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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
CIVIL

Docket No. MDL-2179
Section "J"
New Orleans, LA
Friday, January 23, 2015

THIS DOCUMENT RELATES TO:

UNITED STATES OF AMERICA

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

V.

BP EXPLORATION & PRODUCTION,
INC., ET AL

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

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I N D E X

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WITNESSES FOR THE GOVERNMENT:

PAGE/LINE:

IAN RATNER

Direct Examination by Mr. Casey

986/4

Cross-Examination by Ms. Kirby

1087/22

P R O C E E D I N G S

(FRIDAY, JANUARY 23, 2015)

(MORNING SESSION)

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5 (OPEN COURT.)

6 THE COURT: Good morning, everyone. Before we start, let
7 me just announce the times again. Looks like the USA is going to
8 come in a little under their allotted time here in this case. USA
9 has 11 hours, 24 minutes; and BP Anadarko have used 11 hours,
10 33 minutes, almost equal time. Okay.

11 MS. KARIS: Good morning, your Honor. Hariklia Karis for
12 BP.

13 At this time we would like to offer the exhibits used with
14 Captain VanHaverbeke and with Dr. Rice.

15 THE COURT: Okay. Any objections?

16 MR. ROBERS: No objection from the U.S.

17 THE COURT: All right. Without objection, those are
18 admitted.

19 MS. KARIS: Thank you.

20 MR. ROBERS: Your Honor, Brandon Robers for the United
21 States. We have several sets of exhibits to offer.

22 THE COURT: Go ahead.

23 MR. ROBERS: First, I have a list of two sets of penalty
24 phase stipulations that the parties have reached that are on a thumb
25 drive. The first set of stipulations is Record Document 13725,

08:04:24 1 which constitutes the stipulations and/or related to any other
08:04:27 2 penalties for the same incident factor.

08:04:30 3 The second set of stipulations is Record Document 13808,
08:04:33 4 which constitute the stipulated facts concerning Anadarko's history
08:04:37 5 of prior violations. The United States would move these
08:04:40 6 stipulations into evidence.

08:04:41 7 THE COURT: All right. Any objection to those?

08:04:43 8 MR. BROCK: No, your Honor.

08:04:44 9 MS. KIRBY: No.

08:04:45 10 THE COURT: Without objection, those are admitted.

08:04:47 11 MR. ROBERS: In addition, a second folder on the same
08:04:50 12 thumb drive, we have TREX 233876, TREX 233864, TREX 233863 and
08:04:58 13 TREX 022394. These are four documents that are the guilty pleas
08:05:03 14 entered with respect to four incidents that the United States
08:05:06 15 submits is relevant to either the prior violations of BP or other
08:05:10 16 factors as justice may require. These documents are offered into
08:05:14 17 evidence consistent with the Court's order found at Record Document
08:05:16 18 13867, which provides the U.S. may admit into evidence the factual
08:05:21 19 basis for the guilty pleas from each prior incident.

08:05:24 20 THE COURT: All right. Any objection?

08:05:25 21 MR. BROCK: No objection.

08:05:26 22 THE COURT: Without objection those are admitted.

08:05:31 23 MR. ROBERS: The United States will also offer into
08:05:34 24 evidence the exhibits associated with the testimony of Drs. Quivik,
08:05:39 25 Rice, and Captain VanHaverbeke.

08:05:42 1 THE COURT: Any objection?

08:05:44 2 MR. BROCK: None other than subject to the statements we
08:05:47 3 made about Dr. Quivik yesterday.

08:05:49 4 THE COURT: Okay. With that understanding, we'll admit
08:05:52 5 those.

08:05:53 6 MR. ROBERS: The United States also offers into evidence
08:05:56 7 exhibits associated with the testimony of Dr. Mason.

08:06:00 8 THE COURT: Any objection?

08:06:01 9 MS. KIRBY: Your Honor, I have a partial objection to
08:06:03 10 Exhibit 13318 in connection with my motion to strike yesterday,
08:06:07 11 specifically 13318.36 through 39 and the associated references at .4
08:06:15 12 and .46.

08:06:17 13 THE COURT: Why don't we do this. I am not prepared to
08:06:21 14 rule on that now, but why don't we admit them subject to that
08:06:25 15 objection. And if each side on that wants to give me a three-page
08:06:30 16 letter/brief by Monday I'll try to rule on it then.

08:06:34 17 MS. KIRBY: Will do, your Honor.

08:06:36 18 THE COURT: All right.

08:06:39 19 MR. ROBERS: That's all for the United States, your Honor.

08:06:41 20 THE COURT: All right. Any other preliminary matters?

08:06:44 21 MR. BROCK: No, sir.

08:06:45 22 THE COURT: All right. Government can call its next
08:06:48 23 witness.

08:07:16 24 MR. CASEY: Your Honor, Patrick Casey for the United
08:07:19 25 States. The United States calls Mr. Ian Ratner.

08:07:23 1 THE COURT: Okay.

08:07:41 2 (WHEREUPON, IAN RATNER, WAS AFFIRMED AND TESTIFIED AS FOLLOWS:)

08:07:41 3 DIRECT EXAMINATION

08:07:41 4 BY MR. CASEY:

08:07:57 5 Q. Good morning. Would you please state your name for the record?

08:07:59 6 A. Yes. Ian Ratner, I-A-N, R-A-T-N-E-R.

08:08:07 7 THE COURT: Before you get started, just for the record,
08:08:09 8 again, there's a motion to exclude Mr. Ratner's testimony. I've
08:08:16 9 read the motion and the oppositions and I am going to deny the
08:08:22 10 motion, again with the understanding, of course, that the parties
08:08:29 11 may object to any particular questions or area as we go along.
08:08:34 12 Okay.

08:08:34 13 All right. Go ahead.

08:08:35 14 MR. CASEY: Thank you, your Honor.

08:08:36 15 Your Honor, the United States submitted to the Court
08:08:39 16 Mr. Ratner's original expert reports, including his resumé. Since
08:08:44 17 neither the defendants have challenged Mr. Ratner's expert
08:08:48 18 qualifications in any pretrial motions, and in order to save some
08:08:52 19 time in light of your comments last night, the United States offers
08:08:55 20 Mr. Ratner as an expert in forensic accounting, financial analysis,
08:09:00 21 and business valuations.

08:09:03 22 THE COURT: And his CV is attached to his original report?

08:09:08 23 MR. CASEY: To his original report.

08:09:10 24 THE WITNESS: Yes, your Honor.

08:09:10 25 THE COURT: Any further question on qualification beyond

08:09:12 1 the motion THAT you have filed?

08:09:14 2 MR. REGAN: No, your Honor, I'll just handle it on cross
08:09:16 3 examination.

08:09:17 4 THE COURT: Okay. Very well. He is accepted.

08:09:19 5 MR. CASEY: Thank you, your Honor.

08:09:20 6 BY MR. CASEY:

08:09:21 7 Q. Mr. Ratner, what were you asked to do in this case?

08:09:25 8 A. I was asked to examine the economic impact of a Clean Water Act
08:09:29 9 penalty on the violators. And also to consider their ability to pay
08:09:34 10 the penalty.

08:09:38 11 THE COURT: Are those two different questions?

08:09:40 12 THE WITNESS: I think that's kind of together.

08:09:42 13 THE COURT: Okay.

08:09:45 14 BY MR. CASEY:

08:09:46 15 Q. Did you analyze any opinions by the defendants?

08:09:49 16 A. Yes. I was also asked to analyze an expert report prepared on
08:09:55 17 behalf of BPXP by BPXP.

08:10:01 18 Q. Did you write any expert reports in this case?

08:10:03 19 A. Yes, I did.

08:10:05 20 Q. And how many reports did you write?

08:10:08 21 A. I wrote three reports concerning BPXP and BP. In addition, one
08:10:17 22 supplemental report, and then also one report with regard to
08:10:24 23 Anadarko.

08:10:24 24 Q. Did you submit any erratas to those reports?

08:10:29 25 A. Yes, I did. I submitted an errata for two of the reports for

08:10:36 1 BP and one for Anadarko.

08:10:39 2 Q. Mr. Ratner, do you adopt all of the opinions in your expert
08:10:44 3 reports as clarified or corrected in your erratas as your direct
08:10:49 4 testimony in this case?

08:10:50 5 A. Yes, I do.

08:10:52 6 THE WITNESS: Your Honor, in addition, this week when I
08:10:55 7 was preparing, I noticed on three different sheets there was a
08:11:01 8 rounding error on one spreadsheet; on one of the slides I have
08:11:06 9 today, there's one percentage that is not right; and on another
08:11:10 10 slide, one of the columns of percentages seems to be incorrect. It
08:11:16 11 looks like it pulled from a different file when they were printing
08:11:20 12 it, but I'll point those out when we get to those slides.

08:11:23 13 THE COURT: Okay.

08:11:24 14 BY MR. CASEY:

08:11:24 15 Q. Mr. Ratner, other than those minor errors, do you adopt your
08:11:29 16 reports and erratas as your testimony here today?

08:11:31 17 A. Yes, I do.

08:11:33 18 MR. BROCK: Your Honor, it's very loud out here. I don't
08:11:36 19 know if we can turn it down a little bit.

08:11:38 20 THE COURT: I think you're leaning --

08:11:40 21 MR. BROCK: Just back up a little bit.

08:11:41 22 THE COURT: -- you're a little too close.

08:11:44 23 THE WITNESS: Sorry. Is that better?

08:11:45 24 THE COURT: That's fine.

08:11:46 25 THE WITNESS: Excuse me.

08:11:49 1 MR. BROCK: Even I can hear it.

08:11:51 2 THE COURT: There is a volume control on your -- don't you
08:11:55 3 have a speaker on the table there.

08:11:59 4 MR. REGAN: We don't have one on Mr. Brock.

08:12:03 5 MR. CASEY: I don't think you need to be so close, you'll
08:12:06 6 be fine.

08:12:07 7 THE COURT: There's a happy medium. Usually witnesses are
08:12:09 8 too far away and we have to tell them to get closer. I think if you
08:12:13 9 just sit back in your chair, about right there, you should be okay.

08:12:20 10 MR. CASEY: Could you please show D-32354, which includes
08:12:28 11 TREX 013123R, TREX 013123E, TREX 013125, TREX 013125E, TREX 013127,
08:12:53 12 TREX 233888, TREX 233887R, TREX 233877E.

08:13:06 13 I'm sorry. TREX -- I've been told I made a mistake there,
08:13:11 14 it's TREX 233887E.

08:13:11 15 BY MR. CASEY:

08:13:17 16 Q. Mr. Ratner, what is that?

08:13:19 17 A. Those are the various reports and the cover sheet for the
08:13:23 18 erratas that I issued in this case.

08:13:27 19 Q. Have you prepared an introductory demonstrative regarding your
08:13:39 20 testimony for Anadarko Petroleum Corporation?

08:13:42 21 A. Yes, I have.

08:13:43 22 Q. Would you please show D-32300. Would you please explain to the
08:13:50 23 Court what this demonstrative shows?

08:13:52 24 A. Yes. Your Honor, there's a lot of details of my testimony
08:13:57 25 concerning Anadarko, and I thought it would be helpful to have just

08:14:01 1 a quick overview of some of the key considerations. So I put those
08:14:05 2 together on a slide.

08:14:06 3 The first is that Anadarko -- or APC -- is a global public
08:14:11 4 oil and gas exploration company. As of June 30, 2014, they had
08:14:17 5 \$58.4 billion of total assets. The revenues in 2013 were
08:14:26 6 14.6 billion. The revenue -- the revenues -- that was for full year
08:14:32 7 2013. Just for the six months June 30, 2014, they had 10.3 billion
08:14:38 8 of revenue. They have cash on hand as of June 2014 of \$5.4 billion.
08:14:46 9 And between 2009 and the middle of 2014, they paid a billion-two of
08:14:53 10 dividends out.

08:14:54 11 APC admits that they can pay the civil penalty, and they
08:15:00 12 did not put up an expert report to analyze the work or to comment on
08:15:07 13 their economic -- the economic impact of the penalty.

08:15:12 14 That's just a quick overview before we get into the
08:15:14 15 details of my analysis and opinions.

08:15:16 16 Q. Mr. Ratner, what were you retained to do in this case?

08:15:19 17 A. I was retained to examine the economic impact of a Clean Water
08:15:26 18 Act penalty on the violator.

08:15:27 19 Q. Did you prepare a demonstrative of your opinions?

08:15:31 20 A. Yes, I did.

08:15:32 21 Q. Would you please show D-32301. Can you briefly describe your
08:15:42 22 opinions?

08:15:43 23 A. Yes. Your Honor, APC can pay the maximum penalty under the
08:15:47 24 Clean Water Act without causing a long-term negative impact on their
08:15:51 25 ongoing operations. I believe that APC has the financial

08:15:57 1 flexibility to pay the maximum penalty from a variety of sources.

08:16:02 2 Q. Mr. Ratner, can you please tell the Court the basis for your
08:16:06 3 opinions?

08:16:07 4 A. Yes. Your Honor, the bases for my opinion are my review of
08:16:11 5 APC's balance sheets, my review of APC's financial performance
08:16:15 6 reflected in its income statements, its cash flow statements, and
08:16:21 7 its EBITDAX calculations, my review of their projections, and a
08:16:27 8 comparison of those projections to their historical financial
08:16:31 9 results, my review of APC's historical and projected dividend
08:16:36 10 payments, and my review of past transactions that are similar in
08:16:41 11 magnitude to the Clean Water Act -- to the penalty under the Clean
08:16:46 12 Water Act.

08:16:46 13 THE COURT: Wait. You used an acronym, EBITDAX. Explain
08:16:51 14 that to us.

08:16:52 15 THE WITNESS: Yes, your Honor, EBITDAX is an acronym for
08:16:55 16 earnings before interest, taxes, depreciation, and exploration
08:17:00 17 expenses. So it's a little different than the typical EBITDA that
08:17:05 18 you're familiar with.

08:17:07 19 THE COURT: Okay. Thank you.

08:17:13 20 BY MR. CASEY:

08:17:14 21 Q. What was involved -- I lost my place.

08:17:22 22 What procedures or methodologies did you employ in your
08:17:26 23 analysis?

08:17:26 24 A. Essentially, I performed a detailed comprehensive financial
08:17:30 25 analysis of APC.

08:17:32 1 Q. What is involved in a financial analysis?

08:17:34 2 A. Financial analysis is the procedures and tests and process of
08:17:40 3 reviewing, summarizing, synthesizing and deciphering large volumes
08:17:47 4 of information; sometimes complex financial information. So it's a
08:17:50 5 process of analyzing so that you can determine what do the numbers
08:17:54 6 mean.

08:17:55 7 Q. Did you prepare a demonstrative that summarizes the types of
08:17:59 8 procedures that you employed?

08:18:00 9 A. Yes, I did.

08:18:01 10 Q. Would you please show D-32302. Can you briefly describe for
08:18:10 11 the Court your procedures?

08:18:11 12 A. Sure. Your Honor, I collected and reviewed relevant financial
08:18:15 13 information. I summarized the financial statements. I mean,
08:18:19 14 they're voluminous so I summarized them. I reviewed the disclosures
08:18:22 15 and notes to the financial statements for Anadarko so I could
08:18:28 16 familiarize myself with their accounting policies and procedures. I
08:18:32 17 performed a variety of trend analysis. I prepared common-sized
08:18:36 18 financial statements, which is essentially putting the financial
08:18:40 19 statements in percentage terms so that you can compare them without
08:18:42 20 regard to the absolute dollars. I considered relationships between
08:18:47 21 the financial items and also various ratios and ultimately reviewed
08:18:55 22 projections of the financial information that they disclosed and
08:18:59 23 compared those projections to the historical financial results.

08:19:02 24 Q. Now, Mr. Ratner, did you focus on any one year in particular?

08:19:08 25 A. No, I did not. When I performed my financial analysis I

08:19:13 1 reviewed more than one year, I reviewed 2009 through middle of 2014.
08:19:21 2 And the reason is, when you're looking at a company, if you look at
08:19:24 3 one year by itself, you might not really see the trend or the
08:19:29 4 profitability, or there could be an unusual item in that one year.
08:19:32 5 So the whole point of financial analysis is to look at more than one
08:19:35 6 year so that you can understand, you know, kind of what's really
08:19:39 7 happening and the relationships between the financial metrics.

08:19:43 8 Q. Mr. Ratner, can you please describe for the Court the types of
08:19:48 9 materials that you reviewed and relied on?

08:19:53 10 A. Yes. I relied on, of course, the financial statements for the
08:19:57 11 company, various press releases. They had some credit rating agency
08:20:06 12 reports or disclosures. I relied on deposition testimony. I relied
08:20:12 13 on, you know, all of the information that had been disclosed about
08:20:18 14 Anadarko both in this case and that I was able to get through the
08:20:20 15 public, all public domain.

08:20:22 16 Q. How many documents did you review for your financial analysis
08:20:26 17 of Anadarko Petroleum Corporation?

08:20:28 18 A. Something like 1,100 different documents.

08:20:33 19 Q. Are these the typical types of documents and information that
08:20:36 20 experts in forensic accounting would review in a case like this?

08:20:40 21 A. Yes.

08:20:40 22 Q. You mentioned that one of the basis for your opinions was your
08:20:45 23 review of Anadarko's balance sheets. Can you briefly explain what a
08:20:49 24 balance sheet is?

08:20:49 25 A. A balance sheet is a "point in time" document. It's a snapshot

08:20:54 1 of the assets, liabilities, and equity of a company at a point in
08:20:59 2 time.

08:21:00 3 Q. Did you prepare a demonstrative summarizing Anadarko's balance
08:21:04 4 sheets?

08:21:07 5 A. Yes, I did.

08:21:10 6 Q. Would you please show D-32303. Mr. Ratner, what does this
08:21:18 7 show?

08:21:18 8 A. This is a summary of Anadarko's balance sheets from 2009
08:21:25 9 through June 2014. And this is, of course, consolidated. So it's
08:21:34 10 the whole company of APC, and I would just highlight a couple of
08:21:37 11 items, your Honor.

08:21:39 12 If you look at the first line where it says "Cash and Cash
08:21:44 13 Equivalentents," which we've highlighted now in yellow, you can see
08:21:47 14 that the cash balances of the company have grown from 3.5 billion in
08:21:54 15 2009 to 5.3 billion as of June 30, 2014.

08:22:04 16 Another thing you can see, if you look at the financial
08:22:06 17 statement at the "Total Asset" line, you'll see that the total
08:22:10 18 assets of the company have grown, you know, relatively steady from
08:22:14 19 50 billion in 2009 to 58 billion in June 30 -- as of June 30, 2014.

08:22:24 20 Another item -- not specifically to highlight, but another
08:22:29 21 item that you can see on the assets is the relationship between each
08:22:34 22 individual asset and the total assets. So you see it's a very
08:22:37 23 stable, very stable relationship, you know, things are not bouncing
08:22:41 24 around in terms of the assets that the company has.

08:22:45 25 Another item that I think is probably the most important

08:22:50 1 for this spreadsheet is, if you look at the "Total Equity" line --
08:22:56 2 I'm sorry, if you look at the "Total Equity" line which is further
08:23:01 3 down, third line from the bottom, your Honor, you'll notice that the
08:23:07 4 equity is the difference between the book assets and the book
08:23:11 5 liabilities. So that's the equity according to the financial
08:23:15 6 statements.

08:23:16 7 And you'll notice that the equity in the company has
08:23:20 8 remained relatively flat between 19 billion in 2009, 19.9 billion,
08:23:28 9 so about 20 billion in 2009 all the way to 19 billion at June 30,
08:23:36 10 2014.

08:23:37 11 So what's significant about that is that that already
08:23:41 12 accounts for two major, I'll call them "one time items" that the
08:23:47 13 company had to account for as an expenditure or accrue. That was a
08:23:52 14 settlement that they had with BP, when they paid BP almost
08:23:57 15 \$4 billion, and also an accrual of a settlement relating to Tronox
08:24:03 16 litigation, which is a bankruptcy litigation.

08:24:05 17 So the point is, for me, when I'm looking at this balance
08:24:08 18 sheet, the equity of the company has remained flat, notwithstanding
08:24:13 19 that they've accounted for two significant one-off events that add
08:24:19 20 up to about \$9 billion, the payment to BP and the accrual for the
08:24:27 21 Tronox litigation. So it's pretty impressive that the equity of the
08:24:32 22 company has remained flat over those five years, notwithstanding
08:24:35 23 these two unusual very large items.

08:24:40 24 Q. Mr. Ratner, your demonstrative shows that the total equity on
08:24:45 25 June 30th, 2014, was approximately \$19 billion. Is that the market

08:24:52 1 value of Anadarko?

08:24:53 2 A. No. The market value would be the trading value of the equity.
08:24:59 3 So this reflects the book value. Of course, the book value is the
08:25:02 4 difference between the book assets and the book liabilities, but the
08:25:07 5 stock trading is actually the equity that's trading in the company.
08:25:11 6 And the equity is trading at a higher, much higher value than the
08:25:15 7 book equity.

08:25:17 8 Q. Do you know what the market value of Anadarko is?

08:25:22 9 A. It is about \$40 billion as of, you know, recently. When I did
08:25:30 10 my report in June, when we issued our reports in June -- we issued
08:25:34 11 our reports in August, sorry.

08:25:36 12 When we issued our reports in August, as of June, it was
08:25:40 13 55 billion, the equity value, the traded equity. And then, of
08:25:45 14 course, it's gone down, there's a decline in oil prices, the market
08:25:48 15 has gone down a little bit for the stocks. So the stock has been
08:25:53 16 negatively impacted by oil prices, but it's still -- there's still
08:25:58 17 \$40 billion of book equity in this company. So it's a substantial
08:26:02 18 company.

08:26:04 19 Q. Now, Mr. Ratner, you indicated just a moment ago that the
08:26:07 20 company has built up a cash balance of about \$5.4 billion. Is all
08:26:13 21 of that needed for Anadarko's operations?

08:26:17 22 A. No, it's not.

08:26:19 23 Q. How do you know that?

08:26:19 24 A. I know that because they made a presentation, a rating agency
08:26:24 25 presentation, where they indicated that they need about a billion

08:26:27 1 dollars on hand for what would be considered kind of the
08:26:32 2 liquidity -- excuse me, your Honor -- the working capital, the cash
08:26:36 3 portion of the working capital. So, you know, they need to have
08:26:39 4 some cash on hand, but they don't need to have 5.3 billion of cash
08:26:43 5 on hand to run the business. I mean, of course, it gives them more
08:26:47 6 flexibility -- the more cash you have, the more flexibility it gives
08:26:51 7 you, but they disclosed that they don't need all of this cash for
08:26:54 8 operations.

08:26:55 9 Q. Now, based on your review of Anadarko's balance sheets, what
08:26:59 10 conclusions have you reached?

08:27:01 11 A. I mean, it's a stable company. I mean, the relationships are
08:27:06 12 stable. They have a lot of cash on hand. The assets have grown
08:27:10 13 during this time period. And I guess, to me, the most significant
08:27:13 14 was that the equity in the company has remained relatively flat at
08:27:19 15 \$20 billion notwithstanding these two major, major one-off or
08:27:24 16 one-time expenses that would be similar -- you know, there's --
08:27:29 17 bigger in scope than the Clean Water Act penalty, but that's very
08:27:33 18 significant. It's a well managed balance sheet that they've been
08:27:36 19 able to do that.

08:27:37 20 Q. Does Anadarko have any unused lines of credit?

08:27:40 21 A. Yes. In addition to the financial statement, they have a
08:27:44 22 \$5 billion credit facility that is untapped.

08:27:48 23 Q. And how do you know that?

08:27:49 24 A. Again, from the disclosures, the public disclosures of the
08:27:54 25 company.

08:27:54 1 Q. Would you please show D-32304, which includes TREX 23230 -- I'm
08:28:03 2 sorry. TREX 232380, TREX 012793, TREX 012794, TREX 012795, TREX
08:28:14 3 012386, TREX 012387, and TREX 232325.

08:28:23 4 What is that, Mr. Ratner?

08:28:24 5 A. Those are the covers of the SEC financial statements that I
08:28:30 6 relied on for the balance sheets.

08:28:32 7 Q. Mr. Ratner, earlier you testified that one of the basis for
08:28:38 8 your opinions was the financial performance of Anadarko. Where is
08:28:43 9 Anadarko's financial performance reflected?

08:28:45 10 A. Your Honor, the financial performance is reflected in the
08:28:51 11 income statement, the statement of cash flows, and also in the
08:28:55 12 company's EBITDAX calculations.

08:28:58 13 Q. Let's start with the income statements first. Can you briefly
08:29:02 14 explain what an income statement is?

