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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: OIL SPILL BY THE OIL RIG	*	Docket 10-MD-2179
<i>DEEPWATER HORIZON</i> IN THE	*	
GULF OF MEXICO ON APRIL 20, 2010	*	Section J
	*	
Applies to:	*	New Orleans, Louisiana
	*	
Docket 10-CV-02771,	*	March 11, 2013
<i>IN RE: THE COMPLAINT AND</i>	*	
<i>PETITION OF TRITON ASSET</i>	*	
<i>LEASING GmbH, et al</i>	*	
	*	
Docket 10-CV-4536,	*	
<i>UNITED STATES OF AMERICA v.</i>	*	
<i>BP EXPLORATION &amp; PRODUCTION,</i>	*	
<i>INC., et al</i>	*	
	*	
* * * * *		

DAY 9, AFTERNOON SESSION  
TRANSCRIPT OF NONJURY TRIAL  
BEFORE THE HONORABLE CARL J. BARBIER  
UNITED STATES DISTRICT JUDGE

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1 AFTERNOON SESSION

2 (March 11, 2012)

13:18 3 THE COURT: Please be seated, everyone.

13:31 4 Is that your witness?

13:31 5 MR. GODWIN: Yes, Your Honor. This is Mr. Tim  
13:31 6 Probert, Your Honor.

13:31 7 THE COURT: Very well.

8 **TIMOTHY PROBERT,**

9 having been duly sworn, testified as follows:

13:22 10 THE DEPUTY CLERK: Please state your full name and  
13:22 11 correct spelling for the record.

13:32 12 THE WITNESS: My name is Timothy James Probert.

13:32 13 MS. KARIS: Your Honor, I was going to address one  
13:32 14 housekeeping matter, but I'm happy to defer.

13:32 15 THE COURT: Let's do it.

13:32 16 MS. KARIS: We were asked previously to finalize the  
13:32 17 list with respect to -- BP's exhibit list with respect to  
13:32 18 Mr. Sepulvado's exhibits. There was an issue with it. It has  
13:32 19 since been rectified. I believe the parties are in agreement  
13:32 20 with respect to the exhibits that we are offering, so we will  
13:32 21 tender this list for Mr. Sepulvado at this time.

13:32 22 THE COURT: Are there any remaining objections to  
13:32 23 BP's list of exhibits relating to Mr. Sepulvado?

13:32 24 Those are admitted.

13:32 25 MS. KARIS: Thank you, Your Honor.



13:32 1           **THE COURT:** Thank you.

13:32 2           **MR. MILLER:** Good afternoon, Your Honor. Kerry  
13:32 3 Miller for Transocean. I would like at this time to move in  
13:32 4 the exhibits that I used with Glen Benge. As Your Honor will  
13:32 5 recall, BP had an objection to one of the demonstratives, 6630.  
13:32 6 That's the one the witness corrected on the stand.

13:33 7           I think Your Honor ruled on that this morning,  
13:33 8 so I think the exhibits that I seek to offer are now all not  
13:33 9 objected to.

13:33 10          **THE COURT:** Unless there are other objections, those  
13:33 11 are admitted.

13:33 12           Who is calling Mr. Probert?

13:33 13          **MR. BREIT:** Mr. Breit is. Jeffrey Breit for the  
13:33 14 Plaintiffs' Steering Committee calling Mr. Probert on  
13:33 15 cross-examination.

13:33 16          **THE COURT:** Good afternoon, Mr. Probert.

13:33 17          **THE WITNESS:** Good afternoon.

13:33 18                           **CROSS-EXAMINATION**

13:33 19 **BY MR. BREIT:**

13:33 20 **Q.** At the present time you are the president of Halliburton?

13:33 21 **A.** No, that's not correct.

13:33 22 **Q.** You changed your position since your deposition was taken?

13:33 23 **A.** Yes. My title is president of strategy and corporate  
13:33 24 development.

13:33 25 **Q.** At the time of your deposition. And now, you are the

## TIMOTHY PROBERT - CROSS

13:33 1 president of strategy and corporate development?

13:33 2 A. That's correct.

13:33 3 Q. At the present time you're also the head of health, safety  
13:34 4 and the environment for Halliburton?

13:34 5 A. No, I'm not. That role was passed to the newly appointed  
13:34 6 position of chief operating officer in the fourth quarter of  
13:34 7 2012.

13:34 8 Q. So when your deposition was taken, you were in charge of  
13:34 9 health and safety for Halliburton?

13:34 10 A. No, that's not quite correct. Just for clarity, my role  
13:34 11 was chief health, safety, and environmental officer. The head  
13:34 12 of the health and safety for Halliburton at that time was  
13:34 13 Melissa Bergman.

13:34 14 Q. So you were in charge or head of health, safety, and the  
13:34 15 environment for Halliburton, correct?

13:34 16 A. I was the chief HSE officer for that company, yes.

13:34 17 Q. And that means you were the head officer for Halliburton  
13:34 18 for health, safety, and environment; is that correct?

13:34 19 A. Well, that's not correct, actually.

13:34 20 Just for clarity, again, I was the chief HSE officer,  
13:34 21 which means my roles were primarily to liaison with the HSE  
13:35 22 committee of the board, to also chair the internal HSE  
13:35 23 committee for Halliburton. The chief HSE function, if you  
13:35 24 like, was Melissa Bergman.

13:35 25 Q. So you chaired the HSE for the board of Halliburton; is

## TIMOTHY PROBERT - CROSS

13 : 35 1 that right?

13 : 35 2 A. Not for the board, no. There is a board member who  
13 : 35 3 presides over the HSE committee of the board. I presided over  
13 : 35 4 the HSE committee of Halliburton internally.

13 : 35 5 Q. Okay. At the time of the explosion, you were the  
13 : 35 6 president of the global business lines?

13 : 35 7 A. That's correct.

13 : 35 8 Q. At the time of the explosion, you were also in that same  
13 : 35 9 role as head of health, safety, and environment, chief officer,  
13 : 35 10 correct?

13 : 35 11 A. I was the officer, yes, the chief HSE officer.

13 : 35 12 Q. Chief HSE officer for Halliburton; is that correct?

13 : 35 13 A. That's correct.

13 : 35 14 Q. So before the explosion of April 20, 2010, during the  
13 : 35 15 explosion and after the explosion, you maintained your job as  
13 : 36 16 the chief officer for Halliburton for health, safety, and  
13 : 36 17 environment; is that correct?

13 : 36 18 A. That's correct, until the fourth quarter of 2012.

13 : 36 19 Q. After the explosion you were the face and the voice for  
13 : 36 20 Halliburton as Halliburton presented testimony for Congress; is  
13 : 36 21 that correct?

13 : 36 22 A. I did go to Washington to testify in front of Congress,  
13 : 36 23 yes.

13 : 36 24 Q. You were the voice of Halliburton, together with Lamar  
13 : 36 25 McKay for BP and for Steve Newman for Transocean, correct?

## TIMOTHY PROBERT - CROSS

13:36 1 A. At those hearings, yes.

13:36 2 Q. So the three of you appeared as the heads of your company  
13:36 3 at those Senate hearings, correct?

13:36 4 A. At those hearings on May 11 and May 12, 2010, yes.

13:36 5 Q. And before you appeared before Congress, you attempted to  
13:36 6 gather as much information as you could so that you could  
13:36 7 properly testify honestly and accurately before Congress; is  
13:37 8 that correct?

13:37 9 MR. GODWIN: Object, Your Honor, to relevance  
13:37 10 regarding any testimony before Congress by this witness.

13:37 11 THE COURT: Overruled.

13:37 12 MR. BREIT: Thank you, Your Honor.

13:37 13 THE WITNESS: Could you restate the question, please.

13:37 14 BY MR. BREIT:

13:37 15 Q. At the time that you went to Congress and prepared  
13:37 16 yourself to testify before Congress, you met with personnel  
13:37 17 from Halliburton in order so that you could have accurate and  
13:37 18 honest information so that when you testified, you could  
13:37 19 testify accurately and honestly, correct?

13:37 20 A. Correct.

13:37 21 Q. And you met with, if I'm not mistaken, Tommy Roth --  
13:37 22 correct --

13:37 23 A. Correct.

13:37 24 Q. -- before May -- in your testimony in May of 2010?

13:37 25 A. Correct.

## TIMOTHY PROBERT - CROSS

13:37 1 Q. Ronnie Faul?

13:37 2 A. Correct.

13:37 3 Q. And Anthony Badalamenti?

13:37 4 A. Correct.

13:37 5 Q. All people from the cement department of Halliburton?

13:37 6 A. That's correct.

13:37 7 Q. You also prepared a statement so that when you went to  
13:37 8 Congress, you could read a statement at the Senate hearing  
13:37 9 committee on May 11, 2010; is that correct?

13:37 10 A. I prepared three statements, actually, for the three  
13:38 11 separate hearings.

13:38 12 Q. Three separate hearings, and you presented those  
13:38 13 statements. Although they were awfully close to each other,  
13:38 14 there were some sentences that were different; is that correct?

13:38 15 A. That's correct.

13:38 16 MR. BREIT: TREX-0216-B-5, please.

13:38 17 BY MR. BREIT:

13:38 18 Q. One of the statements that you made in your prepared  
13:38 19 statement with Halliburton for the Senate was that:

13:38 20 "Halliburton was contracted by the well owner to perform a  
13:38 21 variety of services. These included cementing, mud logging,  
13:38 22 directional drilling, and real-time data acquisition and data  
13:38 23 delivery services for key personnel on board the rig and on the  
13:38 24 shore."

13:38 25 Was that in your prepared statement?

## TIMOTHY PROBERT - CROSS

13:38 1 A. Yes, it was.

13:38 2 Q. You also told Congress in the same TREN-0216 --

13:38 3 MR. BREIT: B-6, please, Carl --

13:38 4 BY MR. BREIT:

13:38 5 Q. "At the outset, I need to emphasize that Halliburton, as a  
13:38 6 service provider to the well owner, is contractually bound to  
13:39 7 comply with the well owner's instructions on all matters  
13:39 8 relating to the performance of all work-related activities."

13:39 9 Was that your statement as well to Congress?

13:39 10 A. Yes, it was.

13:39 11 Q. Now, when you said to Congress that the service provider  
13:39 12 is contractually bound to comply with the well owner, it was  
13:39 13 also clear that Halliburton, as the contractor, wished to carry  
13:39 14 out the work at the Gulf of Mexico in accordance with the terms  
13:39 15 of those contracts.

13:39 16 MR. BREIT: The same, 21292-B-22, please.

13:39 17 This is from the contract -- I apologize,  
13:39 18 Your Honor. It's TREN-21292.

13:39 19 BY MR. BREIT:

13:39 20 Q. In the contract between Halliburton and BP, which has been  
13:39 21 previously introduced as 4477, the contractor wishes to carry  
13:39 22 out the work in accordance with the terms and conditions of the  
13:39 23 contract.

13:39 24 This is on the contract, and this is on Halliburton's  
13:40 25 part of the contract; is that correct?

## TIMOTHY PROBERT - CROSS

13 : 40 1 A. Yes.

13 : 40 2 Q. Now, you also told Congress -- 02016-B-8 -- this is a  
13 : 40 3 statement from Tim Probert: "The company views safety and  
13 : 40 4 environmental performance as critical to its success, and these  
13 : 40 5 are the core elements of our corporate culture."

13 : 40 6 Is that your statement?

13 : 40 7 A. Yes.

13 : 40 8 Q. You were making that statement as an officer in charge of  
13 : 40 9 health, safety, and environment for Halliburton, were you not?

13 : 40 10 A. Yes.

13 : 40 11 Q. Now, as I pointed out, Mr. Godwin had used a copy of the  
13 : 40 12 contract as TRES-4477. There is a cleaner version at 21292.

13 : 40 13 I want to ask you --

13 : 40 14 **MR. BREIT:** Carl, B-24, which is page 6 of 44 of that  
13 : 40 15 contract.

13 : 40 16 **BY MR. BREIT:**

13 : 40 17 Q. In that contract Halliburton agreed that it should take  
13 : 40 18 "full responsibility for the adequacy, stability, health,  
13 : 40 19 safety, and environmental protection of all of its operations  
13 : 41 20 and methods necessary for the performance of the work, and  
13 : 41 21 shall keep strictly to the provisions of Section 7, Health,  
13 : 41 22 Safety, Security, and Environment."

13 : 41 23 Is that true?

13 : 41 24 A. Yes.

13 : 41 25 Q. Now, not only did BP indicate that Halliburton would take

## TIMOTHY PROBERT - CROSS

1 full responsibility for health and safety, the contract with  
2 Halliburton specifically required Halliburton to observe and  
3 comply with BP's health and safety contract, B-25, from the  
4 same exhibit.

5 "Company" -- that's BP -- "places prime importance on  
6 health, safety, security, and environmental issues and requires  
7 the contractor" -- in this case Halliburton -- "and their  
8 subcontractors to actively pursue the highest standards of  
9 health, safety" -- I'm not sure what the next word is --  
10 "security, environment, and performance."

11 And there's a last line of that: "The contractor,  
12 Halliburton, shall familiarize himself with the following  
13 documents: 'Getting Health, Safety, and Environment Right';  
14 'BP's Golden Rule of Safety'; and "Drilling and Wells  
15 Operations Policy, also known as the DWOP.'"

16 It's all part of what Halliburton agreed to do; is  
17 that correct?

18 A. Yes.

19 Q. And that's a part of the Halliburton document that was a  
20 part of that contract; is that correct?

21 A. Yes.

22 Q. Now, in your testimony before Congress, you testified that  
23 Halliburton was contractually bound to comply with the well  
24 owner's instructions on all matters; and one of those well  
25 owner's instructions was the contractor to provide onshore



## TIMOTHY PROBERT - CROSS

13 : 42 1 engineering development and update the cement basis of  
13 : 42 2 design -- B-28 of the same contract.

13 : 42 3 This is in the cementing services part of the  
13 : 42 4 BP/Halliburton contract applicable at the time of this  
13 : 42 5 explosion: "Provide onshore engineering support to the  
13 : 42 6 operation, with full and comprehensive technical backup to the  
13 : 43 7 operation, and this shall include development and update the  
13 : 43 8 cement basis of design."

13 : 43 9 Did I read that correctly?

13 : 43 10 A. Yes, you did.

13 : 43 11 Q. And the cement contract had obligations for Halliburton's  
13 : 43 12 onshore engineering as well, did it not?

13 : 43 13 A. I don't know.

13 : 43 14 MR. BREIT: B-30 of the same contract, please. Let's  
13 : 43 15 look at Section F.

13 : 43 16 BY MR. BREIT:

13 : 43 17 Q. Again, this is the onshore engineering roles: "Produce  
13 : 43 18 and update a basis of design document for the project. The  
13 : 43 19 objective of this document is to record the major decisions and  
13 : 43 20 their process of determination. The document shall be  
13 : 43 21 controlled and auditable."

13 : 43 22 And in Section G: "Apply risk-based engineering  
13 : 43 23 processes to prepare the basis of design, individual well  
13 : 43 24 programs, and all associated engineering and documentation."

13 : 43 25 Did I read that correctly?

## TIMOTHY PROBERT - CROSS

13 : 4 3 1 A. Yes, you did.

13 : 4 4 2 MR. BREIT: Section J at B-31, Carl.

13 : 4 4 3 BY MR. BREIT:

13 : 4 4 4 Q. "Provide" again "onshore engineering roles and  
13 : 4 4 5 responsibilities, provide solutions where conventional cement  
13 : 4 4 6 design and procedures are not suitable, such as blend and foam  
13 : 4 4 7 cement."

13 : 4 4 8 Did I read that correctly from the contract?

13 : 4 4 9 A. Yes, you did.

13 : 4 4 10 Q. Now, the contract also had very specific criteria for what  
13 : 4 4 11 was basis of design between Halliburton and BP at the time  
13 : 4 4 12 prior to this explosion.

13 : 4 4 13 MR. BREIT: Carl, B-32, please.

13 : 4 4 14 BY MR. BREIT:

13 : 4 4 15 Q. This is the scope of the work for the same cementing  
13 : 4 4 16 services. "Objectives. What needs to be achieved? What  
13 : 4 4 17 objective would incur cementing NPT"-- nonproductive time,  
13 : 4 4 18 correct?

13 : 4 4 19 A. Correct.

13 : 4 4 20 Q. -- "if not achieved?

13 : 4 4 21 "The boundaries. What are the design limits that  
13 : 4 4 22 need to be considered? Fracture gradient or local legislative  
13 : 4 5 23 requirements?

13 : 4 5 24 "The assumptions. What engineering decisions have  
13 : 4 5 25 already been made? Mud weight, casing size, and setting

## TIMOTHY PROBERT - CROSS

13 : 45 1 depths?

13 : 45 2 "What risks? What are the key risks?

13 : 45 3 "Mitigations. How can the major risks be managed?

13 : 45 4 "Options. What cement design options exist?

13 : 45 5 "Selection. Based on technical health, safety,  
13 : 45 6 commercial identified risks.

13 : 45 7 "What are the best solutions for the project?"

13 : 45 8 Did I read that correct from the contract?

13 : 45 9 A. Yes, you did.

13 : 45 10 Q. Now, despite that contractual obligation of Halliburton  
13 : 45 11 and its duties to BP when it signed that contract and before  
13 : 45 12 the drilling of the Macondo well, Halliburton not have a formal  
13 : 45 13 basis of design, did it?

13 : 45 14 A. I'm not -- first of all, I'm not a cementing expert.  
13 : 45 15 Secondly, I haven't read this particular part of the contract,  
13 : 45 16 the cementing contract, before. And I have no knowledge of  
13 : 45 17 whether or not there was a basis of design or not.

13 : 46 18 Q. You're telling this Court that as the head of health and  
13 : 46 19 safety and environment for Halliburton during April 2010, that  
13 : 46 20 you have no idea whether or not there was a basis of design in  
13 : 46 21 Halliburton's own operations?

13 : 46 22 A. That would not be a part of my responsibility, to  
13 : 46 23 establish whether or not there was a basis of design for this  
13 : 46 24 particular project; and, therefore, I would not have known  
13 : 46 25 about it, no.

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13 : 46 1 Q. Well, you did find out about it, didn't you, that there  
13 : 46 2 was no basis of design for Halliburton at the time of the  
13 : 46 3 Macondo explosion?

13 : 46 4 A. No, I was not aware of that.

13 : 46 5 Q. All right. Well, let me direct you, if I could. You got  
13 : 46 6 a presentation sometime after this explosion from Mr. Roth, who  
13 : 46 7 prepared you for your testimony at Congress, did you not?

13 : 46 8 A. I was prepared --

13 : 46 9 Q. Mr. Roth gave you a slide presentation, did he not,  
13 : 46 10 afterwards?

13 : 46 11 A. I'm not familiar with that presentation, to the extent it  
13 : 46 12 existed, no.

13 : 46 13 MR. BREIT: Let me see TREN-25040, which is a section  
13 : 47 14 from Tommy Roth's deposition. Deposition 25040, page 763.

13 : 47 15 Can we start with the first one, 4357, which I'm  
13 : 47 16 going to show you in a minute.

13 : 47 17 BY MR. BREIT:

13 : 47 18 Q. (Reading)

13 : 47 19 "QUESTION: You prepared these documents that are  
13 : 47 20 styled 'Observations for Presentation to Mr. Probert,' as  
13 : 47 21 I understand it. Correct?"

13 : 47 22 So that is testimony from Mr. Roth, who indicated  
13 : 47 23 that he gave you such a slide presentation. Do you deny that  
13 : 47 24 that happened?

13 : 47 25 A. I don't know what slide presentation you're referring to,

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13 : 47 1 sir.

13 : 47 2 MR. BREIT: Well, let's see it. TREN-4357, please.

13 : 47 3 BY MR. BREIT:

13 : 47 4 Q. The slide presentation Mr. Roth has indicated that he gave  
13 : 47 5 you in the fall of 2010, after this explosion.

13 : 47 6 4357. That's the native from the Halliburton files.  
13 : 47 7 And if you could please turn to page 5 of that exhibit, B49.  
13 : 47 8 Again, if you could read this -- this is the presentation of  
13 : 48 9 the slide show of Mr. Roth to you in the fall of 2010, which he  
13 : 48 10 indicated under oath: "No formal basis of design standard  
13 : 48 11 exists today. BOD, basis of design, to formalize an agreement  
13 : 48 12 with client of challenges to be addressed by cementing service  
13 : 48 13 recommendation during the well."

13 : 48 14 Down below: "BOD to provide means to continually  
13 : 48 15 assess fitness of purpose of cementing, recommendation by  
13 : 48 16 engineering interpretation against client challenges and well  
13 : 48 17 hazards, red flags while encountered during drilling."

13 : 48 18 In this presentation to you, Mr. Roth, who prepared  
13 : 48 19 you for Congress and did an investigation of this incident,  
13 : 48 20 tells you that no formal basis of design standard exists when  
13 : 48 21 you had a contract with BP to actually provide basis of design.

13 : 48 22 Am I reading that wrong?

13 : 49 23 A. I do not read it that way. I read it as there is no  
13 : 49 24 standard. It doesn't mean to say that there was not a basis of  
13 : 49 25 design in that particular instance. That's my understanding of

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13:49 1 the document.

13:49 2 Q. Well, then, let me show you another document, TREN-989.  
13:49 3 This is the "April 2010 Halliburton U.S. Land Offshore  
13:49 4 Cementing Work Methods" which was applicable to the Macondo  
13:49 5 well in the contract between BP and Halliburton before this  
13:49 6 explosion?

13:49 7 MR. BREIT: And if I could see TREN-48008 next to the  
13:49 8 "April 2010 U.S. Land Offshore Cementing Work Methods"  
13:49 9 documents.

13:49 10 And on the right side of this screen you will see  
13:49 11 that this is the March 2011 U.S. Land Offshore Cementing Work  
13:49 12 Methods document that was created by Halliburton after the  
13:50 13 explosion. The one on the left is the one that was applicable  
13:50 14 before and during the explosion.

13:50 15 MR. BREIT: Carl, I would ask you to scroll through  
13:50 16 the indexes for me. Go from page 1 to page 2 of each of these  
13:50 17 documents.

13:50 18 BY MR. BREIT:

13:50 19 Q. And we'll talk about whether or not the basis of design,  
13:50 20 as interpreted by you, is interpreted in these documents the  
13:50 21 same way.

13:50 22 On the screen right now, we have the April 10, 2010,  
13:50 23 on the left, March of 2011 on the right. And if you can see  
13:50 24 the table of contents, charter, charter, cement, cement,  
13:50 25 products, products, solution, solution are all identical, no

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13:50 1 changes.

13:50 2 MR. BREIT: Carl, next page, please.

13:50 3 BY MR. BREIT:

13:50 4 Q. Cementing operations offshore, bulk operations, solutions,  
13:50 5 engineering solutions, field engineering. On this one, cement  
13:50 6 operations, bulk operations, solutions, in 2011.

13:51 7 MR. BREIT: And if I could see, Carl -- I believe  
13:51 8 it's the next page, B-42.

13:51 9 BY MR. BREIT:

13:51 10 Q. And if you see in March of 2011, after field engineering,  
13:51 11 which exists on 2010, in 2011 you have added a section which  
13:51 12 did not exist in April of 2010.

13:51 13 MR. BREIT: If you could show us that, please, Carl.

13:51 14 MR. GODWIN: Your Honor, I would object on the basis  
13:51 15 of he is asking -- he's trying to compare at and before the  
13:51 16 event to subsequent remedial measures that were taken. We  
13:51 17 believe that's objectionable and should not be allowed.

13:51 18 MR. BREIT: Your Honor, I don't believe it is a 407  
13:51 19 objection. Because, first of all, they're claiming that  
13:51 20 they've had a basis of design all along. If they are claiming  
13:51 21 that they had a basis of design, it surely cannot be a  
13:51 22 subsequent remedial measure.

13:51 23 But more importantly, in interpretations of 407  
13:52 24 by Wigmore, as well as by the Fifth Circuit, where there is an  
13:52 25 existence of a duty and a violation of that duty, this is not

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13 : 5 2 1 considered to be a subsequent remedial measure.

13 : 5 2 2 **THE COURT:** Let's see where it goes.

13 : 5 2 3 **MR. BREIT:** Thank you, Your Honor.

13 : 5 2 4 **BY MR. BREIT:**

13 : 5 2 5 **Q.** So in March of 2011, what has been added to this land  
13 : 5 2 6 offshore cement work methods is a section called "Basis of  
13 : 5 2 7 Design" -- and I will get to it later -- "Management of Change  
13 : 5 2 8 Process."

