58 8 A. Yes.

04:58 9 Q. Okay. And we saw this organizational chart in opening
04:58 10 statements in this case and a statement was made, but we don't
04:58 11 see BPXP on this chart; right?

04:58 12 A. That's correct.

04:58 13 Q. Okay. I want to ask you about a few things where we do
04:58 14 see BPXP that are also in the United States' possession.
04:58 15 You're familiar that there is a lease for Macondo; correct?

04:59 16 A. Yes.

04:59 17 Q. TREX-8502 -- 85002.1.

04:59 18 What legal entity leased the Macondo property, MC252?

04:59 19 A. BP Exploration and Production, Inc.

04:59 20 Q. You're familiar with the fact that royalties are paid by
04:59 21 BP Exploration and Production, Inc., to the federal government;
04:59 22 correct?

04:59 23 A. Yes.

04:59 24 Q. After the accident, are you familiar with who the
04:59 25 United States of America designated as a responsible party

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04:59 1 amongst the BP Group?

04:59 2 A. BPXP.

04:59 3 Q. TREN-241460.1.

04:59 4 Have you seen this, the letter on April 28th, 2010,
04:59 5 from the United States Coast Guard?

04:59 6 And if we can just zoom on the top. That's fine
04:59 7 right there.

04:59 8 This is consistent with your review; correct?

04:59 9 A. Yes.

04:59 10 Q. The notice was sent to BP Exploration and Production,
05:00 11 Inc., as the responsible party; correct?

05:00 12 A. Yes.

05:00 13 Q. And you saw -- we don't have to bring it up -- BPXP
05:00 14 accepted that designation; correct?

05:00 15 A. I don't recall seeing that.

05:00 16 Q. Let's do it quickly. TREN-240400.1.

05:00 17 Now, we can look at the letterhead. It's from
05:00 18 James Dupree. You saw his name, he was one of the witnesses
05:00 19 that you reviewed; correct?

05:00 20 A. Yes. And now I do remember seeing this letter, yes.

05:00 21 Q. In May of 2010, he was the president of BPXP; correct?

05:00 22 A. Yes.

05:00 23 Q. He sent a letter on the letterhead of BPXP to the United
05:00 24 States Coast Guard; correct?

05:00 25 A. Yes.

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05:00 1 Q. And he accepted on behalf of BPX&P the status of
05:00 2 responsible party; correct?

05:00 3 A. That's my recollection that that's what the letter says,
05:00 4 yes.

05:00 5 Q. Okay. 20 billion-dollar trust, you reviewed that;
05:00 6 correct?

05:00 7 A. I remember reviewing documents about that, yes.

05:00 8 Q. TREX-246972.1.

05:01 9 Professor Quivik, which BP entity entered into a
05:01 10 trust to provide \$20 billion in the summer of 2010?

05:01 11 A. BP Exploration and Production, Inc.

05:01 12 Q. Do you see that there on the first paragraph of that
05:01 13 agreement?

05:01 14 A. Yes.

05:01 15 Q. Have you seen the complaint in this case?

05:01 16 A. Probably.

05:01 17 Q. Let's do it quickly.

05:01 18 A. Okay.

05:01 19 Q. 240925.1.

05:01 20 What BP entity is the defendant in this litigation,
05:01 21 Professor Quivik?

05:01 22 A. BP Exploration and Production, Inc.

05:01 23 Q. You're familiar with the fact that BP Exploration and
05:01 24 Production, Inc., spends billions of dollars every year in
05:01 25 capital expenditures; correct?

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05:01 1 A. I am familiar with the fact that BP spends that much in
05:01 2 capital expenditures and runs them through BPXP, yes.

05:02 3 Q. You -- you looked at BPX&P's financial reports; correct?

05:02 4 A. Yes.

05:02 5 Q. And you saw evidence of payments of billions of dollars in
05:02 6 CAPEX; correct?

05:02 7 A. Yes.

05:02 8 Q. And you saw billions of dollars in OPEX; correct?

05:02 9 A. In what?

05:02 10 Q. Operating expenditures. Pardon me.

05:02 11 A. Yes.

05:02 12 Q. And in 2013 alone, to cut to it, you saw almost \$2 billion
05:02 13 in operating expenses from BPX&P; correct?

05:02 14 A. I don't remember the numbers; I just remember they were
05:02 15 big.

05:02 16 Q. And that level of operating expenses to you was the mark
05:02 17 of a company that was doing a lot of business; correct?

05:02 18 A. Yes. It's the legal entity in the BP Group that that
05:02 19 business was being run through.

05:02 20 Q. Okay. You testified about they have no employees, and
05:02 21 we've heard that from a number of lawyers for the United States
05:02 22 about whether BPXP has no employees. It's true that BPXP has
05:02 23 no payroll; correct?

05:02 24 A. That's correct.

05:02 25 Q. Are you aware of any other oil company that operates

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05:03 1 differently in the sense of having a unique payroll for every
05:03 2 subsidiary, or having a common payroll and just some
05:03 3 subsidiaries?

05:03 4 A. I haven't researched that.

05:03 5 Q. You agree that the people who are working on the BPXP
05:03 6 assets are charging their time to BPXP?

05:03 7 A. Well, the people aren't. It's the -- the people in BP's
05:03 8 finance section -- or function are making the determination
05:03 9 that their time should be charged to BPXP.

05:03 10 Q. And that work is on behalf of BPXP; correct?

05:03 11 A. It's being charged to BPXP.

05:03 12 Q. Well, the work that they're doing that you saw in your
05:03 13 review is work for BPXP; correct?

05:03 14 A. It's being performed on BPXP assets. But as -- as those
05:03 15 people describe who they worked for as I look at the
05:03 16 delegations of authority, I would say that they're also working
05:04 17 on behalf of the Gulf of Mexico SPU or now the regional
05:04 18 business unit, the upstream segment. And that's where they get
05:04 19 their authority to work, that's who they are accountable to.
05:04 20 So they're working on behalf of that entity.