08:29:04 15 A. Sure. The way a balance sheet is a point in time, the income
08:29:08 16 statement is a financial statement that aggregates the results for a
08:29:13 17 period of time. So the balance sheet's a point in time, and the
08:29:16 18 income statement is a period in time. Could be a year, could be six
08:29:19 19 months, could be as quarterly. They are a public company and they
08:29:24 20 report quarterly. So those are the results that are accumulated in
08:29:27 21 that time, revenues, expenses, profits, and such and such.

08:29:31 22 Q. Have you prepared a demonstrative summarizing Anadarko's income
08:29:36 23 statements?

08:29:36 24 A. I have.

08:29:37 25 Q. Would you please show D-32305. Mr. Ratner, what does this

08:29:45 1 demonstrative show?

08:29:46 2 A. So this is a summary of the Anadarko income statements for the
08:29:52 3 period 2009 through June 2014. And, you know, I've added a couple
08:29:58 4 of pieces of additional information here, I guess the first one
08:30:02 5 would be the sales volume.

08:30:04 6 Your Honor, you could just see that that's the -- that's
08:30:08 7 in millions of barrels of oil equivalents. So it shows the company
08:30:12 8 has grown their production, it's oil equivalents because they do
08:30:19 9 more than just oil and that's how they report that growth.

08:30:23 10 And then if you look at -- there's a line called -- that
08:30:28 11 starts off with \$9 billion. You can see that the company's revenues
08:30:32 12 have grown from \$9 billion in 2009 to 14.5 billion for 2013, for the
08:30:42 13 full 12 months. That's the 14581. And then for the six months
08:30:52 14 ending June 30, their revenues were 10.283 billion. That's on the
08:30:58 15 furthest to the right side.

08:31:02 16 The middle is the grouping of the different expenses for
08:31:05 17 the company. You can see the operation expenses, the exploration
08:31:09 18 expenses, the depreciation, such and such. And then you can get
08:31:13 19 down to the operating income line, which, your Honor, you could see
08:31:18 20 the operating income has grown from \$377 million to -- for the six
08:31:26 21 months ending June 30 to \$4.1 or \$4.2 billion. So that's the income
08:31:32 22 of the company.

08:31:34 23 And then we've also calculated what's called the
08:31:37 24 "Operating Cash Flow" on the next line, and you'll see that the cash
08:31:44 25 flows are very significant. The difference, your Honor, between the

08:31:47 1 operating income and the cash flows is that we've added back the
08:31:51 2 non-cash items that are included in the income statement. You've
08:31:55 3 heard of depreciation, well, depreciation is a non-cash expense.
08:31:59 4 There's also some gains on sale that are non-cash, they're
08:32:04 5 accounting entries. So I've added those back just to reflect that
08:32:08 6 the company's operating cash flow is substantial. I mean, it's
08:32:14 7 grown from 3.8 billion to 8.3 billion for 2013.

08:32:21 8 I mean, this is a very successful company.

08:32:25 9 Q. Did you prepare a demonstrative of the Anadarko cash flow
08:32:28 10 statements?

08:32:29 11 A. Yes, I did.

08:32:29 12 Q. Would you please show D-32306. Mr. Ratner, would you please
08:32:37 13 explain what this demonstrative shows?

08:32:40 14 A. Sure. Your Honor, this is another summary taken from their
08:32:43 15 public filings, and it starts off with something called cash
08:32:47 16 provided used in operating activities. And one of the differences
08:32:52 17 between this statement and the one we just looked at is this
08:32:57 18 includes changes in their balance sheet working capital items. So,
08:33:01 19 for example, if they reduce their receivables, that would be a
08:33:07 20 source of cash. So this just includes some changes on the balance
08:33:11 21 sheet as well. And you can see that they have substantial cash from
08:33:16 22 the operating activities ranging from 3.9 billion to 8.8 billion.

08:33:22 23 And then this statement also shows you what they do with
08:33:25 24 that cash. So you'll notice the next line is additions to
08:33:29 25 properties and equipment and dry hole costs, so that would be --

08:33:34 1 some of those expenses end up on the balance sheet, some of those
08:33:39 2 expenditures end up on the balance sheet.

08:33:41 3 You're going to hear a lot today about capital
08:33:44 4 expenditures, both, I suppose, from me and from BP. And this is the
08:33:48 5 additions to the balance sheets, so it's a negative, right, because
08:33:52 6 that's -- you're using your cash.

08:33:54 7 And anyway, this statement has all of the changes in the
08:33:56 8 cash balances, and it includes -- on the bottom, it shows dividends
08:34:02 9 paid, and you can see that the company has paid out dividends every
08:34:06 10 year. And, in fact, the dividends have been increasing over time.

08:34:11 11 Q. Now, are the dividend payments relevant to your analysis?

08:34:15 12 A. Yes. Dividends are, essentially, paid with excess cash,
08:34:20 13 because once you pay a dividend, you don't have that money for
08:34:24 14 operations. So when you're doing an ability-to-pay type analysis,
08:34:28 15 you would look at dividends and distributions and things like that
08:34:32 16 if you're doing an ability-to-pay analysis because those dividends
08:34:36 17 are no longer available to the company's operations or available to
08:34:41 18 pay a penalty. They're not, you know, they're gone from the
08:34:44 19 company. So when you do an ability to pay, you typically look at
08:34:48 20 those types of things.

08:34:50 21 Q. Mr. Ratner, you testified earlier and explained to the Court
08:34:54 22 what EBITDAX was. Did you prepare a demonstrative to summarize what
08:34:59 23 Anadarko's EBITDAX is?

08:35:01 24 A. Yes.

08:35:02 25 Q. Would you please show D-32307, which is -- this is from TREX

08:35:11 1 012386.68. What does this demonstrative show?

08:35:16 2 A. So, your Honor, without reading the whole definition, because
08:35:24 3 the SEC wants to make sure that there's fair disclosure when
08:35:30 4 companies present something other than a balance sheet or income
08:35:33 5 statement, companies have to disclose the definition of these items.
08:35:36 6 So this is the definition that's contained in the financial
08:35:42 7 statements of Anadarko; and basically, it says that the EBITDAX is
08:35:47 8 used to assess the performance of the operating segment. And it
08:35:52 9 analyzes the company's income where they add back taxes, exploration
08:35:59 10 expenses, depreciation, amortization, impairments, interest
08:36:05 11 expenses, and, you know, gains and losses on the sale of
08:36:10 12 derivatives, et cetera.

08:36:11 13 It just gives you a bit of a definition, which is what I
08:36:14 14 shared with you before, that it's essentially the -- like EBITDA,
08:36:18 15 which it sounds that you're familiar with, earnings before interest
08:36:22 16 taxes, depreciation, amortization, and they add back exploration
08:36:26 17 expenses. The reason they add back exploration expenses is because
08:36:29 18 those are expenses that are expensed in the current period that
08:36:34 19 don't relate to current period production. So what they're trying
08:36:37 20 to do is trying to get at the highest level of cash flow or the most
08:36:43 21 discretionary cash flow that the company has to make decisions,
08:36:47 22 because those exploration expenses are for the benefit of future
08:36:50 23 production, right. So this is a measure that they use.

08:36:54 24 It was important to me because if you look to the bottom
08:36:57 25 of the slide it says the purpose, management -- I think it's an

08:37:02 1 important measure, but management does also. "Management believes
08:37:05 2 that presentation of adjusted EBITDAX provides information useful in
08:37:10 3 assessing the company's financial condition and results of
08:37:12 4 operations, and that adjusted EBITDAX is widely accepted as an
08:37:17 5 indicator of the company's ability to incur and service debt, fund
08:37:22 6 capital expenditures, and make distributions to stockholders."

08:37:26 7 So basically, it's important. They say it's important,
08:37:29 8 and this company has phenomenal EBITDAX, and I have a slide to show
08:37:35 9 you that. It's another measure of cash flow. We looked at
08:37:38 10 operating cash, we looked at the cash flow from the statement of
08:37:41 11 cash flows, and then you have EBITDAX. It's just another measure of
08:37:46 12 the company's ongoing cash flows.

08:37:48 13 Q. Now, did you prepare a demonstrative that summarizes Anadarko's
08:37:52 14 EBITDAX?

08:37:52 15 A. I did.

08:37:52 16 Q. Would you please show D-32308. Would you, please, explain to
08:38:00 17 the Court what this demonstrative shows?

08:38:02 18 A. Right. So, your Honor, without going through all of the
08:38:06 19 minutia of the calculation, I would bring us to the last line, which
08:38:10 20 is line 13 on the spreadsheet. It says, "Consolidated adjusted
08:38:17 21 EBITDAX." So this is the reported EBITDAX for the company. And it
08:38:24 22 shows, your Honor, that in addition to the other measures of
08:38:27 23 performance that I've talked about, the company's cash flows have
08:38:32 24 grown from 6 billion to 9 billion in 2013 and --

08:38:40 25 And remember, this is their reported numbers. Their

08:38:43 1 reported cash flow, based on EBITDAX, was 7.1 billion for the six
08:38:49 2 months of June. So this is -- it's a tool to see the most highest
08:38:54 3 level of discretionary cash flow that you can use for debt payments,
08:38:58 4 dividends, capital expenditures. This is giving them their starting
08:39:02 5 point of what they can do.

08:39:04 6 Q. Mr. Ratner, you indicated earlier that one of the basis for
08:39:09 7 your opinions is your review of Anadarko's projections. Did you
08:39:13 8 prepare a demonstrative reflecting Anadarko's projected cash flows?

08:39:17 9 A. Yes, I did.

08:39:18 10 Q. Could you please show D-32309R?

08:39:26 11 MR. CASEY: Your Honor, I will note that this
08:39:29 12 demonstrative has been redacted with the confidential information by
08:39:35 13 Anadarko on projections. So we will not talk about those columns.

08:39:35 14 BY MR. CASEY:

08:39:42 15 Q. Now, Mr. Ratner, what does that demonstrative show?

08:39:45 16 A. Your Honor, this is information that was taken from a rating
08:39:53 17 agency that -- update that the company prepared in May 2014. And it
08:40:02 18 shows that, you know -- I mean, it's redacted, but basically it
08:40:07 19 shows that they reported discretionary cash flow from operations of
08:40:12 20 8 billion in 2013, 8.8 billion was the forecast for 2014, and we saw
08:40:20 21 that they already were well into meeting that. And it shows that
08:40:25 22 they were going to have significant capital expenditures, right. It
08:40:27 23 shows on that line, I guess, four from the bottom, it shows that
08:40:32 24 they were going to spend 8.5 billion and 9.5 billion in capital
08:40:38 25 expenditures.

08:40:38 1 And the projections show -- I guess the forecast shows
08:40:43 2 the dividends were increasing. If you look at the line that says,
08:40:47 3 "Dividends," they're going to 500 million, so they're on pace to pay
08:40:52 4 500 million of dividends in 2014. And ultimately, the projections
08:40:56 5 are redacted, but there was nothing in those projections that was
08:41:01 6 contradictory. I mean, the actual unredacted are in my report, but
08:41:09 7 I don't understand, I am not supposed to speak about them today, I
08:41:12 8 think that was my understanding.

08:41:13 9 THE COURT: Yes.

08:41:13 10 BY MR. CASEY:

08:41:16 11 Q. Now, what do the levels of discretionary cash flow operations
08:41:19 12 mean to you?

08:41:20 13 A. Again, that just shows a lot of flexibility for the company.

08:41:25 14 Q. Would you please show TREX 012393R. Mr. Ratner, what is that?

08:41:34 15 A. That is the rating agency update where that information came
08:41:38 16 from.

08:41:38 17 Q. Now, do you know what oil price was used to prepare the
08:41:45 18 projections that we're discussing?

08:41:47 19 A. Yes.

08:41:49 20 Q. And what were those oil prices?

08:41:52 21 A. Your Honor, I think when that was prepared, it was in the 90s
08:41:57 22 to 100, 94 to \$100 or something was communicated to the company.

08:42:04 23 Q. Now, how do these prices compare with the current prices of
08:42:08 24 oil?

08:42:08 25 A. Well, of course, there -- oil prices are significantly down,

08:42:13 1 you know. Probably half of what they were about six months ago.

08:42:18 2 Q. Now, considering the current oil prices, are Anadarko's
08:42:24 3 projections useful to your analysis?

08:42:27 4 A. Yes.

08:42:27 5 Q. Why?

08:42:28 6 A. Well, I mean, it does give you an order of magnitude analysis
08:42:33 7 and it helps you understand the various drivers. It's not just oil
08:42:38 8 prices. There's production, we've seen the magnitude of CAPEX. All
08:42:42 9 of the E&P companies have already announced that they're cutting
08:42:47 10 CAPEX 25 percent, 20 percent because that's discretionary, right.
08:42:51 11 So you're going to pull back on current projects. I mean,
08:42:55 12 management is going to make those type of decisions, but they're
08:42:59 13 already communicating that to the market that they're going to pull
08:43:02 14 back on capital expenditures and defer some of that as prices are
08:43:06 15 low now.

08:43:07 16 So when you look at those projections, yes, the oil prices
08:43:11 17 impact that, but the projections are still useful in terms of
08:43:15 18 understanding the drivers in the company and also understanding the
08:43:18 19 discretionary cash flow. And there is a lot of variables, right.
08:43:24 20 There's volume of production, there's price, there's operating
08:43:27 21 expenses, there's capital expenditures.

08:43:30 22 There's different drivers that get to the net number, so
08:43:34 23 it's not as if it's a dollar-for-dollar reduction. You know, it's
08:43:38 24 not, like, oh, oil prices are down and it's going to 100 percent
08:43:45 25 affect the net income. There's all kind of drivers. These are

08:43:49 1 large sophisticated companies and this is part of their industry,
08:43:53 2 these swings.

08:43:55 3 Q. Mr. Ratner, very quickly, have you changed your opinions with
08:43:59 4 regard to Anadarko as a result of the current oil prices?

08:44:01 5 A. No.

08:44:02 6 Q. Why?

08:44:03 7 A. Well --

08:44:06 8 MS. KIRBY: I am going to object, your Honor, on the four
08:44:08 9 corners rule.

08:44:10 10 MR. CASEY: Your Honor, I think this was noted in what you
08:44:14 11 had requested in Mr. Ratner's January 6 supplemental report. You
08:44:20 12 asked --

08:44:21 13 THE COURT: It was. Overrule the objection.

08:44:22 14 MS. KIRBY: Your Honor, if I may. That was a supplemental
08:44:25 15 report responding to BXP's expert, not anything that we submitted.

08:44:29 16 THE COURT: Well, the whole idea was -- what was -- repeat
08:44:33 17 the question again, your exact question.

08:44:36 18 MR. CASEY: Your Honor, I had asked him if he changed his
08:44:38 19 opinions with regard to Anadarko as a result of the current oil
08:44:42 20 prices, and he answered, "No" and --

08:44:45 21 THE COURT: I am going to let him answer that. Go ahead.

08:44:48 22 THE WITNESS: No. Because I had some additional updated
08:44:54 23 information even after June, right, when oil prices were going down.
08:44:58 24 And then on January 6th we issued a small update, and I looked at
08:45:03 25 Anadarko's third quarter results because I didn't have those when I

08:45:08 1 did the report in August because that was dated June. So what I
08:45:14 2 identified from looking at the last quarter that's available, right,
08:45:18 3 which was the third quarter, is that their cash balance on hand has
08:45:22 4 grown from the 5.3 billion to 8 billion. And the revenues for the
08:45:29 5 nine months are 15 billion. And, in fact, the revenues for the
08:45:33 6 nine months -- for the three quarters were --

08:45:36 7 MS. KIRBY: Your Honor, I don't believe this is in the
08:45:38 8 supplemental report now.

08:45:40 9 THE COURT: Okay. Look. It seems to me that everybody
08:45:45 10 has raised the issue of the relevancy. The defendants want to take
08:45:50 11 advantage in asking me to assess a penalty of the fact that oil
08:45:53 12 prices have gone down. I think it's only fair to let this witness
08:45:56 13 and other witnesses comment on what, if any, implications I should
08:46:01 14 draw from that, what the consequences of that are.

08:46:04 15 So overrule the objection. Go ahead, sir.

08:46:06 16 THE WITNESS: Basically, I looked at two additional
08:46:08 17 documents and looked deeper into Anadarko. And again, they had a
08:46:15 18 press release about the third quarter results. And again, cash
08:46:19 19 balances were up to \$8 billion, the revenues were strong, the
08:46:24 20 profitability for their cash operations were six-and-a-half for the
08:46:27 21 three quarters.

08:46:28 22 I also looked at an analyst report that I quoted, that I
08:46:36 23 footnoted in the January 6 report. And, you know, that analyst
08:46:43 24 report had a lot of commentary on the company, but it, basically,
08:46:49 25 showed that it was a highly rated, four, five star rating from

08:46:53 1 Morningstar. And frankly, it showed that the stock as undervalued
08:46:57 2 because there had been a decline in stock. It showed the company is
08:47:00 3 undervalued at its current price.

08:47:02 4 So to me, again, prices are down. There's no doubt it's
08:47:05 5 going to affect the capital expenditures for the company. It's
08:47:10 6 going to affect decision making, right, where you need management,
08:47:13 7 you need their models to know what decisions they're going to make.
08:47:16 8 But over the long-term, this is a very successful company. It has a
08:47:21 9 phenomenal balance sheet, and I believe it can weather this. So it
08:47:25 10 hasn't changed my opinion.

08:47:29 11 BY MR. CASEY:

08:47:29 12 Q. Would you please show TREX 233624 and TREX 233874. Mr. Ratner,
08:47:37 13 what are those?

08:47:39 14 A. The document on the left side, your Honor, is the cover sheet
08:47:43 15 of the press release that was -- accompanied the financial results
08:47:49 16 for the three quarters. And the document on the right is a
08:47:54 17 Morningstar analyst report, you know, talking about Anadarko and
08:48:04 18 strengths of the company, et cetera.

08:48:06 19 Q. Mr. Ratner, you mentioned your review of dividends was also a
08:48:10 20 basis for your opinion. Do you have a demonstrative to show what
08:48:12 21 dividends Anadarko has paid over the last few years?

08:48:16 22 A. Yes.

08:48:17 23 Q. Would you please show D-32312. What does this demonstrative
08:48:24 24 show?

08:48:24 25 A. I think we had this demonstrative before, your Honor. It just

08:48:29 1 shows on the "Dividends Paid" line, it shows that the dividends
08:48:34 2 have -- that would be the fourth line from the bottom. It just
08:48:37 3 shows that they paid significant dividends. And, in fact, the
08:48:43 4 dividends have been growing over time from this company.

08:48:47 5 Q. Are those relevant to your opinion?

08:48:49 6 A. Yes.

08:48:49 7 Q. Why?

08:48:52 8 A. I think, as I mentioned before, when you're doing an
08:48:55 9 ability-to-pay type of analysis, you want to look at dividends.

08:48:59 10 Q. You mentioned that another basis for your opinion was similar
08:49:02 11 transactions in the past. What are the transactions you're
08:49:05 12 referring to?

08:49:05 13 A. Yes. Your Honor, I mentioned it in the key considerations that
08:49:10 14 the company has paid a \$4 billion payment to BP in 2011. And
08:49:23 15 also -- it might have been the end of 2010 -- no, 2011, I think.
08:49:28 16 And also, the company has accrued a \$5 billion settlement for
08:49:34 17 something called Tronox, which is a bankruptcy litigation.

08:49:38 18 Q. What does "accrued" mean?

08:49:39 19 A. Accrued means it has not been paid, your Honor, but it is
08:49:43 20 accounted for in the expenses of the company. In other words, they
08:49:48 21 set up the expense and they accrue the liability. So it's
08:49:52 22 reflected --

08:49:52 23 THE COURT: They paid it on their books, so to speak.

08:49:55 24 THE WITNESS: Yes. Yes, your Honor.

08:49:59 25 BY MR. CASEY:

08:50:00 1 Q. What is the significance of these settlements to your analysis?

08:50:03 2 A. Again, they're very significant because they're similar --
08:50:06 3 well, they're bigger than the transaction that I was analyzing, but
08:50:10 4 it shows that the company from 2009 to June 2014 was able to manage
08:50:19 5 either to pay or accrue \$9 billion associated with two transactions
08:50:25 6 that are basically bigger than the maximum penalty, and over that
08:50:29 7 time period, maintained their equity.

08:50:33 8 So in other words, their equity has remained flat.
08:50:36 9 They've been able to manage. Just shows it's a well-managed company
08:50:40 10 and they have a lot of cash. I mean, they have a lot of liquidity.
08:50:44 11 It's very important. I guess it's kind of like the market method.
08:50:48 12 I am looking at a similar transaction and -- similar transactions,
08:50:50 13 and I am saying, "Hey, they were able to manage those transactions
08:50:53 14 and that makes me comfortable that they have the flexibility in the
08:50:57 15 management to do it again."

08:50:59 16 Q. Do you know how Anadarko plans to pay the Tronox settlement
08:51:03 17 very quickly?

08:51:04 18 A. They disclosed that they have the flexibility to use some cash,
08:51:10 19 some borrowing. Of course, that could change, but they have
08:51:13 20 disclosed that they have a couple of ideas of how they would pay it.

08:51:16 21 Q. And how do you know that?

08:51:18 22 A. Again, that was communicated in a presentation.

08:51:20 23 Q. Did you prepare a demonstrative to show how Anadarko plans to
08:51:24 24 pay for the settlement?

08:51:26 25 A. Yeah, I just have a page from that presentation.

08:51:29 1 Q. Would you please show D-32313. What does this demonstrative
08:51:41 2 show?

08:51:41 3 A. Your Honor, it shows -- they're just talking about they have
08:51:44 4 cash on hand of 3.6 -- that they have some domestic cash available.
08:51:52 5 They had 5.9 billion of cash at March 31st. It's just talking about
08:51:57 6 how they might pay it from a mix of cash and from maybe some bridge
08:52:01 7 financing. So they're just talking about how they expect to pay it.
08:52:06 8 And this is when they -- they're expected to pay it near the end of
08:52:11 9 the third quarter of 2013. So they're presenting information about
08:52:16 10 how they think they're going to pay it.

08:52:18 11 Q. Now, earlier today, Mr. Ratner, you indicated that Anadarko has
08:52:23 12 the financial flexibility to pay the maximum penalty from a variety
08:52:27 13 of sources. What do you mean by financial flexibility?

08:52:33 14 A. Right. So, your Honor, these are large companies -- extremely
08:52:37 15 large companies, in the case of BP -- and there's a lot of
08:52:45 16 optionality that they have, right. So what I'm saying is you look
08:52:48 17 at the balance sheet, you look at the income statement and asset
08:52:51 18 base, and they have some flexibility. They can decide to sell some
08:52:54 19 assets, they can use the cash on hand that they don't need, they can
08:52:58 20 defer CAPEX, they can borrow money, they have a line of credit
08:53:02 21 that's available.

08:53:02 22 So I am not making a recommendation or an opinion, I am
08:53:06 23 just saying, "Hey, they have a lot of flexibility," and management
08:53:11 24 will decide at the time what's the best way to do it.

08:53:14 25 Q. Did you determine what sources Anadarko has to pay a penalty?

08:53:22 1 A. Yes, sir. Yes, your Honor -- yes, Mr. Casey.

08:53:25 2 Q. And what are those sources, sir?

08:53:27 3 A. As I mentioned, they could use cash, they could use debt, they
08:53:32 4 could sell some assets. But they have enough cash, so you wouldn't
08:53:36 5 sell assets if you didn't need to. They could raise equity if they
08:53:39 6 decided they wanted to use their cash for something else. There's a
08:53:43 7 lot of choices that they have.

08:53:45 8 Q. Are you making a recommendation on how Anadarko should fund the
08:53:49 9 penalty?

08:53:49 10 A. No.

08:53:51 11 Q. Does Anadarko have the ability to pay the maximum penalty in
08:53:57 12 this case?

08:53:57 13 A. Yes, they do.

08:53:58 14 Q. Would you please show D-32314. And what does that
08:54:07 15 demonstrative reflect?

08:54:07 16 A. Your Honor, it's just their -- it's a response to a request for
08:54:14 17 admissions, I think. And you can see the last paragraph, they
08:54:16 18 basically said the same thing that I am saying in the same kind of
08:54:20 19 concepts, that they admit that as of August 2014, they're capable of
08:54:26 20 paying. And it's interesting they're using the same kind of
08:54:30 21 discussion, using available cash, new or existing credit facilities,
08:54:34 22 loan arrangements, equity or debt offerings, and/or through the sale
08:54:38 23 of assets.

08:54:39 24 Like I said, they have the optionality. They haven't
08:54:43 25 decided -- they may have an exact plan, but they haven't decided.

08:54:48 1 They're confirming what I'm saying.

08:54:50 2 Q. Mr. Ratner, for your testimony today on BXP, have you prepared
08:54:56 3 an introductory demonstrative?