13 : 5 2 9 Would you agree that that didn't exist in April of  
13 : 5 2 10 2010, but it became a part of this important U.S. Land Offshore  
13 : 5 2 11 Cement Work Methods volume in --

13 : 5 2 12 **A.** Sir --

13 : 5 2 13 **Q.** -- April of 2011? If I could finish my question, sir.

13 : 5 2 14 **A.** Go ahead.

13 : 5 2 15 **Q.** I will repeat it.

13 : 5 2 16 Would you agree with me that in March of 2011, they  
13 : 5 2 17 added to this very important document, U.S. Land Offshore  
13 : 5 2 18 Cement Work Methods, a section on basis of design and  
13 : 5 2 19 management of change process because it did not exist in that  
13 : 5 3 20 same document in April of 2010?

13 : 5 3 21 **MR. GODWIN:** Same objection, Your Honor. Also,  
13 : 5 3 22 there's been no showing there was any violation of any duty by  
13 : 5 3 23 Halliburton at or prior to the time of the explosion.

13 : 5 3 24 **THE COURT:** All right. I will let him answer the  
13 : 5 3 25 question.



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13:53 1 MR. BREIT: Thank you.

13:53 2 THE WITNESS: First of all, sir, as I mentioned to  
13:53 3 you earlier, I'm not a cement expert. I haven't seen these  
13:53 4 documents before. Is there a discrepancy or difference between  
13:53 5 the two documents? I don't dispute that. Whether or not a  
13:53 6 basis of design existed before or not, there are certainly  
13:53 7 others who will be in a better position to testify than I that  
13:53 8 are on the docket.

13:53 9 BY MR. BREIT:

13:53 10 Q. Well, let me understand your role, then; and I'm not sure  
13:53 11 I quite understood it when we started off.

13:53 12 As the chief officer for health and safety and the  
13:53 13 environment for all of Halliburton, are you telling us that you  
13:53 14 have no idea what your employees are supposed to do as it  
13:53 15 relates to basis of design or management of change process at  
13:53 16 the time that the Macondo explosion occurred?

13:54 17 A. I'm telling you that that was not part of my job  
13:54 18 responsibility at that time, correct.

13:54 19 Q. Well, you were in charge of health and safety as the chief  
13:54 20 officer before, during, and after, weren't you? Did you ever  
13:54 21 look into it?

13:54 22 MR. GODWIN: Objection, Your Honor. That's been  
13:54 23 asked and answered.

13:54 24 THE COURT: I think he has answered. I think you're  
13:54 25 getting argumentative now.

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13:54 1 MR. BREIT: Okay. I apologize, Your Honor.

13:54 2 BY MR. BREIT:

13:54 3 Q. Now, let me move on then.

13:54 4 The contract with Halliburton and BP also required  
13:54 5 Halliburton to have in place a risk assessment and management.

13:54 6 MR. BREIT: Page B-42A of TREN-21292, please. This  
13:54 7 is from the same contract, BP's expectations of Halliburton.  
13:54 8 And if we could look at B-42, please.

13:54 9 BY MR. BREIT:

13:54 10 Q. "Risk assessment and management. Management of risk is a  
13:54 11 continuous process and the cornerstone of HSSE elements. We  
13:55 12 will regularly identify the hazards and assess the risks  
13:55 13 associated with our activities. We will take appropriate  
13:55 14 action to manage the risks and, hence, prevent or reduce the  
13:55 15 impact of potential accidents or incidents."

13:55 16 Did I read that section of the Halliburton/BP  
13:55 17 contract correctly?

13:55 18 A. You did.

13:55 19 Q. The contract also required Halliburton to have in place  
13:55 20 management of change.

13:55 21 MR. BREIT: Again, TREN-21292, page 8 of that  
13:55 22 contract, 63-A, and then I will move to 63, please.

13:55 23 BY MR. BREIT:

13:55 24 Q. Management of change, again, a part of the Halliburton  
13:55 25 contract with BP: "All temporary and permanent changes to

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13:55 1 organization, personnel, systems, procedures, equipment,  
13:55 2 products, materials, or substances will be evaluated and  
13:55 3 managed to ensure the health, safety, and environmental risks  
13:56 4 arising from these changes remain at an acceptable level."

13:56 5 Did I read that section of your Halliburton contract  
13:56 6 management of change correctly?

13:56 7 A. You did; but just for clarity here, I don't know whether  
13:56 8 or not this refers specifically to Halliburton or it refers to  
13:56 9 BP or to both. It's not clear to me from what you have read  
13:56 10 since I haven't seen this contract before.

13:56 11 Q. All right. Let's look at this section down here. Is this  
13:56 12 from the Halliburton Energy Services section? Am I reading  
13:56 13 that section properly?

13:56 14 A. I understand it has Halliburton's name on it. What I'm  
13:56 15 just simply saying, it's not clear to me just by looking at  
13:56 16 snippets of this contract, which I haven't reviewed before,  
13:56 17 whether or not these are referring to things that Halliburton  
13:56 18 should specifically do, BP should specifically do, or whether  
13:56 19 or not they should be done together. It's just not clear to  
13:56 20 me.

13:56 21 Q. Let's go back to B-25, then, 21292. This is from the  
13:56 22 BP/Halliburton contract where it says: "Contractor" -- that's  
13:57 23 Halliburton, is that right, not BP? In this situation,  
13:57 24 Halliburton is the contractor?

13:57 25 A. Halliburton is the contractor.

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13 : 57 1 Q. "Contractor shall familiarize itself with the following:  
13 : 57 2 Getting Health, Safety, and Environment Right" --

13 : 57 3 MR. BREIT: Down one section, please.

13 : 57 4 BY MR. BREIT:

13 : 57 5 Q. -- "BP's Golden Rules of Safety, and the Drilling and  
13 : 57 6 Wells Operation." That's for the contractor; is that correct?

13 : 57 7 A. That's correct.

13 : 57 8 Q. I just read you sections from the health, safety, and  
13 : 57 9 environment, right? And the BP's golden rules of safety, which  
13 : 57 10 required management of change to be in place in April of 2010  
13 : 57 11 by Halliburton. Do you disagree?

13 : 57 12 A. No. If that's where it came from, I understand.

13 : 57 13 Q. So you agree, then, that there was no formal management of  
13 : 57 14 change standard in Halliburton as required by its contract in  
13 : 57 15 April of 2010?

13 : 57 16 A. I don't know that to be true.

13 : 57 17 Q. Well, you don't? Let's look to JPD1, which is the  
13 : 58 18 deposition of James Harold Prestidge. And Mr. Prestidge, if  
13 : 58 19 I'm not mistaken, was the vice president in charge of health  
13 : 58 20 and safety, was he not?

13 : 58 21 A. He was.

13 : 58 22 Q. Let's see what he says on page 105.

13 : 58 23 "QUESTION: So as of March 17, 2011, there was not a  
13 : 58 24 formal management of change process in place?

13 : 58 25 "ANSWER: Not a global management of change process

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13:58 1 in place.

13:58 2 "QUESTION: Okay. So the management of change  
13:58 3 process that you talked about earlier was developed after  
13:58 4 or finalized after March 17, 2011?

13:58 5 "ANSWER: Yes, sir."

13:58 6 That's from James Prestidge. Now, do you agree or  
13:58 7 disagree that management of change did not exist as required by  
13:58 8 this contract in April of 2010 and did not come into existence  
13:58 9 until March 17, 2011?

13:58 10 A. No, that's not correct; and that's not what Mr. Prestidge  
13:58 11 is saying there. He is saying that there was not a global  
13:58 12 management of change process. That does not mean to say that  
13:59 13 that management of change process was not in place for specific  
13:59 14 contracts where requested. Just simply what he is saying is it  
13:59 15 wasn't in place globally.

13:59 16 Q. Let's go back to TRES-4357, please. And this, again, is  
13:59 17 the slide show from Tommy Roth, who prepared you for  
13:59 18 congressional testimony, his slide show to you in the fall of  
13:59 19 2010.

13:59 20 MR. BREIT: Second page of that, please, which would  
13:59 21 be B-53, I believe. If not, I can pull it from here myself.

13:59 22 BY MR. BREIT:

13:59 23 Q. This is Tommy Roth's presentation to you the fall of 2010,  
13:59 24 after investigating the Macondo explosion and the death of 11  
13:59 25 men: "No formal management of change standard exists today."

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13:59 1 Is that what Mr. Roth told you in this slide show?

13:59 2 A. That's what the slide show says.

13:59 3 Q. Do you deny hearing from Mr. Roth telling you that no  
13:59 4 management of change standard existed --

14:00 5 A. It doesn't say no standard of change -- change standard  
14:00 6 existed. It says no formal standard exists, which means that  
14:00 7 we are required for specific operators where requested. It may  
14:00 8 well be in place. That's something that I think others  
14:00 9 probably can testify better than I can.

14:00 10 Q. So where engineering interpretation concludes well  
14:00 11 challenges or hazards reduce the probability of success of  
14:00 12 cementing service, recommendation to unacceptable level, formal  
14:00 13 management of change action to be taken and documented, you  
14:00 14 agree that's what he told you when he presented that to you,  
14:00 15 correct?

14:00 16 A. That is part of the presentation, yes.

14:00 17 Q. So if I could go back, then, once again -- and I apologize  
14:00 18 for jumping back -- which would be U.S. Land Offshore Cement  
14:00 19 Work Methods, TRES-989. And specifically -- I'm sorry. I  
14:00 20 meant the 48008, which would be the one in 2011.

14:01 21 MR. BREIT: If I could see -- I believe it's on the  
14:01 22 bottom of 49.

14:01 23 BY MR. BREIT:

14:01 24 Q. This is the 2011 U.S. Land Offshore Cementing Work Methods  
14:01 25 contract. It would be page 4 of that document, the same one

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14:01 1 that had the basis of design.

14:01 2 MR. BREIT: I think it's on 49. There you go, right  
14:01 3 there, this section right here. Carl, could you give me that  
14:01 4 section. Thank you.

14:01 5 BY MR. BREIT:

14:01 6 Q. This is March of 2011, compliance section, which did not  
14:01 7 exist in the 2010 contract, adds for the first time management  
14:01 8 of change process at page 363, 364.

14:02 9 So you would agree with me for the purposes of this  
14:02 10 particular document that in April of 2010 the land shore  
14:02 11 document for Halliburton did not include management of change,  
14:02 12 that it was added in March of 2011?

14:02 13 MR. GODWIN: Objection, Your Honor. Again,  
14:02 14 subsequent remedial measures. He just asked a question and he  
14:02 15 testified this particular section isn't referring to --

14:02 16 THE COURT: Get to the microphone.

14:02 17 MR. GODWIN: Excuse me, Judge.

14:02 18 Mr. Breit has just said in his question that  
14:02 19 this particular section, as of March of 2011, did not exist as  
14:02 20 of April of 2010. It's a subsequent remedial measure. Again,  
14:02 21 we believe it's objectionable under 407 of the Federal Rules of  
14:02 22 Civil Procedure and object to it, Your Honor.

14:02 23 MR. BREIT: I apologize. Slightly different answer  
14:02 24 to my earlier objection to 407, Your Honor. Specifically,  
14:02 25 Mr. Probert has testified that we had management of change, we

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1 just didn't have it globally. I'm suggesting that it didn't  
2 exist at all.

3 But more importantly, the Fifth Circuit, in  
4 reviewing this very issue in the *Brazos* case, 469 F.3d 429,  
5 even post-incident subsequent remedial measure recommendations  
6 detailed in an investigative report is not a violation of 407.

7 So my suggestion to the Court at this time -- as  
8 Mr. Probert tries to tell us the management of change existed  
9 somewhere, my suggestion is that their most applicable document  
10 didn't have it at all until afterwards. And now we have heard  
11 their vice president, by way of a quote from his deposition,  
12 suggest as well that there was no such thing prior to March of  
13 2011. I don't believe it's a subsequent remedial measure. It  
14 goes to the fact that they had duty and they violated that  
15 duty, not to their negligence.

16 **MR. GODWIN:** Your Honor, again, Mr. Breit is  
17 misstating the record. The witness has not said that  
18 Halliburton did not have a management of change process in  
19 place. He said it was on a project-by-project,  
20 client-by-client basis, not a global management of change  
21 process in place. So again, comparing what did not exist prior  
22 to the incident to what they may have put in place a year later  
23 we believe violates 407.

24 **THE COURT:** I don't know where you are going with  
25 this, Mr. Breit. It sounds like we are going around in circles



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14:04 1 here.

14:04 2 MR. BREIT: I don't even have another question on  
14:04 3 that subject.

14:04 4 THE COURT: Then I will sustain his objection.

14:04 5 MR. BREIT: Well, Your Honor, that's different than  
14:04 6 not having another question. This is not a missing guardrail,  
14:04 7 Your Honor, where they came in later and replaced it.

14:04 8 THE COURT: I heard the witness, what he -- his  
14:04 9 answers to several questions, and I think I understand what he  
14:04 10 said.

14:04 11 MR. BREIT: Then that's fine, Your Honor.

14:04 12 BY MR. BREIT:

14:04 13 Q. You would agree, would you not, that the buck stops with  
14:04 14 you with regard to the development of health and safety  
14:04 15 processes and improvements of those processes? Would you agree  
14:04 16 with that?

14:04 17 A. No, I don't agree with that specifically. My role as the  
14:04 18 chief HSE officer is to help develop strategy for the company  
14:04 19 with respect to HSE policy and for that to be implemented in  
14:05 20 our operations on a global basis.

14:05 21 Q. Then let me ask it to you a different way. Have you ever  
14:05 22 said, prior to today's date under oath, that the buck stops  
14:05 23 with you with respect to the development of health and safety  
14:05 24 processes? Have you ever said that under oath?

14:05 25 A. I'm not aware of those specific words perhaps.

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14:05 1 Q. Let me help you.

14:05 2 MR. GODWIN: He is being a little argumentative with  
14:05 3 the witness, and there's no need for that. We would object.

14:05 4 MR. BREIT: I'm impeaching the witness, Your Honor.

14:05 5 THE COURT: But you did interrupt him. Let him  
14:05 6 answer before you ask another question.

14:05 7 MR. BREIT: For that I will apologize, Your Honor.  
14:05 8 Sometimes I get carried away.

14:05 9 BY MR. BREIT:

14:05 10 Q. This is your testimony, TRES-25105, page 317, lines 10  
14:05 11 through 23.

14:05 12 MR. BREIT: Page 317, line -- so you have it as  
14:05 13 different numbers? Hold on. On his deposition, I have it at  
14:05 14 page 17, line 10. I'm looking at page 522. Thank you.

14:06 15 BY MR. BREIT:

14:06 16 Q. Here's the question on line 10:

14:06 17 "QUESTION: Do you know the phrase 'the buck stops  
14:06 18 with you'? For the HSE function at Halliburton, the buck  
14:06 19 stops with you?

14:06 20 "ANSWER: HSE for us is in a line function. It's a  
14:06 21 responsibility of all managers to embrace a safe and  
14:06 22 secure operation for their employees. So the buck stops  
14:06 23 with all of us as it relates to HSE. The buck stops with  
14:06 24 me with respect to the development of HSE processes and  
14:06 25 improvements of those processes that we roll out to the

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1 organization."

2 So did you make that statement, sir?

3 A. I think that's what I just said to you, sir, which was my  
4 responsibility is for the development of policy and strategy,  
5 and the execution resides with the line organization.

6 Q. But the buck stops with you with respect to the  
7 development of health, safety, and environmental processes and  
8 improvements. Do you agree with me?

9 A. That's what I said, yes.

10 Q. Are you telling us that you have never read the health  
11 safety requirements of Halliburton's employees in a contract  
12 relationship with BP on the Macondo well when you are the  
13 person responsible for the development of the processes and the  
14 improvements?

15 A. I have not read that specific contract in detail, no.  
16 Sir, we have 70,000 employees. We have thousands and thousands  
17 of contracts. We have an organization, an HSE organization,  
18 that's some 300 strong. Would I expect that the organization,  
19 the HSE organization locally to have read those? Yes. Me  
20 specifically, no.

21 Q. You have 70,000 employees. Do you have any other  
22 incidents where 11 men were killed using your product?

23 MR. GODWIN: Objection, Your Honor. That misstates  
24 the record.

25 THE COURT: I sustain the objection.

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14:07 1 MR. BREIT: I'll move on.

14:07 2 BY MR. BREIT:

14:07 3 Q. You indicated that Tommy Roth and Ronnie Faul and  
14:08 4 Mr. Badalamenti prepared you for your testimony for Congress;  
14:08 5 is that right?

14:08 6 MR. GODWIN: Asked and answered, Your Honor,  
14:08 7 objection.

14:08 8 MR. BREIT: I just want to make sure that they're the  
14:08 9 ones that did.

14:08 10 THE COURT: He has already answered that question.

14:08 11 BY MR. BREIT:

14:08 12 Q. Let me show you something from your prepared statement  
14:08 13 about whether or not Halliburton was going to continue to work  
14:08 14 with Congress and other people to find out what happened.

14:08 15 MR. BREIT: B-7 of 02016.

14:08 16 BY MR. BREIT:

14:08 17 Q. Prepared statement of Tim Probert: "Halliburton has and  
14:08 18 will continue to fully support and cooperate with the ongoing  
14:08 19 investigations into how and why this tragic event happened."

14:08 20 Did you make that statement in your prepared  
14:08 21 statement before Congress?

14:08 22 A. I did.

14:08 23 Q. If I can move to B-12, page 52 of the same statement: "I  
14:08 24 think that everyone is working very hard to make sure that the  
14:08 25 data is made available so that a reconstruction of events can

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14:08 1 take place so that a determination can be made."

14:08 2 Did you make that statement?

14:08 3 A. I did.

14:08 4 Q. Let me ask you about a statement in a question from  
14:09 5 Senator Murkowski at B-12, please.

14:09 6 I'm sorry. I'm going to move to a question from  
14:09 7 Senator Udall on B-13.

14:09 8 MR. GODWIN: Objection, Your Honor, to any questions  
14:09 9 by senators or congressmen. That would be hearsay.

14:09 10 MR. BREIT: The question is: Are you going to  
14:09 11 cooperate with the investigation --

14:09 12 THE COURT: I think he wants to really get to the  
14:09 13 answer. So we have to know what the question is before we get  
14:09 14 to the answer. You can just ask him was he asked such-and-such  
14:09 15 and then put up his answer, I guess.

14:09 16 MR. BREIT: I could, but I thought this was easier,  
14:09 17 since it was the exact words of the senator.

14:09 18 BY MR. BREIT:

14:09 19 Q. Let me move to the three of you -- and this is  
14:09 20 Senator Udall talking to the president of BP, president of  
14:09 21 Transocean, and you: "I know each of you are conducting your  
14:09 22 own investigations. I'm just curious. Will the results and  
14:09 23 the analysis, as well as any testimony you generate in your  
14:09 24 companies, will that be made available to the federal  
14:09 25 government and to Congress?"

## TIMOTHY PROBERT - CROSS

14:09 1 And your answer?

14:09 2 MR. GODWIN: Objection, Your Honor. It's hearsay.

14:09 3 BY MR. BREIT:

14:09 4 Q. Let's move to your answer, please.

14:09 5 THE COURT: What's hearsay?

14:09 6 MR. GODWIN: What the senator asked him, Your Honor.

14:10 7 MR. BREIT: It's not offered for the truth of the

14:10 8 matter. It's offered --

14:10 9 THE COURT: I overrule the objection.

14:10 10 MR. BREIT: Thank you, Your Honor.

14:10 11 BY MR. BREIT:

14:10 12 Q. And you answered, B-13: "Mr. Probert: Similarly, I will

14:10 13 add that we will, of course, share any information and

14:10 14 hopefully use it as a basis for ensuring that the industry is

14:10 15 safe and environmentally sound."

14:10 16 Did you make that statement?

14:10 17 A. I did.

14:10 18 Q. Then, again -- let me move on.

14:10 19 When you were being prepared for your testimony by

14:10 20 Mr. Faul in May of 2011, you wanted Mr. Faul to give you all of

14:10 21 the information -- all of the relevant information that would

14:10 22 help you answer honestly; is that correct?

14:10 23 A. I was being prepared by Mr. Roth, Mr. Faul,

14:10 24 Mr. Badalamenti, and I believe Mr. Turton also. So it wasn't

14:10 25 just Mr. Faul.

## TIMOTHY PROBERT - CROSS

14:10 1 Q. The three of them --

14:10 2 A. That's four, actually.

14:10 3 Q. -- Mr. Faul, Mr. Roth, Mr. Badalamenti, and who else?

14:11 4 A. Mr. Turton.

14:11 5 Q. Now, let me ask you about what Mr. Faul told you or didn't  
14:11 6 tell you in preparing you to testify.

14:11 7 Did he tell you prior to May 11, 2010, that he had  
14:11 8 asked a Mr. Rickey Morgan in the lab to test the cement recipe  
14:11 9 that had been used on April 19th and 20th and was prepared by  
14:11 10 Halliburton? And did he tell you that Mr. Morgan had reported  
14:11 11 that the cement was thin? Did he tell you that when preparing  
14:11 12 you for your testimony?

14:11 13 A. No, he did not.

14:11 14 Q. When Mr. Faul was continuing to prepare you, did he tell  
14:11 15 you that Mr. Morgan didn't write down the results of his tests  
14:11 16 because he was fearful of the impact the results may have on  
14:11 17 the litigation? Did Mr. Faul tell you that before your sworn  
14:11 18 testimony?

14:11 19 A. No, he did not.

14:11 20 Q. Did Mr. Faul tell you that he asked Mr. Morgan to prepare  
14:11 21 a second test before your testimony on the same Macondo slurry  
14:11 22 and that the second test on the cement that was used to go down  
14:12 23 this well was also thin? Did Mr. Faul tell you that?

14:12 24 A. No, he did not.

14:12 25 Q. Did Mr. Faul tell you that there was a Brian Wall in the

## TIMOTHY PROBERT - CROSS

14:12 1 lab who had also done testing that had not been noted on any  
14:12 2 record prior to your testimony?

14:12 3 A. No.

14:12 4 Q. Did Mr. Faul tell you that he had asked a Tim Quirk at a  
14:12 5 different Halliburton lab to test the samples of the cement  
14:12 6 slurries, the actual lab samples, and the actual additives from  
14:12 7 the rig, but Mr. Faul told Mr. Quirk, "Don't write anything  
14:12 8 down"?

14:12 9 Did he tell you that?

14:12 10 A. No.

14:12 11 Q. Did Mr. Faul tell you that he told Mr. Quirk, "Don't put  
14:12 12 anything in the Viking system that's used to collect and  
14:12 13 maintain these tests."

14:12 14 Did he tell you that?

14:12 15 A. No.

14:12 16 Q. You know what the Viking system is, don't you?

14:12 17 A. I know it's a database.

14:12 18 Q. It's a database where they put testing results of all  
14:12 19 tests done by Halliburton.

14:12 20 Any reason that you know of why Mr. Faul would, one,  
14:12 21 tell Mr. Quirk not to write it down, not put it in the Viking  
14:13 22 system; or, two, not tell you anything about that when you went  
14:13 23 to testify?

14:13 24 MR. GODWIN: Objection, Your Honor. Misstates the  
14:13 25 prior record. There's been no showing of that violation.



## TIMOTHY PROBERT - CROSS

14:13 1 THE COURT: Overruled.

14:13 2 BY MR. BREIT:

14:13 3 Q. Did Mr. Faul give you a reason?

14:13 4 A. No, I didn't speak to Mr. Faul about any of those items to  
14:13 5 the extent they are true.

14:13 6 Q. Oh, there will be testifying -- plenty of testimony on it.

14:13 7 MR. GODWIN: Objection, Your Honor. Sidebar?

14:13 8 THE COURT: You shouldn't comment on the -- on a  
14:13 9 witness's testimony, Mr. Breit.

14:13 10 MR. BREIT: I apologize. Mr. Morgan's testimony  
14:13 11 about these tests and his records are already in the record.  
14:13 12 It was filed on the first Thursday, but Mr. Quirk will be next  
14:13 13 week.

14:13 14 BY MR. BREIT:

14:13 15 Q. Did Mr. Faul tell you that he asked Mr. Quirk to do these  
14:13 16 tests and that Mr. Quirk threw away his notes and then, a year  
14:13 17 later, could not remember the densities of those cements that  
14:13 18 he tested?

14:13 19 A. No, he did not, to the extent that's true.

14:13 20 Q. Is that the way that Halliburton collects data when you  
14:13 21 are testifying to Congress and reconstructs the sequences of  
14:14 22 events?

14:14 23 A. Clearly not. Clearly, if I'm speaking in front of  
14:14 24 Congress, I would want to be forthright and truthful to them.

14:14 25 Q. You would have wanted those people to tell you the truth

## TIMOTHY PROBERT - CROSS

14:14 1 about failed tests of the Macondo cement prior to your  
14:14 2 testimony in May of 2010, wouldn't you?