05:04 21 Q. Professor Quivik, are these workers working on behalf of
05:04 22 BPXP?

05:04 23 A. Well, as long as we recognize that this is not an
05:04 24 either/or situation, yes --

05:04 25 Q. Okay.

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05:04 1 A. -- they are working for BPXP.

05:04 2 Q. And in your either/or --

05:04 3 A. On behalf of BPXP.

05:04 4 Q. -- you're describing BPXP, which is a legal entity;
05:04 5 correct?

05:04 6 A. Excuse me?

05:04 7 Q. In your either/or, you're describing BPXP, which is a
05:04 8 legal entity; correct?

05:04 9 A. Yeah, that's a legal equity.

05:04 10 Q. And the "or" you're describing is an organizational unit
05:04 11 or a segment or a function; correct?

05:04 12 A. Well, there's also BPAPC, that's their payroll entity. So
05:04 13 there are a number of entities that we could say they're
05:05 14 working on behalf of.

05:05 15 Q. All right. So a drilling engineer who is working on
05:05 16 *Thunder Horse*, his time is charged to BPXP, who's that engineer
05:05 17 working for?

05:05 18 A. If he knows where his paycheck comes from, he might say
05:05 19 BPAPC.

05:05 20 Q. I'm asking about the work he's doing. Whose work? Who's
05:05 21 he working for?

05:05 22 A. He's working for his immediate supervisor, who would be
05:05 23 someone in the SPU. And so he's working for the Gulf of Mexico
05:05 24 business unit.

05:05 25 Q. So he's not working for BPXP?

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05:05 1 A. I didn't say he's not working for BP -- his time is
05:05 2 charged to BPXP.

05:05 3 Q. All right. 2,300 people in 2014 were having their time
05:05 4 charged to BPXP; correct?

05:05 5 A. I remember a number like that, yes.

05:05 6 Q. Yeah. And you saw the list of those people; correct?

05:05 7 A. I've seen lists of numbers of people, yes.

05:05 8 Q. Okay. If we could pull up TRES-240459, and I'd like to
05:06 9 pull up the 2014 tab.

05:06 10 The names have been removed. But you've seen a chart
05:06 11 like this which listed every row is a different person. And
05:06 12 then it describes -- if you could go over to the side, Donny,
05:06 13 to J, K, and L.

05:06 14 It describes a position, the job, and an
05:06 15 organizational unit?

05:06 16 A. Yes.

05:06 17 Q. You've seen that; right?

05:06 18 A. Yes.

05:06 19 Q. So we can use one that I think you know. If we go to
05:06 20 line 22, if you follow me.

05:06 21 A. I can't --

05:06 22 Q. It says --

05:06 23 A. Okay. You've highlighted it.

05:06 24 Q. It says, "Regional President, Gulf of Mexico." You know
05:06 25 who that is in 2014; right?

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05:06 1 A. That is Richard Morrison.

05:06 2 Q. Right. Does he work on behalf of XP?

05:06 3 A. It says here he's part of the Gulf of Mexico unit.

05:06 4 Q. Right. Does he work on behalf of XP, is it yes or no?

05:06 5 Are you saying he doesn't?

05:06 6 A. I'm seeing the column where his time is charged.

05:06 7 Q. All right. Go back over to -- I think it's B.

05:06 8 It's D.

05:06 9 A. Okay. I see that his time is being charged to BXP, yes.

05:06 10 Q. Okay. Can we call him a BXP worker?

05:07 11 A. I guess we'd have to ask him.

05:07 12 Q. Okay. He'll be here next week.

05:07 13 A. Okay.

05:07 14 Q. You also saw a list of officers and directors of BXP;
15 correct?

05:07 16 A. Yes.

05:07 17 Q. And was there any officer or director on that list that
18 you thought was not qualified to be a board of director -- a
19 member of the board?

05:07 20 A. I don't have an opinion about the qualifications they
21 should have.

05:07 22 Q. Okay. You saw that there were financial officers of BXP
23 like Randy Latta and Neil Shaw on that list?

05:07 24 A. Yes.

05:07 25 Q. And their work -- they were officers of BXP and they

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05:07 1 acted on behalf of BPXP in that capacity; correct?

05:07 2 A. Yes.

05:07 3 Q. And you agree that Richard Morrison, in his role as the
05:07 4 head of GoM, has overseen the management of BPXP's assets;
05:07 5 right?

05:07 6 A. As the head of the Gulf of Mexico business unit?

05:08 7 Q. Yes.

05:08 8 A. Yes.

05:08 9 Q. If we could pull up TREN-13210.35.1.

05:08 10 We saw right before you testified a video clip of
05:08 11 Steven Bray. Do you recall that? Were you in the courtroom,
05:08 12 Professor Quivik?

05:08 13 A. Yes.

05:08 14 Q. And Mr. Bray used this phrase over and over again, "to the
05:08 15 best of my personal knowledge." And before I get to my
05:08 16 questions, as an industrial historian, what does someone saying
05:08 17 "to the best of my personal knowledge" mean to you?

05:08 18 A. It would mean that he has personal experience of it.

05:08 19 Q. All right. Would it mean that his answer is limited to
05:08 20 what he actually knows? Would you agree with me on that?

05:08 21 A. Yes.

05:08 22 Q. Okay. So in your report, you say that before the Macondo
05:08 23 accident, the board met in person once on December 30th, 2009.
05:08 24 And then you cite Steven Bray; right?

05:08 25 A. Yes.

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05:08 1 MR. GLADSTEIN: Objection, Your Honor. He did not
05:09 2 read the entire sentence there.

05:09 3 BY MR. REGAN:

05:09 4 Q. Okay. According to the minutes; correct?

05:09 5 A. Yes.

05:09 6 Q. Now, Mr. Bray, he didn't join BXP until 2009; correct?

05:09 7 A. That's correct.

05:09 8 Q. And he didn't join the board of BXP until 2009; correct?

05:09 9 A. Correct.

05:09 10 Q. And, in fact, he testified that he did not know what took
05:09 11 place at the BXP board prior to 2009 because he wasn't there;
05:09 12 correct?