08:54:58 4 A. I have.

08:54:58 5 Q. Would you please show D-32315. What does this demonstrative
08:55:04 6 show?

08:55:05 7 A. Your Honor, in the same way that I highlighted some critical
08:55:13 8 considerations vis-à-vis Anadarko, I tried to do the same thing for
08:55:19 9 BP and BXP because there's a lot of testimony. So I just wanted to
08:55:23 10 put out some of the high points out of the gate, so to speak, your
08:55:32 11 Honor, so that's what this slide is.

08:55:33 12 Q. Would you please explain your considerations for the Court.

08:55:38 13 A. Okay. These are some of the key points that are going to be
08:55:40 14 communicated, as we go through my opinion, that BXP is
08:55:45 15 operationally and financially dependent and an integrated and
08:55:49 16 important part of BP, a global oil and gas business.

08:55:55 17 BXP is integrated. It's an integrated part of the whole.
08:55:59 18 They don't maintain their own cash. As we heard yesterday, they
08:56:03 19 don't have employees, they share employees. And the funds for the
08:56:07 20 spill costs, much of the funds came from BP. So it's an integrated
08:56:13 21 part of the global company of the BP Group.

08:56:16 22 The second high point to consider is that BP, as of 2013,
08:56:24 23 based on 2013 revenues, was the fifth largest company in the world.
08:56:30 24 They had revenues of \$396 billion in 2013. They had \$315 billion of
08:56:39 25 assets on the balance sheet at the end of the second quarter of

08:56:45 1 2014, and they had \$27 billion in cash. When we look at their
08:56:53 2 balance sheet, your Honor, you'll see that BP's balance sheet is
08:56:56 3 better today than it was prior to the spill. It is a big company.

08:57:02 4 BPXP owns hundreds of leases and significant oil reserves
08:57:06 5 in the Gulf of Mexico. Eighty-nine percent of the -- BPXP
08:57:13 6 represents 89 percent of what they call the GoM region, we heard
08:57:18 7 about that yesterday, that's how they manage the E&P business in the
08:57:22 8 Gulf. BP's GoM region accounts for 20 percent of -- approximately,
08:57:28 9 20 percent of BP's global oil production. We look back over the
08:57:31 10 years, so it's clearly an important part of the whole.

08:57:37 11 The GoM region is one of the four key areas in their
08:57:40 12 upstream business. The upstream being the exploration and
08:57:44 13 production. So BPXP is important.

08:57:47 14 The fourth high level consideration that is going to be
08:57:52 15 through the testimony is that, of course, current oil prices are
08:57:56 16 down. We know that, even though they were up two percent yesterday,
08:58:00 17 but they're down. It reflects the historical volatility in the
08:58:06 18 business. BP themselves have disclosed that.

08:58:11 19 BP's expert Mr. Den Uyl's opinions are misleading. One of
08:58:18 20 the thing he does in his update report is assumes the current low
08:58:21 21 price for the next 40 years. So it's just not realistic. There's a
08:58:26 22 lot of volatility.

08:58:28 23 Finally, the last of the fifth kind of key considerations
08:58:32 24 is that BPXP's opinion about their ability to pay is based on a
08:58:40 25 current internal line of credit. And we're going to talk about

08:58:44 1 that. The BPXP's cash flows and costs are based on a group plan
08:58:52 2 template that provides limited information, we never had it in
08:58:56 3 electronic form, and it's redacted.

08:58:58 4 And then, finally, the valuations that Mr. Den Uyl does
08:59:03 5 are based on a third-party document, he does no due diligence on
08:59:07 6 that document, and it does not include all of the assets or unproved
08:59:12 7 reserves or prospect reserves for BPXP. It's a limited third-party
08:59:19 8 analysis, it's a reserve analysis, and it is not a business
08:59:22 9 valuation.

08:59:24 10 And these are some of the high level -- these are some of
08:59:26 11 the high level things that we are going to pass through in the
08:59:31 12 testimony today, these what I've called critical considerations.

08:59:35 13 Q. Mr. Ratner, have you prepared a demonstrative of your expert
08:59:39 14 opinions regarding BPXP and BP?

08:59:42 15 A. Yes.

08:59:43 16 Q. Can you please show D-32316. Mr. Ratner, please tell the Court
08:59:55 17 what your opinions are.

08:59:56 18 A. Yes. BPXP and BP have the ability to pay the maximum Clean
09:00:02 19 Water Act penalty.

09:00:04 20 There will not be a long-term negative economic impact on
09:00:09 21 BPXP or BP related to the payment of the maximum penalty under the
09:00:13 22 Clean Water Act. And that, finally, BP, BPXP have the financial
09:00:19 23 flexibility for the same kinds of reasons we discussed already to
09:00:23 24 fund the maximum penalty.

09:00:26 25 MR. REGAN: Your Honor, I want to interpose an objection

09:00:29 1 to the demonstrative.

09:00:31 2 Matt Regan on behalf of BP. There is no request by the
09:00:34 3 government to have BP pay the Clean Water Act penalty. They are not
09:00:38 4 a defendant in this case.

09:00:39 5 THE COURT: We all know that. BPXP is the only defendant,
09:00:43 6 but the Court's already ruled that in determining the penalty to be
09:00:48 7 imposed on BPXP, the Court may look at BP Group. So we understand
09:00:58 8 that, Mr. Regan.

09:00:59 9 MR. REGAN: Okay. Thank you.

09:01:00 10 THE COURT: Thank you.

09:01:01 11 MR. CASEY: Thank you, your Honor.

09:01:03 12 THE COURT: All right.

09:01:05 13 BY MR. CASEY:

09:01:05 14 Q. Now, did any of BPXP's expert's Mr. Den Uyl's conclusions
09:01:12 15 change any of your opinion?

09:01:13 16 A. No.

09:01:14 17 Q. Did you prepare a demonstrative of the basis for your opinions?

09:01:19 18 A. Yes, I did.

09:01:20 19 Q. Would you please show D-32317. Mr. Ratner, would you, please,
09:01:28 20 very quickly, summarize for the Court the basis for your opinions?

09:01:33 21 A. Yes. Quickly, your Honor. BPXP is operationally and
09:01:39 22 financially intertwined. It's part of the BP Group. Inextricable
09:01:45 23 is a word that I've used in the past. BP is financially strong
09:01:50 24 based on my review. Its balance sheets, its operating results
09:01:54 25 reflected in its income statements and statements of cash flows. BP

09:01:58 1 is strong based on its history of paying dividends and buying back
09:02:02 2 stock. BP is strong based on its projections. It's strong based on
09:02:07 3 my review of its SMOG, which is an acronym for standard measure of
09:02:13 4 oil and gas; and basically, looking at the information about BP's
09:02:18 5 value from the public sources.

09:02:20 6 Another basis for my opinion is that BPXP has significant
09:02:23 7 assets on its balance sheets, has operated profitably in the past.
09:02:29 8 BPXP has paid dividends in the past, so it's been successful enough
09:02:34 9 in the past to pay dividends, substantial dividends.

09:02:39 10 BPXP has significant future cash flows based on the review
09:02:43 11 of the 2013 SMOG, Standard Measure of Oil and Gas, for the Gulf of
09:02:49 12 Mexico region. There is no separate SMOG for BPXP. BPXP is the
09:02:54 13 legal entity that owns the leases and owns the -- some of the
09:03:01 14 operating partnerships in the leases, but the SMOG is prepared at
09:03:06 15 the regional level. So these are the high-level bases for my
09:03:10 16 opinion.

09:03:11 17 Q. Mr. Ratner, what was your overall approach to this matter?

09:03:14 18 A. Again, I prepared a detailed financial analysis of the BP,
09:03:20 19 BPXP, and, you know, reviewed a lot of information.

09:03:25 20 Q. Is this the same type of financial analysis that you did for
09:03:29 21 Anadarko?

09:03:29 22 A. Yes.

09:03:30 23 Q. Did you prepare a demonstrative of the types of tests and
09:03:34 24 procedures you performed as part of your financial analysis?

09:03:37 25 A. Yes.

09:03:38 1 Q. Charles, would you please show 32318. Mr. Ratner, would you
09:03:44 2 please explain the steps and procedures involved in your analysis?

09:03:49 3 A. Your Honor, very similar to what I did for Anadarko in terms of
09:03:53 4 the analysis. A couple of differences, the first bullet being I
09:03:57 5 analyzed the corporate structure of BP, and I'll describe why, but
09:04:01 6 it's a large company. If you don't know what you're looking at --
09:04:04 7 you're getting all of this financials and how it's grouped, and so
09:04:09 8 the first thing I did was I analyzed kind of the corporate
09:04:13 9 structure. I did the same types --- and then I did the same types
09:04:17 10 of analysis that I did for Anadarko I did for BP: I summarized, I
09:04:21 11 collected financial statements, I summarized the financial
09:04:23 12 statements, I reviewed the financial statements, I considered the
09:04:26 13 relationships and the profitability and the trends. You know, same
09:04:29 14 types of things.

09:04:31 15 Q. Now, did you perform the same type of financial analysis for BP
09:04:37 16 and BPXP?

09:04:38 17 A. I did. Although for BPXP, I had to do some additional detailed
09:04:44 18 work that I didn't have to do for BP.

09:04:48 19 So BPXP, they have a general ledger capturing the revenue
09:04:55 20 and expenses, but there had not been any financial statements
09:04:59 21 prepared prior to, I think, first quarter of 2011. So because I was
09:05:04 22 looking at -- I wanted to look at the period from 2009 onward, I had
09:05:10 23 to take the general ledger and create a financial statement for BPXP
09:05:14 24 for 2009 and '10, and, you know, that led to other work. Because I
09:05:20 25 then had to do the same thing for 2011 and '12, '13, so that I knew

09:05:25 1 my groupings were consistent, because they did prepare financial
09:05:28 2 statements in 2011, '12 and '13. So I was able to take that general
09:05:33 3 ledger and compare it to their groupings so that I knew that the
09:05:36 4 work I did on the earlier period was consistent, to make sure that I
09:05:40 5 was comparing apples and apples. So that was quite a bit of
09:05:44 6 detailed work around that.

09:05:47 7 Your Honor, I also analyzed the financing of BPXP and the
09:05:54 8 intercompany lending, so that's a little different. When you're
09:05:57 9 looking at consolidated financial statements, you don't see that,
09:06:00 10 right. The intercompany balances are eliminated when companies are
09:06:05 11 consolidated. But when you're looking at the separate legal
09:06:08 12 entities, you see the financing going on between the group.

09:06:14 13 And that was another area of our review because one of the
09:06:20 14 things that I learned when I looked at the financial -- the
09:06:23 15 corporate structure was, you know, they're all very related and we
09:06:27 16 knew that they were all managed centrally. So we actually unwound
09:06:30 17 that a little bit to examine how everybody is financed.

09:06:37 18 Q. Now, Mr. Ratner, the first procedure you mentioned was
09:06:41 19 analyzing the corporate structure of BP. Why did you do that?

09:06:44 20 A. The primary reason I did that was to understand the business
09:06:49 21 and to understand whose financial information I was looking at.
09:06:54 22 When you get a financial statement, you need to know the corporate
09:07:00 23 structure so you know whose information you're looking at. Am I
09:07:04 24 looking at one of the subs? Am I looking at the parent? And then
09:07:07 25 also, as you get deeper into it, you have to know how the entities

09:07:11 1 are accounted for, how they're grouped.

09:07:14 2 So you really have to start off with a -- you have to
09:07:17 3 start off with the corporate structure so that when you get a
09:07:20 4 document or a financial statement or a summary, you know what you're
09:07:23 5 looking at. Because if not, you don't know how it all connects.

09:07:26 6 Q. What is the size of BP?

09:07:28 7 A. It's, again, it's a large company. They're the fifth largest
09:07:36 8 company in the world in 2013, you know, there's 2,800 different
09:07:41 9 indirect or direct subs. So there's a lot of pieces and that's
09:07:45 10 why -- in this type of situation, understanding the corporate
09:07:48 11 structure is very important because you could easily get mixed up or
09:07:52 12 go down the wrong path if you don't know what you're looking at.

09:07:55 13 Q. Now, what years did your financial analysis cover?

09:08:00 14 A. Our analysis covered the same time period, 2009 through the
09:08:06 15 middle of 2014. For BPXP in certain cases, we only had the first
09:08:12 16 quarter. We only had the March 2014, so we didn't go all the way to
09:08:20 17 June because we didn't have it. But it was basically the same time
09:08:23 18 period, 2009 before the spill to as close as we can get to the time
09:08:27 19 of our report.

09:08:27 20 Q. Now, did you review BP and BPXP business records as part of
09:08:32 21 your analysis?

09:08:32 22 A. Yes, I did.

09:08:33 23 Q. How many documents did you review?

09:08:37 24 A. About 4,000 or so documents were part of the stuff that we
09:08:44 25 collected, that we had from the litigation or collection.

09:08:48 1 Q. Are all of the documents you relied on and reviewed detailed in
09:08:54 2 your report?

09:08:54 3 A. Yes, they are.

09:08:56 4 Q. Did the documents that you reviewed contain the types of
09:09:01 5 information and data that experts performing a forensic financial
09:09:05 6 analysis would review?

09:09:05 7 A. Yes.

09:09:06 8 Q. Now, what led you to your conclusion that BPXP is operationally
09:09:13 9 and financially inextricable from BP?

09:09:17 10 A. Really looking at the corporate structure, the way the
09:09:23 11 companies operated, and the way they were financed. So I think
09:09:27 12 there's three, kind of, high levels that led me to believe they're
09:09:32 13 integrated.

09:09:32 14 Q. What did you learn from your review of the corporate structure
09:09:34 15 of BP?

09:09:35 16 A. High level, your Honor, BP is a public company. That is the
09:09:41 17 reporting entity -- when you read financial statements or anything
09:09:45 18 on the news or media, they're talking about BP.

09:09:48 19 I learned that BPXP is a private company, way down in the
09:09:54 20 corporate structure. It has, you know, two shareholders. I also
09:09:59 21 learned that BPXP, although it's a legal entity, it really,
09:10:06 22 internally, they -- those results when -- it's like, for example,
09:10:10 23 they don't have projections for BPXP; they have projections for the
09:10:13 24 Gulf of Mexico region.

09:10:15 25 So BPXP is definitely a legal entity. It has a set of

09:10:20 1 books and records, but internally it's -- GoM is what you're looking
09:10:25 2 at, the Gulf of Mexico region. So I kind of learned that from
09:10:29 3 looking at the corporate structure.

09:10:30 4 Q. Did you prepare a demonstrative of the corporate structure?

09:10:33 5 A. Yes.

09:10:35 6 Q. Would you please show D-32319. Mr. Ratner, can you very
09:10:44 7 briefly explain to the court what this demonstrative shows?

09:10:47 8 A. Sure. Very quickly, on the left side is the corporate
09:10:53 9 structure prior to 2014. And we can see that the blue entity is BP,
09:11:02 10 PLC, the public company. There's many companies between that and
09:11:05 11 then the lift-off into BP Holdings America, Limited. Then you get
09:11:13 12 down to the beige company called BPA, which is BP America, Inc.

09:11:18 13 Your Honor, BPA does have audited financial statements and
09:11:22 14 is the U.S. taxpayer. So there's a lot of ownership until you get
09:11:26 15 to the U.S. taxpayer. And then below that, you can see through the
09:11:29 16 chain of ownership: BP Corporation North America; BP Company North
09:11:35 17 America; and then the direct parent, BP America Production Company,
09:11:39 18 owns -- in green, we have BPXP, the defendant.

09:11:44 19 You can see that the common stock in BPXP is owned by BP
09:11:50 20 America Production Company, and there's also a preferred shareholder
09:11:53 21 that owned preferred stock, which is BP Products, North America.

09:11:57 22 So on the left side, that's just quickly, that was the
09:12:00 23 corporate structure of the company. And I just highlight two other
09:12:07 24 things for you, your Honor.

09:12:08 25 There's a company called NAFCO, which is -- that I am

09:12:11 1 going to refer to shortly, on the right-hand side of the left chart.
09:12:17 2 And NAFCO stands for North America Funding Company. That's kind of
09:12:23 3 the internal bank. You heard that there's no bank account for BXP.
09:12:27 4 Well, everybody's financed -- NAFCO's kind of the internal banking,
09:12:31 5 banker for these companies.

09:12:33 6 And then there's another internal bank that's not
09:12:36 7 reflected here that's called BPI, which is at the parent level.
09:12:41 8 Which is BP, PLC. And then the two banks interact. So there's a
09:12:46 9 lot of flow of funds moving around, not in a negative way, that's
09:12:52 10 just how it moves around the corporation.

09:12:54 11 The right-hand chart on Chart 3 on the right-hand side of
09:13:00 12 the demonstrative just reflects a small change in ownership that
09:13:04 13 happened in the first quarter of 2014 when the ownership in BXP --
09:13:12 14 if you look at the green -- was distributed one level up. So before
09:13:18 15 it was owned by BP America Production Company, you'll notice the
09:13:22 16 ownership was distributed one level up to BP Company North America,
09:13:26 17 which was before the -- one tier above. So I mean, they sent a
09:13:31 18 letter describing it. It was -- they pushed up the ownership one
09:13:34 19 level. The preferred stockholding stayed the same.

09:13:37 20 So that's just a quick overview of the corporate
09:13:39 21 structure.

09:13:41 22 Q. Would you please show TREX 011963 and TREX 012676. Mr. Ratner,
09:13:50 23 what are those?

09:13:51 24 A. These are the sources for the information that I had on the
09:13:57 25 corporate -- that I developed for the corporate chart that I just

09:14:00 1 shared with you.

09:14:01 2 Q. Mr. Ratner, during your analysis, what did you learn about the
09:14:15 3 operations of BXP?

09:14:17 4 A. Yeah, I mean, I learned that they're integrated. They share
09:14:22 5 employees, you heard about that yesterday. They don't -- BXP
09:14:27 6 doesn't prepare separate projections; the projections were part of
09:14:31 7 this group plan template that we're going to hear about later, which
09:14:35 8 was a BP document. I learned that the financing decisions are made
09:14:38 9 on an integrated basis. I learned that, again, that BXP didn't
09:14:44 10 have separate financial statements. I mean, it had the data but
09:14:49 11 they weren't preparing financial statements.

09:14:54 12 Just, you know, that's general things like that about
09:14:56 13 their operation.

09:14:57 14 Q. Now, what is -- you mentioned financial statements. What is
09:15:01 15 the significance of that?

09:15:02 16 A. I mean, the significance is that without financial statements,
09:15:08 17 nobody would be reviewing them. If you're reviewing the
09:15:12 18 operations -- if you're reviewing the financial performance of a
09:15:14 19 sub, you can't do that by looking at the general ledger. The
09:15:18 20 general ledger in this case has 600 lines or something. It just
09:15:22 21 shows that it is definitely a legal sub. It's an entity.

09:15:28 22 But prior to the spill, they weren't preparing financial
09:15:30 23 statements, so nobody would have been reviewing those financial
09:15:33 24 statements because they weren't being prepared.

09:15:34 25 MR. REGAN: I object and move to strike that answer. That

09:15:37 1 is not in his reports. No issue at all with him describing what he
09:15:40 2 saw in the financial information, what was there, and what his
09:15:43 3 assessment was. But the witness did not disclose and I don't think
09:15:47 4 is free to speculate about how people would react to looking at
09:15:51 5 financial information. It's not his area.

09:15:53 6 THE COURT: Overrule the objection.

09:15:56 7 BY MR. CASEY:

09:15:56 8 Q. Mr. Ratner, how was BXP funded during the period of your
09:16:00 9 review?

09:16:01 10 A. So BXP was funded internally by other BP Group entities during
09:16:11 11 the entire period of my review.

09:16:13 12 Q. What types of funding would we be talking about?

09:16:16 13 A. So they had --

09:16:18 14 Your Honor, they had an internal line of credit that's
09:16:21 15 referred to as an IFA, you're going to see that a lot today. The
09:16:24 16 IFA is an Internal Funding Account. They had that.

09:16:27 17 They also had intercompany borrowings between -- or like a
09:16:32 18 due to/due from, where somebody pays a bill on your behalf and it
09:16:36 19 shows up in your books as a payable to them.

09:16:39 20 And then in 2014, after -- I'm going to review a chart,
09:16:45 21 but after the time of the chart, they also got a \$3.1 billion loan
09:16:51 22 from NAFCO separate from -- NAFCO being the internal bank --
09:16:55 23 separate than the line of credit. So that's kind of the financing.

09:17:01 24 Q. Now, was BP funded with any equity?

09:17:05 25 A. Yes. As we looked at on the corporate chart, the equity was

09:17:11 1 internal, right. They had preferred stock that was internal, the
09:17:14 2 common stock was internal; and then during the period of my review,
09:17:18 3 they got about a \$14 billion equity injection from their then-parent
09:17:25 4 on the corporate chart. Remember, the parent changed. They got an
09:17:29 5 injection from BP, APC at that time.

09:17:33 6 Q. Mr. Ratner, you just mentioned some of the internal lines of
09:17:38 7 credit. I think you mentioned an IFA. Is this debt that BXP
09:17:44 8 received?

09:17:44 9 A. Yes.

09:17:47 10 Q. Mr. Ratner, did you prepare a demonstrative of BXP
09:18:02 11 intercompany transactions?

09:18:03 12 A. Yes, I did.

09:18:06 13 Q. Charles, would you please show 32321. I wonder if you could
09:18:12 14 very quickly explain to the Court what this shows?

09:18:16 15 A. Sure. Your Honor, this is a table from I think it was our
09:18:20 16 Round 1 report describing the financing of BXP. So all of the --
09:18:26 17 on the top of the chart, you see it says "BP, PLC," "BP America," et
09:18:31 18 cetera, all the way down to NAFCO and then other BP Group entities
09:18:36 19 and then "Grand Total." Those are one party to the transaction and
09:18:41 20 then all of these transactions are with BXP. So this is not
09:18:45 21 transactions, these are year-end balances.

09:18:49 22 We analyze transactions as well, but the year-end balance
09:18:52 23 is I think more meaningful in terms of what's happening. Again, I
09:18:57 24 had so many charts, I picked the key -- some of the key things.

09:19:00 25 So the negatives on the chart, your Honor, are amounts

09:19:05 1 that BPXP has borrowed. So if you look at the NAFCO line, the NAFCO
09:19:13 2 column, you will see that at the end of 2010, BPXP, the legal
09:19:23 3 entity, owed NAFCO \$10.9 billion or 10.99, almost 11 million. At
09:19:32 4 the end of 2011, BPXP owed NAFCO still 11.178 billion.

09:19:45 5 And 2012, it's the other direction, okay. They have a
09:19:48 6 positive balance with NAFCO. Well, how did that happen? There was
09:19:52 7 an equity injection from their then-owner and they turned around --
09:20:00 8 so they got in money from their parent and they turned around and
09:20:03 9 paid back their internal bank.

09:20:08 10 Interestingly, the equity investment that came in, the
09:20:11 11 parent got that money from NAFCO also. So I mean, you know, there's
09:20:16 12 a lot of internal transactions that are occurring to finance BPXP.

09:20:22 13 Q. Now, were those loans that you're just discussing with NAFCO,
09:20:29 14 are those subject to an Internal Funding Account?

09:20:31 15 A. Yes.

09:20:32 16 Q. What was the limit on the Internal Funding Account?

09:20:39 17 A. Your Honor, the stated balance of the IFA, the line of credit,
09:20:42 18 was \$5 billion.

09:20:44 19 Q. Did NAFCO lend BPXP more than the Internal Funding Account
09:20:49 20 amount?

09:20:49 21 A. Yes, absolutely. You can see they lent double; they lent them
09:20:55 22 10.9 billion. The line of credit went up to 11 billion but the
09:21:03 23 stated value of the IFA was 5 billion. What makes it --

09:21:05 24 Q. I'm sorry.

09:21:06 25 A. Sorry, Mr. Casey.

09:21:07 1 Q. What is the significance of that?

09:21:09 2 A. I mean, it just shows the practices, that they had a line of
09:21:12 3 credit and they lent them whatever they needed; they lent them more
09:21:16 4 than the stated line of credit.

09:21:17 5 Q. Were the loans to NAFCO repaid?

09:21:21 6 A. Yes.

09:21:21 7 Q. Was a valuation prepared -- and how were those loans repaid?

09:21:32 8 A. As I said, the loans were repaid, your Honor, through BPXP
09:21:40 9 getting a \$14 billion equity injection from their then-parent, BP,
09:21:48 10 APC. So BP, APC makes an investment in BPXP and then BPXP turned
09:21:53 11 around and paid it back to NAFCO.

09:21:55 12 Q. Now, was a valuation prepared when that equity injection
09:21:59 13 occurred?