14:14 3 A. I would want to be truthful in front of Congress, yes.

14:14 4 Q. Did Mr. Badalamenti, another one of the gentlemen who  
14:14 5 helped prepare you to testify before Congress, tell you that he  
14:14 6 had asked Mr. Quirk separately from the other gentlemen to do  
14:14 7 tests, and that the transitioning time of the same cement was  
14:14 8 unacceptable? Did he tell you that?

14:14 9 A. To the extent that's true, no.

14:14 10 Q. Did Mr. Roth -- one of the men who helped you prepare?

14:14 11 A. Mr. Roth.

14:14 12 Q. Yes. He was one of them, correct?

14:14 13 A. Yes.

14:14 14 Q. Did he tell you that he had spoken to Morgan and that he  
14:14 15 had taken notes from Morgan, and then, when Mr. Morgan had  
14:14 16 tested the slurry, the slurry from the Macondo well would not  
14:14 17 foam? Did he tell you that he had written that down and that  
14:14 18 was a part of his notes?

14:15 19 A. To the extent that's true, no.

14:15 20 Q. Well, we have already seen that record earlier this week,  
14:15 21 the actual notes. Do you deny that that happened, or are you  
14:15 22 denying that he told you?

14:15 23 A. No. Obviously, I haven't been exposed to any testimony,  
14:15 24 so I don't know that fact.

14:15 25 Q. So did you know that any of these off-the-record tests

## TIMOTHY PROBERT - CROSS

14:15 1 that were done by Halliburton employees after April 20th at any  
14:15 2 time up to your testimony or any time since --

14:15 3 A. Yes. I did become aware of some irregularities in the  
14:15 4 testing -- in testing post the incident through counsel,  
14:15 5 through regulatory briefings, and I think it was from some SEC  
14:15 6 files as well.

14:15 7 Q. Did you ever amend your testimony before Congress? You  
14:15 8 filed written statements. Did you file a subsequent statement?

14:15 9 A. There were adjustments made to the -- there were two  
14:15 10 things that took place. Obviously, follow-up questions were  
14:15 11 answered for Congress, and there were some clarifications made  
14:15 12 to them, though not done directly by me, by our legal team.

14:16 13 Q. But you, as the spokesman for Halliburton and testifying  
14:16 14 under oath before Congress, didn't supplement to Congress your  
14:16 15 own written statement suggesting that there had been a series  
14:16 16 of two, three, four, five tests that had been done that all had  
14:16 17 irregularities with the Macondo cement? You didn't do it?

14:16 18 MR. GODWIN: You Honor, object. Misstates the  
14:16 19 testimony. There's been no showing that there were two, three,  
14:16 20 four, five tests that did not pass. That misstates the record.

14:16 21 THE COURT: Restate your question.

14:16 22 BY MR. BREIT:

14:16 23 Q. Did you supplement your testimony to Congress to suggest  
14:16 24 any test that Mr. Faul had asked for Mr. Quirk to do or  
14:16 25 Mr. Morgan to do?

## TIMOTHY PROBERT - CROSS

14:16 1 A. To my -- to the best of my understanding, some  
14:16 2 clarifications were made to Congress, to the committees that I  
14:16 3 testified in front of, though I did not do it personally.

14:16 4 Q. You don't know whether or not they included the  
14:16 5 information Mr. Faul had and Mr. Morgan had and Mr. Badalamenti  
14:16 6 had?

14:16 7 A. As I said, I didn't do it personally, and I don't know the  
14:16 8 content of the clarifications that were made.

14:17 9 Q. Let me switch gears with you for a second.

14:17 10 MR. BREIT: If I could have TREX-2003, please.

14:17 11 BY MR. BREIT:

14:17 12 Q. You were aware in January -- January 19, 2010, that  
14:17 13 Halliburton was in trouble with BP, didn't you?

14:17 14 A. No, I don't agree with that characterization.

14:17 15 Q. Here is an e-mail to you from Mark Traylor dated Tuesday,  
14:17 16 January 19, 2010, 4:37 p.m.

14:17 17 MR. BREIT: And if I could see the commercial issue  
14:17 18 right here, please. Last paragraph.

14:17 19 BY MR. BREIT:

14:17 20 Q. In a response to a question from you to Mr. Traylor,  
14:17 21 Mr. Traylor responded to you: "We were getting run off the  
14:17 22 rig. Therefore, PSL took a calculated risk, which is fine, yet  
14:17 23 they should have followed through with policy."

14:17 24 What turned out was that Halliburton had to return  
14:17 25 \$3.1 million credit to BP, didn't they, as a result of this

## TIMOTHY PROBERT - CROSS

14:17 1 problem with getting run off the rig? You were aware of that,  
14:17 2 were you not?

14:17 3 **MR. GODWIN:** Objection, Your Honor. We believe this  
14:17 4 has been handled by a limine order by Your Honor.

14:18 5 **MR. BREIT:** I don't believe this --

14:18 6 **THE COURT:** I really don't know. What in limine  
14:18 7 order was that?

14:18 8 **MR. BREIT:** There was a motion --

14:18 9 **MR. GODWIN:** Your Honor, 5576.

14:18 10 **THE COURT:** What's the date of that, do you know?

14:18 11 **MR. GODWIN:** Do you have the date?

14:18 12 **MS. MARTINEZ:** I don't have a date, but this e-mail  
14:18 13 is specifically excluded.

14:18 14 **MR. BREIT:** Your Honor, I believe there was a motion  
14:18 15 in limine order with regard to a Sperry credit for \$139,000 for  
14:18 16 cement that was transferred over from the Kodiak well over to  
14:18 17 the Macondo well. I don't believe that this particular credit  
14:18 18 here is a subject of that motion in limine. And, Your Honor,  
14:18 19 if it is, then I will just address the issue of getting run off  
14:18 20 the rig.

14:18 21 **MR. GODWIN:** This was actually the subject of the  
14:18 22 motion, Your Honor. That's another one he is talking about,  
14:18 23 another in limine matter where an order was entered --

14:18 24 **THE COURT:** What was the order -- the number of the  
14:18 25 in limine order?

## TIMOTHY PROBERT - CROSS

14:18

1 MS. MARTINEZ: 5576.

14:18

2 THE COURT: 5576? I've got that as 5572. That's a  
3 different -- 5572 pertains to something -- some report of DNV.

14:19

4 MR. BREIT: Your Honor, without wanting to stick my  
5 own goose, 5576 involves a nonproductive time credit.

14:19

6 THE COURT: I can't put my hands on it.

14:19

7 MR. BREIT: I'll move on, Your Honor.

14:19

8 THE COURT: I will have to take Ms. Martinez's word  
9 for it that it was excluded.

14:19

10 This is actually issued by Judge Shushan.

14:19

11 That's probably why I couldn't remember it.

14:20

12 MR. BREIT: I think you overruled it, Judge. I can't  
13 remember the number.

14:20

14 THE COURT: 5576 is a document number issued  
15 February 3, 2012, by Judge Shushan. It says: "It is ordered  
16 that Halliburton's motion to exclude evidence relating to a  
17 credit on the Kodiak No. 2 well for nonproductive time related  
18 to downhole tool issues is granted."

14:20

19 So that's the same thing we are talking about,  
20 right?

14:20

21 MR. GODWIN: Yes, Your Honor.

14:20

22 THE COURT: All Right. I'll sustain the objection.

14:20

23 MR. GODWIN: Thank you, Your Honor.

14:20

24 MR. BREIT: I'll move on, Your Honor, with that  
25 sustained.

14:20

14:20

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## TIMOTHY PROBERT - CROSS

14:20 1 BY MR. BREIT:

14:20 2 Q. When there is a contract for Halliburton to work on a BP  
14:20 3 well, no matter how many tests Halliburton has to perform on  
14:20 4 the cement to make sure that it's viable and stable,  
14:20 5 Halliburton gets paid the same amount of money, don't they?

14:21 6 A. I don't know the answer to that.

14:21 7 Q. I thought you were in charge of strategy and corporate  
14:21 8 development and global business lines. That's not part of the  
14:21 9 global business lines, to know about the money either? The  
14:21 10 money and the contracts?

14:21 11 A. I don't know the details of that specific contract with  
14:21 12 respect to how payment flows for that particular contract.

14:21 13 Q. Now, at the time of the disaster of the *Deepwater Horizon*,  
14:21 14 you all had an incident investigation plan in place, did you  
14:21 15 not?

14:21 16 A. I'm sorry. Can you repeat the question.

14:21 17 Q. You had an incident investigation plan in place that was  
14:21 18 called the Performance Improvement Initiative, the PII Health,  
14:21 19 Safety and Environmental Plan?

14:21 20 A. No, that's not quite correct. PII is a performance  
14:21 21 improvement initiative that had been in place since probably  
14:21 22 1999, which was the basis by which we tried to improve HSE  
14:22 23 performance of the company.

14:22 24 Q. So that document from 1999 was still in place in 2010 when  
14:22 25 the Macondo disaster happened, correct?

## TIMOTHY PROBERT - CROSS

14:22 1 A. The principles of that program were still in place.

14:22 2 MR. BREIT: If I could have TRES-5277-B-51A.

14:22 3 BY MR. BREIT:

14:22 4 Q. This is a Halliburton 2010 version of the Performance  
14:22 5 Improvement Initiative, PII HSE plan. That's the same thing  
14:22 6 we're talking about, right?

14:22 7 A. That's correct.

14:22 8 Q. That's the plan that had been developed in 1999 and had  
14:22 9 moved forward to an updated version at the time of this  
14:22 10 explosion; am I correct?

14:22 11 A. It was updated on an annual basis.

14:22 12 Q. In fact, in this particular document, B-51, you all had  
14:22 13 trademarked a term called "TapRoot," quality of incident  
14:22 14 investigation. You all had a TapRoot investigation system in  
14:22 15 place at the time of the Macondo well explosion, did you not?

14:22 16 A. For clarity, TapRoot, actually, is a registered mark of a  
14:23 17 separate company. It's just a tool that's utilized to help get  
14:23 18 to sources of incidents.

14:23 19 Q. If I could have B-52 of that performance improvement  
14:23 20 initiative, please.

14:23 21 The purpose of this PII Health, Safety, and  
14:23 22 Environment was -- one of them was to improve the investigation  
14:23 23 of and organizational learning from incidents; is that right?  
14:23 24 Is that what it says?

14:23 25 A. That's what it says.



## TIMOTHY PROBERT - CROSS

1           **MR. BREIT:** If I could have the second page, B-53A,  
2 which I believe -- B-53, please. Here we are. This is a part  
3 of this section.

4 **BY MR. BREIT:**

5 **Q.** These investigations of incidents were mandatory, were  
6 they not? Right here on the top, "Mandatory TapRoot  
7 Investigations." They were mandatory at the time when there  
8 were incidents, were they not?

9 **A.** Yes, they were mandatory. Not for every incident, but  
10 they were mandatory for high-profile incidents.

11 **Q.** Well, they were mandatory down here -- they were mandatory  
12 for significant health and safety incidents involving an  
13 employee, a contractor, a subcontractor, or third party that  
14 results in fatalities.

15           So you would agree with me that the Macondo well  
16 explosion is one of those kinds of instances, isn't it?

17 **A.** It certainly is.

18 **Q.** If we could go on, bottom of the same page: "These  
19 mandatory TapRoot investigations are to be closed within  
20 30 days from the date of the incident."

21           Isn't that true?

22 **A.** That's correct.

23 **Q.** There was no TapRoot investigation of the Macondo  
24 explosion, was there?

25 **A.** If you take a look at the process for TapRoots, which are

## TIMOTHY PROBERT - CROSS

14:24 1 adequately documented, the process does have a loop in it which  
14:25 2 requires contact or requires legal involvement if litigation is  
14:25 3 potentially threatened. That legal contact is a gentleman  
14:25 4 called Kelley Green, and Kelley was the point of contact as  
14:25 5 lawsuits started to fly in the course of the investigation of  
14:25 6 this tragedy. That obviously was an event which was triggered,  
14:25 7 and Kelley Green took over responsibility for the  
14:25 8 investigation.

14:25 9 Q. So is it your testimony to this judge that this  
14:25 10 investigation protocol that was in place and required as a  
14:25 11 mandatory investigation by Halliburton, he is going to find in  
14:25 12 that document an exclusion when there might be a lawsuit  
14:25 13 involving Halliburton?

14:25 14 A. What you are going to find is that there is a diagram, if  
14:25 15 you like, of the process, which has a loop in it if there is --  
14:25 16 if legal activities are underway that our legal -- our legal  
14:26 17 organization becomes involved and takes over the direction for  
14:26 18 the investigation.

14:26 19 Q. So you believe that that took place; that taking charge of  
14:26 20 any investigation occurred almost immediately?

14:26 21 A. Yes, sir. Right.

14:26 22 Q. Well, then, let's look at your testimony to Congress  
14:26 23 again, 02016.

14:26 24 MR. BREIT: B-16, please, Carl.  
25

## TIMOTHY PROBERT - CROSS

14 : 2 6 1 BY MR. BREIT:

14 : 2 6 2 Q. Is this what you told Congress under oath in May of 2011?  
14 : 2 6 3 Let's read down to the bottom -- well, I will just start at the  
14 : 2 6 4 top: "Other than to alert our organization around the world to  
14 : 2 6 5 this incident, firstly, second, we also operate to a standard  
14 : 2 6 6 set of procedures. And it's certainly our expectation that, as  
14 : 2 6 7 we learn from this incident, there may well be changes in  
14 : 2 6 8 process, procedures, or other approaches which we would then  
14 : 2 6 9 plan on implementing as part of our global standard. But this  
14 : 2 6 10 will wait, obviously, on the findings of the analysis of the  
14 : 2 6 11 root causes of this incident."

14 : 2 7 12 Were you talking about some other kind of root cause  
14 : 2 7 13 investigation that Halliburton was doing? Or were you talking  
14 : 2 7 14 here about a root cause investigation that you knew was going  
14 : 2 7 15 to be taken over by lawyer direction and investigation?

14 : 2 7 16 A. First, just for clarity, you said May 2011; it was  
14 : 2 7 17 May 2010.

14 : 2 7 18 Q. I'm sorry, May 2010. I appreciate that.

14 : 2 7 19 A. I'm sorry. You will have to ask me the question again.

14 : 2 7 20 Q. Well, when you told Congress you were waiting for a root  
14 : 2 7 21 cause of this incident, were you waiting for the root cause  
14 : 2 7 22 that was a mandatory from this particular document that was in  
14 : 2 7 23 play in April of 2010? Or were you talking about some other  
14 : 2 7 24 root cause investigation that was being directed by the  
14 : 2 7 25 attorneys off record? Which were you talking about?

## TIMOTHY PROBERT - CROSS

14:27 1 A. I'm sorry. I'm not aware of any investigation off record.

14:27 2 Q. Well, we already know -- we may have testimony -- about a  
14:27 3 lot of tests that were taken where there are no records of  
14:27 4 those tests. Was that part of the root cause investigation by  
14:27 5 Halliburton? Or was that one of the legally directed  
14:28 6 investigations that you talked about in your deposition?

14:28 7 A. Well, I think as I just testified to you I didn't know  
14:28 8 about any of the alleged testing until some considerable time  
14:28 9 after my testimony. So it clearly couldn't have -- I couldn't  
14:28 10 have been referring to that.

14:28 11 Q. Well, were you aware of the fact immediately after this  
14:28 12 incident, when the lawsuits started tumbling in, that there was  
14:28 13 also a court order asking or ordering Halliburton to secure all  
14:28 14 of the products, cement additives, on the Macondo well that had  
14:28 15 been kept in the labs? Were you aware of that?

14:28 16 A. I believe I am, yes.

14:28 17 Q. You became aware of the fact that, in fact, a State of  
14:28 18 Texas court issued such a mandatory preservation order, and  
14:28 19 this Court, on May 5, 2010, had also issued a preservation  
14:28 20 order asking or ordering all Halliburton employees to secure  
14:28 21 everything for the Macondo well. You become aware of that,  
14:28 22 correct?

14:28 23 A. I'm not aware of the details, as you describe it, at all,  
14:29 24 sir, no.

14:29 25 Q. Well, you are aware -- if I can go to the contract again,

## TIMOTHY PROBERT - CROSS

14:29 1 TREX-21292-B-36.

14:29 2 You are aware that the contract required Halliburton,  
14:29 3 during job execution, representative samples of mix water,  
14:29 4 additives, and dry cement shall be taken. These samples shall  
14:29 5 be retained until it is confirmed that all of the objectives of  
14:29 6 the cementing operations have been achieved. Failure to  
14:29 7 provide these samples in the event of a post-cementing  
14:29 8 investigation will prevent the root cause of the problems to be  
14:29 9 determined and inappropriate nonproductive time allocation.

14:29 10 You're aware of that provision of the contract as  
14:29 11 well as the two preservation orders?

14:29 12 A. I was not aware that it was a provision in the contract,  
14:29 13 but I clearly see it written here.

14:29 14 Q. You would expect, would you not, all of your employees at  
14:29 15 Halliburton to honor a preservation order from this Court in  
14:29 16 light of the fact that the *Deepwater Horizon* was on the bottom  
14:30 17 of the Gulf and 11 men were dead?

14:30 18 A. I would certainly -- to the extent it was communicated to  
14:30 19 them, I would certainly expect that, yes.

14:30 20 Q. Well, let's look at what was held by Halliburton after the  
14:30 21 preservation orders were put in place.

14:30 22 MR. BREIT: And if I could see B-64.

14:30 23 BY MR. BREIT:

14:30 24 Q. This is TREX-3110, which has the listings -- if you look  
14:30 25 at the top here, materials currently in the lab for

## TIMOTHY PROBERT - CROSS

14:30 1 BP/Transocean *Horizon* rig.

14:30 2 MR. BREIT: It's page 1, page 2. And if I could have  
14:30 3 the next page, please.

14:30 4 BY MR. BREIT:

14:30 5 Q. As you see on April 30, 2010 -- April 30, 2010,  
14:30 6 Halliburton, in light of the preservation order as well as its  
14:31 7 contractual obligations, had secured all of these products,  
14:31 8 which included this section here.

14:31 9 MR. BREIT: Carl, can you pull up that section there,  
14:31 10 which I believe is 64-A.

14:31 11 BY MR. BREIT:

14:31 12 Q. If you see here on April 30, 2010, Halliburton, in its  
14:31 13 locked lockers, had secured the Kodiak 2 cement, which is the  
14:31 14 exact cement that was used by Jesse Gagliano for the testing of  
14:31 15 the well prior to the explosion with very specific lab sample  
14:31 16 ID 63981.

14:31 17 That's how they mark these things, isn't it? They  
14:31 18 put specific ID numbers on them, they put them in containers so  
14:31 19 that the lab is able to properly test something that's out on  
14:31 20 the rig site?

14:31 21 A. I'm not familiar with the products. I'm not familiar with  
14:32 22 the storage methodology of these products.

14:32 23 Q. If I represented to you that this is from the metadata  
14:32 24 showing that on April 30, 2010, Halliburton had secured the  
14:32 25 No. 2 Kodiak cement that had been used by Jesse Gagliano, and

## TIMOTHY PROBERT - CROSS

14:32 1 if you notice the lab sample ID, 63981 --

14:32 2 MR. BREIT: Please turn to TRES-05595.

14:32 3 BY MR. BREIT:

14:32 4 Q. And if you see at the top --

14:32 5 MR. BREIT: This is 67, Carl.

14:32 6 BY MR. BREIT:

14:32 7 Q. -- this is the March 7 lab sheet ordered by Jesse  
14:32 8 Gagliano. These dates are European dates, March 4, 2010,  
14:32 9 required by March 6, 2010 [verbatim].

14:32 10 Now, let's look at the material section in the center  
14:32 11 of that document.

14:32 12 MR. BREIT: Which would be B-68, please, Carl.

14:32 13 BY MR. BREIT:

14:32 14 Q. You can see here that we have the Transocean blend, all  
14:33 15 the chemicals, and we have the sample ID, which is the exact  
14:33 16 same ID which is in the locker, 63981, which is the same Kodiak  
14:33 17 cement that was being held on April 30, 2010.

14:33 18 Does that look to be correct, what I have represented  
14:33 19 to you?

14:33 20 A. Sir, as I have said to you several times before, I'm not a  
14:33 21 cementing expert, I'm not familiar with these materials, I'm  
14:33 22 not familiar with mixing or testing processes. And so the  
14:33 23 answer is, I don't know.

14:33 24 Q. Let me ask you this. Did I read to you the correct sample  
14:33 25 ID number from this blend of 63981, and is that not the same

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1 sample ID number that I read to you from the locker from  
2 April 30, 2010?

3 A. I have no way of knowing what the significance of that is.

4 Q. Well, let's see what happened to the Kodiak blend between  
5 April 30, after this Court had put in a preservation order in  
6 place to make sure that that lab blend that was used by Jesse  
7 Gagliano was saved.

8 MR. BREIT: If I could see, please, 64-A, please.  
9 This is the July 20, 2010 locker. I'm missing a page, which  
10 was the first page of this document.

11 Hold on one second, Your Honor. I apologize.

12 BY MR. BREIT:

13 Q. It would be 03110, which I will represent to you is the  
14 same locked cabinet for Halliburton where the material's  
15 currently in a locked cabinet for BP/Transocean *Horizon* rig.

16 MR. BREIT: And if we can now go to 64-A.

17 BY MR. BREIT:

18 Q. And I believe 64-A is a comparison. You will see that  
19 this Kodiak cement that was being held on April 30, 2010 is no  
20 longer being kept by Halliburton on July 20, 2010.

21 Do you have any explanation why someone from  
22 Halliburton would have violated a preservation order of this  
23 Court and removed the very Kodiak cement that was being used on  
24 the Macondo well? Do you have any explanation?

25 MR. GODWIN: I'll object to that. That misstates the



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1 record, Your Honor. There has been no showing that anybody  
2 violated an order. In fact, when we had the injunction when it  
3 was issued, Your Honor, shortly after the incident, all of the  
4 materials were placed in the locker and they were held there.

5 Later on, the JIT issued a subpoena. A subpoena  
6 also -- a letter came from the Department of Justice. We held  
7 those records and reported to Judge Shushan each and every  
8 week -- each and every week -- what was being done and we were  
9 waiting on them to issue a subpoena and tell us where to  
10 eventually turn them over.

11 That was eventually done later in the year, but  
12 it was all done by court order. We were prohibited from doing  
13 anything with them, and there has been no showing, and it's  
14 unfair for anybody to stand here in this courtroom and say that  
15 my client took any of that blend out of that locker, which it  
16 did not do, Your Honor.

17 **MR. BREIT:** Your Honor, that's a mischaracterization  
18 of what happened. On April 30 --

19 Please put that document back up there so I can  
20 explain it to the judge, 64-A.

21 On April 30, 2010 --

22 **THE COURT:** I think there's another problem here.  
23 The problem is you may have the wrong witness on the stand. It  
24 sounds like, from listening to Mr. Probert, he is not aware of  
25 any of this. So you can argue that he should be maybe, but he

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1 is not. He has already said that several times. He doesn't  
2 know anything about these matters.

3 Right?

4 **THE WITNESS:** Correct.

5 **THE COURT:** So I don't know where you are going with  
6 this examination.

7 **MR. BREIT:** Your Honor, the point --

8 **THE COURT:** If you've got a point you can make, maybe  
9 you can prove it otherwise or show it otherwise. But it sounds  
10 like you have the wrong witness on the stand.

11 **MR. BREIT:** Your Honor, I understand the limitations  
12 of this witness's knowledge, but two things separate his  
13 representations today and Mr. Godwin's representations.

14 He was the president of the company that  
15 testified under oath before Congress. He has already indicated  
16 that he was aware there was a preservation order. He was in  
17 charge of health and safety for this company. He was the  
18 person who has presented the investigation after these men  
19 died, and there is absolutely no explanation how Halliburton's  
20 employees held the Kodiak cement on April 30 and threw it away  
21 before July 20. There is no explanation.

22 I'm asking him, as in charge of health and  
23 safety --

24 **THE COURT:** The problem is I don't think -- if what  
25 you just said is true -- you will be able to prove that or you

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1 will prove that through other witnesses or evidence, but not  
2 through this witness, I believe. That's the problem.

3 **MR. GODWIN:** Your Honor, we would object also to  
4 these theatrics in the courtroom here in front of the press  
5 saying Halliburton threw away evidence that was under court  
6 order. There's no showing of that.

7 **THE COURT:** I don't know who threw away what or if  
8 anybody threw away anything. We'll have to sort all that out.  
9 But my point is Mr. Breit, I think, has the wrong witness on  
10 the stand.

11 **MR. GODWIN:** Thank you, Your Honor.