05:09 13 A. He didn't know from experiencing it, but he did talk about
05:09 14 his conversations with his predecessors who served on the board
05:09 15 to find out what they had been doing.

05:09 16 Q. Just to see how we're doing this in terms of the
05:09 17 deposition, let's pull up Steven Bray's deposition, page 316, 9
05:09 18 through 317, 9.

05:09 19 And you read this deposition; right?

05:10 20 A. Yes.

05:10 21 Q. And you told us earlier that it's important for you to
05:10 22 cite your sources so that we can validate your report; correct?

05:10 23 A. Yes.

05:10 24 Q. Now, I'll just read this. It's two questions and
05:10 25 answers -- three questions and answers. You saw this in

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05:10 1 Mr. Bray's deposition.

05:10 2 "QUESTION: Now, you were asked a series of questions
05:10 3 earlier today about whether the BXP board took any
05:10 4 actions in 2005 other than the exhibit you've just
05:10 5 identified?

05:10 6 And you answered the question by saying:

05:10 7 "ANSWER: To the best of my personal knowledge, no."

05:10 8 "QUESTION: I just want to make sure the record is
05:10 9 clear. Why is it that you were saying the board did not
05:10 10 take any other action that you could describe based on
05:10 11 personal knowledge?

05:10 12 "ANSWER: Well, to have personal knowledge, I would
05:10 13 have had to have been there, and I wasn't there in 2005.

05:10 14 "QUESTION: Were you meaning to imply by your answers
05:10 15 that there was no other action taken by the board in the
05:10 16 year 2005 other than the written consent that's dated
05:10 17 February 11th, 2005?

05:10 18 "ANSWER: No. I mean, I was just intending to imply
05:10 19 that I wouldn't know because I wasn't there.

05:11 20 "QUESTION: Would the same be the case for the
05:11 21 questions you answered along those lines about 2006, 2007,
05:11 22 2008, and 2009, until the point in time that you joined
05:11 23 BP?

05:11 24 "ANSWER: Yes. Again, I wasn't there. I wouldn't
05:11 25 have had personal knowledge."

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05:11 1 That was Steven Bray's testimony; correct?

05:11 2 A. Yes.

05:11 3 Q. It would not be fair to cite Steven Bray as a source for
05:11 4 the fact that the BXP board did not take any actions from 2005
05:11 5 to 2009; correct?

05:11 6 A. I'm trying to remember in his deposition if there was some
05:11 7 follow-up recross examination that addressed that question, and
05:11 8 I believe I was addressing the kind of investigation that he
05:11 9 would have done to understand what those previous activities
05:11 10 would have been.

05:11 11 Q. Uh-huh. Did you see a question where Mr. Bray was asked,
05:12 12 did you ask people about what happened in 2005, and have him
05:12 13 answer, yes, I did and this is what they told me?

05:12 14 A. I don't remember the details of that back and forth.

05:12 15 Q. Okay. You also challenged the volume of documents
05:12 16 produced with respect to BXP's board minutes; correct?

05:12 17 A. I don't understand what you mean by the word "challenged."

05:12 18 Q. Okay. You -- you made a statement about the fact that
05:12 19 there were no minutes for activities other than dividends prior
05:12 20 to 2009. Do you recall saying that in your first report?

05:12 21 A. I recall reporting that that was the case, yes.

05:12 22 Q. Did you then learn that actually Judge Shushan had entered
05:12 23 a discovery order about what year cutoff there was for the
05:12 24 production of documents and that that was the reason why you
05:12 25 weren't seeing documents for those years?

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05:12 1 A. Yes.

05:12 2 Q. So, again, it would not be fair to suggest that there was
05:12 3 no activity because you don't see documents without recognizing
05:12 4 that there are court orders that govern what documents are
05:13 5 produced in the litigation; correct?

05:13 6 A. Correct.

05:13 7 Q. And it would not be fair as a historian to suggest that
05:13 8 there's -- the absence of information is meaningful when the
05:13 9 participants in the litigation know exactly why there's an
05:13 10 absence of information; correct?

05:13 11 A. Can you repeat that question? I'm not sure I understand
05:13 12 it.

05:13 13 Q. I -- I couldn't remember it if I tried.

05:13 14 You saw the court order about discovery; correct?

05:13 15 A. Yes.

05:13 16 Q. And you understand now that there is actually a specific
05:13 17 order on what minutes were required to be produced and for what
05:13 18 time periods; correct?

05:13 19 A. Yes.

05:13 20 Q. And you would expect -- want someone to read your reports
05:13 21 in the context of those court orders; correct?

05:13 22 A. Yes.

05:13 23 Q. Segments and legal transition -- almost done here,
05:13 24 Professor Quivik. Segments and legal entities, I want to turn
05:13 25 to that.

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05:13 1 You talked about the organizational structure that
05:13 2 the BP Group has in that it had functions and organizational
05:14 3 units like the Guam business unit; correct?

05:14 4 A. Yes.

05:14 5 Q. Okay. Is there anything wrong with having functional
05:14 6 segments to organize the teams of workers?

05:14 7 A. Again, I've made no value judgments.

05:14 8 Q. Are there other multinational companies in the E&P
05:14 9 industry that are organized exactly the same way as BP?

05:14 10 A. I would say comparably is a better word, yes.

05:14 11 Q. Let's pull up TREN-13214.1.

05:14 12 This is Professor Daines' report, and you saw this
05:14 13 before; correct?

05:14 14 A. Yes.

05:14 15 Q. If I could go to TREN-13214.43.1.

05:14 16 Professor Daines has a chart where he presents a list
05:14 17 of companies, their total assets, their reportable business
05:14 18 segments, and then the number of majority-owned subsidiaries.

05:14 19 And you've seen this before; right?

05:14 20 A. Yes.

05:14 21 Q. So we just had a witness here from Chevron, or I guess he
05:15 22 had had some -- Mr. Walkup. He had worked quite a bit of time
05:15 23 at Chevron before becoming a consultant. If we just look at
05:15 24 Chevron here, about the middle of the page, maybe we'll just
05:15 25 read it right to left.