09:21:59 14 A. No, there was no valuation.

09:22:01 15 Q. Did BPXP have any other lending facilities with NAFCO?

09:22:06 16 A. The only other lending facility was the one I mentioned. In
09:22:11 17 2014, they took out, they made -- they still have a \$5 billion IFA
09:22:16 18 and they also owe NAFCO 3.1 billion.

09:22:24 19 Q. Are there any other transactions other than the loans with
09:22:29 20 NAFCO reflected on this demonstrative?

09:22:31 21 A. Yes, there are.

09:22:32 22 Q. Would you explain those, please.

09:22:34 23 A. Sure. If you look at -- in particular, if you look at the
09:22:38 24 company, the column called "BP Company North America, Inc.," this
09:22:47 25 represents internal due to/due from transactions. So this is

09:22:54 1 basically like internal financing from a related party. So this is
09:22:59 2 where somebody either paid a bill on your behalf -- so if you pay a
09:23:05 3 bill on my behalf I owe you the money, right? So the bookkeeping
09:23:08 4 shows up as a due to or due from.

09:23:11 5 So over this time period, BPXP had a payable to BP Company
09:23:19 6 North America of, you know, 9.5 billion at the end of 2010, 9.4
09:23:25 7 billion at the end of 2011, 9.2 billion at the end of 2012.

09:23:30 8 Ultimately, they also used some of that equity, you know,
09:23:35 9 to repay that. But that's -- they're getting financed from another
09:23:42 10 related party. So it's not only the NAFCO loans, they're also
09:23:46 11 having others fund them internally.

09:23:49 12 Q. Mr. Ratner, were there any loan agreements governing the
09:23:56 13 intercompany transactions that are reflected in the column under BP
09:24:02 14 North America that you were just discussing?

09:24:04 15 A. Not that I've seen.

09:24:05 16 Q. Did you find in your analysis or identify any instances where
09:24:12 17 BPXP was not able to obtain the financing it needed from the BP
09:24:17 18 Group?

09:24:17 19 A. No.

09:24:18 20 Q. Did BPXP ever obtain any outside debt or outside equity during
09:24:23 21 the period of your analysis?

09:24:24 22 A. Never. Excuse me, never.

09:24:29 23 Q. Did you review and analyze the available due diligence loan and
09:24:33 24 investment documents related to the IFA's and other cash advances?

09:24:37 25 A. Yes.

09:24:38 1 Q. What conclusions did you reach from your analysis?

09:24:42 2 A. I mean, there's one document related to the original IFA;
09:24:47 3 there's one document related to the \$3.1 billion loan; there's one
09:24:55 4 internal SFN related to the injection. There's no pledge of assets,
09:25:00 5 there's no IRR calculation, there's no valuation. They're internal
09:25:05 6 documents.

09:25:05 7 One thing that I noted when I was reviewing it, your
09:25:10 8 Honor, is that when the \$14 billion equity injection was made by the
09:25:16 9 parent, in the SFN it says, you know, "No board approval required."
09:25:22 10 I mean, that's a big transaction. So just it shows it's all
09:25:26 11 integrated. The decisions are made centrally in terms of the
09:25:31 12 financing.

09:25:33 13 Q. Charles, would you please show TREX 011968. Mr. Ratner, what
09:25:47 14 is that?

09:25:48 15 A. That's the general ledger detail that we use to prepare the
09:25:54 16 financing summaries.

09:25:56 17 Q. Now, Mr. Ratner, how did you determine that BP was a
09:26:01 18 financially strong company?

09:26:02 19 A. I did a financial analysis of BP.

09:26:05 20 Q. How did you do that?

09:26:07 21 A. Well, I analyzed and considered the financial information for
09:26:14 22 BP, and I performed a variety of procedures and tests, you know,
09:26:17 23 similar to what I did for APC or Anadarko.

09:26:21 24 Q. Why did you do that?

09:26:24 25 A. I did that because it was important to me to understand the

09:26:31 1 strength of the parent. Because they're integrated companies, you
09:26:37 2 can't perform a financial analysis in a vacuum. The whole point of
09:26:40 3 financial analysis is to look at the relationships between these
09:26:43 4 parties. How could you analyze a sub that is financially dependent
09:26:48 5 on their parent and not assess the strength of the parent?

09:26:51 6 Because if the parent is a source of internal debt, you
09:26:56 7 need to know, Can the parent make a loan? If the parent is a source
09:26:59 8 of equity, you need to know, Can the parent make an investment? So,
09:27:03 9 to me, analyzing BP was a critical part of the financial analysis.

09:27:08 10 Q. Did you prepare a demonstrative to summarize BP's financial
09:27:13 11 strength and why it was proven?

09:27:18 12 A. Yes.

09:27:19 13 Q. Charles, would you please show D-32323. Can you please
09:27:23 14 summarize, Mr. Ratner, your analysis?

09:27:25 15 A. Right. This is the types of things, your Honor, I just
09:27:28 16 mentioned. They're highly integrated companies, so assessing the
09:27:32 17 strength of BP as a whole was critical to the analysis. In the
09:27:36 18 past, BP or other BP entities have been lenders or equity investors.
09:27:42 19 So you have to analyze the BP Group to determine if that's a
09:27:46 20 possibility, right.

09:27:49 21 To the extent that these internal sources are going to be
09:27:52 22 a possible source of capital for a Clean Water Act payment, you have
09:27:56 23 to analyze the consolidated entity.

09:28:00 24 Basically investing and capital decisions are made on a
09:28:04 25 group basis. Even in their most recent disclosure about prices,

09:28:09 1 they talked about the group decision making. So you have to do the
09:28:12 2 analysis in a consistent fashion. These are basics of financial
09:28:15 3 analysis.

09:28:16 4 And then finally, I didn't think it was appropriate to
09:28:20 5 look at BXP in a vacuum without the parent. I mean, that's just --
09:28:25 6 to me, these are basics of financial analysis that you have to look
09:28:29 7 at the whole. You can't look at the right hand without the left
09:28:32 8 hand.

09:28:32 9 Q. Now, did you analyze BP's balance sheets?

09:28:36 10 A. I did.

09:28:36 11 Q. Did you prepare a demonstrative summarizing BP's balance
09:28:39 12 sheets?

09:28:40 13 A. I did.

09:28:41 14 Q. Charles, please show D-32324. What does this demonstrative
09:28:47 15 show, Mr. Ratner?

09:28:48 16 A. So quickly, your Honor, this shows a similar type of analysis
09:28:53 17 that I performed on Anadarko, and I'll highlight the first line,
09:28:58 18 "Cash and Cash Equivalents." That's the first line on Table 8 and
09:29:04 19 it shows that the cash balances of the company have grown from
09:29:10 20 8.3 billion before the spill to 27 billion as of the end of the
09:29:16 21 second quarter, as of June. So the cash on hand, right, which gives
09:29:22 22 them flexibility, et cetera, the cash on hand has grown, your Honor,
09:29:26 23 from 8.3 billion in 2009 to 27 billion at the end of the second
09:29:32 24 quarter.

09:29:32 25 And just parenthetically, because we have the updated

09:29:36 1 information because of the oil price situation, they have 30 billion
09:29:39 2 on hand at the end of the third quarter of 2014.

09:29:44 3 The second item that I would highlight for you, your
09:29:47 4 Honor, is the total assets of the company. The total assets of the
09:29:51 5 integrated group have grown from 235 billion, which is the line in
09:29:57 6 yellow now called "Total Assets." The total assets of the company
09:30:02 7 have grown, your Honor, from 235 -- well, 236 billion before the
09:30:08 8 spill to 315 billion as of June 2014.

09:30:17 9 And maybe I'll take us down all the way down to the
09:30:21 10 equity. The book's equity, where it says "Total Equity," second
09:30:24 11 line from the bottom, the total equity of the company has grown from
09:30:30 12 102 billion prior to the spill to 133 billion at the end of June
09:30:37 13 2014. So that's the book equity.

09:30:41 14 And there are three very important ratios that are on this chart,
09:30:48 15 because when we review these ratios, you'll see that the balance
09:30:51 16 sheet of BP the parent is better today -- or better as of June 2014,
09:30:56 17 than it was prior to the spill

09:30:58 18 If you look at the working capital line, you'll see the net working
09:31:03 19 capital, which is basically the current assets less the current
09:31:08 20 liabilities. The working capital is grown from 8 billion to
09:31:12 21 28 billion. The net debt is essentially flat, slightly down. And
09:31:20 22 the net debt is -- yes, the cash has gone up, but they borrowed more
09:31:26 23 money over time. So what's really important is the net debt.

09:31:30 24 The net debt is the cash less the finance debt. And if you look at
09:31:35 25 that line, your Honor, called "Net Debt," you'll see that the net

09:31:38 1 debt of the company was 26 billion in 2009, and you can see that the
09:31:44 2 net debt was, is 24.4 billion at the end of the second quarter.

09:31:52 3 So, yeah, they have more cash and of course BP will point
09:31:56 4 out that, yeah, they borrowed more money. But what's really
09:31:59 5 important is the net, right.

09:32:00 6 And then finally the item that really shows you the strength of the
09:32:04 7 company in their own analysis is the gearing ratio. In the U.S., we
09:32:10 8 might refer to that as the "leverage," right. The leverage would be
09:32:14 9 the debt-to-equity or debt-to-total capitalization. They refer to
09:32:18 10 it as a "gearing ratio."

09:32:20 11 And if you'll notice, the last line, the ratio of net
09:32:24 12 debt to debt plus equity, that's their definition of the gearing
09:32:30 13 ratio, which, again, is the leverage of the company. And you'll see
09:32:33 14 that the leverage of the company has gone down from 20.4 percent in
09:32:40 15 2009 to 15.5 percent as of the second quarter of 2014. And in their
09:32:49 16 own disclosures, the low gearing ratio or the low leverage gives
09:32:54 17 them the strength and flexibility to manage this low price oil
09:32:58 18 environment.

09:32:58 19 So the takeaway from this slide is that,
09:33:01 20 notwithstanding -- I mean, it's monumental. Notwithstanding the
09:33:08 21 30-odd billion that they spent, the numbers are huge, this company
09:33:11 22 is -- actually, has a better balance sheet today than it had before
09:33:15 23 the spill.

09:33:17 24 The net debt is basically flat. The leverage is down.
09:33:22 25 The assets are up. The book equity is up. So this presents an

09:33:26 1 incredibly strong picture on a consolidated basis.

09:33:32 2 Q. Now, Mr. Ratner, what is the total equity reflected on the
09:33:38 3 balance sheets as of June 30th, 2014?

09:33:41 4 A. The total equity on the balance sheet is 130, almost 133
09:33:48 5 billion as of the end of June 2014. Midyear 2014.

09:33:54 6 Q. And what do you mean when you say, "book equity"?

09:33:57 7 A. Well, this is the difference between the assets and the
09:34:01 8 liabilities recorded on their books. So this is not the trading
09:34:04 9 value of the company. This is the book value of the company.

09:34:08 10 Q. What was the market value of BP's equity on June 30th, 2014?

09:34:13 11 A. Well, when we did our report, the market value of the equity
09:34:17 12 was about, I think, 160 billion. So the book equity was 132
09:34:24 13 billion, and the market equity was, I think, about 160 billion.

09:34:28 14 Q. What is it today?

09:34:29 15 A. Of course it's down. Today the book equity -- the market
09:34:34 16 equity, your Honor, is about 110 -- sorry, about 119 billion. So
09:34:42 17 it's actually trading at less than the book value. So stock has
09:34:47 18 been -- the stock was up yesterday a little bit, but the stock has
09:34:50 19 declined in relation to the decline in oil prices.

09:34:54 20 One of the things that Mr. Den Uyl analyzed was the
09:34:58 21 spider index, one of the indexes of share price for companies. Of
09:35:03 22 course, the oil price stocks are down, right, with this very drastic
09:35:10 23 drop in oil prices, but the company still has 132 billion of book
09:35:16 24 equity and the market equity is still 120 or \$119 billion. It's
09:35:21 25 still a huge company. And of course, it's gone down since my

09:35:25 1 report.

09:35:25 2 Q. Charles, would you please show TRES 233104 and TRES 232340.

09:35:33 3 Mr. Ratner, what are those?

09:35:35 4 A. Those are the source for the financial statements that I relied
09:35:38 5 on to analyze the balance sheets.

09:35:40 6 Q. Now, what else did you look at to determine if BP was
09:35:46 7 financially strong?

09:35:46 8 A. I looked at the performance on the income statement and the
09:35:50 9 statement of cash flows.

09:35:51 10 Q. Have you prepared a demonstrative summarizing BP's income
09:35:54 11 statements?

09:35:55 12 A. Yes.

09:35:55 13 Q. Charles, please show 32326. What does this demonstrative show,
09:36:03 14 Mr. Ratner?

09:36:03 15 A. Again, just very high level, your Honor. It shows the size of
09:36:08 16 the company in revenues. If you look at the total revenue line,
09:36:12 17 you'll see that the revenues for the company have grown from 246
09:36:19 18 billion in 2009 to 396 billion in 2013. So they've had -- of
09:36:26 19 course, oil prices have grown during that time, but the company's
09:36:29 20 revenues have grown substantially.

09:36:32 21 Another thing that's very important about this slide is
09:36:37 22 the -- if you look at the line called "Profit or Loss Before
09:36:44 23 Interest and Taxation" -- up from there a little bit -- "Profit or
09:36:51 24 Loss Before Interest and Taxation," your Honor, you'll see that the
09:36:54 25 company, but for the year of the spill, but for 2010, this company

09:37:00 1 has been extremely profitable every year.

09:37:03 2 In 2009, they had profits before interest and taxes of
09:37:13 3 \$26 billion. And then, after the spill, they returned to
09:37:16 4 profitability. They made money. They made 30-plus billion in 2011.
09:37:21 5 They made 19 billion in 2012; 30 billion in 2013.

09:37:28 6 So, yeah, the year of the spill they lost money, and since
09:37:34 7 then, they have made a lot of money.

09:37:36 8 If you look to the final line on this chart, you can see
09:37:39 9 the net income, which would be after tax and after interest. The
09:37:45 10 net income you'll see that the year of the spill they lost 3.6
09:37:50 11 billion, but all of the other years they made substantial profits.
09:37:56 12 So this is a high level of the income statement.

09:37:59 13 Q. Does this reflect all of BP's activities?

09:38:01 14 A. Yes.

09:38:02 15 Q. You stated you also analyzed BP's statement of cash flows. Did
09:38:08 16 you prepare a demonstrative summarizing BP's statement of cash
09:38:12 17 flows?

09:38:12 18 A. Yes.

09:38:12 19 Q. Would you please show 32327. Mr. Ratner, is this one of the
09:38:20 20 tables containing the error you referenced earlier?

09:38:23 21 A. Yes, it is. Your Honor, on the right-hand side of this chart,
09:38:29 22 there is a percentage called 17.1 percent, and that should be 8.7.

09:38:39 23 THE COURT: Where is that again?

09:38:41 24 THE WITNESS: On the right-hand chart. You see on the
09:38:43 25 right-hand where it says, "Percent of Revenue"? In the middle of

09:38:47 1 the chart there's a percentage. It says, "as a percent of revenue,"
09:38:51 2 and we're just analyzing the cash from operations as a percent of
09:38:57 3 revenue. And the last percentage, it says 17.1, that should be 8.7.

09:39:08 4 BY MR. CASEY:

09:39:08 5 Q. Does that affect your opinions in any way, Mr. Ratner?

09:39:11 6 A. No.

09:39:11 7 Q. What does this demonstrative show?

09:39:13 8 A. This is the company's audited cash flow statements. So this is
09:39:18 9 a very important statement because it shows what happens to the cash
09:39:24 10 as opposed to the income statement that includes things, like,
09:39:27 11 depreciation, and non-cash charges.

09:39:31 12 So I think the important -- some of the important lines on
09:39:35 13 this chart would be the net cash provided by operating activities.
09:39:39 14 So, your Honor, that shows the cash that the company has earning
09:39:46 15 from its operating activities before it spends money on capital
09:39:50 16 expenditures.

09:39:50 17 So this is what it's making. We're adding back
09:39:54 18 depreciation because it's a non-cash item, and making adjustments
09:39:59 19 for the balance sheet changes. And you can see that the cash from
09:40:03 20 operations has grown from 27 billion in 2009 -- well, hadn't grown,
09:40:10 21 but basically 27 billion in 2009; 13 billion in 2010, et cetera; 20
09:40:19 22 billion in 2012; 21 billion in 2013. And they were on pace and they
09:40:25 23 have disclosed that they were going to have 30 billion of cash from
09:40:29 24 operations in 2014.

09:40:33 25 And then, another thing that's important on this chart

09:40:36 1 would be the capital expenditures. That's called investing
09:40:43 2 activity. So, your Honor, this shows -- we've heard a lot about
09:40:48 3 capital expenditures, right, they keep investing in their business.
09:40:51 4 And at the BPXP level, that's two or three billion a year, right.
09:40:55 5 So this shows you the money that they continue to invest in their
09:40:59 6 balance sheet by either acquiring assets, investing in rigs,
09:41:03 7 investing in wells, all of the stuff that it takes to run, to build
09:41:06 8 the company.

09:41:08 9 So again, capital expenditures are -- some of those
09:41:12 10 capital expenditures are discretionary because you can decide what
09:41:16 11 to do now, later, you know, what the plan is. And, of course, we
09:41:20 12 don't have their capital expenditure plan, but that's the concept.

09:41:25 13 The company analyzes something called discretionary cash
09:41:28 14 flow, and they're analyzing their cash flow before capital
09:41:32 15 expenditures. So we'll see another chart where they present an
09:41:38 16 expected discretionary cash flow before capital expenditures.
09:41:42 17 That's how they manage, what are we going to make and then how are
09:41:45 18 we going to spend it. And this chart is a great chart that explains
09:41:50 19 that. And, again, this is coming out right of the audited financial
09:41:53 20 statements.

09:41:53 21 The other lines that are important on this chart, to me,
09:41:57 22 are -- you can see further down the chart, your Honor, and you'll
09:42:06 23 see under "Financing Activities" it shows share issuance and
09:42:09 24 dividend -- and total dividends. This is important because this
09:42:14 25 shows that notwithstanding the spill and the cost of the spill and

09:42:19 1 the possibility of a Clean Water Act payment, in 2013 and 2014, they
09:42:26 2 bought back seven-and-a-half billion dollars of stock. They've gone
09:42:31 3 into the market and bought back stock from shareholders. That's a
09:42:35 4 use of cash, right.

09:42:37 5 And earlier, I said, "Dividends and distributions,
09:42:40 6 dividends distributions, share buyback," those are transactions with
09:42:44 7 your shareholders that, once that money is out, it's not available
09:42:47 8 for operations.

09:42:50 9 Q. Mr. -- I'm sorry, I didn't mean to interrupt you.

09:42:54 10 A. The line below that is a dividend line. And you can see the
09:42:58 11 dividends that they've paid are substantial. Just since the spill,
09:43:04 12 they paid something like \$19 billion of dividends out of this
09:43:10 13 company, and that's reflected here.

09:43:11 14 Q. Now, Mr. Ratner, what is the total amount of dividends BP has
09:43:17 15 distributed to its shareholders since the spill?

09:43:19 16 A. Right, I think I mentioned that. Since the spill, they've
09:43:22 17 distributed something like \$19 billion of dividends.

09:43:26 18 Q. And you also mentioned stock buybacks. Why is that relevant to
09:43:30 19 your analysis?

09:43:31 20 A. Because, again, that's cash that's left the company, and it's
09:43:34 21 been used to buy back stock, so it's not available for operations,
09:43:39 22 it's not available to pay penalties, it's just not available to
09:43:41 23 them. They would have to go borrow that.

09:43:44 24 Q. Now, what does your analysis of BP's dividends, share buybacks,
09:43:49 25 and cash balances indicate?

09:43:51 1 A. So, your Honor, if you look at the last line on this chart, it
09:43:55 2 shows that the cash balances have also increased by about 19 billion
09:44:01 3 since the spill. The cash balance was about the same at the end of
09:44:04 4 the first quarter of 2010, so I am using the 8.3 billion. The cash
09:44:10 5 balances have increased by 19 billion. They've paid out 19 billion
09:44:15 6 of dividends and they've bought back seven-and-a-half billion
09:44:20 7 dollars of stock.

09:44:22 8 So since the spill they've either grown their cash and
09:44:27 9 spent money with outside -- going out to their shareholders, and
09:44:32 10 that totals about \$45 billion. The 19 billion of dividends, the
09:44:37 11 \$19 billion increase in cash, and the seven-and-a-half billion
09:44:43 12 dollars used to buy back stock.

09:44:45 13 Q. Would you please show TREX 012303A, TREX 233104, and TREX
09:44:57 14 232340. What are those, Mr. Ratner?

09:45:01 15 A. Those are the financial statements which are the source for the
09:45:04 16 cash flows.

09:45:05 17 Q. Did you review BP's cash flow projections?

09:45:14 18 A. Yes.

09:45:14 19 Q. What projections did you have for BP?

09:45:16 20 A. They made -- there was an investor presentation in March of
09:45:26 21 2014, and it contained some future looking -- excuse me, your Honor,
09:45:31 22 it included some future looking statements.

09:45:35 23 Q. Did you prepare a demonstrative reflecting BP's projections?

09:45:40 24 A. Yes.

09:45:40 25 Q. Charles, would you show D-32355. Mr. Ratner, could you,

09:45:52 1 please, very quickly, tell the Court what this demonstrative shows?

09:45:57 2 A. Sure. Your Honor, on the left-hand side of the chart, I have
09:46:02 3 the actual financials for 2009 through 2013 for the same metrics
09:46:09 4 that they projected. And on the right-hand side, I have the
09:46:13 5 information from their investor update in March 2014. And you'll
09:46:19 6 see that they project \$30 billion of cash flow. We estimated the
09:46:27 7 assets sales.

09:46:28 8 They said they were going to sell \$10 billion of assets in
09:46:31 9 the two years, we broke it out into 2014 and 2015, and they
09:46:37 10 disclosed that they're going to have capital expenditures in the
09:46:40 11 same level as the prior years.

09:46:45 12 So this chart gets us down to something called
09:46:48 13 discretionary cash flow before dividends. And based on their own
09:46:53 14 projections, this is an analysis that shows what the discretionary
09:46:57 15 cash flow would look like.

09:46:59 16 Q. Now, Mr. Ratner, another basis for your opinions was the BP
09:47:04 17 SMOG. What is SMOG?

09:47:05 18 A. The SMOG is the standard measure of oil and gas, which is an
09:47:10 19 acronym for an analysis that's required for public reported oil and
09:47:17 20 gas companies.

09:47:23 21 Q. What does that entail?

09:47:25 22 A. So the SMOG analysis includes a net present value of the proved
09:47:30 23 reserves for the company.

09:47:33 24 Q. What was the value of the proved reserves at year-end 2013
09:47:39 25 disclosed in the BP audited financial statements in their SMOG

09:47:44 1 analysis?

09:47:45 2 A. So the discounted value, your Honor, was, like, 126 billion and
09:47:49 3 the undiscounted cash flows were like \$260 billion.

09:47:57 4 Q. And was that the net present value for BP's reserves?

09:48:01 5 A. Just for the proved preserves.

09:48:03 6 Q. When you say, "just proved reserves," what do you mean?

09:48:06 7 A. Well, they have proved reserves, which are reserves that are,
09:48:10 8 you know, quantifiable, and they can quantify the costs of
09:48:16 9 extraction or that they're regulatorily allowed to extract, et
09:48:23 10 cetera.

09:48:23 11 And there's also unproved reserves where they can analyze
09:48:28 12 the quantity, but they either haven't determined cost estimates or
09:48:31 13 it's not regulatorily allowed or it's, you know, they're not
09:48:36 14 extracting.

09:48:38 15 And there's even other classes of reserves which are
09:48:41 16 contingent or prospect where they haven't been able to determine the
09:48:46 17 quantity and haven't been able to determine the cost in getting it.

09:48:50 18 So there's a lot of stuff, a lot of reserves outside of
09:48:54 19 the proved reserves. This is important because there's -- when we
09:48:57 20 get into the BXP discussion, there is no analysis that's been
09:49:01 21 provided that gives us the detail of all of the unproved reserves,
09:49:05 22 so you can't quantify what's out there.

09:49:11 23 Q. Did you prepare a demonstrative to show the relationship
09:49:14 24 between BP proved and unproved researches?

09:49:17 25 A. Yes.

09:49:18 1 Q. Charles, can you please show D-32329. What does this
09:49:26 2 demonstrative show?

09:49:26 3 A. Your Honor, the -- I mentioned the number before 126 billion
09:49:34 4 discounted or 260 billion undiscounted value of proved reserves,
09:49:40 5 that's the yellow. That's the yellow on this chart, which is the
09:49:43 6 proved reserves. By the way, this is something that they disclosed.