12 **BY MR. BREIT:**

13 **Q.** You understand that there are rig additives that are used  
14 in the cementing process?

15 **A.** I understand there are additives used, yeah.

16 **Q.** And they are Halliburton proprietary additives that other  
17 companies don't have that are very unique to Halliburton and  
18 used for very specific purposes?

19 **A.** I don't know anything about those additives, but I  
20 understand they exist.

21 **Q.** You understand that they exist as proprietary additives  
22 for Halliburton?

23 **A.** I don't know what a -- which ones are proprietary and  
24 which ones are not proprietary.

25 **Q.** Would you agree with me, as regard to your position as

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1 chief officer in charge of health and safety, that if there was  
2 a preservation order in place holding on to the cement as well  
3 as the chemical additives, that no one at the company should be  
4 reaching into a locker and trying to grab the chemicals that  
5 were used on the Macondo slurry? Would you agree with me on  
6 that, or is that something that's okay?

7 A. No, I would say that to the extent there was a  
8 preservation order in place for anything, I would expect it to  
9 be followed to the extent it was communicated to those  
10 individuals.

11 Q. Well, did Mr. Faul or Mr. Badalamenti or Mr. Roth tell you  
12 that they had Mr. Quirk go in and take the lab additives that  
13 were under a preservation order and test it with the slurry on  
14 testing results that are no longer available because they were  
15 not put in the system? Did any of those gentlemen tell you  
16 that they asked him to reach in and grab the Halliburton  
17 proprietary additives that had been secured on April 30?

18 A. I think, as I have already testified, I'm not familiar  
19 with any of those activities.

20 Q. Would you have expected one of those four gentlemen that  
21 advised you that there was testing going on after there was a  
22 preservation order of the chemicals that were being secured  
23 that were taken from the Macondo well and that were in the lab  
24 specifically from the Macondo well, would you have expected  
25 them to tell you that?

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14:40 1           **MR. GODWIN:** Objection, Your Honor, misstates the  
14:40 2 record. There's been no testimony whatsoever that anybody went  
14:40 3 into that locker and took materials out and tested it. He  
14:40 4 keeps saying this in open court, and he is misstating the  
14:40 5 record, Your Honor.

14:40 6           **MR. BREIT:** Your Honor, I'm happy to show the very  
14:40 7 lab sheet that Mr. Quirk was using where he has taken the  
14:40 8 specific additive --

14:40 9           **THE COURT:** Mr. Quirk is going to be called to  
14:40 10 testify, correct?

14:40 11           **MR. BREIT:** He is scheduled on the list for next  
14:40 12 week.

14:40 13           **THE COURT:** All right. We will find out when he gets  
14:40 14 here.

14:40 15 **BY MR. BREIT:**

14:40 16 **Q.** If that happened, you would have expected to be told?

14:40 17           **MR. GODWIN:** Same objection, Your Honor, and  
14:40 18 speculation. He is asking him to opine on something he knows  
14:40 19 nothing about. He's already said --

14:40 20           **THE COURT:** Let's move on.

14:40 21 **BY MR. BREIT:**

14:40 22 **Q.** So you had indicated to Congress that you-all were  
14:41 23 cooperating, reconstructing data. And did you ever tell anyone  
14:41 24 at Congress in May of 2010 or any time thereafter anything  
14:41 25 about the use of additives, Kodiak cement, for any of the

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14:41 1 testing that I have asked you about that you don't know  
14:41 2 anything about?

14:41 3 A. I'm sorry. I'm not really clear on what your question is.

14:41 4 **MR. GODWIN:** Again, Your Honor, he is misstating the  
14:41 5 record by the questions. He is implying that those materials  
14:41 6 were used in testing, and there's no proof of that here in this  
14:41 7 courtroom that has been elicited so far. If he thinks he can  
14:41 8 do it through another witness, that's another thing. But it's  
14:41 9 not --

14:41 10 **THE COURT:** I sustain the objection. And I think we  
14:41 11 just need to move on to a whole different subject, Mr. Breit.  
14:41 12 Or a different witness, if you have finished with --

14:41 13 **MR. BREIT:** I have reached the end of this witness  
14:41 14 for this time, Your Honor. Thank you very much.

14:41 15 **THE COURT:** The United States?

14:41 16 **MS. CHANG:** Your Honor, the United States has no  
14:41 17 questions for this witness.

14:41 18 **THE COURT:** Alabama?

14:41 19 **MR. MAZE:** Alabama has no questions.

14:41 20 **THE COURT:** Louisiana?

14:42 21 **MR. KANNER:** Louisiana has a few questions,  
14:42 22 Your Honor.

14:42 23 **MR. BREIT:** I apologize, Your Honor. I walked off  
14:42 24 with the mic.

25

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## 1 CROSS-EXAMINATION

2 BY MR. KANNER:

3 Q. I'm Allan Kanner for the State of Louisiana taking you as  
4 a cross-examination.5 We haven't met or discussed your testimony in any  
6 way, have we?

7 A. I don't believe so, no, sir.

8 Q. I have a few questions. Are you familiar with the use of  
9 centralizers, BP's decision relative to centralizers at  
10 *Deepwater Horizon*?11 A. Yes, conceptually. I don't know any details, but I am  
12 conceptually aware of it.13 Q. You understand that your company, Halliburton, recommended  
14 the 21 centralizers be used because of a risk of channeling and  
15 some other variables, but only six were used?

16 A. That's what I understand.

17 Q. Is it your testimony that that's a very serious problem  
18 from a health and safety point of view?19 MR. REGAN: Your Honor, I think the witness has  
20 established with respect to -- the witness established, I think  
21 already, that this is not an area that he has expertise in. No  
22 foundation for these questions.

23 THE COURT: Is that right?

24 THE WITNESS: I am not a cementing expert. I --  
25 obviously, as you probably know, I was prepared to speak at

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1 Congress around centralizers. But -- and their performance and  
2 the likely outcome of not using the recommended number. But  
3 subsequent to that testimony, I have gathered no further  
4 information on the subject.

5 **MR. KANNER:** At the witness's deposition, Your Honor,  
6 he did give testimony --

7 **THE COURT:** Go ahead and ask the question.

8 **MR. KANNER:** Thank you.

9 **BY MR. KANNER:**

10 **Q.** So you agree that BP's decision -- Halliburton didn't make  
11 the decision -- BP's decision to use six instead of the  
12 recommended 21 centralizers was a health and safety concern?

13 **A.** I believe I'm correct in saying that the recommendation to  
14 use them was -- or not to use them would result in severe gas  
15 flow.

16 **Q.** You have also offered the opinion or insight that BP made  
17 the decision not to set a final cement plug. You thought that  
18 was unusual, correct?

19 **A.** You know, my understanding is the final cement plug was  
20 not set because the well was in a blowout condition prior to  
21 the planned setting of that final plug.

22 **Q.** And the cement bond log that was not done, that was BP's  
23 decision, not Halliburton's?

24 **A.** That was BP's decision not to run a cement bond log, yes.

25 **Q.** And you've previously testified that that was also a



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14:45 1 matter of concern to you, that BP should have run the cement  
14:45 2 bond log test?

14:45 3 A. Yes. Because, you know, a barrier is not a barrier unless  
14:45 4 it's tested. And a cement bond log would have provided  
14:45 5 incremental information on the security of that barrier, cement  
14:45 6 barrier.

14:45 7 Q. At your deposition you talked about the golden rules for  
14:45 8 safety. You agree, do you not, that the golden rules of safety  
14:45 9 would require a stop work by Halliburton or BP if there was a  
14:46 10 clear and present danger of serious harm?

14:46 11 A. Well, the -- I'm not familiar with -- the golden rules, I  
14:46 12 believe, are BP's golden rules, and I am not familiar with the  
14:46 13 details of BP's golden rules. I think that's -- just as a  
14:46 14 point of clarity for you.

14:46 15 With respect to the second part of your question?

14:46 16 Q. Well, I believe that you recognized at your deposition  
14:46 17 that you were obligated to follow those golden rules, that if  
14:46 18 there is a serious health and safety issue, that Halliburton  
14:46 19 was also obligated to stop work. I believe you also referenced  
14:46 20 that -- you were asked some questions about it being in the  
14:46 21 contract that we looked at earlier today. Do you recall that?

14:46 22 A. I do recall that, yes.

14:46 23 Q. So Halliburton also was obligated to stop work if it saw a  
14:46 24 clear and present danger, correct?

14:47 25 A. Correct.

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14:47 1 Q. And you would agree with me that the greater the risk of  
14:47 2 harm, such as a well blowout, the greater the need for  
14:47 3 vigilance?

14:47 4 A. I'm sorry, sir. Could you repeat that again, please.

14:47 5 Q. Yes. The greater the harm, the more likely people would  
14:47 6 die and the environment will get devastated, the greater the  
14:47 7 need for vigilance?

14:47 8 A. Yes.

14:47 9 Q. And that would apply to Halliburton as well as to BP,  
14:47 10 correct?

14:47 11 A. It would apply to everyone.

14:47 12 Q. Would you agree that when the centralizer issue was  
14:47 13 reported to BP and the statement "severe gas flow risk" was  
14:47 14 used in it, would you agree that was a big red flag for BP to  
14:47 15 stop?

14:47 16 MR. REGAN: Objection, foundation, Your Honor.

14:47 17 THE COURT: Well, I think -- the witness has already  
14:47 18 said he is not an expert on these issues. We have already had  
14:47 19 a lot of testimony about this very issue, and I'm assuming we  
14:48 20 are going to hear more before this trial is over. So I don't  
14:48 21 think we should be going down this trail with this witness,  
14:48 22 Mr. Kanner.

14:48 23 MR. KANNER: Fair enough, Your Honor.

14:48 24 BY MR. KANNER:

14:48 25 Q. Let me just ask you one last question. As the head of

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1 health and safety at Halliburton, would you have expected your  
2 workers to stop work when a severe health and safety and  
3 environmental risk presented itself?

4 A. I think that what I would say is I would expect our  
5 workers to use their best judgment. If they see a clear and  
6 present danger -- and that may be a variety of things, a  
7 suspended load or whatever -- they would use their best  
8 judgment to escalate that or draw it to the attention of the  
9 well owner, in this case, BP.

10 Q. But your contract requires you to stop work as well,  
11 correct? And you would expect your workers to comply with the  
12 contract, correct?

13 A. I would expect my workers to fulfill the obligations which  
14 are in the contract. And the reality is that by stopping work,  
15 it doesn't always -- it's not possible for people to simply  
16 stop work because operation is ongoing.

17 What I would expect them to use is their best  
18 judgment to draw it to the attention of the well owner, in this  
19 case BP, who control the well and the decisions around the well  
20 to make best use of that information, since our employees only  
21 have a narrow slice of the knowledge around a given operation.  
22 The well owner has all the knowledge from various inputs and  
23 can integrate that together to make the best decision for them.

24 Q. Is there anything about the centralizer -- the OptiCem  
25 study on the 21 centralizers that would make it -- that once a

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14:49 1 decision was made to use six centralizers, that the Halliburton  
14:49 2 people were not immediately that there was a major disaster  
14:49 3 about to happen at this well?

14:49 4 A. The act of not running the centralizers themselves do not  
14:50 5 necessarily create the risk of a major disaster. The reality  
14:50 6 is that BP would have known that the potential for the cement  
14:50 7 job to be successful would have been minimized and; therefore,  
14:50 8 they would need take other steps later, a backup plan, if you  
14:50 9 like, to remediate or otherwise ensure that the cement bond was  
14:50 10 effective.

14:50 11 Q. You have said that Halliburton employees have been  
14:50 12 retaliated against by operators for exercising stop work at  
14:50 13 your deposition, correct?

14:50 14 A. I said that what we did is we supported our employees by  
14:50 15 ensuring that if they used a stop work authority where there  
14:50 16 was a clear and present danger, that they had essentially been  
14:50 17 supported fully by management to make sure that we continued to  
14:50 18 promulgate that kind of behavior.

14:51 19 Q. Under your theory, as head of health and safety,  
14:51 20 Halliburton always does just a piece of the job. If you are  
14:51 21 saying that only the person who sees all of the pieces could  
14:51 22 stop work, then you never can stop work, can you?

14:51 23 A. Well, there are certain circumstances where you can, where  
14:51 24 you have a colleague walking under a suspended load or about to  
14:51 25 put their hand into some unprotected machinery. Those kinds of

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14:51 1 things are really where stop work works very effectively for a  
14:51 2 contractor like Halliburton.

14:51 3           Where you are just a narrow slice of the operation,  
14:51 4 you are correct, it really takes the well owner or the operator  
14:51 5 to be able to see the totality of the operation and stop work  
14:51 6 if it's appropriate.

14:51 7 **Q.** So you instruct your people not to stop work if it's one  
14:51 8 of these major issues that could lead to a major blowout.  
14:51 9 Because what you teach your people is that it's the operator's  
14:52 10 responsibility; is that correct?

14:52 11 **A.** That's not what I said. What I said was that we teach our  
14:52 12 people to escalate -- if they see something which they perceive  
14:52 13 as being risky, they escalate it to the operator, who is the  
14:52 14 ultimate well owner and responsible for the overall control of  
14:52 15 the well.

14:52 16 **Q.** One housekeeping matter. You mentioned -- on the MoC you  
14:52 17 said you weren't the knowledgeable person to talk to. Who  
14:52 18 would be the knowledgeable person to talk to at Halliburton?

14:52 19 **A.** I think that question was specifically about the  
14:52 20 management of change as it relates to cementing activity. And  
14:52 21 there will be several other witnesses who will be probably more  
14:52 22 than capable --

14:52 23 **Q.** Just a name.

14:52 24 **A.** Sir Tommy Roth would be one, for example, who would be  
14:52 25 very knowledgeable in that area.

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14 : 5 2 1 MR. KANNER: Thank you very much.

14 : 5 2 2 No further questions, Your Honor.

14 : 5 3 3 THE COURT: Who is up next over here?

14 : 5 3 4 MR. GODWIN: Halliburton. May it please the Court,  
14 : 5 3 5 Your Honor. Thank you, Judge.

14 : 5 3 6 DIRECT EXAMINATION

14 : 5 3 7 BY MR. GODWIN:

14 : 5 3 8 Q. Good afternoon, Mr. Probert.

14 : 5 3 9 A. Good afternoon.

14 : 5 3 10 Q. You were asked some questions by Mr. Breit about a number  
14 : 5 4 11 of subjects. I would like to go back over a couple of those  
14 : 5 4 12 just briefly and then ask you about a few other subjects, if I  
14 : 5 4 13 might, please.

14 : 5 4 14 You were asked about your testimony before Congress.  
14 : 5 4 15 How many times did you testify before Congress or congressional  
14 : 5 4 16 bodies?

14 : 5 4 17 A. Three times.

14 : 5 4 18 Q. On each and every one of those occasions, did you tell the  
14 : 5 4 19 whole and complete truth to every question that was asked of  
14 : 5 4 20 you?

14 : 5 4 21 A. I did.

14 : 5 4 22 Q. Was there any time that anybody, whether it was a lawyer  
14 : 5 4 23 or anybody in Halliburton, ever suggested to you that when you  
14 : 5 4 24 went in to see Congress that you would give less than a  
14 : 5 4 25 complete answer and a truthful answer to every single question?

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14:54 1 A. Absolutely not.

14:54 2 Q. Would you have done so had you been asked?

14:54 3 A. I would not have told anything but the truth.

14:54 4 Q. Thank you, sir.

14:54 5 With regard to the materials that were under a  
14:54 6 preservation order that was entered by a number of courts in  
14:55 7 Louisiana and Texas shortly after the event -- you learned of  
14:55 8 that order at some time, did you not, sir?

14:55 9 A. I did learn of the order, yes.

14:55 10 Q. Following the horrific incident, you learned of it?

14:55 11 A. I did.

14:55 12 Q. At that time, sir, are you aware of anyone having taken  
14:55 13 any of the materials, no matter how slight, out of the locker,  
14:55 14 out of the secure place where they were being retained? Are  
14:55 15 you aware of anyone with Halliburton or on Halliburton's behalf  
14:55 16 having removed any of those materials for any reason whatsoever  
14:55 17 until they were turned over to the Department of Justice by  
14:55 18 Halliburton?

14:55 19 A. No, I'm not.

14:55 20 MR. BREIT: I'm going to object, Your Honor, on the  
14:55 21 same exact foundational issues. He just said, "I'm not the  
14:55 22 guy."

14:56 23 So now he's going to ask a self-serving question  
14:56 24 without any foundation as to who he asked. He's in charge of  
14:56 25 health and safety, did he go ask anyone? Did he go look

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14 : 56 1 around?

14 : 56 2 So it has no foundation, and it's the very area  
14 : 56 3 that he's already said I don't know of anything about.

14 : 56 4 MR. GODWIN: I asked him what --

14 : 56 5 MR. BREIT: I object to the self-serving question.

14 : 56 6 THE COURT: I overrule the objection.

14 : 56 7 MR. BREIT: Thank you, Your Honor.

14 : 56 8 BY MR. GODWIN:

14 : 56 9 Q. Can you answer the question, sir?

14 : 56 10 A. I'm sorry. You will have to ask it again.

14 : 56 11 Q. I'll do my best.

14 : 56 12 THE COURT: I think he already answered it. You  
14 : 56 13 asked him if he was aware of any of that, and he said, "No, I'm  
14 : 56 14 not."

14 : 56 15 MR. GODWIN: Thank you, Your Honor.

14 : 56 16 BY MR. GODWIN:

14 : 56 17 Q. Post-incident testing. Mr. Breit asked you about some  
14 : 56 18 post-incident testing that was performed or conducted allegedly  
14 : 56 19 by one or more individuals at Halliburton. Do you remember  
14 : 56 20 that?

14 : 56 21 A. I do.

14 : 56 22 Q. Were you a part in any way of any post-incident testing  
14 : 56 23 after the incident there at Halliburton or on Halliburton's  
14 : 56 24 behalf?

14 : 56 25 A. I was not.



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14:56 1 Q. Did anyone report to you regarding the findings of any  
14:56 2 post-incident testing of whatever was being done, if anything,  
14:57 3 after the incident?

14:57 4 A. No.

14:57 5 Q. I believe you testified earlier, did you not, sir, that  
14:57 6 you have no background in cementing. Is that correct?

14:57 7 A. That's correct.

14:57 8 Q. Do you have any background in cement testing?

14:57 9 A. I do not.

14:57 10 Q. Do you have any background in interpreting the results of  
14:57 11 cement tests?

14:57 12 A. No, I do not.

14:57 13 Q. Have you reviewed at any time any of the cement test  
14:57 14 results regarding the cement slurry that was performed or was  
14:57 15 designed by Jesse Gagliano for the Macondo well?

14:57 16 A. No.

14:57 17 Q. Let's go back, if we can, please, Mr. Gagliano [*verbatim*],  
14:57 18 and find out a little bit about who you are. Do you have  
14:57 19 degrees from college --

14:57 20 THE COURT: I think it's Mr. Probert.

14:57 21 MR. GODWIN: Excuse me. I'm sorry. I apologize for  
14:57 22 that, Judge.

14:57 23 BY MR. GODWIN:

14:57 24 Q. Mr. Probert, do you have any degrees from college?

14:57 25 A. Yes. I have a bachelor's from the University of London in

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14:58 1 geography and geology.

14:58 2 Q. Following your having graduated from college -- and that  
14:58 3 was back in the '70s?

14:58 4 A. 1972.

14:58 5 Q. I was trying not to date you all the way back.

14:58 6 Have you worked continuously in the oil and gas  
14:58 7 industry since then?

14:58 8 A. I have worked continuously in the oil and gas industry  
14:58 9 since then, apart from a brief two-year period in the process  
14:58 10 industry relating primarily to mining.

14:58 11 Q. At any time while you worked in the oil and gas industry,  
14:58 12 was there a period of time when you worked as a mud logger?

14:58 13 A. Yes.

14:58 14 Q. Okay, sir. Tell us, if you will, please, what you  
14:58 15 understand a mud logger's role to be on a well.

14:58 16 A. Based on my experience, at least, the primary role is to  
14:59 17 construct a log of the well, the formations which the well  
14:59 18 intersects; to create a log to match to the operator's model of  
14:59 19 what the reservoir may look like; to calibrate it; to collect  
14:59 20 data around gas to identify whether or not there may be oil or  
14:59 21 gas shows present in the well.

14:59 22 And then, secondarily, depending on the contract that  
14:59 23 exists with the well owner, to be a second set of eyes to  
14:59 24 gather drilling-related information. That may be information  
14:59 25 relating to mud flow or mud volumes or standby pressure or

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14:59 1 whatever the case may be.

14:59 2 Q. A second set of eyes to whom?

14:59 3 A. A second set of eyes to the rig floor. Typically the rig  
14:59 4 floor or the driller specifically is responsible for the  
14:59 5 immediate well control activities. And so that mud logger will  
15:00 6 communicate very closely with the driller on an hour-by-hour or  
15:00 7 day-by-day basis, certainly.

15:00 8 Q. Let me ask you, sir: Have you ever worked on a deepwater  
15:00 9 rig?

15:00 10 A. No. I have worked on what was deep water in the day,  
15:00 11 which was probably about 500 feet of water or so, but not in  
15:00 12 the depths that rigs are working in today.

15:00 13 Q. Now, let's fast-forward a little bit to April 20, 2010.  
15:00 14 Prior to the time that you learned about the incident, the  
15:00 15 horrific accident there at the Macondo well, with the  
15:00 16 *Deepwater Horizon* having blown up, did you -- had you heard  
15:00 17 about the Macondo well prior to that day?

15:00 18 A. I had not heard about the Macondo well prior to that date,  
15:00 19 with the exception of one item, which was an e-mail regarding  
15:00 20 Sperry's performance on that particular well.

15:01 21 Q. Who was it that actually informed you that there had been  
15:01 22 an incident there on the *Deepwater Horizon*?

15:01 23 A. I believe the first contact came from Tony Angelle, who  
15:01 24 was the operations VP in the Gulf of Mexico at that time.

15:01 25 Q. Did he report to you, sir?

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15:01 1 A. No. He reported to the regional vice president for the  
15:01 2 Gulf of Mexico, Jeff Miller.

15:01 3 Q. Now, let's be very clear on this. At the time when you  
15:01 4 were informed as to the incident having happened, what was your  
15:01 5 actual title at Halliburton?

15:01 6 A. I was president of global business lines and chief HSE  
15:01 7 officer.

15:01 8 Q. Okay, sir. And as the chief HSE officer, did you have any  
15:01 9 contact with the board of directors of Halliburton concerning  
15:01 10 HSE matters?

15:01 11 A. Yes, I did.

15:01 12 Q. Give us some examples of what that would have been.

15:01 13 A. Well, at that time, the HSE committee of the board met  
15:02 14 several times a year. And I would, as part of their regular  
15:02 15 committee meetings, provide them typically a one-hour update on  
15:02 16 our HSE performance of the company and other elements that they  
15:02 17 found of interest to ask questions on relating to our HSE  
15:02 18 performance.

15:02 19 Q. At April 20, 2010, did Halliburton actually on its board  
15:02 20 of directors have an HSE committee?

15:02 21 A. Yeah, we did. It was headed by Malcolm Gillis. And I  
15:02 22 believe, if I'm correct, there were five members on the HSE  
15:02 23 committee of the board at that time.

15:02 24 Q. How many total members of the board were there at  
15:02 25 Halliburton at April 20, 2010?

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15:02 1 A. 11.

15:02 2 Q. So out of the 11 members, five of them were on this HSE  
15:02 3 committee. And you reported to those folks, men and women,  
15:02 4 from time to time; is that correct?

15:02 5 A. That's correct.

15:02 6 Q. Did you also report to the management as of April 20,  
15:02 7 2010, concerning HSE matters?

15:02 8 A. Yes. I was the chairman of the internal HSE committee,  
15:03 9 which met on a quarterly basis with a number of the key senior  
15:03 10 managers throughout Halliburton, to review our internal safety  
15:03 11 performance, to review any changes in process or standards  
15:03 12 which we were planning to establish, and to review serious  
15:03 13 incidents.

15:03 14 Q. At April 20, 2010, when you say you were reporting both to  
15:03 15 the board of directors HSE committee as well as to the HSE  
15:03 16 committee made up of several of the managers of the company,  
15:03 17 was safety an important factor within Halliburton?

15:03 18 A. Safety is an extremely important element within  
15:03 19 Halliburton. It's a core value of the company. We spend a  
15:03 20 great deal of time focused on trying to keep our employees, our  
15:03 21 contractors, and those around us safe.

15:03 22 Q. When you learned of the horrific incident on April 20,  
15:04 23 2010, what was your immediate response as the head of HSE, if  
15:04 24 anything?

15:04 25 A. Well --

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15:04 1 Q. What did you undertake to do?