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05:15 1 Chevron had 164 subsidiaries and two reportable
05:15 2 business segments. Any reason to dispute that?

05:15 3 A. No.

05:15 4 Q. Do you know that Chevron's segments were upstream and
05:15 5 downstream?

05:15 6 A. I don't know that.

05:15 7 Q. Okay. How about Shell? 381 subsidiaries and two
05:15 8 reportable business segments, any reason to dispute that?

05:15 9 A. No.

05:15 10 Q. ExxonMobil, 229 subsidiaries, three reportable business
05:15 11 segments. Any reason to dispute that?

05:15 12 A. No.

05:15 13 Q. Is BP's organization, by using reportable business
05:15 14 segments, does it appear to be an outlier in your review as a
05:15 15 historian as you see these facts?

05:15 16 A. It looks very similar.

05:16 17 Q. You testified about SFNs, or corporate structured finance
05:16 18 notes. I'd like to bring up TREN-13243.2.1. We can bring up
05:16 19 the first page just to orient you, Professor Quivik.

05:16 20 A. I see it. Thank you.

05:16 21 Q. This is one of the documents you reviewed, and I think you
05:16 22 may have testified about this one or one that's similar to it
05:16 23 on your direct. You're familiar with it?

05:16 24 A. Yes.

05:16 25 Q. So let's bring up, then, the -- the easier one to read.

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05:16 1 In this corporate structure and finance note, on
05:16 2 page 2, it says internal -- "The internal BP Group management
05:16 3 delegations, set out within the group's DoA" -- and that's
05:16 4 delegation of authority; correct?

05:16 5 A. Yes.

05:16 6 Q. -- "do not take precedence over the requirements of
05:16 7 applicable law, contract or the articles of association, bylaws
05:16 8 or other governing documents of the relevant legal entity,
05:16 9 whatever its form (subsidiary company, joint venture,
05:17 10 associate, partnership or other)."

05:17 11 You saw that in your review; correct?

05:17 12 A. Yes.

05:17 13 Q. You have no opinion that that guidance that we see right
05:17 14 there was not followed within the BP Group; correct?

05:17 15 A. I believe that the SFN guidance is a document that, among
05:17 16 other things, helps to ensure that -- that this will take
05:17 17 place.

05:17 18 Q. Right.

05:17 19 A. And I'll point out, though, that, again, the focus of my
05:17 20 research analysis was to look at where decisions are made about
05:17 21 which projects to undertake.

05:17 22 Q. Right.

05:17 23 A. And -- and so those are made by the segment. That's where
05:17 24 the decision to commit the group's resources are made. But
05:17 25 then absolutely, there are people in the tax function, in the

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05:17 1 treasury function, in the legal function to make sure that
05:17 2 those decisions are legal, and they don't trump the legal
05:18 3 requirements of any of those subsidiary legal entities.

05:18 4 Q. And you saw not only that there was the policy for that
05:18 5 and that there were the people for that, but you saw that, in
05:18 6 fact, that was what happened, that this guidance as we see in
05:18 7 this document is, in fact, followed?

05:18 8 A. I've seen documents that show that this was followed, yes.

05:18 9 Q. Uh-huh.

05:18 10 A. Again, I didn't --

05:18 11 Q. And you have no opinion --

05:18 12 A. -- do a complete study to see that it's always followed,
05:18 13 but I've seen documents.

05:18 14 Q. Understood. No opinion that -- or example of this not
05:18 15 being followed; right?

05:18 16 A. Correct.

05:18 17 Q. Centralized functions like tax and legal, accounting,
05:18 18 treasury, you have no basis to disagree that that's common to
05:18 19 have in large companies?

05:18 20 A. Correct.

05:18 21 Q. General service agreement, you saw that between BPXP and
05:18 22 BPAPC; correct?

05:18 23 A. Yes.

05:18 24 Q. An ordinary course document to you? Something you've
05:18 25 seen --

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05:18 1 A. I've seen that in other cases, yes.

05:18 2 Q. Right. Nothing surprising about having a general services
05:19 3 agreement between two subsidiaries, is there?

05:19 4 A. I was not surprised, no.

05:19 5 Q. That document has been used in some depositions for the
05:19 6 fact that it was signed by the same person on behalf of two
05:19 7 different companies. So I'll pull that up, TREX-11964.19.1.

05:19 8 And you've seen this signature page before today;
05:19 9 correct?

05:19 10 A. Yes.

05:19 11 Q. And Mr. Mottashed signed on behalf of BP America
05:19 12 Production Company and also on behalf of BP Exploration and
05:19 13 Production Company; correct?

05:19 14 A. Yes.

05:19 15 Q. It is not usual for someone who is an officer working on
05:19 16 behalf of two companies to sign an agreement on behalf of both,
05:19 17 is it?

05:19 18 A. I've seen that in other instances.

05:19 19 Q. Not unusual, is it?

05:19 20 A. Well, I haven't studied the extent to which it's usual or
05:19 21 unusual, but I've seen it in other instances.

05:19 22 Q. Right. So based on everything you've seen in all your
05:19 23 work, you would agree that it is not unusual for someone who's
05:19 24 an officer on behalf of two companies to sign an agreement on
05:19 25 behalf of both companies; correct?

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05:20 1 A. To the extent that usual is a value judgment, I won't go
05:20 2 there, but I was not surprised.

05:20 3 Q. Now, in your report and also today, you talked about the
05:20 4 fact that you saw depositions where individuals were not able
05:20 5 to identify the legal entity for whom they were working;
05:20 6 correct?

05:20 7 A. Correct.

05:20 8 Q. Now, are you expressing a value judgment about that?

05:20 9 A. Not a value judgment; only to point out that as they go
05:20 10 about doing their work, knowing the legal structure of the
05:20 11 BP Group is not important. What they need to know is where
05:20 12 they fit in the organizational structure that BP has set up for
05:20 13 managing operations.