09:49:49 7 And the unproved reserves are three times that, because
09:49:54 8 unproved, they know they have them and they can estimate the cost,
09:50:00 9 but they haven't either decided to get it or they're not
09:50:04 10 regulatorily allowed. It's not part of the program yet.

09:50:08 11 THE COURT: Explain something to me because I lost
09:50:11 12 something in translation here. Is this just for one year?

09:50:16 13 THE WITNESS: This is, like, a point in time.

09:50:19 14 THE COURT: But that's 11 billion proved reserve, but you
09:50:23 15 were just talking about 120.

09:50:24 16 THE WITNESS: So this is the quantity, this is --

09:50:28 17 THE COURT: Oh, this is not value, this is barrels.

09:50:30 18 THE WITNESS: Right, barrels of oil equivalent. Excuse
09:50:33 19 me, I'm talking quickly.

09:50:35 20 So the connection, the important connection is the SMOG,
09:50:40 21 standard measure of oil and gas, is a report required by the SEC so
09:50:46 22 that everybody can compare apples to apples. And all of the
09:50:49 23 different companies would prepare it in the same manner. And the
09:50:53 24 SMOG has two things in it, and we're actually going to look at SMOG
09:50:57 25 in a little bit. The SMOG has two things in it: It has the

09:50:59 1 undiscounted cash flow, right, the real dollars, what is it going to
09:51:04 2 look like in the future. And then it also has a discounted cash
09:51:07 3 flow.

09:51:07 4 So the 11 billion in the -- the 11 billion of oil
09:51:13 5 equivalent is about 126 billion in discounted cash flow or net
09:51:22 6 present value, and about 250 or 260 of undiscounted, right, 260 of
09:51:31 7 undiscounted cash flow.

09:51:33 8 So the point of this is that when they present this
09:51:35 9 information to their investors, they're saying, "Hey, we have 11
09:51:39 10 billion of proved reserves that we're working on. And by the way,
09:51:43 11 we have 33 billion of unproved reserves."

09:51:45 12 So why is that important? It's very important because
09:51:47 13 what they're saying is, "Hey, we have a long highway. We have a
09:51:51 14 long track record, a long pathway." If you're analyzing two
09:51:55 15 companies and they both have the same value, the same quantity of
09:51:59 16 proved reserves, wouldn't you rather invest or have a loan or
09:52:03 17 something to a company that has more unproved, because those are
09:52:08 18 part of their resources. So it shows that they have a long track
09:52:12 19 record because it's a depleting resource business, so they always
09:52:17 20 have to be replacing that. So it's very important.

09:52:23 21 BY MR. CASEY:

09:52:24 22 Q. Mr. Ratner, is the projected cash flow from the proved reserves
09:52:28 23 recorded on BP's financial statements?

09:52:29 24 A. No. The assets -- the investment in the assets to get out
09:52:34 25 those proved reserves is, but the cash flows aren't. Those are

09:52:38 1 future cash flows.

09:52:39 2 Q. Charles, could you please show TREX 012432. Mr. Ratner, what
09:52:49 3 is that?

09:52:50 4 A. That is the cover page of the investor update that I pulled
09:52:54 5 that table from and some of that information. It's the same
09:52:59 6 investor update that I pulled the projected cash flows from.

09:53:02 7 Q. Mr. Ratner, was there a SMOG analysis for BPXP?

09:53:08 8 A. Yes -- well, no. No, there's not. There's not a SMOG for BPXP
09:53:12 9 the legal entity. There's a SMOG analysis prepared for the region,
09:53:18 10 for the Gulf of Mexico region.

09:53:20 11 Remember, we were saying that BPXP is a legal entity, but
09:53:26 12 the Gulf of Mexico region is a little bit bigger than BPXP. BPXP
09:53:32 13 owns and co-owns a lot of these leases with other parties, and the
09:53:40 14 Gulf of Mexico region includes certain things that are not included
09:53:43 15 in the BPXP legal entity. But that's how they report it. All of
09:53:49 16 the operating information is at the -- I mean, the two pieces of
09:53:53 17 information that we got on the Gulf of Mexico, the SMOG and the
09:53:57 18 group plan template were at that level. They weren't at the BPXP
09:54:01 19 level.

09:54:01 20 THE COURT: Did you say earlier -- I want to make sure I
09:54:04 21 remember it correctly -- that BPXP owns about 85 percent of what's
09:54:10 22 called the Gulf of Mexico region?

09:54:13 23 THE WITNESS: Eighty-nine percent.

09:54:14 24 THE COURT: Eighty-nine percent, okay. Thank you.

09:54:16 25 THE WITNESS: It's actually a little more complicated than

09:54:18 1 that because it's not like there's one entity that they own the
09:54:22 2 percentage in. So the way they figure out -- when I say,
09:54:25 3 "89 percent," I'm pulling that right out of their financial
09:54:28 4 statement. But that number is based on a calculation of the value
09:54:32 5 of those assets and it changes.

09:54:38 6 BY MR. CASEY:

09:54:38 7 Q. Did you prepare a demonstrative reflecting the SMOG for the BP
09:54:43 8 Gulf of Mexico region?

09:54:44 9 A. Yes.

09:54:44 10 Q. Would you please show TREX 244133. Now, Mr. Ratner, does BPXP
09:55:02 11 refer to the BP Gulf of Mexico SMOG in its internal financial
09:55:06 12 statements?

09:55:07 13 A. Yes.

09:55:07 14 Q. Now, would you please explain what this SMOG shows?

09:55:10 15 A. Okay. So one of the most important backgrounds is that all of
09:55:20 16 these SMOG analysis are only for their proved reserves. So it
09:55:24 17 doesn't include the unproved that they quantify, the 33 billion on
09:55:29 18 that yellow and green chart. And it doesn't include things that are
09:55:34 19 not even quantified yet.

09:55:36 20 When I reviewed the testimony of some of the executives,
09:55:41 21 they also refer to something called "prospect resources" or
09:55:49 22 "contingent resources." So the resources of this company maybe
09:55:54 23 have, like, three categories; you have, like, proved, unproved, and
09:55:57 24 then you have this more, like, contingent asset. This analysis is
09:56:05 25 just for what I call the lowest level, the most certain. This is

09:56:09 1 the proved reserves.

09:56:12 2 So the reason we have this is, this is used to
09:56:16 3 consolidate all of the way up to the SMOG that's reported in the
09:56:21 4 audited financial statements for the parent. So this is like a
09:56:24 5 subset of the bigger SMOG. That's what this is.

09:56:28 6 Q. Okay. Mr. Ratner, would you please explain what this SMOG
09:56:34 7 shows?

09:56:34 8 A. Sure. Your Honor, this SMOG is at December 31, 2013. And if
09:56:41 9 you look to bottom left corner, you'll see a summary. So what the
09:56:48 10 SMOG does is projects out every year based on the assumptions of
09:56:52 11 when they're going to extract, and it has some price assumptions in
09:56:56 12 it, some cost assumptions in it.

09:56:58 13 And the left-hand side is a summary. And what you'll see
09:57:01 14 here is for the Gulf of Mexico region, just on their proved
09:57:06 15 reserves, they're forecasting a gross revenue of \$104 billion over
09:57:13 16 the time life of those reserves. So that's \$100 billion of revenue
09:57:21 17 associated with the Gulf of Mexico reserves that are proved.

09:57:25 18 Further down, you see they're backing out production
09:57:29 19 costs. They're backing out additional production costs for what
09:57:37 20 they're calling development costs. That's for stuff that's proved
09:57:41 21 that's on the plan that is further capital investment for the proved
09:57:46 22 reserves. And you can see that they're getting to a pretax cash
09:57:50 23 flow of \$68 billion for the Gulf of Mexico based on this analysis.

09:57:56 24 And then they take out taxes, and at the end you see
09:58:01 25 there's a post tax cash flow of 45 billion undiscounted. That's

09:58:06 1 just adding up the cash flows. You don't need -- for example, if
09:58:11 2 you were going to pay a penalty over time, you don't discount
09:58:14 3 because you're paying it with real dollars, right. So the first
09:58:19 4 column is the undiscounted cash flow, and the second column, the 24
09:58:24 5 billion, is the discounted value. So the discounting is the concept
09:58:30 6 of time value of money that -- you're shaking your head. You're
09:58:34 7 familiar with that.

09:58:35 8 THE COURT: I think we all know what that means.

09:58:37 9 THE WITNESS: Okay.

09:58:39 10 BY MR. CASEY:

09:58:39 11 Q. Mr. Ratner, let's move along here. Did you prepare a valuation
09:58:43 12 of BPXP?

09:58:43 13 A. No.

09:58:44 14 Q. Why not?

09:58:45 15 A. I didn't have the information to do that. Vis-à-vis BPXP, I
09:58:52 16 had some historical financial statements, a general ledger, I had --
09:58:57 17 I didn't have a forecast for BPXP, all I had was a five-page
09:59:02 18 forecast for the Gulf of Mexico. I didn't have any information
09:59:06 19 about their unproved reserves. I didn't have any information about
09:59:10 20 their prospect reserves. I didn't have their capital expenditure
09:59:15 21 plans into the future. This is a -- I didn't have access to
09:59:19 22 management.

09:59:20 23 This is a major company. Even if you were to accept
09:59:25 24 Mr. Den Uyl's value of 30-odd billion before he starts making his
09:59:31 25 deducts, how can you value a \$30 billion company without their

09:59:35 1 business plan, without access to management, without a detailed
09:59:38 2 capital expenditure plan, without their -- without any information
09:59:43 3 on their unproved reserves and on their contingent reserves. Those
09:59:48 4 items would play into a valuation. And based on the information I
09:59:53 5 had, I couldn't perform a valuation per se of BPXP.

09:59:57 6 THE COURT: That last chart that you had up, can you put
10:00:02 7 it back up? What's the number again? Just make sure the record
10:00:11 8 shows what we're talking about. What's the TREX number on that or
10:00:16 9 the demonstrative number?

10:00:19 10 MR. CASEY: TREX 244133.

10:00:24 11 THE COURT: I just want to make sure I'm clear. These
10:00:28 12 valuations here, these numbers on the left here, this is only --
10:00:32 13 this is not the entire worldwide BP Group, this is just --

10:00:39 14 THE WITNESS: GoM.

10:00:40 15 THE COURT: -- GoM, Gulf of Mexico.

10:00:42 16 THE WITNESS: Right. And again, it's not a business
10:00:44 17 valuation. It's almost like a liquidation analysis. It's what is
10:00:48 18 the present value of just what I know I'm going to deplete. That's
10:00:51 19 not a valuation.

10:00:52 20 THE COURT: I just wanted to make sure I was clear at what
10:00:55 21 I was looking at. Okay. Thank you.

10:00:58 22 BY MR. CASEY:

10:00:59 23 Q. Mr. Ratner, is BPXP important to BP?

10:01:01 24 A. Yes.

10:01:02 25 Q. Did you prepare a demonstrative showing why BPXP is important

10:01:06 1 to BP?

10:01:06 2 A. Yes.

10:01:07 3 Q. Charles, would you please show D-32330. Mr. Ratner, would you
10:01:14 4 please summarize to the Court this information in the demonstrative?

10:01:17 5 A. Yeah. I mean, some of it I've alluded to already. BPXP owns
10:01:22 6 hundreds of leases in the Gulf of Mexico. BPXP has substantial oil
10:01:28 7 reserves in the Gulf of Mexico; some we know about, some we don't.
10:01:33 8 BPXP represents 89 percent of the GoM region. If the GoM region is
10:01:38 9 20 percent of the global production and we're 89 percent of that,
10:01:43 10 then -- when I say "we," I mean BPXP -- BPXP, by default, is
10:01:47 11 important, right, because upstream business is more profitable than
10:01:52 12 the distribution and marketing business, right. Most of the
10:01:57 13 profits, a lot of the profits are earned in the exploration and
10:02:00 14 development.

10:02:00 15 We know BPXP's important because the company discloses
10:02:06 16 that the GoM is one of the four key business regions in their
10:02:10 17 upstream business. BPXP, even though it's a smaller entity, itself
10:02:17 18 has \$18 billion of assets on its balance sheet.

10:02:21 19 And prior to the spill, BPXP had been profitable and paid
10:02:25 20 out dividends. So I think it's a significant -- it's a significant
10:02:29 21 entity. It's part of the integrated picture of the company.

10:02:34 22 Q. Did you perform a financial analysis of BPXP similar to what
10:02:37 23 you did for BP?

10:02:39 24 A. Yes.

10:02:39 25 Q. Did you analyze BPXP's balance sheets?

10:02:45 1 A. I did.

10:02:46 2 Q. Did you prepare a demonstrative summarizing that analysis?

10:02:48 3 A. Yes.

10:02:49 4 Q. Charles, would you please show 32331. Mr. Ratner, is this one
10:02:56 5 of the tables containing the error you mentioned earlier?

10:02:59 6 A. Yes.

10:03:00 7 Q. Would you explain what that error is?

10:03:02 8 A. If you look at December 2011, the percentages, your Honor, are
10:03:09 9 not right. It was pulling from another file. So if you highlight,
10:03:17 10 if you can, highlight 2011 --

10:03:26 11 THE COURT: You can touch the screen to show where you're
10:03:29 12 pointing to. It'll mark it.

10:03:30 13 THE WITNESS: Oh, perfect.

10:03:33 14 2011, those percentages are not right. It was pulling
10:03:36 15 from another file and somehow we missed it and, you know, going from
10:03:41 16 PDF to Excel and then we updated. We've been looking into it -- I
10:03:45 17 just discovered this. It's inexcusable, but that line, those
10:03:50 18 percentages are not right.

10:03:51 19 THE COURT: Just for 2011?

10:03:53 20 THE WITNESS: The numbers are right, the actual numbers
10:03:55 21 are right, just the percentages are not right.

10:04:00 22 BY MR. CASEY:

10:04:00 23 Q. Does that affect any of the substantive numbers in this chart?

10:04:04 24 A. No.

10:04:05 25 Q. Does this error affect your opinions?

10:04:07 1 A. No.

10:04:08 2 Q. And what does this demonstrative show?

10:04:11 3 A. It shows, for example, if you look at the first line where it
10:04:16 4 says "Fixed Assets," yes, BPXP is a smaller entity than BP, of
10:04:22 5 course. It's way down in the corporate structure. But, your Honor,
10:04:27 6 it still has 18 -- at March 2014, it had \$18 billion of fixed
10:04:37 7 assets. So that's the first line.

10:04:41 8 I think I would also highlight for you also the last line,
10:04:45 9 the "Shareholder's Equity" line -- the second-to-last line, sorry.
10:04:49 10 If you look at the last line, of relevance to me was that the
10:04:54 11 equity, the book equity -- again, I think that there's a lot of
10:04:57 12 financial transactions that create this that are -- BPXP is not in
10:05:03 13 charge of the transaction, the equity investment, the lending.

10:05:06 14 But anyways, it is a legal structure and it does have a
10:05:10 15 general ledger. As of March 31, 2014, it had three-and-a-half
10:05:17 16 billion dollars of equity, of book equity, and that accounts for an
10:05:23 17 accrual of three-and-a-half billion associated with the Clean Water
10:05:29 18 Act penalty. So the three-and-a-half billion dollars of whatever
10:05:33 19 happens in this trial is already accounted for in that balance
10:05:39 20 sheet.

10:05:39 21 So they've accrued, as we talked about before, they've
10:05:42 22 already accrued three and a half into that number. So if you back
10:05:45 23 that out, you have 8 -- you have 7 billion of equity. But anyway,
10:05:51 24 it's a smaller balance, obviously a lot less complex. You see
10:05:55 25 there's not much going on in there.

10:05:57 1 Q. Mr. Ratner, on this demonstrative under "Total Assets" for the
10:06:06 2 column indicated March 31st, 2014, it shows approximately 25 billion
10:06:16 3 of assets. Does that include future cash flows?

10:06:19 4 A. No.

10:06:21 5 Q. Charles, would you please call up TREX 011968, TREX 012678,
10:06:29 6 TREX 011965, and TREX 012682. Mr. Ratner, what are these?

10:06:40 7 A. The left-hand side is the general ledger, again, because we had
10:06:43 8 to create the financial statements for the early years. And then
10:06:46 9 you have the financial statements for the 2012, 2013, 2014 and 12
10:06:53 10 had 11 in it, for BPXP.

10:06:58 11 Q. Mr. Ratner, did you review BPXP's income statements?

10:07:02 12 A. Yes.

10:07:02 13 Q. What do they reflect?

10:07:04 14 A. Again, it's a smaller, much smaller company but they did have
10:07:08 15 revenues of 8, 10 -- you know, 8 to \$10 billion and were profitable.
10:07:16 16 So it's a much smaller company, but there is substantial CAPEX that
10:07:22 17 they're spending in those entities as well.

10:07:25 18 Q. Did you look at the cash flows for BPXP?

10:07:28 19 A. Yes.

10:07:29 20 Q. And what did they show?

10:07:34 21 A. Also there's positive cash flow before capital expenditures
10:07:39 22 historically for BPXP.

10:07:43 23 Q. And for the purpose of saving time, is the information
10:07:46 24 concerning BP's cash flows and their income statements included in
10:07:51 25 your report?

10:07:52 1 A. Yes.

10:07:52 2 Q. During your analysis did you consider any dividends paid by
10:07:57 3 BPXP?

10:07:57 4 A. Yes.

10:07:58 5 Q. Did you prepare a demonstrative of the dividends paid by BPXP?

10:08:03 6 A. I did.

10:08:06 7 Q. Charles, could you please show D-32334. Mr. Ratner, what does
10:08:14 8 this demonstrative show?

10:08:15 9 A. This is a summary of the dividends. Your Honor, if you recall,
10:08:22 10 the company BPXP has a common owner, right, what I referred to as
10:08:27 11 the parent, and then they also had a preferred investor, another BP
10:08:32 12 entity. Anyway, this is a summary of the dividends that were paid
10:08:35 13 from 2007 to 2010 before the spill. You can see they paid out
10:08:43 14 \$16 billion in dividends. So again, it's a smaller company but it's
10:08:47 15 paid out substantial dividends.

10:08:50 16 Q. Charles, would you please show D-32335, which reflects
10:09:00 17 TREX number 012738 through TREX 012752, inclusive. Mr. Ratner, what
10:09:10 18 are those?

10:09:10 19 A. Those are board resolutions and other corporate documents
10:09:15 20 associated with those dividends.

10:09:18 21 Q. Would you please show TREX 012792. What is that, Mr. Ratner?

10:09:26 22 A. I understand that that's a summary prepared by the defendants,
10:09:31 23 which basically confirmed the dividends that we had.

10:09:33 24 Q. Did you review cash flow projections for BPXP?

10:09:37 25 A. Yes.

10:09:38 1 Q. Did you review cash flow projections for the BP Gulf of Mexico
10:09:54 2 region?

10:09:56 3 A. Yes -- well, not for BPXP. As I said before, there was no
10:10:02 4 projections that we had for BPXP. We had something that they refer
10:10:06 5 to as a group template, which BP prepares which is for the Gulf of
10:10:10 6 Mexico region.

10:10:16 7 Q. Have you prepared a summary of the Gulf of Mexico region cash
10:10:19 8 flows?

10:10:19 9 A. Yes.

10:10:21 10 Q. Charles, would you please show D-32339. What does this
10:10:28 11 demonstrative show?

10:10:28 12 A. Okay. So this is a table, this is Table 17 in one of our
10:10:36 13 reports, it may be our first report. And it is a summary of the
10:10:43 14 group plan template of the key items in it that reflect the net cash
10:10:50 15 flow, which is after capital expenditures, for the GoM region. But
10:10:55 16 in the beginning, you see the total production, that's in millions,
10:11:00 17 that's thousands of barrels of oil equivalent a day. The first
10:11:05 18 line. And you can see that that's -- they're forecasting a growing
10:11:10 19 production in the Gulf of Mexico, which is consistent with their
10:11:13 20 disclosure that production has come back in the Gulf.

10:11:16 21 By the way, parenthetically, the actual volume in 2014 was
10:11:24 22 greater than the 2011. So they already in the period of data we
10:11:30 23 had, they already were outperforming these projections.

10:11:33 24 Then you have the segment revenue, operating expenses,
10:11:40 25 change in working capital items. And then you see the operating

10:11:43 1 cash - post tax but before capital expenditures. So again it shows
10:11:50 2 you that there's substantial cash flow before capital expenditures.
10:11:54 3 Then you have the CAPEX, which is capital expenditures, and the net
10:11:59 4 flow.

10:11:59 5 The total for this five years -- this is from a document
10:12:02 6 that was redacted. So for the total of five years, you can see
10:12:06 7 they're projecting operating cash after tax but before CAPEX of
10:12:10 8 north of \$25 billion. They have about 15 billion of CAPEX and the
10:12:17 9 net cash flow is about 10.6 billion.

10:12:22 10 If you add up -- if you add up the operating cash post
10:12:30 11 tax, this line, now I'll use the -- if you add up that line
10:12:36 12 (INDICATING), the 3.2 all the way to 6.7, that's north of 25 billion
10:12:43 13 for the five years. Then they have their investing activity, which
10:12:47 14 is the capital expenditures that they're going to continue to
10:12:51 15 invest. Some of that would be for current production, some of it's
10:12:56 16 for future production.

10:12:57 17 At Anadarko we had that information because they present
10:12:59 18 their EBITDAX, so they tell you how much of their CAPEX is for --
10:13:03 19 how much of their exploration is future.

10:13:05 20 And then anyway, you have the net cash flow. If you add
10:13:09 21 up the bottom line here, you know, that'll take you to about
10:13:14 22 10.6 billion.

10:13:14 23 So this was the summary of the group plan template, which
10:13:19 24 is the Gulf of Mexico projection.

10:13:21 25 Q. What was the total for CAPEX for the five-year forecast for the

10:13:24 1 Gulf of Mexico?

10:13:25 2 A. Again, it's north of \$15 billion. So plan on spending a lot of
10:13:30 3 money.

10:13:33 4 MR. CASEY: Your Honor, we have about 20 or 25 minutes
10:13:38 5 left of testimony. I wonder if this is a good time to take a break?

10:13:42 6 THE COURT: Okay. We can do that. It's about 10:15.
10:13:45 7 We'll break until 10:30, okay.

10:13:48 8 MR. CASEY: Thank you, your Honor.

10:13:49 9 THE WITNESS: Thank you, your Honor.

10:13:50 10 THE DEPUTY CLERK: All rise.

10:13:52 11 (WHEREUPON, A RECESS WAS TAKEN.)

10:36:44 12 (OPEN COURT.)

10:36:44 13 THE COURT: All right. Please be seated, everyone. All
10:36:48 14 right. You may proceed.

10:36:50 15 MR. CASEY: Thank you, your Honor.

10:36:51 16 BY MR. CASEY:

10:36:52 17 Q. Charles, would you please pull up TREX 012430, TREX 240455,
10:37:01 18 TREX 233137. Thank you. Mr. Ratner, would you, please, tell the
10:37:13 19 Court what that is?

10:37:14 20 A. That is a -- those are covers from the BPXP financial
10:37:24 21 statements, and the bottom document is, TREX 012430 is the group
10:37:32 22 plan template that I referred to before.

10:37:35 23 Q. Now, where are the BP Gulf of Mexico region cash flow
10:37:47 24 projections found?

10:37:49 25 A. They're found in something referred to as group plan template.

10:37:53 1 Q. Would you please show TREN 012431.1. Is this the group plan
10:38:08 2 template?

10:38:10 3 A. Yes, it's a little bit of a blowup of the group plan template.
10:38:15 4 I mean, you can see the revenue number there in the left-hand column
10:38:21 5 6.1, 7.2. That's the full document -- that's one page of a
10:38:30 6 five-page document.

10:38:32 7 Q. And the next slide, that's just a call out of the first line,
10:38:35 8 correct?

10:38:36 9 A. Yes.

10:38:36 10 Q. Now, what conclusions did you reach after analyzing this
10:38:42 11 document?

10:38:43 12 A. Well, it's a five-page document, I did not get the electronic
10:38:49 13 documents, so I had a hard copy only. It was redacted. It's a
10:38:54 14 ten-year forecast, presumably, because five years are redacted. It
10:39:00 15 had -- I mean, it's a pretty limited document. There's no backup or
10:39:05 16 detail in terms of where is the revenue coming from, what assets,
10:39:12 17 where is the CAPEX going. There's no detail of the expenses. It's
10:39:15 18 a pretty limited document, in fact.

10:39:19 19 MR. REGAN: Your Honor, if I could just interpose. It may
10:39:22 20 not be an objection, but we've heard about it several times about
10:39:25 21 the redaction. I would just cite Record No. 13170, which is an
10:39:30 22 order from --

10:39:31 23 THE COURT: I understand, I'm well aware of that.