15:04 2 A. First of all, we have an emergency response program in  
15:04 3 place, which is made up of several individuals. In this case,  
15:04 4 Tony Angelle, who I mentioned earlier, was engaged; Melissa  
15:04 5 Bergman, who was the head of our HSE function; and also our  
15:04 6 security organization. They combined together to really, at  
15:04 7 that time, initially monitor progress.

15:04 8 As some of you may recall, horrible accident,  
15:04 9 terrible tragedy, but not a lot of information was flowing in  
15:04 10 the hours immediately after the blowout.

15:04 11 Q. Did Halliburton have any men and/or women there on the  
15:04 12 *Deepwater Horizon* rig at the time of the incident?

15:04 13 A. Yes. We had four employees on the rig at that time.

15:05 14 Q. Were they men and women? Were they both out there, if you  
15:05 15 know?

15:05 16 A. There were four individuals: two cementers and two mud  
15:05 17 loggers; three men and one female.

15:05 18 Q. Did all of those folks survive the horrific incident?

15:05 19 A. Thankfully, all four survived, though clearly quite a  
15:05 20 traumatic event for all four of them.

15:05 21 Q. Following your being notified about the incident, did you  
15:05 22 establish a process by which an investigation working with the  
15:05 23 legal department at Halliburton would begin trying to find out  
15:05 24 what role, if any, Halliburton played in the events leading up  
15:05 25 to the blowout?

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15:05 1 A. We started to obviously gather some degree of information.  
15:05 2 As I testified a little earlier, our legal organization took  
15:05 3 leadership in the gathering and control of the information and  
15:06 4 continued to gather information, but also at the same time to  
15:06 5 share literally thousands and thousands of documents and also  
15:06 6 make people available to share information about what we were  
15:06 7 learning as a result of this horrible incident.

15:06 8 Q. Was Halliburton -- in your opinion, being the head of HSE,  
15:06 9 was the company very interested in trying to find out what  
15:06 10 happened there on that Macondo well?

15:06 11 A. I think two things. We try and learn from any incident  
15:06 12 that takes place. But this was obviously a tragic accident, so  
15:06 13 we obviously tried to learn as much as we possibly could here,  
15:06 14 too, so that we could continue to learn and improve as a  
15:06 15 company.

15:06 16 Q. How many employees did Halliburton have as of the time of  
15:06 17 the incident?

15:06 18 A. I think approximately 63,000, I believe.

15:06 19 Q. Based upon -- how many years have you been with the  
15:06 20 company, with Halliburton?

15:06 21 A. 10 years.

15:07 22 Q. Based upon your 10 years of having been with the company,  
15:07 23 do you believe that Halliburton is recognized in the oil and  
15:07 24 gas industry as the leader in cementing services, with service  
15:07 25 contractors around the world?

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15:07 1 A. Yes, I do. We perform literally thousands and thousands  
15:07 2 of cement operations around the world on an annual basis. And  
15:07 3 I think we are recognized as the leader, if not one of the key  
15:07 4 leaders, in the industry.

15:07 5 Q. Is Halliburton also, to your knowledge, recognized as a  
15:07 6 leader in the design and execution of foam cement slurries in  
15:07 7 deepwater wells around the world?

15:07 8 A. Yes. I understand that we have a prominent role in the  
15:07 9 design and execution of foam slurries as well.

15:07 10 Q. Do you know Melissa Bergman?

15:07 11 A. Yes, I do.

15:07 12 Q. At April 20, 2010, was she employed by Halliburton?

15:07 13 A. Yes, she was.

15:07 14 Q. What was her role there at that time, sir?

15:07 15 A. She was director of HSE, the head sort of functional --  
15:08 16 the head function within the HSE support organization globally.

15:08 17 Q. Did she report to you?

15:08 18 A. She did.

15:08 19 Q. So then do I understand you to be saying that on a  
15:08 20 day-to-day basis, Ms. Melissa Bergman would have been in charge  
15:08 21 of the day-to-day responsibility for HSE and conducting it  
15:08 22 throughout the company and reporting up to you?

15:08 23 A. Yes, with one slight modification. That is -- as I think  
15:08 24 you saw in testimony earlier today, safety is everyone's  
15:08 25 business. And so everyone within the company has some degree



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1 of responsibility with respect to the execution of our safety  
2 programs. It is a line management responsibility.

3 Melissa's role primarily was to help support our  
4 policies, our practices, and provide support to our global  
5 operations, to make sure that they were achieving their  
6 objectives to meet our safety -- health, safety, and  
7 environmental goals around the globe.

8 **MR. GODWIN:** May we call up Exhibit 5283, please.  
9 5283.

10 **BY MR. GODWIN:**

11 **Q.** Sir, we have a document here entitled "HSE and Quality  
12 Service Excellence." Do you see the document we have there?

13 **A.** Yes, I do.

14 **MR. GODWIN:** If we can, let's go to page 2. Page 2.  
15 Is there a page 2 there, Rob?

16 **BY MR. GODWIN:**

17 **Q.** If you will go down here with me and follow with me where  
18 it says here in the first paragraph: "Effective health,  
19 safety, and environmental and service quality processes  
20 permeate Halliburton's global business and provide the  
21 foundation that makes our broad range of services efficient and  
22 effective."

23 Did I read that correctly?

24 **A.** Yes, sir.

25 **MR. GODWIN:** Go back, if you would, Rob, without

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15:10 1 pulling that out. Just put it back in.

15:10 2 **BY MR. GODWIN:**

15:10 3 **Q.** The next paragraph says: "To achieve our HSE goal of zero  
15:10 4 incidents, Halliburton depends on a methodical approach to  
15:10 5 continuous improvement of our HSE systems."

15:10 6 Did I read that correctly?

15:10 7 **A.** Yes, sir.

15:10 8 **Q.** You heard us talk about earlier that after the incident,  
15:10 9 there were things that have continued to improve. Is  
15:10 10 Halliburton -- regardless of whether we are dealing with a  
15:10 11 blowout or whatever we may be dealing with, is Halliburton  
15:10 12 continuously looking for ways to provide a safer place for its  
15:10 13 employees to work?

15:10 14 **A.** Yes, we are.

15:10 15 **Q.** And a safer place for its customers to be involved with,  
15:11 16 is this one of the goals of the company?

15:11 17 **A.** It is a goal of the company to do that.

15:11 18 **Q.** Has Halliburton over the years -- about how many years has  
15:11 19 Halliburton been in business?

15:11 20 **A.** The company has been in business since 1919.

15:11 21 **Q.** Would you consider, as the president of the division  
15:11 22 you're involved with, that Halliburton is involved from time to  
15:11 23 time in what many in the oil and gas industry believe to be a  
15:11 24 very dangerous part of the business?

15:11 25 **A.** Yes.

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15:11 1 Q. It can be?

15:11 2 A. It can be.

15:11 3 Q. Okay, sir. Let's go back.

15:11 4 MR. GODWIN: Pull that back, if you will.

15:11 5 BY MR. GODWIN:

15:11 6 Q. "The following principles guide our global operations,  
15:11 7 including deepwater asset development: HSE incidents are  
15:11 8 preventable."

15:11 9 Do you believe that, sir?

15:11 10 A. Yes, I do. It's a very important principle to make sure  
15:11 11 that everyone believes that incidents are preventable.

15:11 12 Q. "Leadership and management commitment are fundamental.  
15:11 13 "HSE performance is each individual's  
15:11 14 responsibility."

15:11 15 What does that mean?

15:11 16 A. It means that we all have a part to play in making sure  
15:12 17 that we are safe. It's a condition of employment to work  
15:12 18 safely within Halliburton.

15:12 19 Q. Whether an individual is on a rig or on shore, each  
15:12 20 individual is going to be responsible for what he or she is  
15:12 21 doing. Is that a fair way of saying it?

15:12 22 A. That's -- very fair.

15:12 23 Q. "Compliance with applicable laws and regulations is  
15:12 24 mandatory.

15:12 25 "Working safely and protecting the environment are

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15:12 1 conditions of employment."

15:12 2 Does Halliburton, as best it can, strictly enforce  
15:12 3 that within the company?

15:12 4 A. Yes, we do.

15:12 5 Q. And "Stop any task or operation if a concern or question  
15:12 6 regarding an HSE risk exists"?

15:12 7 A. Correct.

15:12 8 Q. Do you understand that could be construed to relate to  
15:12 9 what is known as "stop work authority"?

15:12 10 A. I do.

15:12 11 Q. In terms of the Macondo well, were you a part of an  
15:12 12 investigation to try to determine what did happen there on the  
15:12 13 well leading up to the blowout?

15:12 14 A. I personally was not engaged in that investigation, no.

15:13 15 Q. Did others report to you about what their findings were?

15:13 16 A. Others did not report to me. Post my testimony in  
15:13 17 Congress, those investigations were conducted at the behest of  
15:13 18 counsel.

15:13 19 Q. And in terms of some of the things that were done there on  
15:13 20 the well, have you learned that Jesse Gagliano recommended to  
15:13 21 BP that certain things be done such as the running of  
15:13 22 21 centralizers as opposed to 6 or 7?

15:13 23 Have you learned that?

15:13 24 A. I learned that, yes.

15:13 25 Q. Have you learned, through information getting back to you

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15:13 1 as a part of the investigation, that Halliburton recommended  
15:13 2 that a full bottoms-up be performed prior to the cement job  
15:13 3 being pumped?

15:13 4 A. Yes, I learned that.

15:13 5 MR. REGAN: Objection, Your Honor. Sorry.  
15:13 6 Objection. I think the witness has established he hasn't heard  
15:13 7 anything from the investigation. I don't know what the basis  
15:13 8 is for the answer of the question.

15:14 9 MR. GODWIN: I can clarify it, Judge.

15:14 10 THE COURT: I thought that during one of the prior  
15:14 11 examinations that there were objections to this line of  
15:14 12 testimony and I sustained it.

15:14 13 MR. GODWIN: In terms of what he actually was told,  
15:14 14 Judge, about those items that were recommended to BP. That's  
15:14 15 different than what I was objecting to earlier.

15:14 16 In other words, where I'm going with that,  
15:14 17 Judge, is when he was asked about stop work authority, what I  
15:14 18 want to establish is has he heard --

15:14 19 THE COURT: I thought we were talking about  
15:14 20 centralizers.

15:14 21 MR. GODWIN: Where I'm going with that, Judge, is was  
15:14 22 there anything that was done there on the well by BP or anyone  
15:14 23 that he believes should have resulted in a Halliburton employee  
15:14 24 calling stop work authority? That's a different -- I think  
15:14 25 it's a little bit different, Judge. I'm very brief on it.

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15:14 1 THE COURT: I don't know what he would base that on,  
15:14 2 since he said he didn't do the investigation and they didn't  
15:14 3 report it to him.

15:14 4 BY MR. GODWIN:

15:14 5 Q. Was there any part of the preparation for your testimony  
15:15 6 to Congress and/or any of the investigation that came back to  
15:15 7 you that involved the recommendations by Halliburton concerning  
15:15 8 centralizers and full bottoms-up?

15:15 9 A. Both those subjects came up --

15:15 10 THE COURT: Wait, wait, wait.

15:15 11 MR. REGAN: I think now we are just asking him for  
15:15 12 hearsay. We are just asking him to relate what someone else  
15:15 13 told him.

15:15 14 THE COURT: I'm going to sustain the objection.

15:15 15 MR. GODWIN: Thank you, Your Honor.

15:15 16 Pull that down, if you will, Rob, that part there.

15:15 17 BY MR. GODWIN:

15:15 18 Q. We go over here to the part on the right-hand side where  
15:15 19 it says: "Ensure the training and competency of the workforce.  
15:15 20 Halliburton HSE training gives employees the skills and  
15:16 21 knowledge to perform their jobs safely and competently."

15:16 22 Do you believe that to be a true statement?

15:16 23 A. I do.

15:16 24 Q. Do you believe that it was a true statement as of  
15:16 25 April 20, 2010?

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15:16 1 A. I do.

15:16 2 Q. "That training prepares employees to recognize hazards,  
15:16 3 prioritize risks, and assign controls to reduce risks to an  
15:16 4 acceptable level and to understand internal and external  
15:16 5 reporting requirements. It also provides a basic knowledge of  
15:16 6 applicable regulatory requirements and emergency response  
15:16 7 procedures."

15:16 8 Do you believe those to be true statements?

15:16 9 A. I do.

15:16 10 Q. Do you believe them to have been true at April 20, 2010?

15:16 11 A. Yes.

15:16 12 Q. Thank you, sir.

15:16 13 Do you know how long Halliburton has done business  
15:16 14 with BP?

15:16 15 A. I think more than 50 years.

15:16 16 Q. Over 50 years?

15:16 17 A. I think so, yes.

15:16 18 Q. In terms of the business that it's doing now, about how  
15:16 19 much business in terms of dollar volume did Halliburton do with  
15:17 20 BP in 2009, the year preceding the incident?

15:17 21 A. I believe in 2009, Halliburton's revenues with BP and its  
15:17 22 joint ventures was about \$880 million.

15:17 23 Q. About \$880 million. After the incident was there a  
15:17 24 moratorium that was put into place?

15:17 25 A. Yes. There --

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15:17 1 MR. REGAN: Your Honor, objection to the relevance.

15:17 2 THE COURT: What's the relevance there?

15:17 3 MR. GODWIN: I'm trying to show, Your Honor, that  
15:17 4 they have continued to work with them and that BP, why faulting  
15:17 5 them here, is continuing to work at the same level.

15:17 6 THE COURT: I don't know the relevance of that to  
15:17 7 what I have to decide. So I sustain the objection.

15:17 8 MR. GODWIN: I understand. Thank you, Judge.

15:17 9 BY MR. GODWIN:

15:17 10 Q. In terms of your role as HSE chief officer, were you and  
15:17 11 the people working with you in your department interested,  
15:17 12 after the incident, of trying to find out what did happen and  
15:17 13 cause that blowout on the Macondo well?

15:18 14 A. Absolutely.

15:18 15 Q. Okay. Do you believe that Halliburton has been able,  
15:18 16 through its investigation and working with its experts, has  
15:18 17 determined what it believes did result in the actual blowout  
15:18 18 itself?

15:18 19 MR. REGAN: Foundation, Your Honor. It's asking to  
15:18 20 relate about an investigation he has testified that he has not  
15:18 21 been reported to and that I think was cloaked in --

15:18 22 THE COURT: I sustain the objection.

15:18 23 MR. GODWIN: Thank you, Your Honor.

15:18 24 BY MR. GODWIN:

15:18 25 Q. Okay. It was asked about earlier that Halliburton is a



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15:18 1 contractor there on the well. The rig would have been owned by  
15:18 2 Transocean, and the well was owned by BP as the operator. Do  
15:18 3 you know the respective differences in the roles of those three  
15:18 4 there on a rig such as the Macondo --

15:18 5 A. Yes, I believe I do.

15:18 6 Q. -- the Macondo well, the *Deepwater Horizon* rig?

15:19 7 What role would Halliburton -- what role did it play  
15:19 8 that you have learned of since the incident there on the  
15:19 9 Macondo well?

15:19 10 MR. REGAN: Your Honor, this is again -- hearsay, I  
15:19 11 think, is the only way he would know this. He can talk  
15:19 12 generally in terms of the structure of the industry; but as to  
15:19 13 specifically this well, this rig, this drilling operation, he  
15:19 14 is not the witness for this.

15:19 15 MR. GODWIN: I'll ask him about the industry in  
15:19 16 general.

15:19 17 MR. BRIAN: I'll join that objection, Your Honor.

15:19 18 THE COURT: I sustain the objection. Also, I mean, I  
15:19 19 have heard a lot about this. I think I have a pretty good  
15:19 20 understanding of the relationships between the various parties.

15:19 21 MR. GODWIN: Thank you.

15:19 22 BY MR. GODWIN:

15:19 23 Q. Sir, in terms of the role Halliburton played on the -- let  
15:19 24 me say it this way.

15:19 25 In terms of the role that Halliburton, as a cement

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15:19 1 contractor, plays on a deepwater rig, in terms of that role,  
15:19 2 who, if anyone, does it take direction from there on the actual  
15:19 3 rig with regard to the services that Halliburton would be  
15:19 4 performing?

15:19 5 A. On the rig itself would come -- either from BP's well-site  
15:20 6 leader.

15:20 7 Q. And you are familiar with what a well-site leader is?

15:20 8 A. Yes.

15:20 9 Q. What do you understand a well-site leader to be in the  
15:20 10 context of that answer you gave?

15:20 11 MR. REGAN: Your Honor, I think --

15:20 12 THE COURT: I sustain the objection.

15:20 13 BY MR. GODWIN:

15:20 14 Q. Based upon your experience of about 40 years in the oil  
15:20 15 and gas industry, do you believe that operators and contractors  
15:20 16 such as Halliburton always reach an agreement on what's going  
15:20 17 to be done between the two regarding the role of the  
15:20 18 contractor?

15:20 19 A. Yes, I do.

15:20 20 Q. Do you believe that there are disagreements that the  
15:20 21 operator -- based upon your experience -- that the operator and  
15:20 22 the contractor have from time to time regarding what the  
15:20 23 contractor is going to do there on the rig?

15:20 24 A. At the end of the day, clearly the operator or the well  
15:20 25 owner is -- it's their well and they ultimately call the shots.

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15:21 1 Q. Based upon your experience of 40 years, do you believe  
15:21 2 that cement -- a cement contractor like Halliburton will make  
15:21 3 recommendations to the operator that are not always followed?

15:21 4 A. Yes.

15:21 5 Q. At the end of the conversation who is it, based upon your  
15:21 6 experience, that makes the ultimate decision regarding  
15:21 7 recommendations by Halliburton as a cement contractor?

15:21 8 MR. REGAN: Your Honor, I object to this as getting  
15:21 9 speculative. We are talking about a hypothetical relationship.

15:21 10 THE COURT: I sustain the objection.

15:21 11 BY MR. GODWIN:

15:21 12 Q. Mr. Probert, based upon your experience, do you know what  
15:22 13 are the advantages, if any, of a full bottoms-up being run  
15:22 14 prior to the cement job being pumped?

15:22 15 MR. REGAN: I object to this witness being asked -- I  
15:22 16 think he has established that his experience is far from  
15:22 17 cement. The only reason --

15:22 18 THE COURT: I sustain the objection.

15:22 19 MR. GODWIN: Judge, let me see if I can go at it this  
15:22 20 way.

15:22 21 BY MR. GODWIN:

15:22 22 Q. As the head of HSE of Halliburton, have you -- over the  
15:22 23 10 years you have been with the company, have you learned what  
15:22 24 a full bottoms-up is conducted for as a part of the process  
15:22 25 leading up to the cement pumping?

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15:22 1 MR. REGAN: I object.

15:22 2 THE COURT: Sustained.

15:22 3 MR. GODWIN: Thank you, Your Honor.

15:23 4 BY MR. GODWIN:

15:23 5 Q. Sir, in terms of your role as a head of HSE, have you  
15:23 6 learned of what is referred to as "remediation work"?

15:23 7 A. I have, yes.

15:23 8 Q. Tell the Court, if you will, please, what you understand  
15:23 9 remediation work to be in the context of the cementing  
15:23 10 operations within Halliburton of which you were the head of  
15:23 11 HSE.

15:23 12 A. Remedial operations in cementing is also known commonly in  
15:23 13 slang as a "squeeze job," which means that at any time that the  
15:23 14 cement job is believed not to be isolating either through  
15:23 15 direct measurements or inference, that a squeeze job is  
15:23 16 performed to make sure it provides the integrity that is  
15:23 17 required, simply because it is a standard procedure, was  
15:24 18 performed on the Macondo well further up in the section and is  
15:24 19 a fairly common procedure since one well in 10 in deepwater  
15:24 20 Gulf of Mexico --

15:24 21 THE COURT: Stop right there, sir. We have been down  
15:24 22 this road before. I have had several objections. This  
15:24 23 gentleman has said he is not a cementing expert. We have had a  
15:24 24 lot of other testimony -- no offense to Mr. Probert -- but a  
15:24 25 lot of other testimony about what is a squeeze job, how you

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15:24 1 remediate.

15:24 2 MR. GODWIN: I'll move on, Judge.

15:24 3 THE COURT: I have heard all of this before, and it's  
15:24 4 just not helpful at this point.

15:24 5 MR. GODWIN: I'll move on, Judge.

15:24 6 THE COURT: Plus, he has said he is not a cementing  
15:24 7 expert. So --

15:24 8 MR. GODWIN: I will move on, Judge. Thank you, sir.

15:26 9 BY MR. GODWIN:

15:26 10 Q. Mr. Probert, since you were informed of the blowout and an  
15:26 11 investigation internally was begun there at Halliburton, have  
15:26 12 you learned from any source within the company as to whether or  
15:26 13 not Jesse Gagliano was, in fact, adequately trained and  
15:26 14 experienced to design the foam cement slurry they designed  
15:26 15 there for the Macondo well?

15:26 16 MR. REGAN: Your Honor, I object to questions about  
15:26 17 an investigation. If I could just be heard for one minute on  
15:26 18 it?

15:26 19 Halliburton has said that they conducted an  
15:26 20 investigation that was privileged and they can't now use it as  
15:26 21 a sword and then start talking about an investigation that no  
15:26 22 one had access to and use it in open court. So I object to the  
15:26 23 constant references to an investigation, notwithstanding also  
15:26 24 the fact that this witness has said he has no idea what came of  
15:26 25 it.

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15:26 1 MR. GODWIN: Well, Judge, he was asked by  
15:26 2 Mr. Breit -- I'm sorry, Judge.

15:26 3 THE COURT: I sustain the objection. I distinctly  
15:26 4 remember the witness said he didn't participate in the  
15:27 5 investigation and didn't get a report about it, so I don't know  
15:27 6 why you are asking him these questions.

15:27 7 MR. GODWIN: Let me ask this, Judge, in terms of not  
15:27 8 within the investigation.

15:27 9 BY MR. GODWIN:

15:27 10 Q. Following the incident, have you made inquiry of anyone  
15:27 11 within Halliburton regarding Jesse Gagliano's competence and  
15:27 12 experience and capabilities to design the foam cement slurry?

15:27 13 MR. BREIT: Now, we will object on the grounds of  
15:27 14 foundation.

15:27 15 THE COURT: I will sustain that.

15:27 16 BY MR. GODWIN:

15:27 17 Q. Following the incident, have you -- as a former mud logger  
15:27 18 yourself, following the incident, have you made inquiry of  
15:27 19 anyone within Halliburton regarding Joe Keith's competence,  
15:27 20 experience, and ability to perform as a mud logger there on the  
15:27 21 Macondo well prior to the incident? Have you made inquiry?

15:27 22 MR. BREIT: Same objection.

15:27 23 THE COURT: Sustained.

15:28 24 BY MR. GODWIN:

15:28 25 Q. Are you familiar with what is referred to as "best

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15:28 1 practices" within Halliburton?

15:28 2 A. Yes.

15:28 3 Q. Will you tell the Court what you understand best practices  
15:28 4 to mean as you understand them within Halliburton.

15:28 5 A. Halliburton runs its business primarily through specific  
15:28 6 processes for our particular businesses. There are, in certain  
15:28 7 cases, particular best practices which are established which  
15:28 8 are designed to be guidelines to help our employees perform  
15:28 9 more effectively. They are not really rules, per se, but  
15:28 10 they're general guidelines which we ask people to use in  
15:28 11 concert with their experience and their judgment.

15:28 12 Q. These best practices within Halliburton, to your  
15:28 13 knowledge, are they mandatory with regard to each employee  
15:29 14 performing what he or she is doing in a strict conformance with  
15:29 15 what the best practice says?

15:29 16 A. No. As I was mentioning, I think they are designed to be  
15:29 17 used in conjunction with an employee's experience and also  
15:29 18 their judgment to -- and also with the customer to come up with  
15:29 19 the best possible solution. So they are not a hard-and-fast  
15:29 20 set of rules. They are there to be guidelines.

15:29 21 MR. GODWIN: Thank you, Your Honor. I pass the  
15:29 22 witness.

15:29 23 THE COURT: Who is next? Transocean is next? Are  
15:29 24 you going to be a while, Mr. Brian?

15:29 25 MR. BRIAN: I'm going to be fairly short, but I

1 wouldn't mind a biological break right now.

2 **THE COURT:** Let's take about a 15-minute recess.

3 (Recess.)

4 **THE COURT:** Please be seated, everyone.

5 Mr. Brian.

6 **MR. BRIAN:** Brad Brian for Transocean. This is  
7 cross-examination.

8 **CROSS-EXAMINATION**

9 **BY MR. BRIAN:**

10 **Q.** Good afternoon, Mr. Probert.

11 **A.** Good afternoon.