05:20 14 Q. Did a BP witness testify in deposition that knowing the
05:20 15 legal structure is not important, the words you just used?

05:20 16 A. No, no, that's -- that's my opinion.

05:20 17 Q. Right. Based on reading depositions, right?

05:21 18 A. Yeah. I've been able to see that this management system
05:21 19 works very well without people knowing the legal structure.

05:21 20 Q. So that's your --

05:21 21 A. Doug Suttles, for instance, is a good example. He was the
05:21 22 chief operating officer of the upstream segment, but he didn't
05:21 23 understand the legal structure of the BP Group.

05:21 24 Q. Your interpretation from reading depositions, that's where
05:21 25 you got your opinion; correct?

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05:21 1 A. And other documents that BP has produced, such as the SFN
05:21 2 guidance.

05:21 3 Q. Is it unusual for individuals to be confused in
05:21 4 multinational companies about the precise name of the legal
05:21 5 entity they're working for?

05:21 6 A. I have not conducted such a study.

05:21 7 Q. Okay. So you are a professor at Michigan Tech; correct?

05:21 8 A. Yes.

05:21 9 Q. Public institution owned by the State of Michigan;
10 correct?

05:21 11 A. Yes.

05:21 12 Q. And at the time of your deposition, you didn't know the
13 exact legal nature of Michigan Tech's legal existence, did you?

05:21 14 A. That's correct.

05:22 15 Q. Was it unusual for you not to know the legal existence of
16 your employer?

05:22 17 A. Well, that would be a good example. I think of myself as
18 working for Michigan Tech. And I don't need to know the legal
19 details of how that's set up. I know who my department chair
20 is and who the dean of my college is. And so that's the
21 organizational structure I work in.

05:22 22 Q. So do you get your paycheck from your department?

05:22 23 A. I get my paycheck -- well, it's all done electronically
24 now. I get it from Michigan Tech.

05:22 25 Q. So you work in a department -- that is, people working on

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05:22 1 the same types of projects as you -- but you don't get your
05:22 2 paycheck from the department; right?

05:22 3 A. That's correct.

05:22 4 Q. And are you working for Michigan Tech right now?

05:22 5 A. Yes. Well, not as I sit in this courtroom.

05:22 6 Q. So who are you working for as you sit in this courtroom?

05:22 7 A. I'm working for my consulting business.

05:23 8 Q. Did you resign your position at Michigan Tech?

05:23 9 A. No. I took leave, and I have someone taking my classes
05:23 10 while I'm out of town.

05:23 11 Q. So you're an employee of two different institutions at the
05:23 12 same time?

05:23 13 A. Yes.

05:23 14 Q. And nothing wrong with that?

05:23 15 A. I hope not.

05:23 16 Q. I'm not the government.

05:23 17 You're not offering any opinions that the activities
05:23 18 that you describe in your expert reports should be considered
05:23 19 in assessing a Clean Water Act penalty; correct?

05:23 20 A. Can you repeat the question, please?

05:23 21 Q. You are not offering any opinion on the question of
05:23 22 whether the Court should consider the activities you describe
05:23 23 in your expert reports in assessing a particular Clean Water
05:23 24 Act penalty; correct?

05:23 25 A. I'm not -- if your question is am I trying to tell the

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05:23 1 judge how he should rule, I'm not doing that, no.

05:23 2 Q. You're not offering any opinion that there should be
05:24 3 different defendants in this case?

05:24 4 A. I have -- that sounds like a legal opinion, and I have no
05:24 5 such opinion.

05:24 6 Q. Okay. And I just asked you about the question of whether
05:24 7 it might be inappropriate for someone to wear two hats at the
05:24 8 same time. We can agree there's nothing inappropriate of
05:24 9 wearing two hats at the same time as long as it's clear as to
05:24 10 which hat you're wearing when you're doing a particular
05:24 11 activity; fair?

05:24 12 A. Again, appropriateness is something that suggests a value
05:24 13 judgment. And what I've tried to do is document, where I can
05:24 14 ascertain that fact, what hat a person is wearing when he or
05:24 15 she is engaged in a certain activity.

05:24 16 Q. Well, let me just get a little more specific, and then I
05:24 17 can wrap this up.

05:24 18 This is still on the topic of your assessment of the
05:24 19 knowledge of employees whose depositions you read, okay?

05:24 20 That's the topic. I want to talk about James Dupree. We've
05:25 21 mentioned him earlier. He was the chairman of the BPXP and the
05:25 22 head of GoM from 2010 to 2013; right?

05:25 23 A. Yes.

05:25 24 Q. And you don't opine that he was not acting in a role as a
05:25 25 BPXP officer when he was working on GoM assets in 2010 and

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05:25 1 2011; correct?

05:25 2 A. Well, I'm not sure what that would mean because of what I
05:25 3 understand of the delegations of authority in the BP management
05:25 4 system. When he was working as the SPU leader, he received his
05:25 5 delegation of authority from Andrew Inglis in 2010. And so
05:25 6 when he was managing the SPU, he was doing so as part of the
05:25 7 segment.

05:25 8 Q. Are you opining that Mr. Dupree was not acting in a role
05:25 9 as a BXP officer when he was working on GoM assets in 2010 and
05:26 10 2011?

05:26 11 A. I have seen no documentation that would indicate that that
05:26 12 was the case.

05:26 13 Q. No -- to indicate that he was not, in fact -- we have so
05:26 14 many negatives there, let me try it one more time.

05:26 15 A. I haven't seen documentation that would indicate that he
05:26 16 was acting as a BXP official. So, for instance, I am a
05:26 17 professor at Michigan Tech, but I'm not wearing my Michigan
05:26 18 Tech hat here today.

05:26 19 Q. If we can go to your deposition, Professor Quivik,
05:26 20 page 142, line 7 to 10. 142, line 7 to 10.

05:26 21 A simple question, Professor Quivik: Were you asked
05:26 22 this question and did you give this answer under oath about
05:26 23 90 days ago?

05:26 24 A. Yes.