10:39:34 24 MR. REGAN: Okay. Fair enough.

10:39:35 25 THE COURT: BP objected to producing more, and they went

10:39:39 1 to Judge Shushan and Judge Shushan said you all only have to produce
10:39:42 2 this much.

10:39:43 3 MR. REGAN: I didn't want any insinuation that somebody
10:39:46 4 was doing something untoward by these redactions.

10:39:51 5 THE COURT: I understand. Thank you. Go ahead.

10:39:52 6 MR. CASEY: Thank you, your Honor.

10:39:53 7 BY MR. CASEY:

10:39:54 8 Q. Are these projections for BPXP, Mr. Ratner?

10:39:56 9 A. No, as I said before, the Gulf of Mexico region, GOM.

10:40:00 10 Q. Would you please show TREX 012430.3. And what does this
10:40:21 11 reflect, Mr. Ratner?

10:40:23 12 A. So if you recall my summary, your Honor, I had -- the cash flow
10:40:30 13 was 6.7 billion in the last year, and there was a deposition of
10:40:40 14 Mr. Bucknell where this -- the last year's projection was changed
10:40:47 15 during the deposition. So the number that I had put on my summary
10:40:50 16 was 6.7 billion which was the number on the original group plan
10:40:55 17 template. And then there was -- well, this is an exhibit from the
10:40:59 18 deposition, I suppose, where he changed the number to 5.5 billion.

10:41:05 19 Q. Would you please go to TREX 012430.3.1.US. Would you just tell
10:41:14 20 the Court what that represents?

10:41:16 21 A. Right. So there it is. Now, you can see what I was referring
10:41:20 22 to, that's the number I used, 6.7 billion. When we talked about the
10:41:25 23 cash flows being 25 billion in the first five years a couple of
10:41:30 24 minutes ago, I was using the 3.2, the four -- I was using that line,
10:41:36 25 I was not using the 5.5.

10:41:39 1 Q. And do you know who made that change?

10:41:42 2 A. As I said, that was Mr. Bucknell.

10:41:44 3 Q. And do you know the basis for the change?

10:41:47 4 A. I don't.

10:41:48 5 Q. Did Mr. Bucknell indicate the basis for the change?

10:41:53 6 A. No.

10:41:53 7 Q. Did you see a revised group plan template?

10:41:58 8 A. No.

10:41:59 9 Q. Do you know what the total cash flow for the five-year BP
10:42:03 10 projection allocated to BPXP is without adjusting the 2018 number to
10:42:10 11 5.5?

10:42:11 12 A. So if you go to net -- after CAPEX and all of that, if you go
10:42:15 13 to the net on my previous slide, without adjusting the 5.5 billion,
10:42:18 14 it's about 9.4 billion would be allocable to BPXP based on their
10:42:25 15 share of that. You know, if you had all of the details, that high
10:42:29 16 level, that's the assumption.

10:42:33 17 Q. Do you know what it would be if you used the 5.5 number?

10:42:36 18 A. If you used the 5.5 number, it would be about, I think,
10:42:41 19 8.3 billion.

10:42:41 20 Q. Have you prepared an estimate of what the amount allocable to
10:42:45 21 BPXP would be if you included the years that BPXP redacted?

10:42:50 22 A. Yeah. I mean, I had a very high level projection, and I
10:42:55 23 disclosed it in my report. If you assume -- it comes out to about
10:43:00 24 21.7 billion over the ten years. Assuming that 3 billion goes
10:43:08 25 forward projection of cash flows after CAPEX, which is lower than

10:43:13 1 the amount that was originally projected for 2017 and '18. If you
10:43:19 2 go back, you might go back to that table that I had up two minutes
10:43:25 3 ago.

10:43:26 4 Q. Could you call up D-32339?

10:43:34 5 A. Right. So to develop my own estimate of what would happen over
10:43:40 6 ten years at the BPXP level, I said -- I used the portion of this
10:43:47 7 that was allocable to BPXP, accounted for the 5.5 billion adjustment
10:43:53 8 that Mr. Bucknell made, and that came to about 8.3.

10:43:57 9 And then I forecasted three billion a year going forward.
10:44:04 10 That's how conservative my projection was because the
10:44:07 11 actuals without Mr. Bucknell's adjustment, was 4.2 billion, and
10:44:12 12 there was 3.8 billion in 2017 of net cash flow after CAPEX.

10:44:20 13 So when I developed my \$21 billion projection for the
10:44:24 14 ten-year period, I said, "Let's just assume it's three billion going
10:44:28 15 forward." Which is very conservative because if you recall a couple
10:44:32 16 of moments ago, that the actual production, we know that they were
10:44:36 17 already beating the 2011 on a -- daily barrels of oil equivalent
10:44:44 18 production. So I just did a very basic projection, and I came up
10:44:49 19 with 21 billion allocable to BPXP over those ten years.

10:44:55 20 Q. Mr. Ratner, in the group plan template, do you know what oil
10:44:57 21 and gas prices were included in the BP Gulf of Mexico regional
10:45:02 22 projections?

10:45:02 23 A. Not specifically, no.

10:45:05 24 Q. Why?

10:45:06 25 A. They're not -- there's no detail.

10:45:08 1 Q. Was that provided to you?

10:45:11 2 A. No.

10:45:12 3 Q. Do you know what the date of the group plan template was?

10:45:16 4 A. No, I don't know when it was prepared.

10:45:18 5 Q. Mr. Ratner, do you have any opinions regarding the actions BPXP
10:45:26 6 should take to pay a penalty?

10:45:28 7 A. No.

10:45:30 8 Q. Why?

10:45:30 9 A. I mean, there's a lot of optionality. I mean, it would be
10:45:41 10 somewhat even speculative to figure out how much debt. There's so
10:45:46 11 many permutations and combinations. They could use cash. They
10:45:50 12 could borrow. They could get equity. They could raise equity.
10:45:53 13 They can sell stock in the company to an independent third party. I
10:45:58 14 mean, there were so many permutations and combinations that what I
10:46:02 15 was really focused is, hey, let's look at the company, look at the
10:46:05 16 cash flow. Let's assess the flexibility that they have over -- and
10:46:10 17 see the impact of that over the long-term. I mean, I can derive
10:46:16 18 thousands of models of mixes of debt and equity and stock. I mean
10:46:23 19 there's -- it's endless.

10:46:24 20 And frankly, you couldn't do that without management's
10:46:29 21 input because management knows the most about the company. And they
10:46:32 22 know what's -- which assets are critical. We don't even have all of
10:46:36 23 the assets. So to me, I don't even know how I would do that.

10:46:40 24 Q. Could BPXP raise debt or -- from a non-BP entity?

10:46:47 25 A. I guess theoretically they could.

10:46:50 1 Q. Do you think they will?

10:46:51 2 A. No. I mean --

10:46:53 3 Q. Why?

10:46:53 4 A. Because they've never raised debt externally before. BXP, the
10:46:59 5 legal entity, has always been funded through all of these internal
10:47:02 6 mechanisms. So, No. 1, historically, they've never done it. And,
10:47:08 7 in fact, their own deputy treasurer said he wouldn't recommend it.
10:47:13 8 He said it would be difficult. Mr. Bamfield said it would be
10:47:17 9 costly. They would need their own treasury -- because, remember,
10:47:21 10 BXP doesn't have a treasury -- they would need their own treasury.
10:47:24 11 They would probably get not as good a rate as BP because BP could
10:47:29 12 borrow at a better credit rating. And at the end, he said they
10:47:35 13 wouldn't even recommend it.

10:47:37 14 They're not doing anything to get ready to borrow that
10:47:40 15 money. BXP is not taking any action. So I don't think they will
10:47:44 16 and I don't think they could.

10:47:44 17 Q. Now, Mr. Ratner, in your analysis of BP and BXP's ability to
10:47:50 18 pay a penalty, did you rely on BP cash flow projections?

10:47:55 19 A. Yes.

10:47:56 20 Q. Do you know what price and production assumptions were used by
10:48:01 21 BP in developing its projections?

10:48:02 22 A. In the higher level projections, your Honor, that were
10:48:07 23 disclosed in that March investor update, they did say the price
10:48:13 24 assumptions, and they were also in the 90 to 100 -- \$100, 104 for
10:48:20 25 their two or three-year forward-looking statement. If you recall, I

10:48:25 1 referred to a March 2014 investor update that was used by me to
10:48:32 2 develop the discretionary cash flow forecast of about 30 billion a
10:48:37 3 year for the next three years. And in that document they refer to
10:48:42 4 projected oil prices.

10:48:43 5 Q. Mr. Ratner, how would the projections change if current oil and
10:48:51 6 gas prices were used?

10:48:53 7 A. Again, I think that, of course, the oil prices -- I mean, it's
10:49:00 8 in a very short time oil prices have dropped, you know, let's call
10:49:03 9 it 50 percent. That's a significant decline in a short period. So
10:49:08 10 I think it would affect the projections.

10:49:14 11 But again, there's so many different variables that you
10:49:16 12 have to look at. And, in fact, their own disclosures -- I guess
10:49:20 13 what's the most important is their own disclosures say typically
10:49:25 14 prices recover within two years of a sharp decline. BP's own
10:49:29 15 disclosures say that. And who knows what's going to happen.

10:49:33 16 Yesterday there was an article that said oil is going to
10:49:37 17 be \$200 a barrel, right. There's a lot of mixed messages, and I
10:49:40 18 think in the end that volatility is part of their business, right,
10:49:44 19 they say that.

10:49:45 20 So I think the projections would change, and I don't have
10:49:49 21 the tools to know exactly what would happen because if the price
10:49:52 22 would change, CAPEX would definitely change, right, the amount of
10:49:56 23 money they're spending. They're already cutting operating expenses.
10:50:00 24 They disclosed that they're going to have layoffs and cut operating
10:50:04 25 expenses. All of these different factors come into the net.

10:50:08 1 Q. Mr. Ratner, you indicated just a moment ago that BP has
10:50:13 2 disclosed that the oil prices -- sharp declines in oil prices there
10:50:18 3 would be a recovery within about two years. Where did BP say that?

10:50:21 4 A. So in December -- this December, just a couple of -- four weeks
10:50:27 5 ago, or within December, they had an upstream investor day
10:50:33 6 presentation. Upstream being the E&P business.

10:50:36 7 Q. Let me call up TREN 233856. Is this the presentation that
10:50:41 8 you're referring to?

10:50:42 9 A. Yes. That's the cover page.

10:50:43 10 Q. Would you please show, Charles, D-32342. What does this
10:50:53 11 demonstrative -- I'm sorry. What is this demonstrative, Mr. Ratner?

10:50:58 12 A. This is a demonstrative that I prepared that highlights some of
10:51:03 13 the statements in the investor day upstream presentation. And I
10:51:10 14 summarized some of those key statements that were meaningful to me
10:51:13 15 in my analysis. Again, this information is just coming from
10:51:18 16 December 2014.

10:51:19 17 Q. Could you please explain these statements for the Court?

10:51:21 18 A. Sure. I mean, right out of the gate, historically, taken up to
10:51:28 19 two years for prices to undergo recovery following periods of steep
10:51:32 20 price declines. Now they actually have a chart, your Honor, that
10:51:35 21 shows five or six different historical sharp declines where they
10:51:40 22 show the decline and the recovery and they measure the time.

10:51:44 23 Price volatility is inherent in our industry. Current
10:51:51 24 environment introduces some near term uncertainty. Over time, we
10:51:54 25 see this is as potentially healthy. It can drive greater efficiency

10:52:00 1 in the value chain.

10:52:02 2 The fourth bullet: Lower prices should benefit our
10:52:05 3 downstream business and provide some natural offsets. What they're
10:52:09 4 saying is people are going to consume more, they're going to sell
10:52:13 5 more. So again, it's not a dollar-for-dollar impact on the net
10:52:16 6 income, no way. There's too many different pieces of it.

10:52:20 7 And I guess this was very substantial to me, this
10:52:22 8 statement because it says, "We enter this period with a very strong
10:52:26 9 balance sheet. Gearing," which is leverage, we talked about that an
10:52:30 10 hour ago, "Gearing is historically low at around 15 percent and cash
10:52:36 11 balances are strong. This ensures that we have the time and
10:52:39 12 flexibility to make the right decisions for the group." This is
10:52:43 13 exactly my testimony. They manage the business on an integrated
10:52:47 14 basis and they have the financial flexibility to do that.

10:52:54 15 Gulf of Mexico production continues to recover, so,
10:52:56 16 obviously, it's important. "We currently have more opportunities
10:52:59 17 than our capital frame enables us to progress and more than are
10:53:04 18 required to sustain growth."

10:53:06 19 Notwithstanding the declining oil prices, they say, "Hey,
10:53:09 20 we have a lot of capital and we're going to continue to grow and
10:53:12 21 invest over the long-term." And again, looking forward, we have a
10:53:17 22 number of high return, new wells. They're even quoting the Gulf of
10:53:20 23 Mexico here.

10:53:22 24 Very reassuring document if you're an investor, right.
10:53:26 25 And it confirms a lot of the information that I reviewed.

10:53:30 1 Q. Mr. Ratner, let's turn to the last part of your testimony. Did
10:53:34 2 you review the reports and testimony of BP's expert, Mr. Den Uyl?

10:53:38 3 A. I did.

10:53:39 4 Q. And did Mr. Den Uyl offer an opinion about BPXP's ability to
10:53:45 5 pay a Clean Water Act penalty?

10:53:47 6 A. Yes.

10:53:47 7 Q. Did you prepare a demonstrative to show his calculation?

10:53:50 8 A. Yes.

10:53:50 9 Q. Charles, would you please show 32343. Thank you. Is this --
10:53:58 10 can you please explain the calculation shown in this demonstrative?

10:54:02 11 A. Yes. Your Honor, the calculation that Mr. Den Uyl prepared is
10:54:11 12 quite straightforward. It starts off with the internal IFA.

10:54:17 13 Remember, we talked about the credit line, the internal credit line.
10:54:20 14 So BPXP has a \$5 billion credit line.

10:54:24 15 Then he says they've already drawn on that 1.6 billion as
10:54:30 16 of June. That number is correct. They've drawn on that as of June.
10:54:34 17 And then he says, Okay. They have available borrowing capacity of
10:54:39 18 3.4 billion. Then what he does is he deducts his estimate of cash
10:54:47 19 flow losses for 2014 and 2015 for BPXP. Significant to note, those
10:54:54 20 are after CAPEX. So no adjustment to CAPEX, even though prices are
10:54:59 21 now declining, such and such. He says they're going to have a cash
10:55:04 22 flow shortage for 2014 and '15. He deducts that and he says this is
10:55:08 23 what they have available to pay the penalty.

10:55:13 24 So his analysis is 100 percent based on the existing line
10:55:18 25 of credit that they have with their parent.

10:55:22 1 Q. Do you agree with his opinion?

10:55:24 2 A. Absolutely not.

10:55:25 3 Q. Why?

10:55:25 4 A. First of all, this opinion is completely static. It assumes
10:55:35 5 that no one does anything, that all they have is their line of
10:55:38 6 credit, No. 1.

10:55:40 7 Number 2, it assumes that there's no -- it doesn't account
10:55:49 8 for any of the cash flows after 2015. It doesn't take into
10:55:54 9 consideration the assets of the company. It ignores past practices.
10:55:58 10 It completely ignores the historical practices between BP and BPXP
10:56:03 11 in terms of equity and debt.

10:56:05 12 In fact, Mr. Den Uyl didn't even analyze BP when he put
10:56:09 13 this together. He did it in a vacuum. I think it's completely
10:56:13 14 unrealistic and it's a completely static analysis. I mean, in fact
10:56:19 15 they've accrued, a very high level, they've accrued more than he is
10:56:24 16 saying that they can afford to pay. If that's the case, they need
10:56:27 17 to go and reverse an accrual, right, because they've accrued
10:56:31 18 three-and-a-half. He is saying they can only pay 2.4. If that's
10:56:35 19 the true, then the company should reverse an accrual they made. Or
10:56:35 20 part of the accrual.

10:56:39 21 It's a static, limited analysis and it's not based on any
10:56:42 22 reality.

10:56:44 23 Q. Did Mr. Den Uyl offer any opinions -- other opinions in his
10:56:49 24 report?

10:56:49 25 A. He had one other opinion related to the purported equity value

10:56:56 1 of BXPX.

10:56:58 2 Q. What was that?

10:56:59 3 A. His opinion was that the equity value of BXPX was \$16 billion.

10:57:08 4 Q. Did he modify that opinion?

10:57:10 5 A. He did. Ultimately, he changed that -- that was his opinion as
10:57:15 6 of June 2014 when he issued his report in August and then when he
10:57:22 7 issued a supplemental, your Honor, on December 30th. And in that
10:57:27 8 supplemental, he assumed -- he assigned a value of \$5 billion to the
10:57:34 9 equity of BXPX.

10:57:35 10 Q. Now, have you prepared a demonstrative that reflects Mr. Den
10:57:39 11 Uyl's opinions?

10:57:40 12 A. Yes.

10:57:40 13 Q. Charles, would you please show D-32344. What does this
10:57:52 14 demonstrative show?

10:57:53 15 A. So, the first opinion was -- Mr. Den Uyl's first opinion was
10:57:57 16 they could pay 2.4 billion just based on the line of credit.

10:58:01 17 The second opinion that he doesn't really tie into the
10:58:04 18 first opinion, but he just does a standalone estimate of the equity
10:58:08 19 value of BXPX. So this is a summary that is from his report. It's
10:58:15 20 a good table that shows what he did.

10:58:17 21 Q. Would you please explain to the Court what this shows?

10:58:22 22 A. Sure. So what Mr. Den Uyl does is he starts off with a
10:58:26 23 third-party reserve valuation report that you've heard about, or
10:58:31 24 going to hear about, called Wood Mackenzie, and that report is for
10:58:35 25 the Gulf of Mexico region. And that has a net present value of

10:58:41 1 \$38 billion. So it's not the SMOG. It's different from the SMOG.
10:58:47 2 It's higher than the SMOG.

10:58:51 3 And he then estimates the ownership of the Gulf of Mexico
10:58:56 4 region of those assets by BPXP and he says, "Okay. The starting
10:59:01 5 point is that BPXP has a top line value of \$32 billion." So
10:59:07 6 that's -- he says that the starting point of this whole analysis is
10:59:11 7 \$32 billion.

10:59:12 8 Then what he says is -- and I am going to talk about this
10:59:15 9 adjustment later -- he makes an adjustment for a cost differential
10:59:22 10 or cost error, cost differential -- I call it a differential -- and
10:59:25 11 then he deducts that from the value. And then he says it's worth 25
10:59:28 12 billion.

10:59:29 13 And then he makes a deduction for some of the intercompany
10:59:33 14 debt for the IFA. Remember, they're drawn at a billion six. He
10:59:40 15 deducts the IFA, and then he deducts -- there's a criminal penalty
10:59:44 16 payment and -- I forget -- he makes two other deductions to get down
10:59:53 17 to \$16 billion.

10:59:55 18 So that's -- kind of that's what his analysis was. He
10:59:58 19 says, Okay. I am going to take this third-party document that's not
11:00:01 20 a BP document, and I'm going to make these adjustments and that's
11:00:04 21 what I'm going to estimate the equity value of BPXP is.

11:00:08 22 Q. Do you agree with his analysis?

11:00:10 23 A. No.

11:00:10 24 Q. Why?

11:00:12 25 A. There's a variety of errors and flaws in it. But at the high

11:00:16 1 level, I think I can categorize those problems into four categories.

11:00:22 2 Q. Did you prepare a demonstrative of the reasons?

11:00:24 3 A. Yes.

11:00:25 4 Q. Could you please show D-32345. Could you go ahead and explain
11:00:35 5 that to the Court?

11:00:36 6 A. Sure. Again, I don't think this valuation is reliable. And
11:00:41 7 the four categories of problems I have with it is: No. 1, he did
11:00:45 8 not perform a business valuation; No. 2, he did not perform adequate
11:00:50 9 or sufficient due diligence on the primary source of his analysis,
11:00:54 10 right. This third party document.

11:00:56 11 Mr. Den Uyl did not include all of the BPXP assets in his
11:01:02 12 analysis.

11:01:03 13 And then, finally, the \$7.8 billion adjustment, that's a
11:01:09 14 major adjustment, and I don't think he used the right data, I don't
11:01:13 15 think he did enough due diligence on it, and he has not reconciled
11:01:17 16 the detailed information in those costs to each -- I mean, even if
11:01:24 17 it was appropriate to make an adjustment, he doesn't know anything
11:01:26 18 about what's in those costs.

11:01:28 19 THE COURT: Where did that number come from?

11:01:30 20 THE WITNESS: It's very complicated. What he does, your
11:01:33 21 Honor, he looks at the costs that are in the Wood Mackenzie analysis
11:01:38 22 and then he says, oh, so that's -- those costs are deducted and
11:01:42 23 coming out to the \$38 billion value. The \$38 billion value, your
11:01:47 24 Honor, is a net present value of certain producing assets or
11:01:51 25 near-producing assets. So he does the net present value which is

11:01:56 1 the top line after expenses.

11:01:57 2 So then he says, oh, the 38 billion is too high because
11:02:02 3 the deduction for expenses in there is not as much as the actual
11:02:08 4 BPXP expenses. So what he does is he compares the BPXP expenses
11:02:13 5 that are in the group plan template to the expenses in Wood
11:02:19 6 Mackenzie and he says there's a difference.

11:02:21 7 And then what he does is he figures out the difference and
11:02:24 8 he present values the difference in those expenses all the way back
11:02:29 9 to the date of that Wood Mackenzie report. So he is assuming, even
11:02:35 10 if there was an expense difference, he is assuming there's never a
11:02:38 11 correction in those expenses, there's no action to fix those
11:02:41 12 expenses. He is assuming that the expense differential goes out to
11:02:45 13 2057 because the Wood Mackenzie analysis is a net present value all
11:02:50 14 the way to 2057.

11:02:51 15 So what he is doing is he is assuming that this potential
11:02:56 16 cost differential never is corrected, there's no action. That's
11:03:01 17 even inconsistent with BP's own statement now that costs, even if it
11:03:08 18 was required, costs are going to go down, et cetera.

11:03:11 19 So he does this whole present value back and deducts it
11:03:15 20 from the value. And I believe it's an inappropriate adjustment for
11:03:18 21 a variety of reasons.

11:03:19 22 That's the math. The math is very detailed. In some
11:03:25 23 years, the end of the years, the expected differential that he is
11:03:28 24 still forecasting is like a billion dollars a year. Of course, it's
11:03:32 25 present value back so it's not as big of a deal, but you see how

11:03:37 1 speculative it is? That's one of my summaries is that that
11:03:41 2 adjustment is so speculative. It shouldn't be included.

11:03:41 3 BY MR. CASEY:

11:03:48 4 Q. Mr. Ratner, why don't we help the Court out and walk through
11:03:51 5 each one of these, very quickly, so the Court has a full
11:03:54 6 understanding of what you're talking about.

11:03:57 7 What do you mean when you say Mr. Den Uyl did not perform
11:04:01 8 a business valuation?

11:04:02 9 A. That business valuation is based on a set of standards, and
11:04:08 10 Mr. Den Uyl, No. 1, did not follow the standards; he didn't perform
11:04:14 11 a valuation; he relied on a third-party reserve analysis -- that's
11:04:18 12 kind of a depleting analysis -- and substituted that for the
11:04:23 13 business valuation. He didn't perform the market method; he didn't
11:04:27 14 perform integrated cash flow for the company; he did not assume any
11:04:30 15 new investments are being made. He just did not perform a business
11:04:35 16 valuation.

11:04:36 17 What he did is he relied on a third-party research
11:04:40 18 analysis and then made all of these assumptions about it. But he
11:04:44 19 absolutely did not perform a business valuation under any standards.
11:04:47 20 I mean, he admitted that.

11:04:49 21 Q. Now, isn't the business valuation, isn't that what Wood
11:05:00 22 Mackenzie did?

11:05:00 23 A. No. Wood Mackenzie is a reserve valuation. It's a reserve
11:05:07 24 analysis. I mean, the easiest way to think about it is: In a
11:05:10 25 business, you're going to continue to invest in new things. You're

11:05:14 1 going to continue to grow your company.

11:05:16 2 In fact, Wood Mackenzie does not include all of the
11:05:20 3 contingent and prospect assets. It's the proved -- we think it's
11:05:24 4 the proved and may be some of the unproved. But you don't know that
11:05:28 5 because I don't have all of the detail to reconcile the Wood
11:05:32 6 Mackenzie report.

11:05:33 7 In other words, you don't really know what's included. A
11:05:36 8 business valuation includes the whole activity of the company, not
11:05:41 9 just the winding down of the existing assets.