12 **MR. BRIAN:** May I put up the exhibit that Mr. Godwin  
13 used, TREX-5283-4?

14 **BY MR. BRIAN:**

15 **Q.** This is the exhibit that you were shown by Mr. Godwin, was  
16 it not?

17 **A.** That's correct.

18 **Q.** He directed your attention to the sentence that reads:  
19 "Halliburton HSE training gives employees the skills and  
20 knowledge to perform their jobs safely and competently."

21 Do you recall that?

22 **A.** I do.

23 **Q.** Now, as part of that training, you expect the Halliburton  
24 employees to follow the requirements in the Halliburton  
25 manuals, do you not?



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15:46 1 A. Depending on what manual that might be.

15:46 2 MR. BRIAN: Could we put up TREX-2133-283B. That's a  
15:46 3 call-out from page 283.

15:46 4 BY MR. BRIAN:

15:46 5 Q. Do you see where it states: "All cement slurry designs  
15:46 6 should be tested and reviewed in order to provide successful  
15:46 7 zonal isolation. Each well has specific characteristics that  
15:47 8 dictate the cement slurry properties. Careful and thorough  
15:47 9 review of these well characteristics is essential for designing  
15:47 10 an effective slurry."

15:47 11 Did I read those sentences correctly?

15:47 12 A. You did.

15:47 13 Q. You have no reason to disagree with that as you sit here  
15:47 14 today, do you, sir?

15:47 15 A. No, I don't.

15:47 16 MR. BRIAN: Let's call up TREX-5219-3A.

15:47 17 BY MR. BRIAN:

15:47 18 Q. This is a Halliburton technology bulletin. Do you see  
15:47 19 that, sir?

15:47 20 A. Yes.

15:47 21 Q. Do you see where it says: "Caution: Do not use defoamers  
15:47 22 or dispersants" -- and it lists a number of them. "These  
15:47 23 materials will destabilize the foam."

15:47 24 Do you see that, sir?

15:47 25 A. I see that.

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15:47 1 Q. I think you testified in response to Mr. Godwin's  
15:47 2 questions that Halliburton is a leader in the world in  
15:47 3 providing cement slurries, did you not, sir?

15:47 4 A. I did.

15:47 5 Q. Do you know that cement -- that a foam cement slurry was  
15:48 6 used on the Macondo well?

15:48 7 A. I do know that, yes.

15:48 8 Q. Do you know one way or another whether Mr. Gagliano or  
15:48 9 anyone at Halliburton warned BP about the use of a defoamer in  
15:48 10 connection with that foam cement slurry?

15:48 11 A. I don't have any knowledge of whether he did or whether he  
15:48 12 did not.

15:48 13 Q. You also testified, did you not, about some knowledge you  
15:48 14 do have about the duties and responsibilities of a mud logger,  
15:48 15 correct?

15:48 16 A. Yes.

15:48 17 Q. You would agree, would you not, that the mud logger is  
15:48 18 a -- provides a second set of eyes to watch what's going on on  
15:48 19 the rig, right?

15:48 20 A. That sounds like an awfully broad characterization. I  
15:48 21 think you would have to provide a bit more specificity than  
15:48 22 that for me.

15:48 23 Q. Well, the mud logger, for example, is responsible for  
15:48 24 monitoring things like drill pipe pressure, correct?

15:48 25 A. I don't know the details of this specific contract, but

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15:48 1 that would be typical service, yes.

15:49 2 Q. It would also be typical for the mud logger to monitor  
15:49 3 flow in and flow out?

15:49 4 A. Yes.

15:49 5 Q. Pit gains, correct?

15:49 6 A. Yes.

15:49 7 Q. Gas transfers?

15:49 8 A. No, not that I'm aware of.

15:49 9 Q. If the mud logger becomes aware of an indicator of a kick,  
15:49 10 is it not part of the mud logger's duties to bring that to the  
15:49 11 attention of the drilling crew?

15:49 12 A. Yeah, I would expect -- I would expect the mud logger, if  
15:49 13 they see something anomalous, to contact the driller or his  
15:49 14 designee.

15:49 15 Q. You mentioned the contract.

15:49 16 MR. BRIAN: Let's put up TREN-2007-1A.

15:49 17 BY MR. BRIAN:

15:49 18 Q. This is the first page of a Sperry-Sun Drilling Services  
15:49 19 contract with BP. Do you see that?

15:49 20 A. I see that.

15:49 21 MR. BRIAN: Let's pull up TREN-2007-7A.

15:50 22 BY MR. BRIAN:

15:50 23 Q. Do you see where it states in Section 2.1.1 that  
15:50 24 "Sperry-Sun Drilling Services (SSDS) shall provide upon receipt  
15:50 25 of job call-out a complete MWD system with sufficient backup

## TIMOTHY PROBERT - CROSS

15:50 1 equipment to ensure continuity of quality service"?

15:50 2 Do you see that?

15:50 3 A. I see that.

15:50 4 Q. Do you the see in Section 2.1.2 that it is supposed to  
15:50 5 "provide two surface computer systems with necessary  
15:50 6 interfaces. Software and cabling shall be supplied with each  
15:50 7 system."

15:50 8 Do you the see that?

15:50 9 A. I see that.

15:50 10 Q. Can you see that down in 2.2.1 it says that "SSDS has the  
15:50 11 responsibility for ensuring that all MWD tools are calibrated  
15:50 12 in accordance with SSDS standard calibration procedures"?

15:50 13 Do you see that?

15:50 14 A. I see that.

15:50 15 Q. Do you understand that "MWD" stands for "measurement while  
15:51 16 drilling" system?

15:51 17 A. I do, relating to the drilling operation.

15:51 18 Q. Now, let me ask you this. There's been some testimony  
15:51 19 about the mud logging shack. Do you know what a mud logging  
15:51 20 shack is, sir?

15:51 21 A. Yes.

15:51 22 Q. You have never visited the *Deepwater Horizon*, have you,  
15:51 23 sir?

15:51 24 A. I have not.

15:51 25 Q. Have you been on a deepwater drilling rig at all?

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15:51 1 A. Yes.

15:51 2 Q. Do you know, then, that when a company like Transocean or  
15:51 3 some other deepwater driller purchases a rig, it doesn't come  
15:51 4 with a mud logger's shack, does it, sir?

15:51 5 A. Sometimes it does. Sometimes it doesn't.

15:51 6 Q. And sometimes it doesn't, does it?

15:51 7 Do you know what was the case with respect to the  
15:51 8 *Deepwater Horizon*?

15:51 9 A. I do not.

15:51 10 Q. So you don't know, for example, whether or not Transocean  
15:51 11 purchased a rig and then some combination of Sperry and/or BP  
15:51 12 designed and put a mud logger's shack on that rig. You don't  
15:51 13 know one way or another, do you?

15:52 14 A. I don't know one way -- whether or not it was a so-called  
15:52 15 "built in" or whether or not it was added.

15:52 16 Q. You don't know that, if it was added later, who designed  
15:52 17 the equipment and the layout of that mud logger's shack, do  
15:52 18 you, sir?

15:52 19 A. No, I don't.

15:52 20 Q. Now, there's been testimony about the proximity between  
15:52 21 the mud logger's shack and certain pits on the rig. You don't  
15:52 22 know as you sit here today how it was designed -- how that  
15:52 23 proximity was designed and who designed it, do you, sir?

15:52 24 A. I do not.

15:52 25 Q. Do you know whether or not there was a live camera feed in

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15:52 1 the mud logger's shack that allowed the mud logger to observe  
15:52 2 things going on on the rig outside the shack? Do you know one  
15:52 3 way or the other?

15:52 4 A. No.

15:52 5 Q. Now, there's been some questions and some testimony about  
15:52 6 your congressional testimony. I'm not going to beat that very  
15:52 7 much. I'm going to ask you a couple questions about it.

15:52 8 MR. BRIAN: If we could pull up TREN-2019-60A.

15:52 9 BY MR. BRIAN:

15:53 10 Q. The portion that I have excerpted there, sir, is part of  
15:53 11 your opening remarks to one of those committees, is it not?

15:53 12 A. That's correct.

15:53 13 Q. You said, in part, quote: We will continue to work with  
15:53 14 you and your staff to collect factual data that will enable an  
15:53 15 understanding of what took place.

15:53 16 That's one of the things you said, did you not?

15:53 17 A. That's correct.

15:53 18 Q. At the time you appeared in front of Congress, you were  
15:53 19 aware, were you not, that some folks at Halliburton had begun  
15:53 20 to investigate or collect data with respect to the Macondo well  
15:53 21 incident, did you not?

15:53 22 A. With respect to what specifically, sir?

15:53 23 Q. Anything. You knew that an investigation by Halliburton  
15:53 24 had started, didn't you?

15:53 25 A. I think gathering of facts about what took place in

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15:53 1 preparation for my testimony, for sure.

15:53 2 Q. Yes. And did you expect at the time that you testified in  
15:54 3 front of Congress that as part of whatever investigation  
15:54 4 Halliburton would be doing, that it was logical to assume that  
15:54 5 that would include some testing of the cement slurry similar to  
15:54 6 the cement slurry actually poured on April 20, 2010? Was that  
15:54 7 logical to you at that time, sir?

15:54 8 A. No.

15:54 9 Q. That never crossed your mind?

15:54 10 A. No. It's not logical to me, no.

15:54 11 Q. So at the time you said -- well, let me ask you this  
15:54 12 question.

15:54 13 When you said to Congress, "We will continue to work  
15:54 14 with you and your staff to collect factual data," would you  
15:54 15 agree with me that if it's the case that somebody at  
15:54 16 Halliburton destroyed their notes of tests being done on a  
15:54 17 cement slurry similar to what actually was poured, that doing  
15:55 18 that is inconsistent with a promise to Congress to "work with  
15:55 19 you" and collect the factual data?

15:55 20 Would you agree with me on that?

15:55 21 MR. GODWIN: Object, Your Honor, foundation.

15:55 22 THE COURT: Overruled.

15:55 23 THE WITNESS: I'm sorry. That's a very complicated  
15:55 24 question which has, I think, multiple parts. You will have to  
15:55 25 restate it for me, to allow me to give you a clear response.

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15:55 1 BY MR. BRIAN:

15:55 2 Q. You have testified that you didn't know one way or the  
15:55 3 other whether Halliburton, a cementer, would be testing the  
15:55 4 cement as part of the investigation. That's your testimony  
15:55 5 today under oath, right?

15:55 6 A. As you have heard previously, I was not involved in any  
15:55 7 subsequent investigation. To the extent that there was any  
15:55 8 testing under the direction of counsel, I would not know that.

15:55 9 Q. So when you testified under oath as the representative of  
15:55 10 Halliburton, it's your testimony today that you did not expect  
15:55 11 anybody at Halliburton as part of their investigation to  
15:55 12 actually test the cement. That's your testimony today?

15:56 13 A. I think your question was, would I expect anyone to test  
15:56 14 the cement. And the answer would be I would not expect anyone  
15:56 15 to do any testing unless it was under the direction of counsel  
15:56 16 as part of any kind of investigation.

15:56 17 Q. I want you to assume for a second -- we'll have to  
15:56 18 establish this. But if you assume for a second that somebody  
15:56 19 at Halliburton, who was investigating this cement that was  
15:56 20 poured, destroyed their notes of their act in the  
15:56 21 investigation, is that consistent or inconsistent with your  
15:56 22 promise to Congress?

15:56 23 MR. GODWIN: Objection, Your Honor, misstates prior  
15:56 24 testimony. It also calls for the witness to speculate. It's a  
15:56 25 hypothetical question of a fact witness.



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15:56 1 THE COURT: I overrule the objection.

15:56 2 THE WITNESS: So I think what you are asking me, if  
15:56 3 someone did some testing, would it be consistent or  
15:56 4 inconsistent?

15:56 5 BY MR. BRIAN:

15:56 6 Q. No. If they did testing and they threw out their notes of  
15:56 7 that, that destruction of evidence, would you view that as  
15:56 8 consistent or inconsistent with your promise to Congress? Very  
15:57 9 simple question.

15:57 10 A. I don't know that it had anything to do with my promise to  
15:57 11 Congress. It certainly would not be consistent with what  
15:57 12 people were requested to do internally within the company,  
15:57 13 which was to retain information.

15:57 14 Q. When you found out about that, that there was some testing  
15:57 15 abnormalities, did you insist that those be brought to the  
15:57 16 attention of Congress, sir? Yes or no. Yes or no. Did you or  
15:57 17 not?

15:57 18 A. I didn't find out about this information until 2012, and  
15:57 19 whether or not that information was provided to Congress, I  
15:57 20 don't know.

15:57 21 Q. Were you angry when someone told you two years later,  
15:57 22 after you had testified, that, in fact, evidence had been  
15:57 23 destroyed? Did that make you a little angry?

15:57 24 A. Yeah. Obviously it doesn't make you feel happy.

15:57 25 MR. BRIAN: No further questions.

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15:57 1 THE COURT: BP is up next, I believe.

15:58 2 MR. REGAN: Your Honor, Matt Regan on behalf of BP.  
15:58 3 Before I begin, there are a couple of demonstrative exhibits.  
15:58 4 I just wanted to ask -- I have hard copies of them that I'm  
15:58 5 going to put on the screen that I can hand up. There's about  
15:58 6 four of them. Would that be of assistance, or would you rather  
15:58 7 we just stay with what's on the screen?

15:59 8 THE COURT: Let's stay with what's on the screen.

15:59 9 MR. REGAN: Very well.

15:59 10 CROSS-EXAMINATION

11 BY MR. REGAN:

15:59 12 Q. Good afternoon, Mr. Probert. Again, my name is Matt  
15:59 13 Regan. I represent BP, and I have you on cross-examination.

15:59 14 A. Good afternoon.

15:59 15 Q. I'm going to endeavor to not cover the materials that have  
15:59 16 been covered so far. I will do my best to try to stick to new  
15:59 17 areas, but there's going to be a little bit of overlap.

15:59 18 You agree -- just in terms of your congressional  
15:59 19 testimony, I would like to pull up 2017.2.1. I just want to  
15:59 20 confirm, Mr. Probert, that -- in one of your written statements  
15:59 21 to Congress, did you use these words to describe Halliburton:  
15:59 22 "Halliburton is the largest cementing service and material  
15:59 23 provider in the oil and gas industry. Halliburton provides  
15:59 24 zonal isolation and engineering solutions for the life of the  
15:59 25 well."

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15:59 1 Are those your words?

15:59 2 A. Right.

15:59 3 Q. You agree that the primary cement job failed at Macondo to  
15:59 4 isolate the hydrocarbons in the well, correct?

16:00 5 A. Yeah, we agree that it failed to isolate the hydrocarbons.  
16:00 6 The issue is we don't know why.

16:00 7 Q. You agree that the cement was designed to be a primary  
16:00 8 barrier against the influx of those hydrocarbons, correct?

16:00 9 A. That was the intent, yes.

16:00 10 Q. So you would agree that that cement did not serve as a  
16:00 11 barrier to hydrocarbons coming into the wellbore, correct?

16:00 12 A. The cement did not isolate the zone, as had been planned  
16:00 13 by Halliburton and BP. What we don't know is why.

16:00 14 Q. I would like to put up D-4377. And if we could -- not to  
16:00 15 take too much of a step backwards, but just to try to orient  
16:00 16 the Court as to some of the names and positions of the people  
16:00 17 you have been testifying about, I have put together this  
16:00 18 chart -- did my best to be accurate -- about the Halliburton  
16:00 19 employees as of April 20, 2010.

16:00 20 I have you at the top. You were one of three  
16:00 21 presidents as of that time, correct?

16:00 22 A. That's correct.

16:00 23 Q. Obviously this is not all 80,000 employees. But with  
16:00 24 respect to the cementing area, Mr. Tommy Roth, spelled R-O-T-H.  
16:01 25 At that point in time, he was the vice president in charge of

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16:01 1 cementing, correct?

16:01 2 A. Correct.

16:01 3 Q. Beneath Mr. Roth there's a gentleman named Mr. Vargo,  
16:01 4 correct?

16:01 5 A. Correct.

16:01 6 Q. He had more specific responsibility for Macondo, correct?

16:01 7 A. I understand so, yes.

16:01 8 Q. We have a few other names, names of people who are  
16:01 9 witnesses, people who have either given deposition or will  
16:01 10 testify. And I just want to point out a couple of them, as to  
16:01 11 where they sit in the organization.

16:01 12 Beneath Mr. Vargo we have Ronnie Faul. He was the  
16:01 13 senior technical professional manager, correct?

16:01 14 A. Correct.

16:01 15 Q. Over here on the right side, we have Rickey Morgan. He  
16:01 16 was the principal technologist. Did you understand that he  
16:01 17 worked in the lab in Duncan, Oklahoma?

16:01 18 A. I didn't know.

16:01 19 Q. Beneath Mr. Faul we then have Jesse Gagliano. Do you see  
16:01 20 his name there?

16:01 21 A. I see his name.

16:01 22 Q. And then to the right of him, Mr. Quirk, an area lab  
16:01 23 manager. Do you know what lab Mr. Quirk worked in?

16:01 24 A. I believe it was in Lafayette.

16:01 25 Q. Then we have over on the other side Mr. Ravi and

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16:02 1 Mr. Lewis, some people who are testifying as experts as  
16:02 2 Halliburton employees.

16:02 3 Rough justice, is this a fair representation of some  
16:02 4 of the people that were involved in this project with respect  
16:02 5 to Halliburton, to your knowledge?

16:02 6 A. Yes. I mean there are others, obviously, as part of the  
16:02 7 regional structure, that would have been involved as well.

16:02 8 Q. Fair enough.

16:02 9 A. This is one slice of the organization.

16:02 10 Q. So the individuals that you work with -- I understand you  
16:02 11 had nothing to do with Macondo prior to the incident. Fair?

16:02 12 A. Yes.

16:02 13 Q. The individuals that you worked with in preparation for  
16:02 14 your testimony would have been Mr. Roth, the head of cementing;  
16:02 15 Mr. Faul, the senior technical manager; and then Mr. Anthony  
16:02 16 Badalamenti, the technology director. Correct?

16:02 17 A. That's correct.

16:02 18 Q. And there was one other individual whose name I --

16:02 19 A. I think Richard Vargo was there.

16:02 20 Q. Richard Vargo as well?

16:02 21 A. I believe so. By telephone, I think.

16:02 22 Q. These were the guys that you worked with and helped you  
16:03 23 prepare to give public statements on behalf of the company  
16:03 24 following the accident. Is that fair?

16:03 25 A. That's correct.

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16:03 1 MR. REGAN: If we can go to TREN-5283, page 4. Just  
16:03 2 a quick question on that.

16:03 3 BY MR. REGAN:

16:03 4 Q. While it's coming up, Mr. Probert, as the chief HSE  
16:03 5 officer, you were asked some questions by Mr. Godwin about this  
16:03 6 document, TREN-5283. I just had a question about it over here  
16:03 7 on the right side.

16:03 8 There's a paragraph here, if we could start with:  
16:03 9 "Maintain strict adherence to the Halliburton management  
16:03 10 system, HMS."

16:03 11 It says in the document you were shown by your  
16:03 12 counsel: "Following established processes is critical in  
16:03 13 mitigating HSE risks and reducing the number of HSE incidents.  
16:03 14 HMS, comprising all our work level processes and procedures,  
16:03 15 enables employees to deliver service that is safe,  
16:03 16 environmentally sound, and reliable."

16:03 17 My question is simple, Mr. Probert. What is the HMS  
16:04 18 system?

16:04 19 A. HMS is the repository, if you like, where all our  
16:04 20 processes are maintained. It's an electronic library.

16:04 21 Q. So things like the best practices for cementing or foam  
16:04 22 cementing manuals or some of the other documents you were shown  
16:04 23 today that were Halliburton manuals, would they be part of the  
16:04 24 HMS system?

16:04 25 A. I don't know that those documents themselves are part of

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1 HMS. But the core processes by which we run our business are  
2 included in HMS.

3 Q. When you testified in front of Congress, you were there  
4 with Mr. McKay and Mr. Newman, correct?

5 A. Correct.

6 MR. REGAN: I would like to bring up G-999.4.  
7 G-999.4.

8 BY MR. REGAN:

9 Q. My question, Mr. Probert, as this is coming up, is: Did  
10 you hear Mr. Newman give a statement to the effect of -- during  
11 that testimony -- that the well construction process is a  
12 collaborative effort involving various entities and many  
13 personnel: the well operator, government officials, the  
14 drilling contractor, the mud contractor, the casing contractor,  
15 the cement contractor, and others?

16 Do you remember Mr. Newman giving a statement to that  
17 effect?

18 A. Yes, I do.

19 Q. Do you agree with that statement?

20 A. I don't disagree with it.

21 Q. Now, you have described in one of your answers that  
22 Halliburton had a narrow slice, I think was the phrase you  
23 used, with respect to its role in the drilling of a deepwater  
24 well. Can we agree that in that narrow slice it includes  
25 providing not only cementing products but also cementing

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16:05 1 personnel and expertise?

16:05 2 A. Cementing products, did you say?

16:05 3 Q. Yes.

16:05 4 A. Yeah. It combines cementing products to the extent they  
16:05 5 are provided by us and not by others, and also cementing  
16:05 6 expertise, yes.

16:05 7 Q. With respect to this project at Macondo, Halliburton also,  
16:05 8 through its Sperry division, provided mud loggers, correct?

16:05 9 A. They provided directional drilling services and also mud  
16:06 10 logging services, yes.

16:06 11 Q. In that narrow slice we have cementing products, cementing  
16:06 12 personnel and expertise, Sperry mud logging services, and also  
16:06 13 directional drilling services. Is that fair?

16:06 14 A. Yeah. Though, of course, as you understand, the well --  
16:06 15 the drilling was completed sometime previously, and those  
16:06 16 personnel were no longer on board.

16:06 17 Q. The directional drilling people were no longer on board?

16:06 18 A. Right.

16:06 19 Q. Right. They actually were -- fair enough.

16:06 20 With respect to that work in that narrow slice, you  
16:06 21 would agree that it would be incumbent on Halliburton personnel  
16:06 22 to advise BP of anything that the Halliburton personnel  
16:06 23 believed was a risk, correct?

16:06 24 A. I think it was incumbent on Halliburton to advise BP of  
16:06 25 anything they saw as a significant risk.



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16:06 1 Q. With respect to -- we talked earlier that it's clear that  
16:06 2 there was a -- I think that might be your microphone.

16:07 3 We can agree that there was clearly not zonal  
16:07 4 isolation on the night of April 20, 2010, correct?

16:07 5 A. As I said --

16:07 6 Q. We can also agree that --

16:07 7 A. We don't know why.

16:07 8 Q. I didn't mean to talk over you.

16:07 9 We can also agree that on that night there was a kick  
16:07 10 that went undetected, developed into a blowout, and led to the  
16:07 11 explosion and the fatalities that we are here about. Is that  
16:07 12 fair?

16:07 13 A. There was a kick, yes.

16:07 14 Q. Halliburton had involvement in the project with respect to  
16:07 15 providing cement product, providing cement personnel, providing  
16:07 16 mud logging personnel, who were a second pair of eyes on the  
16:07 17 project, correct?

16:07 18 A. Yeah. I don't know whether or not Halliburton provided  
16:07 19 the cement products. That's not known to me. They certainly  
16:07 20 provided the personnel.

16:07 21 Q. Now, in your deposition do you recall testifying that in  
16:07 22 your view Halliburton was zero percent responsible for the  
16:07 23 incident in Macondo?

16:07 24 A. That's correct.

16:07 25 Q. Is that still your testimony today, Mr. Probert, that in

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16:08 1 your view Halliburton has zero responsibility with respect to  
16:08 2 that accident?

16:08 3 A. Yeah, it still is, and I will tell you why. My view is  
16:08 4 this, is that if several things had happened -- if, for  
16:08 5 example, the cement had been tested to establish whether or not  
16:08 6 it was a barrier or not had taken place. Number two, if BP had  
16:08 7 correctly interpreted the negative test. Number three, if BP  
16:08 8 had not underbalanced the well to put it in such a dangerous  
16:08 9 situation, not knowing whether or not the test was favorable or  
16:08 10 not. And number four, if, when there were the first signs of a  
16:08 11 kick, BP and Transocean had acted on a timely basis, we  
16:08 12 wouldn't be here today, and the tragedy would not have  
16:08 13 happened.

16:08 14 Q. Can we add a number zero, that if Halliburton personnel in  
16:09 15 Halliburton's lab using Halliburton's equipment had determined  
16:09 16 that that cement was unstable and should be redesigned, that  
16:09 17 that slurry would have never made it to the rig? Will you add  
16:09 18 that to the list?