05:26 25 Q. "QUESTION: You are not going to be opining that he was

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05:26 1 not" --

05:26 2 This is Mr. Dupree --

05:27 3 "QUESTION: -- "acting in a role as a BXP officer in
05:27 4 working on GoM assets in 2010 and 2011?"

05:27 5 "ANSWER: That's correct."

05:27 6 Were you asked that question and did you give that
05:27 7 answer?

05:27 8 A. Yes, I did.

05:27 9 Q. Okay. Now, in your second report, you made a statement
05:27 10 about Mr. Dupree, and I'd like to pull that up.

05:27 11 MR. REGAN: If we go to TREG-13235.11. So if we
05:27 12 could go to page 12. I think it's .11 of that report. There
05:27 13 we go.

05:27 14 Sorry, .13. Thank you. And, actually, Donny,
05:27 15 can we just get the whole paragraph there. Let's just go to
05:27 16 the native document. There we go.

05:27 17 BY MR. REGAN:

05:27 18 Q. Now, this is a paragraph where you talk about Mr. Dupree.
05:27 19 You see his name at the top?

05:27 20 A. Yes.

05:27 21 Q. And you mention in about four lines down at the time of
05:27 22 his deposition what his title was; correct?

05:27 23 A. Yes.

05:28 24 Q. Yes. And then you say, "When describing the management
05:28 25 organization for the Gulf of Mexico, which included assets held

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05:28 1 by BPXP, he did not mention BPXP as part of the organization,
05:28 2 nor did he mention that he was an officer of BPXP."

05:28 3 That's your commentary on his deposition; right?

05:28 4 A. Correct.

05:28 5 Q. And then down five more lines, you say, "As with Neil
05:28 6 Shaw, Dupree's lack of awareness of BPXP's role in the Gulf is
05:28 7 not surprising." And you continue; right?

05:28 8 A. Yes.

05:28 9 Q. That's what you wrote; right?

05:28 10 A. Yes.

05:28 11 Q. Your statement of his lack of awareness, are you getting
05:28 12 that from somewhere other than the deposition that was taken of
05:28 13 Mr. Dupree?

05:28 14 A. No. I think that that's probably poorly worded.

05:28 15 Q. And, in fact, Professor Quivik, Mr. Dupree was never even
05:28 16 asked the question at his deposition about BPXP; correct?

05:29 17 A. I don't recall that at all.

05:29 18 Q. Do you recall at your deposition saying:

05:29 19 "ANSWER: He was not asked, but what I'm describing
05:29 20 is that it was not on his mind that he was performing that
05:29 21 role."

05:29 22 A. I do recall saying that, and that's the sort of cumbersome
05:29 23 statement that I --

05:29 24 Q. Right. So as an industrial archeologist using your
05:29 25 historical method, you have read a deposition of a witness and

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05:29 1 determined what was his mind because he did not give an answer
05:29 2 to a question he was not asked?

05:29 3 A. No, I have not determined what was on his mind.

05:29 4 Q. That's exactly what you told us in your deposition.

05:29 5 A. Yes, and as I indicated, that was the cumbersome language
05:29 6 that did not convey what I --

05:29 7 Q. You can agree with me that it would not be appropriate for
05:29 8 you to rest opinions on non-answers to non-questions?

05:29 9 A. Correct.

05:29 10 MR. REGAN: Nothing further.

05:29 11 THE COURT: Redirect?

05:29 12 MR. GLADSTEIN: Just one, Your Honor.

05:30 13 REDIRECT EXAMINATION

05:30 14 BY MR. GLADSTEIN:

05:30 15 Q. Based on the information you have reviewed, does the
05:30 16 BP Group charge BXP for the time spent by all employees of
05:30 17 other BP Group entities on Gulf of Mexico business?

05:30 18 A. BP has documented that the time for quite a number of
05:30 19 people has been charged to BXP, but it has not been able to
05:30 20 document that the time was charged for a number of people and,
05:30 21 for instance, that would include Kevin Lacy, Dave Rainey, I
05:30 22 believe, Doug Suttles, Bob Dudley.

05:31 23 MR. GLADSTEIN: Thank you. No further questions,
05:31 24 Your Honor.

05:31 25 THE COURT: All right. Thank you, sir.

05:31 1 Your next witness is Mr. Ratner? Is it
05:31 2 Dr. Ratner?

05:31 3 **MS. HIMMELHOCH:** Mister, Your Honor, and he is our
05:31 4 last live witness. And --

05:31 5 **THE COURT:** He's going to be a while, I imagine?

05:31 6 **MS. HIMMELHOCH:** He's going to be a while, much
05:31 7 longer than the half hour we have left in the day.

05:31 8 **THE COURT:** Okay. All right. So it makes sense just
05:31 9 to break now and come back in the morning. How long do you
05:31 10 anticipate his direct will be?

05:31 11 **MS. HIMMELHOCH:** I believe it's close to two hours.
05:31 12 He's our longest witness because he's covering both companies.
05:31 13 Close to three. I apologize. Three hours.

05:31 14 **THE COURT:** Remind me, what's the nature of his
05:31 15 testimony?

05:31 16 **MS. HIMMELHOCH:** He is the forensic accountant who
05:31 17 will be speaking to the question of the economic impact of the
05:31 18 penalty on the violator and one or two other issues related to
05:31 19 Anadarko.

05:31 20 **THE COURT:** Okay. So --

05:31 21 **MS. HIMMELHOCH:** For both companies.

05:31 22 **THE COURT:** So I assume we can expect about half a
05:31 23 day tomorrow, it sounds like, huh?

05:31 24 **MR. REGAN:** It sounds like half a day for direct,
05:32 25 so --

05:32 1 THE COURT: No, she said two hours.

05:32 2 MS. HIMMELHOCH: No, I -- I was corrected to three.

05:32 3 I apologize --

05:32 4 THE COURT: Three hours for direct?

05:32 5 MS. HIMMELHOCH: Yes, Your Honor. We will try to be
05:32 6 as efficient as --

05:32 7 THE COURT: Who's going -- who's going to do the
05:32 8 cross?