11:05:44 10 Q. Did Mr. Den Uyl follow business valuation standards?

11:05:49 11 A. He didn't. And, in fact, on the Wood Mackenzie, I mean, your
11:05:53 12 Honor, this is potentially a \$38 billion company or more. He didn't
11:05:59 13 even speak to them. In other words, this is a document that he
11:06:03 14 either got from BP or from their counsel. He did not speak to the
11:06:07 15 people that prepared this reserve analysis, this reserve valuation.
11:06:13 16 Business valuation standards, even the most basic standards wouldn't
11:06:17 17 accept that. So he did limited due diligence, if anything.

11:06:25 18 At the time of his deposition, he hadn't spoken to the
11:06:27 19 people who prepared it. He didn't know the purpose that it was
11:06:29 20 prepared for, right. We know why SMOG is prepared, because they
11:06:33 21 need those numbers for their financial statements.

11:06:36 22 So I just don't think he did enough due diligence,
11:06:40 23 especially when it's the foundation of your opinion.

11:06:44 24 Q. What do you mean when you say -- you mentioned it already and
11:06:49 25 explained the due diligence. What do you mean when you say that

11:06:53 1 Mr. Den Uyl did not include all of the BPXP assets in his analysis?

11:06:59 2 A. So in the -- and I guess to be clear, it's helpful, I think,
11:07:05 3 when we say "the Wood Mackenzie report," your Honor, it's not a
11:07:08 4 report, it's two spreadsheets that have many tabs. One is like a
11:07:17 5 global spreadsheet; and the other is a series of spreadsheets
11:07:20 6 related to individual assets.

11:07:22 7 So when we say that he didn't include all of the assets,
11:07:25 8 what I did is I took all of those sub spreadsheets and I looked at
11:07:30 9 the cash flow that was included and I was able to get pretty close
11:07:33 10 to 38 billion. So I was able to reconcile what was included in the
11:07:36 11 38 billion number that he had. And it's basically a series of
11:07:43 12 projects, assets, and leases. But it's certainly not all of the
11:07:47 13 leases that BPXP owns in the Gulf of Mexico.

11:07:51 14 And, in fact, we know there's at least two contingent
11:07:55 15 assets that are highly touted by the company that are not included.
11:08:00 16 So it's not -- even if you were doing a depleting analysis, I don't
11:08:05 17 believe it includes everything.

11:08:06 18 Q. Now, do you know how many projects were included in the Wood
11:08:12 19 Mackenzie analysis?

11:08:12 20 A. There's 14 specific projects included.

11:08:15 21 Q. And how do you know that?

11:08:17 22 A. As I said, I reconciled it and I prepared a chart trying to
11:08:21 23 reconcile the Wood Mackenzie spreadsheets to the \$38 billion.

11:08:25 24 Q. Do you have any problems with the Wood Mackenzie analysis?

11:08:29 25 A. No. I think for what it is, it is what it is. It is a

11:08:35 1 consulting firm's net present value based on certain assumptions
11:08:41 2 that they've made. Presumably they get input from management. I
11:08:46 3 don't know that. But it's a financial model based on their research
11:08:50 4 on certain assets. I mean, mathematically, I don't have a problem
11:08:54 5 with it.

11:08:55 6 It's not a business valuation; it's a specific net present value of
11:09:00 7 specific leases and assets based on production estimates and prices.

11:09:06 8 Q. Mr. Ratner, did you prepare a demonstrative to show what is
11:09:10 9 included in the \$38 billion summarized by Wood Mackenzie and used as
11:09:15 10 the starting point for Mr. Den Uyl's analysis?

11:09:18 11 A. Yes.

11:09:20 12 Q. Charles, would you please show 32346. Mr. Ratner, what does
11:09:26 13 this demonstrative show?

11:09:28 14 A. Okay. So, your Honor, there was 14 specific cash flow analysis
11:09:38 15 in the Wood Mackenzie spreadsheets. And so I listed off the 14
11:09:42 16 spreadsheets. And in those spreadsheets, there is something --
11:09:46 17 there is a net present value for each one. So I was able to
11:09:50 18 reconcile those to the 38 billion that he used. So that was step
11:09:56 19 number one.

11:09:57 20 Then step number two was, in the Wood Mackenzie files -- that's what
11:10:02 21 these reference numbers are, those are the Bates numbers for each
11:10:06 22 Excel file -- there is a summary tab that gives you the description
11:10:10 23 of the project, when it was started -- you know, when it was
11:10:17 24 started, the location, the lease number of what's included, which is
11:10:22 25 a block. So what I did is I put a table together and it shows you

11:10:27 1 the total blocks which are leases that are included on those tabs
11:10:32 2 that add up to the 38 billion.

11:10:34 3 And you'll see that when you spread this all the way out to the
11:10:39 4 acreage, the area -- and they use the word "acreage" in the
11:10:45 5 documents -- the total area that is included is 1,450 square
11:10:54 6 kilometers. The Gulf of Mexico actually, the BP GOM region actually
11:11:01 7 has leases on 14,000 square kilometers in the Gulf. So, yeah,
11:11:08 8 they've looked at these producing assets and done some net present
11:11:12 9 value, but it doesn't include all of the assets that the company
11:11:16 10 owns.

11:11:16 11 If you were investing in a company, let's say these were two equal
11:11:21 12 companies and they both had the same 38 billion in supposed cash
11:11:26 13 flow, and one had exactly 1,450 square kilometers and the other had
11:11:35 14 1,450 square kilometers and all of this other stuff that's not
11:11:37 15 producing yet. For sure you would take the one that has all these
11:11:41 16 other potential assets.

11:11:42 17 You see that, it just doesn't include everything. It's based on the
11:11:46 18 cash flows from those assets that they have in those spreadsheets.

11:11:50 19 Q. Can you give the Court an example of any BP oil reserve
11:11:57 20 discoveries that are not included in the Wood Mackenzie are or
11:12:00 21 Mr. Den Uyl's analysis?

11:12:01 22 A. Yes. Your Honor, there was two specific ones that I found.
11:12:06 23 Remember, you can't find it if you don't know what you're looking
11:12:11 24 for. I only found it because there was some press release on
11:12:14 25 something called Gila, which was touted by BP as a major discovery

11:12:18 1 that would produce in the future. They had a big press release on
11:12:22 2 it. Of course, that's not included here. It's in the Gulf of
11:12:24 3 Mexico. And BXP owns, I think, 80 percent of it.

11:12:28 4 And then there's another one called Guadeloupe, which is
11:12:31 5 not included here.

11:12:32 6 But I wouldn't even know what's not included because I
11:12:36 7 don't have access to that list. I only have what is indicated in
11:12:40 8 the Wood Mackenzie.

11:12:42 9 Q. Mr. Ratner, let's talk about Mr. Den Uyl's \$7.8 billion
11:12:49 10 deduction from the Wood Mackenzie analysis. You indicated in your
11:12:55 11 earlier slide that Mr. Den Uyl made an inappropriate \$7.8 billion
11:13:01 12 downward adjustment. What do you mean by that?

11:13:04 13 A. So that's basically -- Mr. Casey, that's basically the math
11:13:08 14 that I described to your Honor. It basically compares some
11:13:11 15 operating costs in the Wood Mackenzie files to the operating costs
11:13:19 16 in the group plan template or the historical BXP expenses and says,
11:13:23 17 Oh, they're too high -- they're too low, sorry. The expenses in the
11:13:29 18 Wood Mackenzie are too low, so I want to add expenses there. So
11:13:33 19 that's what the \$7.8 billion adjustment is.

11:13:37 20 It's, Hey, the 38 billion is too high. There's not enough
11:13:41 21 expenses there, so I'm going to deduct the present value of future
11:13:45 22 expenses. So that's the math in what he's doing.

11:13:49 23 Q. So, Mr. Ratner, did you prepare a demonstrative showing your
11:13:52 24 analysis of the operating expenses that went into Mr. Den Uyl's
11:13:57 25 analysis?

11:13:57 1 A. Yes.

11:13:59 2 Q. Charles, would you please show D-32347. Can you briefly
11:14:09 3 describe for the Court, Mr. Ratner, what this demonstrative
11:14:13 4 reflects?

11:14:14 5 A. Sure. Your Honor, I am just trying to reconcile all of these
11:14:18 6 different expenses and try to determine what's going on here. The
11:14:21 7 first line is the operating costs as projected in the BP Group plan
11:14:27 8 template. So we're working at the GoM level right now, we're not
11:14:30 9 taking the adjustment. We just want to try to get apples to apples.

11:14:34 10 So this is the operating costs as projected in the BP
11:14:37 11 Group plan template, 2.2 billion, 2041. That's line 1 right here
11:14:43 12 (INDICATING). That's line 1, that's coming right from the group
11:14:47 13 plan template.

11:14:48 14 Now, remember, we don't have the detail of what's included
11:14:51 15 in that. We just have one number, operating costs.

11:14:56 16 The second section, here, is information that's in a global -- and
11:15:05 17 I'm sure that they are they going to show me because last night they
11:15:09 18 sent us the exhibit of it.

11:15:10 19 There's these two packages of spreadsheets from Wood Mackenzie. One
11:15:15 20 of them is what I call a global spreadsheet because it has
11:15:19 21 information related to BP upstream global business. In that
11:15:25 22 spreadsheet, there is operating costs information; there is
11:15:31 23 production estimates.

11:15:33 24 You notice the 241, that's a similar number. That's 241,000 barrels
11:15:40 25 of oil equivalent a day. And then the 365 is the number of days.

11:15:45 1 If you multiply all of that you get the \$2,280,000,000 of operating
11:15:51 2 expenses. So that's the math. But that 2.2 billion is also
11:15:55 3 reflected in the Wood Mackenzie file.

11:15:58 4 Now, I don't know exactly how all of these numbers are used because
11:16:01 5 we don't have a report reconciling them all. But what -- the last
11:16:06 6 number is what Mr. Den Uyl used. In the 508, in that same Wood
11:16:12 7 Mackenzie file, there is a number of 508. It doesn't say operating
11:16:16 8 costs, it's just a table with no heading.

11:16:21 9 So what we are saying is: The first numbers are in the group plan
11:16:24 10 template, the second numbers are in Wood Mackenzie, and the third
11:16:27 11 numbers are also in Wood Mackenzie. And the table on the bottom is
11:16:31 12 just a graphical representation.

11:16:33 13 The red line, of course, is the lowest line. That's the operating
11:16:38 14 cost that Mr. Den Uyl used. The blue line are the expenses in the
11:16:43 15 group plan template. And the green line are the expenses that are
11:16:50 16 interpreted from the Wood Mackenzie global spreadsheet for GoM.
11:16:59 17 It's the first step of a reconciliation of the expenses.

11:17:04 18 Q. So we talked about the information that was used. Do you have
11:17:08 19 any other problems with the \$7.8 billion adjustment?

11:17:13 20 A. I think the two problems I've alluded to: One, I think it's
11:17:17 21 absolutely speculative. I mean, a \$7.8 billion adjustment assumes
11:17:20 22 that even if it's -- like, I don't think it's right. Even if it was
11:17:24 23 right, it assumes that these expenses will be overstated for --
11:17:28 24 'till the year 2057. And not overstated, understated in the
11:17:34 25 38 billion. That the actual expenses are more. Number one.

11:17:37 1 Number two, I think it's speculative and I don't think there's been
11:17:42 2 any kind of forensic accounting due diligence done on it. Mr. Den
11:17:46 3 Uyl's adjustment is very summary. He doesn't know what's included.
11:17:51 4 What are the elements of these expenses that he's analyzing?

11:17:57 5 Q. Mr. Ratner, did you review the report by Mr. Den Uyl issued on
11:18:00 6 December 30th, 2014?

11:18:02 7 A. Yes.

11:18:02 8 Q. Did you prepare a demonstrative summarizing Mr. Den Uyl's
11:18:07 9 December 30th, 2014, supplemental opinion?

11:18:09 10 A. Yes.

11:18:10 11 Q. Charles, would you please show D-32353. Mr. Ratner, what is
11:18:20 12 the difference between Mr. Den Uyl's original opinion and his
11:18:23 13 supplemental opinion?

11:18:24 14 A. Your Honor, the only difference, you notice it's the same
11:18:28 15 format, good format, the only difference is this number here, the
11:18:34 16 \$12 billion adjustment. So what Mr. Den Uyl is doing, he is saying,
11:18:38 17 Hey, you know that Wood Mackenzie report -- and I'll tell you what
11:18:41 18 he did in a moment, but all he is doing is making an adjustment to
11:18:46 19 that value.

11:18:47 20 He is saying, Hey, that top level value of 38 billion --
11:18:51 21 now that oil prices are down, he found some other information in
11:18:54 22 there that he used to reduce the estimated net present value.

11:19:01 23 And I want to highlight one other thing because I think
11:19:05 24 it's very significant. Notice the cost adjustment doesn't change on
11:19:10 25 this table. He uses the same \$7.8 billion. To me, that's an

11:19:14 1 example of -- it's not reliable because if you're going to reduce
11:19:20 2 the revenues and the company has already said they're reducing head
11:19:26 3 count and they're going to have cost savings, he doesn't reduce the
11:19:29 4 costs at all. He assumes, you know what, we're going to have less
11:19:32 5 revenue but have the same cost problems all the way to 2057. It's
11:19:36 6 just not even-handed.

11:19:38 7 So everything else is the same. The only change he makes
11:19:41 8 is the \$12 billion downward adjustment to the value based on the
11:19:49 9 current sharp decline in oil prices.

11:19:51 10 So in other words, his estimate is that in the last six
11:19:54 11 months, the equity value dropped from 16 billion to 5 million, which
11:20:00 12 is like a 70 percent drop in the equity value in the six months.

11:20:06 13 Q. Mr. Ratner, I just have a couple more questions.

11:20:09 14 You mentioned -- you talked about the impact of a
11:20:14 15 33.53 percent worst-case scenario. Do you agree with that
11:20:16 16 allocation?

11:20:16 17 A. No.

11:20:17 18 Q. Can you explain to the Court why?

11:20:18 19 A. Okay. So what is -- first, your Honor, I have to tell you what
11:20:22 20 this is. That's how he made his adjustment.

11:20:25 21 In the Wood Mackenzie analysis, they do a sensitivity
11:20:31 22 analysis in the global file. And the sensitivity analysis says,
11:20:40 23 Okay, here's our base case analysis that comes out to the
11:20:43 24 38 billion. And they say, Okay, let's just make some sensitivities,
11:20:46 25 plus-minus type stuff.

11:20:48 1 So in their sensitivity analysis, they prepare a low-case
11:20:51 2 scenario. The low case scenario came out with a 33 percent lower
11:20:58 3 value for the entire upstream business. So Mr. Den Uyl applied that
11:21:07 4 global reduction. And there's a problem using a sensitivity
11:21:13 5 analysis, but he takes that global downward adjustment and applies
11:21:17 6 it to the GoM.

11:21:19 7 So the problem with that is: It assumes that the timing
11:21:24 8 of the cash flows is the same, because the 33 percent adjustment is
11:21:30 9 based on the global cash flows for the entire upstream business.
11:21:36 10 Not just Gulf of Mexico. It's a very detailed nuance, but it's a
11:21:42 11 mistake because the -- it assumes that the global cash flows for the
11:21:46 12 whole country -- for the whole world for BP has the same timings as
11:21:52 13 the Gulf of Mexico. And they don't. I mean we were able to look at
11:21:56 14 it; they don't have the same timing. So it's a very nuanced
11:22:02 15 problem.

11:22:02 16 So that's how he does that and that's the problem with the
11:22:04 17 33 percent adjustment.

11:22:06 18 Q. Are there any other parts of his December 30th opinion that you
11:22:10 19 disagree with?

11:22:11 20 A. I think that the -- the way the sensitivity analysis works,
11:22:15 21 your Honor, is there are detailed projections through, like, 2018,
11:22:22 22 okay. So for example, Mr. Den Uyl's math, when he makes the
11:22:26 23 adjustment, is the detailed projections go to 2018. And then from
11:22:32 24 there after, it's flat line at 2 percent inflation a year.

11:22:39 25 So, for example, in the low-case scenario, the WTI price

11:22:44 1 that Mr. Den Uyl uses as his lift off into the future is like \$66 or
11:22:50 2 something. So the problem is that his new opinion is -- basically
11:22:56 3 that it's mathematically based on oil prices being \$66 forever.
11:23:03 4 Basically just growing a 2 percent inflation forever. There's no
11:23:08 5 volatility; it's never going to come back; it's just 66 at the
11:23:12 6 launch, 2018, because that's the end of the specific projection that
11:23:16 7 Wood Mackenzie has.

11:23:17 8 And then it's just every year, that's how the
11:23:20 9 sensitivity -- that's how the projections work. They just -- they
11:23:23 10 get to a certain point and then they just project that all the way
11:23:27 11 forward with 2 percent inflation a year.

11:23:29 12 And by using -- the problem is: By using the low-case
11:23:33 13 scenario, he is basically making a projection. He is projecting
11:23:38 14 that things are going to be \$66 out into the future for West Texas
11:23:43 15 just with 2 percent inflation. I mean, that's not what the company
11:23:47 16 said.

11:23:49 17 Q. So does the timing of when oil prices recover have an impact on
11:23:54 18 Mr. Den Uyl's valuation?

11:23:56 19 A. No. I mean, there is no -- on his updated opinion, there is no
11:24:04 20 recovery, it's just out into the future.

11:24:08 21 Q. Should it have an impact on Mr. Den Uyl's opinion?

11:24:11 22 A. Yes. And, in fact, that's one of the problems. By applying
11:24:14 23 this to the GoM assets, a lot of the cash flows, your Honor, for the
11:24:20 24 GoM assets that are reflected in Wood Mackenzie, because it's the
11:24:24 25 only detail we have, are coming after 2020, after 2025, right,

11:24:31 1 because these are less mature assets than other assets in the rest
11:24:36 2 the world. So the cash flows are coming later.

11:24:38 3 So if you're taking a short-term decline in prices and
11:24:41 4 assuming that's going to be forever, then that has a detrimental
11:24:44 5 effect if the cash flows for GoM are actually coming later. Do you
11:24:49 6 see how that works? The timing doesn't work.

11:24:54 7 MR. CASEY: Thank you, Mr. Ratner.

11:24:56 8 THE COURT: All right.

11:24:58 9 MR. CASEY: Thank you, your Honor.

11:24:59 10 THE COURT: Thank you.

11:25:00 11 MS. KIRBY: Your Honor, since Mr. Ratner presented his
11:25:04 12 position or his opinions regarding Anadarko, I thought I would go
11:25:07 13 first. I don't think BP agrees though.

11:25:11 14 MR. REGAN: Just noting the time, your Honor, I think --
11:25:12 15 and Ms. Kirby and I talked about it -- I am going to have a
11:25:16 16 substantial amount of cross-examination, and --

11:25:19 17 THE COURT: So you don't object to her going first?

11:25:23 18 MR. REGAN: No, sir.

11:25:23 19 THE COURT: That's a long way of saying you don't object.

11:25:26 20 MR. REGAN: I'm good, your Honor.

11:25:34 21 CROSS-EXAMINATION

11:25:34 22 BY MS. KIRBY:

11:25:40 23 Q. Good afternoon, Mr. Ratner. I'm Ky Kirby for Anadarko.

11:25:45 24 I know that you have expertise in financial analysis, but
11:25:48 25 you don't consider yourself an expert in the oil and gas business,

11:25:51 1 right?

11:25:52 2 A. No.

11:25:52 3 Q. Or in the exploration and production business, in particular?

11:25:57 4 A. No, I don't think so.

11:25:58 5 Q. But you do know the difference between an integrated oil and
11:26:03 6 gas company and what's called an independent, don't you?

11:26:06 7 A. Yes.

11:26:07 8 Q. So an integrated oil and gas company is one that is engaged not
11:26:12 9 only in exploration and production but also in refinement and
11:26:18 10 distribution and in marketing, for instance, to consumers, right?

11:26:21 11 A. Like BP, yes.

11:26:23 12 Q. BP, PLC, right?

11:26:25 13 A. Yes.

11:26:26 14 Q. Chevron, for example?

11:26:28 15 A. Yes.

11:26:29 16 Q. ExxonMobil?

11:26:31 17 A. Yes.

11:26:32 18 Q. Now, the exploration and production segments of an oil and gas
11:26:40 19 company, those are commonly referred to as upstream, right?

11:26:43 20 A. Yes.

11:26:44 21 Q. And the refining, distribution, and marketing are commonly
11:26:50 22 referred to as downstream?

11:26:52 23 A. Yes.

11:26:53 24 Q. Now, when oil and gas prices are high, then the upstream
11:27:00 25 segments of the business are likely to have higher revenues, right?

11:27:05 1 A. Yes.

11:27:06 2 Q. And hopefully higher profits that come with those, right?

11:27:10 3 A. Yes.

11:27:10 4 Q. And when the oil prices are low, the converse is true, right?

11:27:16 5 A. I think that's a fair statement.

11:27:18 6 Q. Lower revenues, lower profits, right?

11:27:23 7 A. Holding everything else consistent, I think that's a fair
11:27:26 8 statement.

11:27:26 9 Q. And companies with downstream segments may see their revenues
11:27:34 10 increase when there are low oil prices because of lower raw material
11:27:40 11 prices and higher consumer demand, right?

11:27:44 12 A. I think that's consistent. I think it's consistent with the BP
11:27:47 13 statement that I just shared with you.

11:27:49 14 Q. And so, therefore, probably profit margins would increase for
11:27:54 15 the downstream segment companies, right?

11:27:58 16 A. I don't know.

11:28:00 17 Q. Now, you know that Anadarko is not an integrated oil company,
11:28:04 18 right?

11:28:04 19 A. Correct.

11:28:05 20 Q. You know it's an independent, which means it only has the
11:28:08 21 upstream segment, right?

11:28:11 22 A. That's true.

11:28:11 23 Q. No downstream segment to offset, right?

11:28:15 24 A. I mean, it's a large company, it's not just oil exploration.
11:28:21 25 There's a lot of things going on in the business.

11:28:23 1 Q. Does it have a downstream segment?

11:28:25 2 A. I don't think so.

11:28:26 3 Q. Now, the primary assets of an exploration and production
11:28:35 4 company are its oil and gas reserves, right?

11:28:39 5 A. I think that's true.

11:28:44 6 Q. And those assets begin to shrink once they are placed into
11:28:50 7 production; isn't that right?

11:28:51 8 A. Yes.

11:28:52 9 Q. And as a result, it is important to replace those depleting
11:28:56 10 assets, right?

11:28:57 11 A. That's why capital expenditures are so important.

11:29:00 12 Q. Certainly so the company can survive in the extreme, right?

11:29:04 13 A. Yeah, I think that's fair.

11:29:09 14 Q. And hopefully grow, right?

11:29:14 15 A. I think that's fair.

11:29:15 16 Q. And, in fact, in the exploration and production business, you
11:29:20 17 need to continually replace those depleting assets, right?

11:29:26 18 A. I think -- I mean, as a high level statement, I think that's
11:29:33 19 fair.

11:29:33 20 Q. And the way you replace production is with drilling and
11:29:41 21 success, right?

11:29:41 22 A. That's fair.

11:29:44 23 Q. And drilling successes bring in the revenues, right, assuming
11:29:50 24 they are put into production?

11:29:52 25 A. Either production or they're sold because you've proved that a

11:29:55 1 success and maybe you decide you don't want to extract; you want a
11:30:00 2 partner and you want to sell.

11:30:01 3 Q. Revenues are what lead to the profits, right?

11:30:03 4 A. Absolutely.

11:30:06 5 THE COURT: Excuse me, Mr. Ratner, pull that microphone a
11:30:09 6 little bit closer to you. Yeah, like that. That's better.

11:30:13 7 MS. KIRBY: We've gone the other way now.

11:30:13 8 BY MS. KIRBY:

11:30:17 9 Q. For purposes of your opinions regarding the economic impact on
11:30:21 10 any of this, on any of the companies, you define a short-term as
11:30:25 11 roughly three years, right?

11:30:26 12 A. I think, yeah, I think generally speaking, your Honor, I've
11:30:31 13 defined kind one to three is short-term; five to seven, mid-term;
11:30:37 14 and then long term is ten-ish years. That's typically how it's
11:30:40 15 defined.

11:30:40 16 Q. And there are no charts in your report about Anadarko, in
11:30:46 17 particular, that shows any mid-term projections for Anadarko, right?

11:30:50 18 A. No, we didn't have them. Whatever we had, we used. The only
11:30:54 19 projections we had for Anadarko were through, I think, 2016.

11:30:59 20 Q. So obviously, then, you didn't have any long-term projections
11:31:02 21 either, did you?