16:09 19 A. No, I won't, because basically what -- as you know, I'm  
16:09 20 not a cementing expert. I haven't been involved in the design.  
16:09 21 I haven't been involved in the testing, and I don't understand  
16:09 22 the testing protocols. So from my perspective, I can't add  
16:09 23 that.

16:09 24 Q. So not understanding it, you are convinced it could not  
16:09 25 have been Halliburton's fault?

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16:09 1 A. That's, I guess, a hypothetical question which I clearly  
16:09 2 can't answer at this stage.

16:09 3 MR. REGAN: Pull up D-4309A.

16:09 4 BY MR. REGAN:

16:09 5 Q. Mr. Probert, I'm going to put up a demonstrative, and I  
16:09 6 would just like to clarify that I understand where you stand.  
16:09 7 What I have on this demonstrative -- to orient you, I have a  
16:09 8 list of four tests that were performed before the Halliburton-  
16:09 9 recommended procedure was provided to BP. I then have three  
16:10 10 tests that there's testimony about having in court after  
16:10 11 April 20.

16:10 12 I just want to clarify: With respect to the top  
16:10 13 four, in gray, it's your testimony that you were never aware of  
16:10 14 these test results as of the time that you gave your testimony  
16:10 15 to Congress, correct?

16:10 16 A. I was not aware of specific test results when I testified  
16:10 17 to Congress.

16:10 18 Q. Okay.

16:10 19 A. Nor am I today, as it happens.

16:10 20 Q. Just to clarify: With respect to the bottom three, the  
16:10 21 ones in pink, it's your testimony that you were not aware that  
16:10 22 Halliburton employees, including Rickey Morgan and Tim Quirk,  
16:10 23 were doing tests in Halliburton labs in late April up through  
16:10 24 mid-May. You were not aware of that fact?

16:10 25 A. I think you heard me testify to that previously.

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16:10 1 Q. You testified a minute ago, I think, that it was just not  
16:10 2 logical to you that anyone really would even be doing such  
16:10 3 tests after the accident, correct?

16:10 4 A. They certainly -- to my knowledge, to the extent they were  
16:10 5 doing those tests, then, they certainly weren't authorized.

16:11 6 Q. Is it also the case that as of the time you testified, you  
16:11 7 were not aware that Halliburton, in fact, had never done a foam  
16:11 8 stability test on the actual slurry that was recommended to BP  
16:11 9 for Macondo? Were you aware of that fact in May?

16:11 10 A. I don't know that to be true because, based on what I have  
16:11 11 read, at least, or learned from the National Commission, there  
16:11 12 was a test done and it was stable.

16:11 13 Q. Can you see the yellow box on the screen, Mr. Probert?

16:11 14 A. Yes.

16:11 15 Q. It was an October 28, 2010 press release from your  
16:11 16 company, Halliburton, correct?

16:11 17 A. Yes.

16:11 18 Q. It was a press release that you reviewed before it was  
16:11 19 issued, correct?

16:11 20 A. I did review it.

16:11 21 Q. Halliburton told the world for the first time on  
16:11 22 October 28, 2010, six months after the accident, quote: A foam  
16:11 23 stability test was not conducted on the 9-gallon formulation.

16:11 24 So certainly you knew that as of October 2010,  
16:11 25 correct?

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16:11 1 A. That's correct.

16:11 2 Q. So you don't dispute, do you, that, in fact, Halliburton  
16:12 3 did not do a test on the actual formulations used in the well,  
16:12 4 do you?

16:12 5 A. I understand that to be the case on that specific  
16:12 6 formulation.

16:12 7 Q. Were you told that Halliburton personnel Jesse Gagliano  
16:12 8 had canceled a test that was going to be performed prior to  
16:12 9 April 20 on that 9-gallon formulation?

16:12 10 A. I'm not familiar with the testing protocols.

16:12 11 Q. Do you agree with me, Mr. Probert, that the slurry should  
16:12 12 not have left the lab if it was not tested for foam stability?

16:12 13 A. I don't know what the protocol was between Mr. Gagliano  
16:12 14 and BP to be able to answer that question.

16:12 15 Q. You don't -- you can't say one way or the other?

16:12 16 A. No. Mr. Gagliano worked closely with BP and I do not know  
16:12 17 what the details of their working together was with respect to  
16:12 18 the final approval by BP of that slurry.

16:12 19 Q. I think you stated it a minute ago, but just to confirm:  
16:12 20 You would agree that it would be inconsistent with

16:12 21 Halliburton's policies for Halliburton personnel to run tests  
16:13 22 and either not document them or do them off the side or destroy  
16:13 23 the notes of them or the samples?

16:13 24 A. I don't know what the significance of those tests are and  
16:13 25 whether or not they had any bearing on this particular

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1 incident. To the extent they do, then, clearly, that is  
2 different to the extent that they don't.

3 Q. You could agree with me that if they don't exist anymore,  
4 it's hard for anyone to know what bearing they may have on the  
5 quality and performance of the slurry?

6 A. That's an unknown to me.

7 MR. REGAN: If we could pull up D-4379.

8 BY MR. REGAN:

9 Q. I have a time line that's -- it's not all for you. Some  
10 is for the next witness, but just to orient us as to activities  
11 after April 20, 2010, I would just like to use this to orient  
12 us a little bit.

13 We have on here in the bottom what we would call  
14 "external communications." So when you see on there May 11,  
15 2010, your testimony; May 12, your testimony; and then some of  
16 the other briefings that took place. October 20, 2010, a press  
17 release that we just talked about. Do you see that?

18 A. I see that.

19 Q. I'm going to come back and forth to this exhibit as we  
20 can. But, first, I want to focus on the date there at the top.  
21 The top is what I'd call "internal analysis."

22 Do you see a date, April 27: "Need to say, quote, We  
23 don't know anything further."

24 Do you see that on the time line?

25 A. Yes, I see that.

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16:14 1 MR. REGAN: If we can pull up TREN-1897.

16:14 2 BY MR. REGAN:

16:14 3 Q. Now, Mr. Probert, you testified that Halliburton was very  
16:14 4 interested in trying to find out what happened, and you said  
16:14 5 that in Congress and you said that today. And I believe that's  
16:14 6 your testimony, correct?

16:15 7 A. Yeah, absolutely. We were trying to be quick, responsive,  
16:15 8 and factual.

16:15 9 Q. If we look at this e-mail that you received from Mark  
16:15 10 McCollum on April 27, 2010 -- Mark McCollum was the CFO of  
16:15 11 Halliburton, correct?

16:15 12 A. That's correct.

16:15 13 Q. He sends this message to you on April 27, correct?

16:15 14 A. Yeah, he sends it to me and -- actually, it was responding  
16:15 15 to a request from Christian Garcia, I think, is it not?

16:15 16 Q. He says in this e-mail to you -- you are on there under  
16:15 17 the "To:" line, correct?

16:15 18 A. Yes, but I think the e-mail was in response to Mr. Garcia,  
16:15 19 just reading the bottom part of this e-mail.

16:15 20 Q. He says: "We can acknowledge that we had the cementing  
16:15 21 work on the rig. Transocean's Web site describing the rig says  
16:15 22 specifically that the cementing equipment on the *Horizon* was  
16:15 23 ours under a third-party contract."

16:15 24 Then he says, if we can highlight: "Beyond that, we  
16:15 25 should not comment on what operations were happening at the

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16:15 1 time of the accident or what caused the accident; but, instead,  
16:15 2 need to say that Transocean and BP are conducting the  
16:16 3 investigation into what happened and we don't know anything  
16:16 4 further."

16:16 5 That was the statement of the CFO of Halliburton  
16:16 6 seven days after the accident, correct?

16:16 7 A. That's correct.

16:16 8 Q. There was information, though, that was relevant to what  
16:16 9 happened that was exclusively in the possession of Halliburton,  
16:16 10 correct?

16:16 11 A. That's correct.

16:16 12 Q. Halliburton had exclusive possession of the lab sheets  
16:16 13 about the pre-cement testing, correct?

16:16 14 A. Sir, I think you are avoiding the point here that this  
16:16 15 e-mail -- when I read this e-mail, it comes from a single  
16:16 16 analyst and I think from -- I can't speak for Mr. McCollum. He  
16:16 17 responded to this e-mail, but Mr. McCollum is always -- and is  
16:16 18 under an obligation to always ensure that he abides by SEC  
16:16 19 regulations with respect to communication, and responding  
16:16 20 specifically to an individual analyst would not allow him to  
16:17 21 provide any detailed information.

16:17 22 Q. My question is simple.

16:17 23 Did the CFO of Halliburton on the 27th of April tell  
16:17 24 you, a president of Halliburton, quote: We instead need to say  
16:17 25 that Transocean and BP are conducting an investigation into



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16:17 1 what happened and we don't know anything further.

16:17 2 Did he use those words to you?

16:17 3 A. It's in his e-mail.

16:17 4 Q. As of that date, Halliburton had exclusive possession of  
16:17 5 the information from its laboratories on the testing that had  
16:17 6 taken place on the cement, correct?

16:17 7 A. I don't know that.

16:17 8 Q. As of that date, Halliburton had access to Mr. Gagliano,  
16:17 9 could ask him about what happened with respect to the design of  
16:17 10 the cement, correct?

16:17 11 A. To the extent that someone asked him, that's true.

16:17 12 Q. As of that date, Mr. Roth and Mr. Faul and others that had  
16:17 13 been talked about in questions earlier today -- I'm not going  
16:17 14 to go back into that -- they had information about activities  
16:17 15 that they were undertaking with respect to what happened in the  
16:17 16 accident, correct?

16:17 17 A. I'm sure they did.

16:18 18 Q. If we can turn now to April 30th, the press release,  
16:18 19 TREX-2013. This is three days later.

16:18 20 Now, this is a press release that was issued on  
16:18 21 April 30. It was Halliburton's press release after the  
16:18 22 accident, and it's one that you reviewed, correct?

16:18 23 A. I did review it, yes.

16:18 24 Q. You reviewed it before it was issued, correct?

16:18 25 A. Say that again.

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16:18 1 Q. I'm sorry. I'm mumbling.

16:18 2 You reviewed the press release before it was issued?

16:18 3 A. Yes, I was one of the reviewers for the press release.

16:18 4 Q. In this press release, Halliburton said, quote: The  
16:18 5 cement slurry design was consistent with that utilized in other  
16:18 6 similar applications.

16:18 7 Correct?

16:18 8 A. That's what it says.

16:18 9 Q. Now, who is the source of that statement?

16:18 10 A. That information clearly wouldn't have come from myself.  
16:18 11 It would have come from those individuals who had knowledge of  
16:18 12 slurry design and usage within our cementing products service  
16:18 13 line.

16:18 14 Q. So the knowledgeable people in Halliburton would have  
16:19 15 determined that, "We should tell the world the cement slurry  
16:19 16 design was consistent with that utilized in other similar  
16:19 17 applications"?

16:19 18 A. Those are your words not mine.

16:19 19 Q. I was trying to use yours, but I was going around and  
16:19 20 around.

16:19 21 This clearly didn't come from you; you don't have  
16:19 22 that expertise?

16:19 23 A. No. I just said that.

16:19 24 Q. But the people who had the expertise at Halliburton are  
16:19 25 the ones that told you Halliburton should say in this press

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16:19 1 release the cement slurry design was consistent with that  
16:19 2 utilized in other similar applications, correct?

16:19 3 A. That information would have come from our cementing  
16:19 4 products service line, yes.

16:19 5 Q. They would have been in a position to know whether or not  
16:19 6 that was accurate, correct?

16:19 7 A. Yes.

16:19 8 Q. That would include Mr. Roth, correct?

16:19 9 A. Mr. Roth headed the product line at that time.

16:19 10 Q. You were also asked specifically about the chemical makeup  
16:19 11 of the cement that was used in Macondo by Congress, correct?  
16:19 12 Do you recall that?

16:19 13 A. The specific chemical makeup?

16:19 14 Q. Let me end the mystery. 75074.1. So this is your  
16:20 15 testimony on May 12, if we can please go to .77.1. Do you  
16:20 16 recall being asked the question:

16:20 17 "QUESTION: Now, Mr. McKay and Mr. Probert, was the  
16:20 18 cement used in this case the same chemical makeup as the  
16:20 19 cement used by Halliburton for other wells, yes or no?

16:20 20 "ANSWER: Yes. The cement had been used -- this type  
16:20 21 of cement had been used in approximately 100 applications  
16:20 22 in the Gulf of Mexico."

16:20 23 Was that your answer in Congress?

16:20 24 A. That was my answer in Congress relating to the use of foam  
16:20 25 cement.

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16:20 1 Q. Your basis for stating that this cement had been used was  
16:20 2 again relying on the people at Halliburton who should know,  
16:20 3 correct?

16:20 4 A. Correct.

16:20 5 Q. That includes Mr. Roth, correct?

16:20 6 A. That's correct, Mr. Roth and his staff.

16:20 7 Q. And it is your testimony that the chemical makeup of the  
16:20 8 cement that was used had been used in approximately 100  
16:21 9 applications, right?

16:21 10 A. That's correct.

16:21 11 Q. Now, I have some questions about the actual chemical  
16:21 12 makeup as compared to Halliburton's best practices, but I will  
16:21 13 just ask you one question in advance.

16:21 14 You, sir, are not an expert in Halliburton's global  
16:21 15 best practices for cementing?

16:21 16 A. No. I'm not.

16:21 17 Q. You would expect that the people who make cement and  
16:21 18 provide it to the customers for Halliburton will comply with  
16:21 19 Halliburton's best practices, correct?

16:21 20 A. No, not in all cases. They have to work for a customer,  
16:21 21 and that customer has very clear views about what they would  
16:21 22 and would not like to have done. So they will make  
16:21 23 recommendations to the customer and the customer will either  
16:21 24 modify those recommendations, approve those recommendations, or  
16:21 25 otherwise.

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16:21 1 Q. And in this matter, has anyone ever told you that BP told  
16:21 2 Halliburton, "Do not provide us with cement consistent with  
16:21 3 your global best practices; we want you to do something  
16:21 4 different"?

16:22 5 Have you ever seen any evidence of that conversation  
16:22 6 ever happening?

16:22 7 A. No, I have not seen that.

16:22 8 Q. You testified about the fact that there was an  
16:22 9 investigation that started, and I think you used the phrase  
16:22 10 either "lawyer-driven" or it was done by the lawyers; is that  
16:22 11 right?

16:22 12 A. I said it was led by counsel -- our internal counsel.

16:22 13 Q. "Led by counsel," those are the words you used.

16:22 14 And to this date, as of wherever we are now, in March  
16:22 15 of 2013, you have never been apprised of the results of that  
16:22 16 investigation, as you testified earlier, correct?

16:22 17 **MR. GODWIN:** Your Honor, I'm going to object to this.  
16:22 18 I tried to go into the investigation. They said -- they  
16:22 19 objected then that he wasn't a part of it, nobody reported to  
16:22 20 him. Now they are wanting to go into the same thing, and that  
16:22 21 is, ask about the investigation and who reported back, if  
16:22 22 anyone, to him.

16:22 23 **MR. REGAN:** I think I'm just confirming his earlier  
16:22 24 testimony, Your Honor.

16:22 25 **MR. GODWIN:** It's not consistent, Your Honor.

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16:22 1 THE COURT: I sustain the objection.

16:22 2 BY MR. REGAN:

16:22 3 Q. Are you aware of any nonlawyer, nonprivileged  
16:23 4 investigation that was performed by Halliburton?

16:23 5 A. No.

16:23 6 Q. Are you aware of Halliburton providing anything to the  
16:23 7 industry from a nonlawyer or nonprivileged investigation to  
16:23 8 help improve safety?

16:23 9 A. We have provided literally thousands of documents and the  
16:23 10 time of individuals both to support the various commissions and  
16:23 11 also the congressional testimonies, and also participation in  
16:23 12 the Center for Offshore Safety, etc., and also work to refine  
16:23 13 general API cementing best practices of which BP has also  
16:23 14 participated, I understand.

16:23 15 Q. D-4309A. 4309A.

16:23 16 In the thousands of documents that you are aware of  
16:23 17 Halliburton providing, did Halliburton ever provide these  
16:23 18 documents to anyone, the ones that were the pre-incident lab  
16:24 19 tests, weigh-up sheets, the post-incident tests? Are you aware  
16:24 20 of that ever being provided?

16:24 21 Let's start first -- ever provided to the Bly team  
16:24 22 when they were asking for information starting in late April?

16:24 23 A. I don't know what was provided and what wasn't provided.

16:24 24 Q. Are you aware of these documents being provided to anyone  
16:24 25 prior to October of 2010?

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16:24 1 A. I don't know what was and wasn't provided.

16:24 2 Q. So when you talk about the "thousands of documents," you  
16:24 3 just don't know what was actually included in there?

16:24 4 A. You specifically asked me about this document, and I  
16:24 5 certainly don't know the answer to that.

16:24 6 Q. Whether or not the pre-job laboratory testing that was  
16:24 7 done by Halliburton was in accordance with industry standards,  
16:24 8 that's not your area to say, correct?

16:24 9 A. That's not my area of expertise, no.

16:24 10 Q. So any answers that you would have provided in written  
16:25 11 questions to Congress, that would have come from someone else?

16:25 12 A. That's correct.

16:25 13 Q. You were asked a few questions about centralizers. And do  
16:25 14 you recall giving a written answer to Congress with respect to  
16:25 15 the risk of channeling? Do you recall that?

16:25 16 A. Yes.

16:25 17 Q. TREX-2016.102.1.

16:25 18 **MR. GODWIN:** Objection, Your Honor. I tried to go  
16:25 19 into centralizers and they were objecting saying we had already  
16:25 20 gone into it. It has already been covered, asked and answered,  
16:25 21 it's repetitive, redundant.

16:25 22 **MR. REGAN:** I wanted to just go to the answer they  
16:25 23 gave in Congress after the accident about its relationship with  
16:25 24 safety, but if it's viewed as outside of his ken, we can move  
16:25 25 forward.

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16:25 1 THE COURT: Let's move forward.

16:25 2 MR. REGAN: Let's move forward.

16:25 3 BY MR. REGAN:

16:25 4 Q. With respect to presentations that were given -- if we go  
16:25 5 back to D-4379.

16:26 6 With respect to presentations that were given by  
16:26 7 Tommy Roth on June 3, 2010, and by Mr. Roth September 26, 2010,  
16:26 8 did you have any involvement in those presentations,  
16:26 9 Mr. Probert?

16:26 10 A. I don't believe so. I don't believe that I saw those  
16:26 11 presentations.

16:26 12 Q. With respect to this time period in -- basically from  
16:26 13 April 20 through September 8, 2010, the date the Bly report was  
16:26 14 issued, did you have any involvement in Halliburton's responses  
16:26 15 to requests made by the Bly team for information from  
16:26 16 Halliburton? Were you involved in that at all?

16:26 17 A. I did not. I did not.

16:26 18 Q. Do you recall talking to reporters in late May 2010,  
16:26 19 including Mr. Ben Casselman?

16:26 20 A. Yes, I had a meeting at Halliburton offices at the request  
16:27 21 of Ben Casselman.

16:27 22 Q. In your meeting with Mr. Casselman -- you attended it  
16:27 23 personally, correct?

16:27 24 A. I attended it. It was organized by Cathy Mann, who was in  
16:27 25 charge of public relations for the company. And myself and



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16:27 1 Tommy Roth attended.

16:27 2 Q. During that meeting with Mr. Casselman of *The Wall Street*  
16:27 3 *Journal*, was there any discussions about Halliburton's lab  
16:27 4 testing?

16:27 5 A. No.

16:27 6 Q. Were you aware of any work that Mr. Roth did with respect  
16:27 7 to a program called Displace 3D Modeling, a program that  
16:27 8 determines whether there's channeling from poor mud  
16:27 9 displacement? Does that ring any bells to you?

16:27 10 A. I'm aware of the program, but I'm certainly not aware of  
16:27 11 Tommy doing any work with it.

16:27 12 Q. TREX-48098. This, again, is an October 28, 2010 press  
16:28 13 release. And just to confirm, you would have looked at this  
16:28 14 press release issued by Halliburton before it was made public,  
16:28 15 correct?

16:28 16 A. Correct.

16:28 17 Q. This press release was issued by Halliburton in response  
16:28 18 to the release of Chevron testing that was performed on  
16:28 19 Halliburton lab stock for the Presidential Commission; do you  
16:28 20 recall that?

16:28 21 A. Yes.

16:28 22 Q. In this press release, as we see here, there's a statement  
16:28 23 that --

16:28 24 MR. REGAN: Can we put the two paragraphs -- can we  
16:28 25 go back to 48098 and just do the paragraph above that one as

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1 well. There we go. Thank you.

2 **BY MR. REGAN:**

3 **Q.** This press release -- I'm not going to read the whole  
4 thing here, unless we need to. But this press release from  
5 Halliburton actually discusses Halliburton's internal lab tests  
6 that were done for the Macondo slurry, correct? Do you recall  
7 that?

8 **A.** I'm just reading it.

9 **Q.** Take your time. I'm almost done.

10 **A.** I don't know that it describes the -- okay. I guess some  
11 aspects of testing would be more accurate, right.

12 **Q.** Right. Well, the first sentence says: "With respect to  
13 Halliburton's internal tests," and then it goes on to discuss,  
14 right?

15 Were you aware of Halliburton's internal tests as of  
16 the time in October that you read this press release?

17 **A.** Only to the extent that any tests being undertaken were at  
18 the behest of counsel as part of their analysis of  
19 information -- gathering of information.

20 **Q.** It then says -- if you go to the bottom it says:  
21 "Halliburton believes" -- it's about four lines from the first  
22 paragraph.

23 "Halliburton believes that the first test conducted  
24 in April is irrelevant because the laboratory data did not use  
25 the correct amount of cement blend. Furthermore, contrary to

## TIMOTHY PROBERT - CROSS

16:29 1 the assertion in the letter, BP was made aware of issues with  
16:29 2 that test.

16:29 3 Do you see that?

16:29 4 A. I see that.

16:29 5 Q. Can you tell me what the basis was for that statement?

16:30 6 A. I don't know myself.

16:30 7 Q. It then says: "The second test conducted in April was run  
16:30 8 on the original agreed-upon slurry formulation, which included  
16:30 9 8 gallons of retarder per 100 sacks of cement and showed a  
16:30 10 stable foam."

16:30 11 And the next sentence says: "BP subsequently  
16:30 12 instructed Halliburton to increase the amount of retarder in  
16:30 13 the slurry formulation from 8 gallons per 100 sacks of cement  
16:30 14 to 9 gallons per 100 sacks of cement."

16:30 15 Do you the see that?

16:30 16 A. I see that.

16:30 17 Q. Is that accurate? Was it accurate that Halliburton had  
16:30 18 done a foam stability test on the 8 gallons and then after that  
16:30 19 test, BP subsequently informed them to change the amount of  
16:30 20 retarder?

16:30 21 A. That's what the release says.

16:30 22 Q. Do you know if it's true?

16:30 23 A. I personally don't have knowledge of any of these aspects  
16:30 24 of testing.

16:30 25 Q. Then the last sentence is what we looked at before: "A

## TIMOTHY PROBERT - CROSS

16:30 1 foam stability test was not conducted on the 9-gallon  
16:30 2 formulation." Correct?

16:30 3 A. Correct.

16:31 4 Q. Now, that same day you issued an internal discussion  
16:31 5 document or press release or communication to Halliburton  
16:31 6 employees, correct? Do you recall that?

16:31 7 A. I would like to see it if it's --

16:31 8 Q. Yes. TREN-2030.1.1. This was from you to all Halliburton  
16:31 9 employees. Do you see it at the top?

16:31 10 A. Correct.

16:31 11 Q. It says in the first paragraph -- and I will paraphrase,  
16:31 12 but please feel free to read. It talks about the National  
16:31 13 Commission releasing a report and it says, "Read Halliburton's  
16:31 14 full response here," which is the press release we just looked  
16:31 15 at. He talks about the stock price.

16:31 16 Then it says in the third paragraph: "What we can  
16:31 17 confirm for you along with analysts and fellow shareholders is  
16:31 18 that our contract with BP expressly states our full  
16:31 19 indemnification for any liabilities related to our cementing  
16:31 20 work as well as other services on the Macondo well."

16:32 21 Do you see that there?

16:32 22 A. I see that.

16:32 23 Q. Then the last paragraph indicates that you posted on your  
16:32 24 website 50 pages of the BP contract with Halliburton, correct?

16:32 25 A. With BP, yes.

## TIMOTHY PROBERT - CROSS

16:32 1 Q. But you only posted the pages that dealt with issues of  
16:32 2 indemnity, right?

16:32 3 A. That's my understanding.

16:32 4 Q. You didn't post the pages that dealt with what  
16:32 5 Halliburton's responsibilities were with respect to cement  
16:32 6 services, cement tests, and cement performance, did you?