05:32 9 MR. REGAN: For BP, I am, Your Honor.

05:32 10 MS. KIRBY: And for Anadarko.

05:32 11 THE COURT: I think you need to reassess your direct
05:32 12 testimony tonight. Three hours sounds --

05:32 13 MS. HIMMELHOCH: We will take a very close look,
05:32 14 Your Honor.

05:32 15 THE COURT: You may put the jury to sleep.

05:32 16 MS. HIMMELHOCH: We recognize the jury of one's
05:32 17 advice. I think you will note from our presentation, we've
05:32 18 tried to be as efficient as possible. We will evaluate again
05:32 19 tonight.

05:32 20 THE COURT: Okay. All right. We'll recess now.
05:32 21 Anybody have anything else before we recess?

05:32 22 All right. We'll see everybody back at 8:00 in
05:32 23 the morning.

05:33 24 (WHEREUPON, the proceedings were concluded.)

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1 *****

2 CERTIFICATE

3 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
4 for the United States District Court, Eastern District of
5 Louisiana, do hereby certify that the foregoing is a true and
6 correct transcript, to the best of my ability and
7 understanding, from the record of the proceedings in the
8 above-entitled and numbered matter.

9
10
11 *s/Jodi Simcox, RMR, FCRR*
12 Jodi Simcox, RMR, FCRR
13 Official Court Reporter
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<p>big [2] 875/22 953/15</p> <p>bigger [2] 833/20 833/24</p> <p>billion [7] 815/10 824/3 868/18 949/16 952/5 952/10 953/12</p> <p>billions [6] 834/13 834/13 890/6 952/24 953/5 953/8</p> <p>Bingham [1] 809/18</p> <p>bit [11] 816/20 824/7 826/16 827/11 834/23 842/18 844/20 850/1 863/21 899/4 963/22</p> <p>blanks [2] 855/4 855/5</p> <p>blown [1] 875/24</p> <p>blowout [10] 872/17 879/25 886/18 886/21 886/22 907/20 912/8 917/2 921/25 922/12</p> <p>board [48] 916/24 921/22 922/2 922/3 922/10 922/14 924/11 926/1 926/7 929/2 929/7 929/9 929/12 929/16 929/22 930/10 930/11 930/19 934/4 935/20 937/6 943/22 944/17 944/18 944/22 944/23 945/5 945/6 945/16 946/1 946/10 946/23 946/24 946/25 947/11 947/25 949/6 957/18 957/19 958/23 959/8 959/11 959/14 960/3 960/9 960/15 961/4 961/16</p> <p>boards [4] 911/17 912/2 945/11 945/18</p> <p>Bob [1] 975/22</p> <p>Bockius [1] 809/22</p> <p>BOP [2] 887/9 887/25</p> <p>both [18] 816/12 816/24 817/2 817/3 817/11 826/4 840/19 845/20 848/21 852/23 862/10 902/21 902/24 902/24 967/16 967/25 976/12 976/21</p> <p>bottom [8] 829/1 829/1 830/1 830/2 849/12 876/13 896/9 947/7</p> <p>Box [2] 808/12 808/17</p> <p>BP [110] 807/10 809/2 812/10 898/9 905/11 905/13 907/15 907/16 909/6 909/6 909/6 909/22 911/10 911/12 911/22 912/7 914/17 914/18 915/25 916/3 916/17 916/23 916/24 917/3 917/5 918/5 918/8 919/13 919/16 919/16 919/24 920/5 920/9 920/24 921/3 921/11 921/22 922/1 922/2 922/4 922/10 922/14 922/14 923/1 923/3 923/17 924/8 924/16 924/22 925/10 925/12 926/6 926/18 928/9 928/12 928/13 928/15 932/4 932/9 932/11 932/15 932/16 932/19 932/20 932/23 933/12 933/13 933/17 934/21 934/25 935/4 935/7 935/24 936/1 936/9 941/9 941/16 941/19 942/25 945/5 945/14 950/19 950/21 951/1 951/10 952/9 952/11 952/20 952/22 952/23 953/1 953/18 956/1 960/23 963/2 963/9 965/2 965/14 967/11 967/12 968/11 968/12 968/14 968/23 969/1 972/3 975/16 975/17 975/18 977/9</p> <p>BP America [1] 932/23</p> <p>BP Group [25] 920/9 921/3 921/11 923/3 923/17 924/22 933/12 934/21 934/25 935/4 935/7 935/24 936/1 941/9 941/16 941/19 951/1 953/18 963/2</p>
<p>B</p> <p>Bachelor's [1] 936/18</p> <p>back [16] 860/10 860/13 862/16 866/8 869/6 901/4 910/13 910/25 926/11 928/2 931/20 945/20 957/7 961/14 976/9 977/22</p> <p>background [6] 814/12 816/21 905/16 936/15 937/18 937/20</p> <p>backwards [1] 854/23</p> <p>backwards-looking [1] 854/23</p> <p>bad [5] 827/5 836/15 836/19 849/10 850/11</p> <p>balance [1] 834/16</p> <p>balancing [2] 856/12 856/13</p> <p>bank [1] 936/3</p> <p>BARBIER [3] 807/19 864/21 891/5</p> <p>Barbier's [1] 939/9</p> <p>base [3] 882/18 912/9 912/10</p> <p>based [11] 824/14 830/17 835/1 851/22 855/25 870/21 900/15 960/10 967/22 968/17 975/15</p> <p>bases [14] 912/12 915/8 916/9 916/15 916/16 917/6 921/15 922/19 924/2 924/24 928/2 928/18 931/20 933/3</p> <p>basically [2] 831/25 850/20</p> <p>basis [37] 850/22 850/24 850/25 855/2 917/8 918/4 918/8 