11:31:02 22 A. No.

11:31:03 23 Q. So the one chart you did show was for projections through the
11:31:08 24 end of 2016?

11:31:09 25 A. Yes, ma'am.

11:31:10 1 Q. And that is what you would call short-term, right?

11:31:14 2 A. I think so.

11:31:15 3 Q. And you felt that it would be too aggressive to say that a
11:31:20 4 penalty on Anadarko would not have any negative consequence in a
11:31:26 5 short-term, right?

11:31:27 6 A. Yeah. I think, your Honor, the reason that I was thinking
11:31:33 7 about this project in terms --

11:31:37 8 THE COURT: Pull the microphone closer to you.

11:31:39 9 THE WITNESS: Your Honor, the reason I was thinking about
11:31:41 10 this project in terms of terms is because, I mean, frankly, the
11:31:45 11 numbers are large. Even if you pay a dollar, it has an impact on
11:31:52 12 you in the short-term. So it seems to me that any of these payments
11:31:58 13 are going to have an impact in the short-term.

11:32:00 14 The company -- Anadarko's a successful company. For them,
11:32:04 15 there's probably less of an impact in the short-term because they
11:32:08 16 have so much cash and optionality, but -- that's why you have to
11:32:12 17 really look at this over the medium and long term.

11:32:16 18 But even if you pay a dollar, if you have \$2 and you pay a dollar,
11:32:19 19 it has an impact on you in the short-term. Over the long term, it's
11:32:24 20 probably irrelevant.

11:32:25 21 MS. KIRBY: Right.

11:32:26 22 BY MS. KIRBY:

11:32:26 23 Q. You can't pay down debt with that money you used for a penalty,
11:32:29 24 right?

11:32:29 25 A. In the short-term.

11:32:31 1 Q. Right. You can't use it for capital investment, right?

11:32:34 2 A. Not in the short-term.

11:32:41 3 Q. You told us that oil prices have fallen basically 50 percent
11:32:46 4 since the projections that you did use for your analysis of
11:32:50 5 Anadarko, right?

11:32:50 6 A. That's true.

11:32:52 7 Q. Now, just because oil prices have fallen doesn't mean expenses
11:32:59 8 automatically decrease at the same rate, correct?

11:33:03 9 A. I think that's fair. I don't think that expenses would
11:33:07 10 decrease at the same rate, but definitely there's going to be
11:33:09 11 deflation in the expenses associated with E&P. In fact, BP's
11:33:15 12 studied that and they showed in their own materials. They call it a
11:33:20 13 lag, that after the prices decline, there's also a little bit of a
11:33:24 14 lag, but there -- then, there's also a deflation in the cost, which
11:33:30 15 makes sense from an economic perspective.

11:33:32 16 Q. Are you familiar with the fact that the U.S. Energy Information
11:33:39 17 Administration came out with forecasts for WTI, Western Texas
11:33:45 18 Intermediate crude oil prices of \$54.58 for 2015?

11:33:51 19 A. No.

11:33:52 20 Q. \$71 for 2016?

11:33:56 21 A. I mean, I looked at a lot of new sources. That one might be
11:34:00 22 one that we quoted. I can't recall.

11:34:02 23 Q. One that you quoted?

11:34:03 24 A. In the supplemental report we used some new sources for -- I
11:34:09 25 wouldn't call them projections. I'd say these are people's view or

11:34:12 1 forecasts for prices. And I know in our supplemental report, your
11:34:16 2 Honor, that we issued on January 6th, we included a chart with some
11:34:21 3 different data points of what people are saying about oil.

11:34:25 4 Q. And you didn't -- but what you did not do is you did not try to
11:34:29 5 run an analysis of the impact on Anadarko using any of those new
11:34:35 6 prices in your supplemental report, did you?

11:34:37 7 A. No.

11:34:38 8 Q. Now, you told us earlier that -- let me just make sure I
11:34:46 9 understand. Revenue is a function of the volume of oil sold, right?

11:34:50 10 A. Well, in the case of Anadarko, it's other activities as well.
11:34:53 11 So that's why I think it's communicated in barrel of oil equivalent,
11:35:00 12 but Anadarko has other activities.

11:35:01 13 Q. Right. So if all things stay the same and the amount of oil
11:35:06 14 sold is what was projected, obviously, if the price is 50 percent
11:35:12 15 below that, then it's going to be half the revenues, right?

11:35:15 16 A. I mean, I think in a simplistic example, that's probably the
11:35:23 17 case. If that's all they're doing is selling the same barrel -- if
11:35:27 18 I am selling ten barrels, and I was selling at 100, and now, I'm
11:35:30 19 selling ten barrels at 50, it's half.

11:35:34 20 Q. This can mean sharply reduced profits, can't it?

11:35:39 21 A. Yeah, I think it could result in a decline in profits.

11:35:44 22 Q. And that can lead to sharp cuts in investments, right?

11:35:48 23 A. Well, I think that companies like your client are already
11:35:53 24 forecasting reductions in capital expenditures, because what you
11:35:57 25 want to do is you want to defer -- you want to defer those capital

11:36:02 1 expenditures till a period where prices are recovered. So maybe
11:36:04 2 they defer six, eight months, if they can.

11:36:07 3 Q. And also, it can lead to a decrease in production operations,
11:36:13 4 right?

11:36:13 5 A. Sure.

11:36:14 6 Q. And reductions in the work force, right?

11:36:17 7 A. Yes.

11:36:19 8 Q. Now, you understand that the exploration and production
11:36:23 9 industry has what are called long-term contracts for things like
11:36:26 10 rigs, right?

11:36:28 11 A. Yes.

11:36:28 12 Q. And you understand that those contracts generally obligate the
11:36:33 13 company to pay the full price regardless of whether they decide to
11:36:38 14 defer their exploration activities or their production activities,
11:36:42 15 right?

11:36:42 16 A. I mean, generally, but I don't have a contract in particular
11:36:48 17 that I am looking at or knowledge of.

11:36:51 18 Q. But you have a general understanding, right?

11:36:53 19 A. Yes.

11:36:53 20 Q. In other words, some expenses are not going to decrease no
11:36:56 21 matter what, right?

11:36:57 22 A. Yeah, I think that's fair.

11:36:58 23 Q. And when profitability is sharply reduced for a company,
11:37:03 24 there's generally less flexibility in how payments can be made by
11:37:07 25 that company, right?

11:37:08 1 A. I think that's true, and that's exactly the point. Anadarko is
11:37:15 2 just such a strong company that it has more flexibility than most
11:37:20 3 because of its balance sheet and its cash position. And it's just
11:37:27 4 been so profitable that it, obviously, has a great management team,
11:37:31 5 so it gives it more flexibility.

11:37:34 6 Q. Let me just clarify something. You shared with us a bunch of
11:37:39 7 data today; for instance, that Anadarko's net assets as of June, I
11:37:46 8 believe it was, 2014 were somewhere around \$58 billion, is that
11:37:51 9 right?

11:37:52 10 A. That would have been the total assets.

11:37:54 11 Q. Right. That's total assets before payment of the 5.1 billion
11:37:58 12 for the Tronox settlement, right?

11:38:02 13 A. That's true. But the liability is accounted for in the
11:38:09 14 liability section. And that's why, ma'am, I focused on the equity
11:38:15 15 being 19 billion because it's already accounted for.

11:38:18 16 Q. Also, you showed us cash and cash equivalents of five
11:38:23 17 something, five point something billion as of June. That, again, is
11:38:27 18 before the \$5.1 billion Tronox payment, right?

11:38:31 19 A. Yes.

11:38:32 20 Q. And the 8.8 billion, I think, you said was projected
11:38:36 21 discretionary cash flow for 2014, again, before the Tronox payment,
11:38:43 22 right?

11:38:43 23 A. The Tronox payment would not be -- the company would not
11:38:48 24 include that in their discretionary cash flow. That's what they
11:38:52 25 would use the cash flow for.

11:38:53 1 Q. Now, just returning to -- before I started to digress. When
11:39:01 2 the profitabilities were reduced, they're certainly going to be less
11:39:06 3 ability to raise capital, right?

11:39:07 4 A. Although it is a two-edged sword, because through the last
11:39:13 5 couple of weeks, just reviewing so much media, there is a lot of
11:39:17 6 people, a lot of investors and analysts, saying that this is the
11:39:21 7 time to invest because you have a sharp decline in values. And if
11:39:25 8 you believe oil prices -- I mean, it's a fixed world. We're at a
11:39:30 9 point where global production and global consumption are very close.
11:39:34 10 Your Honor, there's, at least, one forecast I've seen that shows
11:39:37 11 that global production is going to be below global consumption
11:39:42 12 within, you know, the medium term. I think it was five years.

11:39:48 13 So there are people saying that this is the time to invest
11:39:50 14 and to raise capital and buy company, you know, to be in the
11:39:54 15 business, because you want to get in when things are at a low value.
11:39:58 16 I mean, Anadarko is valued below its fair value right now.

11:40:03 17 Q. Mr. Ratner, you do agree that it is possible for a company to
11:40:09 18 have the ability to pay a penalty, but payment could actually
11:40:15 19 jeopardize its operations. That's possible, right?

11:40:18 20 A. Yeah, I think that's a fair --

11:40:29 21 Q. I don't want to cut you off, so.

11:40:31 22 A. I'm just thinking about it. Yeah, I think that's fair.

11:40:34 23 Q. If, for instance, it borrows the money to pay and it's sets
11:40:38 24 services too high, that could potentially jeopardize its operations,
11:40:43 25 right?

11:40:45 1 A. I think that's a fair statement.

11:40:48 2 Q. Or if it has no money for capital expenditures for the next
11:40:52 3 year, right?

11:40:52 4 A. I think that's fair.

11:40:55 5 Q. And if it has no money to pay dividends as it historically has
11:41:00 6 done, then it can jeopardize its ability to raise equity capital,
11:41:05 7 right, or capital, sell more stock, that kind of thing?

11:41:08 8 A. I think those are all true, and that's why you have to look at
11:41:11 9 the company itself. And I don't think that those -- vis-à-vis
11:41:15 10 Anadarko, I don't think it's in that position.

11:41:17 11 Q. Now, you did not model the various options that Anadarko might
11:41:25 12 have for making a penalty payment with \$45 oil prices, did you?

11:41:31 13 A. No.

11:41:32 14 Q. Or even whether all of the various options would still be
11:41:37 15 available to Anadarko, right?

11:41:38 16 A. Yeah, I think the decline in oil prices will make certain
11:41:43 17 options more difficult in the short-term. I think that's a fair
11:41:46 18 statement.

11:41:47 19 Q. And to be fair, you were asked to read on the screen an
11:41:52 20 admission, we'll call it, by Anadarko that said it had the ability
11:41:56 21 to pay. Do you recall that?

11:41:57 22 A. Yes.

11:41:58 23 Q. And that was -- well, it was a demonstrative, but the -- I'll
11:42:07 24 come up with a trial exhibit number in just a second.

11:42:11 25 While Anadarko said it had the ability to pay, it said it

11:42:14 1 did as of August 2014, right?

11:42:17 2 A. Yes, ma'am.

11:42:17 3 Q. And it also, it said it could not admit that there would be no
11:42:23 4 economic impact given that it was a future issue and so on, right?

11:42:28 5 A. I mean, I don't recall that.

11:42:30 6 Q. Let's pull up --

11:42:31 7 A. I don't know if that was in that clip.

11:42:33 8 Q. I'm sorry. Let's put up TREX 230812. Let's go to -- I think
11:42:42 9 you were asked to call out the very beginning of this answer. If we
11:42:47 10 can go to .2 -- there we are. And then just blow up the top of it.
11:42:54 11 And you can see here unable to admit or deny, it is required to pay.
11:43:03 12 It would be able to pay that amount or continue its business
11:43:06 13 operations as a result, okay. That's right. And then, it goes on
11:43:10 14 to say numerous uncertainties and risks, correct?

11:43:14 15 A. Correct.

11:43:14 16 Q. And obviously, in August of 2014, I don't think any of us knew
11:43:21 17 that the oil prices were going to drop by 50 percent, right? You
11:43:27 18 can take that down, Mr. Stephenson.

11:43:29 19 A. Ma'am, I think that's exactly the point. We can't forecast
11:43:33 20 that it's going to be where it is forever either. The same way we
11:43:37 21 had a sharp decline. If you look at the volatility, the point
11:43:40 22 you're making is exactly the point. The point is we've had --
11:43:44 23 nobody in this -- the lawyers or the advisors projected that such a
11:43:50 24 drastic decline in price between August and today, or even between
11:43:55 25 the time of depositions, that we had some decline until today, the

11:43:59 1 same way that you would be really inappropriate to assume that
11:44:03 2 you're going to have the same low price forever.

11:44:06 3 It just doesn't work that way. I mean, you have to be --
11:44:11 4 you can't -- it just doesn't work that way. I think your statement
11:44:14 5 is exactly the point.

11:44:15 6 Q. And, in fact, you just put your finger on it, the oil prices
11:44:19 7 are very volatile, aren't they?

11:44:22 8 A. They can be over the long-term. You see there has been periods
11:44:26 9 of volatility.

11:44:26 10 Q. Let's take a look at one table you were asked to talk about
11:44:33 11 before. Let's pull up TREX 233887R.9.1 -- I'm sorry. I gave you
11:44:49 12 the wrong one. Let's go to .8.1. You told us here they've gone at
11:45:01 13 a steady pace. But if we look at 2011 and 2012, we can see that
11:45:07 14 what actually happened here is that business revenues decreased,
11:45:10 15 didn't they?

11:45:11 16 A. Yes, the volume increased and there was a decline of revenue.
11:45:20 17 I think when I was testifying I said, generally, they've increased
11:45:24 18 over that period. I wasn't going year by year by year.

11:45:27 19 Q. I see. Now, revenues are a function of sales volume and
11:45:31 20 commodity prices, aren't they?

11:45:34 21 A. And I think in the case of Anadarko mix, right, there's a
11:45:37 22 different mix of products involved.

11:45:39 23 Q. You mean oil and gas?

11:45:41 24 A. Yes.

11:45:41 25 Q. And gas prices are down a little bit too, aren't they?

11:45:45 1 A. Yes.

11:45:46 2 Q. So you can see, then, from looking at '11 and '12 that
11:45:54 3 commodity prices had to have gone down, right?

11:45:59 4 A. I don't know exactly what the -- I haven't done a bridge in the
11:46:03 5 revenue between the three point -- 13.8 and the 13.2. A bridge
11:46:09 6 would tell you the reason. You would analyze the volumes and the
11:46:14 7 different sales aspects that they have.

11:46:15 8 Q. We can certainly see that sales volume went up, didn't it?

11:46:20 9 A. Yes.

11:46:20 10 Q. So price must have decreased for something, right?

11:46:25 11 A. Yeah, I don't know.

11:46:27 12 Q. In terms of your testimony about discretionary cash flow, I
11:46:35 13 want to be clear about what that is. We've already talked about how
11:46:39 14 the 8.8 billion that you told was projected for 2014, which was
11:46:46 15 projected back in May of 2014, wasn't it?

11:46:49 16 A. Yes, ma'am.

11:46:49 17 Q. You told us that's before the Tronox payment of 5.1 billion,
11:46:57 18 right?

11:46:57 19 A. Yes, ma'am.

11:46:57 20 Q. That doesn't even include the interest that will also have to
11:47:02 21 be paid when the payment is made, right?

11:47:03 22 A. I don't know.

11:47:04 23 Q. Discretionary cash flow doesn't mean cash in the bank, right?

11:47:12 24 A. That's true.

11:47:13 25 Q. And it is cash flow before capital expenditures, right?

11:47:19 1 A. That's exactly what I said.

11:47:20 2 Q. And it's before debt payments, right?

11:47:24 3 A. Yes, ma'am.

11:47:24 4 Q. And it's before dividends, right?

11:47:27 5 A. Yes, ma'am. That's consistent with my testimony and with my
11:47:32 6 report and what I shared with you today.

11:47:34 7 Q. Now, I think it's in your report, but I want to make it very
11:47:38 8 clear what it isn't. It isn't cash. It isn't all of that other
11:47:41 9 stuff.

11:47:42 10 Now, you're aware from having reviewed Anadarko's 10-Ks and
11:47:47 11 10-Qs that a very significant amount of Anadarko's discretionary
11:47:52 12 cash flow, very significant, historically, has been spent on
11:47:56 13 replenishing its depleting assets, right?

11:47:58 14 A. Yes, ma'am.

11:47:59 15 Q. In other words, on capital expenditures, right?

11:48:02 16 A. And you would do that in an era of price increases, so that
11:48:07 17 would be -- again, this company, your client is enormously
11:48:12 18 successful because they're well managed and, obviously, you invest
11:48:15 19 when prices are going up.

11:48:16 20 Q. I appreciate that you feel that way. Certainly, I do.

11:48:20 21 But you formed no opinion on the minimum capital investment
11:48:24 22 that Anadarko needs to make in order to replace its depleting
11:48:28 23 assets, have you?

11:48:29 24 A. No.

11:48:29 25 Q. Your report -- well, let me see here if I have anything I can

11:48:37 1 skip right through. You do tell us in your report about Anadarko's
11:48:41 2 stock prices. In fact, you give us a table or a chart where you
11:48:46 3 depict Anadarko's stock price against the Standard & Poor's 500
11:48:52 4 index, right?

11:48:52 5 A. Yes, ma'am.

11:48:53 6 Q. And that chart goes through Anadarko's stock price through
11:48:58 7 July 21, 2014, right?

11:49:00 8 A. Right.

11:49:00 9 Q. And certainly, while it may have gone on for a little bit after
11:49:04 10 that, it's been coming down since the oil prices have been going
11:49:07 11 down, right?

11:49:08 12 A. Yes, ma'am. The prices dropped from about \$108 a share to \$80
11:49:14 13 a share yesterday.

11:49:15 14 Q. And you showed us that chart in your report because you thought
11:49:20 15 that price -- stock prices was an indicator of the perceived equity
11:49:27 16 in the company, right, just like you talked about today?

11:49:29 17 A. Yes, ma'am.

11:49:29 18 Q. And its flexibility to obtain debt financing, right?

11:49:38 19 A. It gives you an image of what the market equity of the company
11:49:44 20 is.

11:49:44 21 Q. And if perceived equity goes down, then flexibility goes down,
11:49:49 22 doesn't it?

11:49:49 23 A. Yeah, I think there's still -- I think what's more significant
11:49:53 24 here is that the company -- the market perceives that this company,
11:49:56 25 in particular, is undervalued at the current stock price. That's

11:50:00 1 actually -- that's also useful in assessing the company's
11:50:07 2 flexibility.

11:50:08 3 Q. But you've done no analysis to see if there's a tipping point
11:50:12 4 at which Anadarko's stock price indicates an inability to raise
11:50:18 5 capital, have you?

11:50:18 6 A. I have not.

11:50:19 7 Q. Or an inability to get debt financing, for instance?

11:50:25 8 A. Well, they have an unused line of credit now, so I didn't -- I
11:50:31 9 didn't do that, but I didn't feel the need to even look at it.

11:50:35 10 Q. If they wanted to do some capital expenditures instead of just
11:50:38 11 pay penalties, then they might have to get some more, right?

11:50:41 12 A. Well -- you're actually right and to the point that there's so
11:50:46 13 much optionality that the goal is to layout the frame work and say
11:50:50 14 these are the different aspects of the company. The fact that they
11:50:53 15 have a \$5 billion line of credit that's untapped adds to the
11:50:57 16 optionality. The fact that the stock is undervalued, according to
11:51:01 17 the market, it increases their optionality. The fact that they can
11:51:06 18 defer certain capital expenditures adds to the optionality. You
11:51:11 19 would have to sit down with the CFO -- there's the process of
11:51:15 20 getting to that level of detail that was beyond the scope of what I
11:51:18 21 could do.

11:51:18 22 Q. Now, part of your opinion that you've shared with us today that
11:51:23 23 because of these prior transactions that Anadarko has had, the
11:51:28 24 \$4 billion payment in the settlement with BP, the \$5.1 billion
11:51:32 25 payment that's going out for the Tronox matter because it's been

11:51:37 1 able to do those, or it's just doing the Tronox payment today, you
11:51:43 2 think, well, it could pay a penalty of -- I don't know what you're
11:51:48 3 thinking, 4.6 billion without negatively impacting its operations,
11:51:52 4 right?

11:51:53 5 A. No. I think what I'm really saying is that when you're
11:51:58 6 analyzing a situation, it's helpful to look at what happened in the
11:52:02 7 past. And the company, through all of the different things in its
11:52:09 8 control, was able to manage those two transactions and continue to
11:52:16 9 be stable. And I think that's what I'm saying. I am not saying
11:52:20 10 that it would not have an impact. It would have an impact. I don't
11:52:23 11 think it has an impact over the long-term, but again, if you had \$10
11:52:27 12 today and you gave up five of them, that has an impact on you. But
11:52:32 13 over the long-term, it's probably not -- that's why you can't say
11:52:39 14 that it doesn't have an impact. It does have an impact because one
11:52:43 15 minute you have the money and the next you don't.

11:52:45 16 Q. Sure. I just have a few more questions. In that regard, you
11:52:50 17 did no analysis to determine what the shareholder value would be if
11:52:55 18 Anadarko hadn't had to take that \$9 billion out of the company for
11:52:59 19 those prior transactions, did you?

11:53:02 20 A. No.

11:53:02 21 Q. And you did no analysis to determine what the company's
11:53:06 22 existing operations would look like if it hadn't had to take that
11:53:10 23 \$9 billion out of the company, did you?

11:53:11 24 A. No.

11:53:12 25 Q. You told us about this little footnote that you interjected

11:53:18 1 into your January 6, 2015, supplemental report responding to Mr. Den
11:53:25 2 Uyl, right?

11:53:26 3 A. Responding to the court order so that we were -- I think it was
11:53:30 4 responding to the price decline.

11:53:32 5 Q. Well, the only time you mentioned Anadarko in that report is in
11:53:36 6 Footnote 2 of that report, right?

11:53:38 7 A. Yes, ma'am.

11:53:38 8 Q. And in that Footnote 2, you tell us about a press release from
11:53:43 9 Anadarko in October -- late October 2014, about its third quarter
11:53:48 10 results, right?

11:53:49 11 A. Yes, ma'am.

11:53:50 12 Q. And also, you share with us that Morningstar, another analyst,
11:53:56 13 believes that Anadarko is well positioned to weather the oil price
11:54:02 14 decrease, and that was in December of 2014, right?

11:54:06 15 A. Yes.

11:54:06 16 Q. Now, so, basically, what you're telling us is what Morningstar
11:54:10 17 thinks, right?

11:54:11 18 A. Well, we had not used any analyst reports in our first five
11:54:16 19 reports, your Honor. The four for BP or the three for BP, BPXP, and
11:54:21 20 one for Anadarko, but in the Denial supplemental, he quoted analysts
11:54:29 21 extensively. So I am not saying that opens the door, but we had not
11:54:33 22 done that before; but once we reviewed the analyst reports that he
11:54:37 23 looked at, we said, "Oh, maybe we should look at some of analyst
11:54:42 24 reports." Because prior to that, all of our work had been original,
11:54:46 25 not necessarily reliance on an analyst. That's what that's about.

11:54:49 1 Q. I understand. And let's just be clear: Mr. Den Uyl did not
11:54:51 2 say one word about Anadarko in any of his reports, right?

11:54:55 3 A. No, I don't think so.

11:54:55 4 Q. Correct, he wasn't an expert for Anadarko, was he?

11:54:58 5 A. Anadarko didn't have an expert.

11:54:59 6 Q. Right. So now with respect to the Morningstar report, what you
11:55:03 7 read about this weathering oil prices, it's not the same thing as an
11:55:08 8 opinion that it can weather the oil prices and pay a material
11:55:14 9 penalty, right?

11:55:14 10 A. I don't think they're making that opinion.

11:55:16 11 Q. They didn't say a word about a penalty, did they?

11:55:20 12 A. I can't recall.

11:55:21 13 MS. KIRBY: I have no further questions, your Honor.

11:55:23 14 THE COURT: Okay. I guess we should stop now. You'll be
11:55:27 15 more than five minutes, I suppose?

11:55:28 16 MR. REGAN: I will, yes, your Honor.

11:55:30 17 THE COURT: Let's recess -- what is your estimate, just so
11:55:33 18 I can get a heads up on how much?

11:55:36 19 MR. REGAN: I would say about 90 minutes.

11:55:38 20 THE COURT: Okay. Let's recess now until 1 o'clock.

11:55:41 21 MR. REGAN: Thank you, your Honor.

11:55:42 22 THE DEPUTY CLERK: All rise.

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REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

/s/ Karen A. Ibos
Karen A. Ibos, CCR, RPR, CRR, RMR
Official Court Reporter