918/17 919/5 919/10 919/15 921/17 921/22 922/1 922/21 922/25 923/1 923/4 923/21 924/20 925/1 925/5 925/6 925/10 928/4 928/9 928/20 929/2 931/22 932/2 932/3 933/2 933/5 933/9 933/10 947/18 966/18</p> <p>bat [1] 892/2</p> <p>be [142] 812/6 818/4 819/15 820/13 820/19 821/2 821/21 822/3 825/5 825/10 825/11 825/20 828/19 828/20 829/22 831/7 831/17 834/5 834/19 835/6 835/8 839/4 842/13 847/4 849/10 850/11 851/13 852/2 852/10 852/17 852/20 852/25 853/24 854/10 854/17 855/2 855/19 856/5 856/13 856/13 856/14 862/8 864/10 864/19 864/20 864/21 864/25 865/6 865/7 865/25 866/9 866/14 866/22 867/4 867/5 867/7 868/18 868/19 869/2 869/9 869/13 869/16 870/13 870/16 870/21 871/9 871/10 871/21 872/5 872/9 874/25 877/2 877/18 879/5 879/6 879/8 879/8 879/9 879/18 880/12 880/19 885/8 887/4 887/18 888/4 889/7 895/13 902/4 903/22 904/3 904/3 907/6 908/25 911/20 913/7 913/14 914/23 918/25 919/22 920/24 921/10 931/11 939/21 939/24 940/14 942/15 944/12 944/17 944/20 944/22 944/22 944/24 945/8 946/1 946/8 946/11 947/23 947/23 948/1 954/9 955/22 957/12 957/18 960/20 961/3 962/2 962/7 962/17</p>	<p>964/14 969/3 969/17 970/18 971/2 971/7 972/25 975/7 976/5 976/6 976/10 976/17 977/5 977/18</p> <p>bears [1] 894/5</p> <p>became [1] 833/8</p> <p>because [74] 820/18 825/4 825/5 830/25 832/11 834/14 834/15 835/16 836/2 839/4 839/19 840/1 841/21 842/13 842/16 843/13 844/3 844/24 846/3 849/6 849/22 850/8 850/18 850/18 850/25 852/16 854/23 858/7 858/11 864/9 865/8 866/16 867/5 868/21 869/25 870/13 872/18 872/21 873/1 873/23 876/11 877/8 879/5 880/3 880/13 880/17 882/21 883/11 884/8 885/3 887/5 888/11 890/10 892/21 893/1 894/5 894/6 894/12 896/13 896/20 900/16 901/19 908/25 913/16 918/14 918/25 931/5 947/23 959/11 960/19 962/3 972/2 975/1 976/12</p> <p>becomes [2] 856/11 902/2</p> <p>becoming [4] 838/4 848/8 900/21 963/23</p> <p>been [50] 812/19 814/25 815/10 815/12 816/15 818/22 818/25 821/5 821/6 833/3 835/1 844/24 845/18 858/10 859/11 859/22 862/22 862/25 863/4 863/7 863/15 865/6 865/10 865/14 866/6 871/7 877/21 889/2 894/25 898/23 904/22 905/5 905/25 907/13 907/23 910/25 926/13 937/9 937/10 938/2 938/6 940/23 956/10 959/15 960/13 961/10 967/5 968/18 975/19 975/19</p> <p>before [38] 807/19 812/8 813/2 814/24 815/6 816/13 816/19 859/22 864/13 867/20 868/8 869/23 869/23 871/9 871/19 871/22 875/17 880/18 892/22 895/10 895/19 897/1 900/11 917/12 924/13 929/4 929/10 929/17 937/20 949/1 958/10 958/15 958/22 963/13 963/19 963/23 967/8 977/21</p> <p>began [3] 930/4 938/7 938/9</p> <p>begin [2] 858/22 877/25</p> <p>beginning [2] 838/17 869/3</p> <p>behalf [18] 936/9 952/1 954/10 954/17 954/20 954/21 955/3 955/14 957/2 957/4 958/1 967/6 967/11 967/12 967/16 967/16 967/24 967/25</p> <p>behavior [3] 820/5 856/6 856/7</p> <p>behind [1] 823/10</p> <p>being [23] 826/12 827/20 828/12 833/15 834/20 836/14 837/24 843/14 849/8 850/23 855/18 863/23 866/20 870/2 875/21 885/16 894/19 926/15 953/19 954/11 954/14 957/9 966/15</p> <p>belief [2] 828/24 838/18</p> <p>believe [21] 820/8 844/17 855/16 865/3 881/21 883/16 884/25 911/19 913/7 913/20 914/9 918/2 939/25 940/18 940/18 943/7 947/5 961/8 965/15 975/22 976/11</p> <p>believed [1] 909/9</p> <p>belongs [1] 920/20</p> <p>below [1] 878/19</p> <p>bench [1] 818/4</p> <p>beneficial [2] 856/16 862/9</p> <p>benefit [2] 840/18 848/20</p> <p>Berkeley [1] 815/4</p> <p>besides [1] 890/13</p> <p>best [16] 827/23 827/24 828/21 831/3 838/5 856/15 865/4 865/12 865/14 865/16 866/21 939/16 958/15 958/17</p>	<p>960/7 978/6</p> <p>better [5] 825/12 844/12 848/17 915/1 963/10</p> <p>between [22] 817/6 825/7 825/10 865/9 867/16 876/4 890/1 891/17 892/4 894/13 900/20 901/16 903/3 907/25 924/8 928/9 934/20 934/24 935/3 941/8 966/21 967/3</p> <p>beyond [2] 899/25 901/3</p> <p>BHP [1] 840/18</p> <p>big [2] 875/22 953/15</p> <p>bigger [2] 833/20 833/24</p> <p>billion [7] 815/10 824/3 868/18 949/16 952/5 952/10 953/12</p> <p>billions [6] 834/13 834/13 890/6 952/24 953/5 953/8</p> <p>Bingham [1] 809/18</p> <p>bit [11] 816/20 824/7 826/16 827/11 834/23 842/18 844/20 850/1 863/21 899/4 963/22</p> <p>blanks [2] 855/4 855/5</p> <p>blown [1] 875/24</p> <p>blowout [10] 872/17 879/25 886/18 886/21 886/22 907/20 912/8 917/2 921/25 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