16:32 7 A. Not to my knowledge.

16:32 8 Q. There's nothing in this communication to the Halliburton  
16:32 9 employees about the quality of the tests that were performed by  
16:32 10 Halliburton before or after the accident, correct?

16:32 11 A. No, there's nothing in this document that refers to that.

16:32 12 Q. Are you aware of any Halliburton employee saying that the  
16:32 13 Macondo job should have been stopped?

16:32 14 A. I am not.

16:33 15 Q. You testified in Congress -- and I can put it up if it  
16:33 16 helps -- with respect to setting surface cement plugs in  
16:33 17 seawater. As I have before, let me show you a question and  
16:33 18 then see if this came from you or from someone else.

16:33 19 MR. REGAN: 216.53.1. 216.53.1.

16:33 20 BY MR. REGAN:

16:33 21 Q. Just to make sure we are on the same page, the question is  
16:33 22 in the context of the surface cement plug, the one that was  
16:33 23 going to be higher up in the wellbore, the procedure that had  
16:33 24 not started as of the time of the blowout. Do you understand  
16:33 25 that?

## TIMOTHY PROBERT - CROSS

16:33 1 A. Yes, I do.

16:33 2 MR. REGAN: 2016.53.1.

16:33 3 BY MR. REGAN:

16:33 4 Q. And you were asked the question, Mr. Probert. The  
16:33 5 question is:

16:33 6 "QUESTION: You understand the drilling contractor  
16:33 7 proceeded to displace the riser with seawater prior to the  
16:33 8 planned placement of the final cement plug. Is that  
16:34 9 standard operating procedure?

16:34 10 "ANSWER: That is an operating procedure which is  
16:34 11 commonly used, yes."

16:34 12 Is that the answer you gave?

16:34 13 A. That's the answer I gave, and that obviously was based on  
16:34 14 briefings which I had in Houston before I left for Congress.

16:34 15 Q. So the experts at Halliburton that you met with prior to  
16:34 16 going to Congress told you that consistent with what you  
16:34 17 answered, that setting a final cement plug in seawater is an  
16:34 18 operating procedure that is commonly used, correct?

16:34 19 A. That's not what it says.

16:34 20 Q. We can read the question. The question is --

16:34 21 A. It says: "Displace the riser with seawater prior to the  
16:34 22 planned placement of the cement plug."

16:34 23 Q. Right.

16:34 24 A. It doesn't say setting the cement plug in seawater. I  
16:34 25 don't think --

## TIMOTHY PROBERT - CROSS

16:34 1 Q. If the riser has been displaced with seawater, do you  
16:34 2 understand that the cement plug would then be set in seawater?

16:34 3 Do you know?

16:34 4 A. Unless they pumped a pill of some kind to prevent that,  
16:34 5 which is plausible.

16:34 6 Q. But outside of the exception that you just identified --

16:35 7 A. You specifically asked me about that question, and it  
16:35 8 doesn't actually say that.

16:35 9 Q. Just to be clear, you understand that if a riser has been  
16:35 10 displaced with seawater and you set a surface balance plug,  
16:35 11 it's going to be set in seawater?

16:35 12 A. No. The question was: Is the riser displaced with  
16:35 13 seawater before the plug is set?

16:35 14 And I said, yes, that is the procedure you should  
16:35 15 use.

16:35 16 Q. I will move on.

16:35 17 With respect to following well owner's instructions,  
16:35 18 do you include compliance with the contract in that phrase?

16:35 19 A. I'm sorry. Could you ask that again?

16:35 20 Q. Let me give you a little more warmup.

16:35 21 You said -- I believe you said earlier that you  
16:35 22 believed it was Halliburton's employees' responsibility to  
16:35 23 follow well owner -- the well owner's instructions, or words to  
16:35 24 that effect. Do you recall saying that?

16:35 25 A. Yes.

## TIMOTHY PROBERT - CROSS

16:35 1 Q. Do you include in the well owner's instructions the  
16:35 2 contractual terms between the parties?

16:35 3 A. Yes, I would include those except to the extent that they  
16:35 4 have been modified by either e-mail or verbally by the well  
16:36 5 owner.

16:36 6 Q. Do you, Mr. Probert, have a theory on behalf of  
16:36 7 Halliburton of what the path of flow was of the hydrocarbons  
16:36 8 from the reservoir to the rig?

16:36 9 A. I understand there were several theories. And I also  
16:36 10 understand that we have a theory of casing breach, which I'm  
16:36 11 sure will be discussed subsequently here during this trial.

16:36 12 Q. Okay. The theory that you just articulated, the casing  
16:36 13 breach theory, did you ever hear that from Halliburton in May  
16:36 14 of 2010?

16:36 15 A. That is -- that possibility, as I understand it, has been  
16:36 16 one of the theories which has been around for a long time.  
16:36 17 Whether or not it's been since that particular date, I don't  
16:36 18 know that.

16:36 19 Q. Let me ask, then, the summary question. Are you aware of  
16:36 20 Halliburton ever articulating the theory that's been  
16:36 21 articulated by you just now, the casing breach, at any point in  
16:37 22 time in 2010?

16:37 23 A. I'm aware that that is a theory which has been discussed  
16:37 24 for a long time. I don't know what specific dates it was  
16:37 25 introduced, but it has been around for a long time.



## TIMOTHY PROBERT - CROSS

16:37 1 Q. Does Halliburton still believe a flow path was up the  
16:37 2 annulus, up the back side or outside of the production casing?

16:37 3 A. You are asking me a question which is beyond my scope of  
16:37 4 expertise, and I'm sure there are others who will be better  
16:37 5 qualified to testify on that than me.

16:37 6 Q. Fair enough. Forgive me if it was a question that was --  
16:37 7 where there was an objection sustained. So I'm sure Mr. Godwin  
16:37 8 will let me know.

16:37 9 But with respect to the OptiCem program, I understand  
16:37 10 that you would have learned something about the OptiCem program  
16:37 11 in your preparations for testifying. Correct?

16:37 12 A. Correct.

16:37 13 Q. Do you have any basis or understanding about whether the  
16:38 14 inputs in the OptiCem program that were used by Jesse Gagliano  
16:38 15 were accurate or not? Do you know?

16:38 16 A. No, I don't know. I'm aware that it's a modeling program.  
16:38 17 I'm aware that it was designed to show sort of the  
16:38 18 effectiveness of centralizers, etc. But in terms of the  
16:38 19 details of where the data came from, who provided it at what  
16:38 20 time, I don't know.

16:38 21 Q. Would it be fair to say that with respect to the one  
16:38 22 conclusion that you articulated, the idea of severe gas flow  
16:38 23 potential, you don't know whether or not that conclusion is  
16:38 24 valid if you actually run the program with different or correct  
16:38 25 inputs?

## TIMOTHY PROBERT - CROSS

1 A. I clearly am relying on others who modeled that  
2 eventuality. Yes, I understand it was modeled on multiple  
3 occasions.

4 Q. After the accident -- just talking about you personally,  
5 Mr. Probert -- are you aware of Halliburton ever actually  
6 running the OptiCem program with the right size centralizers in  
7 the right place with the right pore pressure and the right base  
8 load density? Have you ever seen anything like that done?

9 A. As I've testified several times, I'm not familiar with any  
10 post-incident testing, period.

11 MR. REGAN: If I could go back, then, back to D-4377.  
12 D-4377.

13 BY MR. REGAN:

14 Q. Now, this was your title as of April 20, 2010,  
15 Mr. Probert. Is Mr. Roth still the vice president of  
16 cementing?

17 A. No, he's not.

18 Q. Is Mr. Vargo still with Halliburton?

19 A. Yes, my understanding, he is.

20 Q. Is Mr. Quirk still a Halliburton employee?

21 A. To the best of my knowledge, yes.

22 Q. Is Mr. Gagliano still involved in designing cement  
23 slurries?

24 A. I don't know what his current roles and responsibilities  
25 are, but he is certainly an employee of the company.

## TIMOTHY PROBERT - CROSS

16:39 1 Q. Are you still the chief HSE officer of Halliburton?

16:40 2 A. No, I'm not.

16:40 3 MR. REGAN: Thank you, Mr. Probert.

16:40 4 THE COURT: Who is next? Cameron?

16:40 5 MR. GANAWAY: Cameron has no questions, Your Honor.

16:40 6 THE COURT: M-I?

16:40 7 MS. SCOFIELD: No questions, Your Honor.

16:40 8 THE COURT: Mr. Godwin, do you have any --

16:40 9 MR. GODWIN: Yes, Your Honor.

16:40 10 THE COURT: -- redirect?

16:40 11 MR. GODWIN: Judge, the PSC, were they supposed to go  
16:40 12 before me and then me last as the party with the witness?

16:40 13 THE COURT: That's the protocol? Okay.

16:40 14 MR. GODWIN: I think that's what we have been doing,  
16:40 15 Judge.

16:40 16 MR. BREIT: I was going to say that I'll let  
16:40 17 Mr. Godwin go first, if he would like.

16:40 18 MR. GODWIN: I was invited by the judge, so that's  
16:40 19 why I stood up.

16:40 20 MR. BREIT: I have no further questions.

16:40 21 THE COURT: You are up anyway.

16:40 22 MR. GODWIN: Thank you, Your Honor. This won't take  
16:40 23 long, Judge.

24

25

**REDIRECT EXAMINATION**

**BY MR. GODWIN:**

**Q.** Mr. Probert, in your examination you were asked about what you believed to be the approximate number of wells that Halliburton had used foam cement in in the Gulf; and my recollection is you said something in excess of 100.

**A.** Approximately 100, I think, was my answer.

**Q.** You were asked in some of the questions there by BP and others about the design that was used there on the Macondo well, and was that exact same design, all the chemical makeup, was that used in all of those other 100 plus wells.

And your answer -- as I understood it, it was two different answers there. It seemed to be confusing to me.

Were you attempting to tell Judge Barbier that the exact same cement design with all of the additives was used in all of the other 100-plus foam jobs in the Gulf of Mexico?

**A.** Absolutely not. I think the terminology in that statement was similar.

**THE WITNESS:** And certainly if I did express that, Judge, I'm sorry. It was not to suggest that all those jobs would be the same. Every well is different, different depths, different temperatures, different pressures. And so each cement job obviously has to be designed for every specific application. So the formulations and the mixes will be slightly different. It was really a comment, really, on the

## TIMOTHY PROBERT - REDIRECT

16:42 1 use of this foam cement as opposed to the specific formulation  
16:42 2 of it.

16:42 3 **MR. GODWIN:** Thank you, Tim.

16:42 4 Your Honor, nothing further of this witness.  
16:42 5 Thank you, sir.

16:42 6 **THE COURT:** Thank you.

16:42 7 Who is the next witness going to be? Who is  
16:42 8 going to call our next witness?

16:42 9 **MR. THORNHILL:** The next witness is Mr. Tommy Roth.

16:43 10 **THE COURT:** Let's take about a five-minute recess  
16:43 11 where we can readjust here.

16:43 12 (Recess.)

16:53 13 **THE COURT:** Please be seated. Is this our witness?

16:53 14 **MR. THORNHILL:** May it please the Court. Tom  
16:53 15 Thornhill for the Plaintiffs' Steering Committee, and our  
16:53 16 witness this afternoon is Mr. Thomas "Tommy" Roth.

16:53 17 **THOMAS ROTH,**  
16:53 18 having been duly sworn, testified as follows:

16:53 19 **THE DEPUTY CLERK:** State your full name and correct  
16:53 20 spelling for the record, please.

16:53 21 **THE WITNESS:** My name is Thomas M. Roth, R-O-T-H.

16:53 22 **MR. THORNHILL:** This is on cross-examination.  
16:53 23 Mr. Roth is being called under the rule under cross.  
24  
25

**CROSS-EXAMINATION**

1 **BY MR. THORNHILL:**

2 **Q.** Mr. Roth --

3 **A.** Yes, sir.

4 **Q.** -- would you tell us your current position with  
5 Halliburton.

6 **A.** I am global operations manager for the Boots & Coots  
7 products service line at Halliburton.

8 **Q.** That is a new position from when we took your deposition a  
9 little less than a year ago, is it not?

10 **A.** I think it is, sir.

11 **Q.** At that time you said you were vice president of new  
12 business ventures, correct?

13 **A.** That's correct.

14 **Q.** Now, at all times during 2010, what was your title and  
15 position with Halliburton?

16 **A.** I was the cementing vice president of Halliburton -- I was  
17 vice president of Halliburton cementing products service line.

18 **Q.** In that position, did you have responsibilities for the  
19 entire world?

20 **A.** Yes, it was a global position.

21 **Q.** So is it fair for me to say that in terms of the cement  
22 world, you were the top dog?

23 **A.** I was the head of the Halliburton cementing organization.

24 **Q.** For the purposes of the Court understanding your general  
25

## THOMAS ROTH - CROSS

16:54 1 background and experience, and without telling us all 33 years  
16:54 2 of experience, give me a quick summary for the Court of your  
16:54 3 background with Halliburton.

16:54 4 A. I started immediately after graduating from a university.  
16:55 5 I had engineering positions on the Gulf Coast, Lafayette,  
16:55 6 Morgan City, Lafayette a second time, was a technical adviser  
16:55 7 in the Lafayette sales office.

16:55 8 Operations management became my next assignment. I  
16:55 9 held assistant district manager, district manager positions at  
16:55 10 Morgan City and -- excuse me, Lafayette and at Lake Charles  
16:55 11 districts.

16:55 12 I moved to Houston the first time as a technology  
16:55 13 manager. I then transitioned as a general manager for our  
16:55 14 Northern Gulf operation in the Middle East. I then transferred  
16:55 15 to Dubai. I had cementing responsibility over Middle East,  
16:55 16 Asia, Pacific, and the former Soviet Union, the CIS.

16:55 17 I then transferred to London. I was the cementing  
16:55 18 manager for Europe and West Africa. Back to the States as the  
16:56 19 North America cementing manager. I then accepted a role as the  
16:56 20 corporate HSE director for a one-year period.

16:56 21 I was named global business development manager for  
16:56 22 the cementing products service line. I then served as  
16:56 23 corporate real estate director for a year and then to the  
16:56 24 cementing vice president role.

16:56 25 Q. The position of corporate HSE, health, safety, and

## THOMAS ROTH - CROSS

16:56 1 environmental director, or global safety, was in 2000 what?

16:56 2 A. I would have to check, Tom. But it was probably 2002 or  
16:56 3 2003.

16:56 4 Q. Now, between the time of the blowout on April 20, 2010,  
16:56 5 and the end of 2010, when I understand your position changed to  
16:56 6 become vice president of new business ventures?

16:56 7 A. Correct.

16:56 8 Q. So during the time period after the blowout, explain to  
16:57 9 the Court your role. Were you not at that time placed in the  
16:57 10 position as head of cement to essentially conduct an  
16:57 11 investigation or a search for what happened in the blowout?

16:57 12 A. No, sir, I was not.

16:57 13 Q. Your position, as I understand it, was to represent the  
16:57 14 company before Congress?

16:57 15 A. I made a number of presentations at the request of  
16:57 16 congressional subcommittees.

16:57 17 Q. In connection with your representing the company before  
16:57 18 Congress, you and others were given the role of developing  
16:57 19 information for presentation, correct?

16:57 20 A. That's correct.

16:57 21 Q. Among those who made presentations were the president,  
16:57 22 Mr. Probert, who just testified?

16:57 23 A. Yes, sir.

16:57 24 Q. Yourself, correct?

16:57 25 A. Yes, sir.



## THOMAS ROTH - CROSS

- 16:57 1 Q. Mr. Faul, correct?
- 16:57 2 A. I don't know if Mr. Faul made presentations.
- 16:57 3 Q. But he was part of the team, correct?
- 16:57 4 A. He was part of the team.
- 16:57 5 Q. Mr. Badalamenti?
- 16:57 6 A. He provided input.
- 16:57 7 Q. How about Mr. Turton?
- 16:58 8 A. Yes.
- 16:58 9 Q. If we were to show Demonstrative 4377, which was a recent  
16:58 10 exhibit or demonstrative of the company organization, does this  
16:58 11 generally represent the company organization at the time in  
16:58 12 2010, with you being directly under Mr. Marc Edwards and  
16:58 13 Mr. Probert being your supervisor, if you will, your superior?
- 16:58 14 A. Yes, sir, this appears to be accurate.
- 16:58 15 Q. So in connection with those who were the presentation team  
16:58 16 on this chart, Mr. Badalamenti, Mr. Faul, correct?
- 16:58 17 A. Mr. Faul provided intermittent input into us.
- 16:58 18 Q. He also worked with Mr. Quirk, did he not?
- 16:58 19 A. Yes, sir.
- 16:58 20 Q. So Mr. Quirk was part of the team, correct?
- 16:58 21 A. We didn't receive any direct input from Mr. Quirk that I'm  
16:58 22 aware of.
- 16:59 23 Q. Now, as I understand it, this presentation team that  
16:59 24 consisted of you, Faul, Badalamenti, Turton, and Mr. Pulver  
16:59 25 (phonetic) were also considered the investigation team for what

## THOMAS ROTH - CROSS

16:59 1 happened, correct?

16:59 2 A. No, sir.

16:59 3 MR. THORNHILL: May I see Roth Deposition 1,  
16:59 4 page 213, lines 14 to 18, please. I direct you to -- may I get  
16:59 5 the question first, Carl.

16:59 6 BY MR. THORNHILL:

16:59 7 Q. (Reading)

16:59 8 "QUESTION: Did the investigation of Halliburton  
16:59 9 determine the fluid loss test that was run on the slurry?

17:00 10 "ANSWER: We discussed that within the investigation  
17:00 11 team, and the investigation team is basically the  
17:00 12 presentation team that developed the responses to the  
17:00 13 requests for presentation."

17:00 14 That was your testimony? I read it correctly?

17:00 15 A. Yes, sir, it was.

17:00 16 Q. Now, for how long were you involved in the investigation  
17:00 17 of the blowout?

17:00 18 A. I provided a number of presentations over the period from  
17:00 19 probably May through September, and then I did some internal  
17:00 20 work after that through probably October in the beginning of  
17:00 21 November.

17:00 22 Q. Would it be fair for me to say that you were involved for  
17:00 23 seven or eight months?

17:00 24 A. Yes, sir.

17:00 25 Q. The investigation team in this case was involved in trying

## THOMAS ROTH - CROSS

17:00 1 to determine what happened, not why it happened, correct?

17:00 2 A. No, sir. The investigation team, as it's referred to  
17:01 3 here, is the presentation team. And over that period of time,  
17:01 4 we received a number of requests for updates through different  
17:01 5 bodies. I assembled what resources were available. We would  
17:01 6 then develop a presentation in address of the specific  
17:01 7 questions that had been raised.

17:01 8 Q. Mr. Faul was part of the team.

17:01 9 MR. THORNHILL: And I would ask for Mr. Faul's  
17:01 10 deposition, pages 388 to 389, beginning on line 9.

17:01 11 BY MR. THORNHILL:

17:01 12 Q. Can you see that okay? I'll read it with you just so we  
17:01 13 can understand.

17:01 14 "QUESTION: I know today you've talked about -- and  
17:01 15 just so I understand, you've talked quite a bit about the  
17:01 16 information gathering, that you were conducting these  
17:02 17 tests after the fact so you could gather facts and  
17:02 18 information. And you used some of that information to  
17:02 19 brief and educate some of the other people at Halliburton  
17:02 20 about what happened on the Macondo; is that right?

17:02 21 "ANSWER: To give information to them so that they  
17:02 22 could build -- we could build presentations and they could  
17:02 23 go to Washington and present that information."

17:02 24 Did I read that correctly?

17:02 25 A. Yes, sir.

## THOMAS ROTH - CROSS

17:02 1 Q. Now, in connection with your investigation, you were  
17:02 2 involved in developing -- or, better yet, just reading  
17:02 3 transcripts of testimony of witnesses that were provided to  
17:02 4 you, correct?

17:02 5 A. I did see some transcripts.

17:02 6 Q. Do you know which ones?

17:02 7 A. I saw a transcript of some -- in, I guess, discussions or  
17:02 8 just an account of the events from, I think, the cementers that  
17:03 9 were on the rig, also the mud loggers that were on the rig.

17:03 10 Q. In this case, your investigation team also had tested the  
17:03 11 samples of cement that was used on the Macondo rig, did you  
17:03 12 not?

17:03 13 A. No, sir.

17:03 14 Q. That was a no?

17:03 15 A. That's a no.

17:03 16 MR. THORNHILL: May I have Roth depo 4, page 56 to  
17:03 17 57, line 21. And this runs through page 9 on the next page.

17:03 18 BY MR. THORNHILL:

17:03 19 Q. And I want to start on this page.

17:03 20 "QUESTION: Were there handwritten transcripts?

17:03 21 "ANSWER: They were typed.

17:03 22 "QUESTION: They were typed transcripts. So you  
17:04 23 think that Halliburton generated some transcripts for you?

17:04 24 "ANSWER: Those transcripts were generated" --

17:04 25 MR. HILL: Your Honor, I'm going to object. Gavin

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17:04 1 Hill for Halliburton. He asked him the question about testing,  
17:04 2 not about transcripts, and he is trying to impeach him with  
17:04 3 testimony about transcripts, which he has already testified to.

17:04 4 **MR. THORNHILL:** That's correct, Your Honor. This  
17:04 5 demonstrative is in connection with the prior question. I will  
17:04 6 withdraw the demonstrative, and we'll go to the next question.  
17:04 7 Thank you, Your Honor.

17:04 8 **BY MR. THORNHILL:**

17:04 9 **Q.** The 3D displacement modeling you had run in connection  
17:04 10 with this investigation was also used by you to make decisions  
17:04 11 about what happened on the Macondo rig, correct?

17:04 12 **A.** It provided information for us to consider.

17:04 13 **Q.** That was part of your investigation, correct?

17:04 14 **A.** It was in address of a question that was raised during the  
17:04 15 development of our second presentation to the Energy & Commerce  
17:04 16 Commission staff.

17:04 17 **Q.** Now, when you investigated the facts, from which well did  
17:05 18 you determine that the cement had been designed to cement  
17:05 19 initially?

17:05 20 **A.** The cement that was used in the production casing was  
17:05 21 actually transferred from a prior well, the Kodiak well.

17:05 22 **Q.** Did you determine in your investigation when the cement  
17:05 23 was blended?

17:05 24 **A.** I did, but I don't recall the date.

17:05 25 **Q.** Was it in 2009?

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17:05 1 A. I think it was, yes, sir.

17:05 2 Q. Was it in about September or October of 2009?

17:05 3 A. I don't recall the exact date.

17:05 4 Q. So is it fair for me to say if it was about October of  
17:05 5 2009 until April of 2010, the age of the cement that had been  
17:05 6 blended and placed on the *Deepwater Horizon* was at least six  
17:05 7 months old?

17:05 8 A. That appears to be ballpark. But again, I don't know the  
17:05 9 exact date.

17:05 10 Q. Do you know in your investigation if you determined how  
17:06 11 the cement was stored?

17:06 12 A. Yes, sir. I had details that was provided to me by people  
17:06 13 on the rig as to how it was stored.

17:06 14 Q. How was it stored?

17:06 15 A. In a pneumatic P-tank.

17:06 16 Q. Now, during the time it was on the tank on the rig, the  
17:06 17 *Deepwater Horizon*, were samples or testing samples taken from  
17:06 18 the tank to check the integrity of the cement?

17:06 19 A. Samples were taken and tests were performed.

17:06 20 Q. Do you know if some of those samples were delivered to  
17:06 21 shore?

17:06 22 A. Yes, sir, they were.

17:06 23 Q. Do you know the shelf life of the cement that's blended  
17:06 24 and used in this well?

17:06 25 A. I don't know anything about shelf life.

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17:06 1 Q. As it turns out in this case, the cement that was moved on  
17:06 2 the *Deepwater Horizon* from the Kodiak well to the Macondo well  
17:06 3 was cement for which BP was not charged on the Kodiak well.  
17:07 4 Instead it was given a credit, was it not, of \$139,926?

17:07 5 A. There was a paper transfer of the cement that was owned by  
17:07 6 BP. We basically assisted them in being able to charge those  
17:07 7 materials to the proper well. I think it was leftover from  
17:07 8 Kodiak and we completed a credit to Kodiak and then a charge to  
17:07 9 Macondo to be able to, on paper, transfer that cement in  
17:07 10 keeping BP's books straight.

17:07 11 Q. First, with respect to the credit, you acknowledge, do you  
17:07 12 not, that the credit of \$139,626 was a credit to BP on its bill  
17:07 13 for that which was not used on the Kodiak well, correct?

17:07 14 A. It was a credit, but it was just a wash. It was a credit  
17:07 15 and a debit just to be able to move the cement on paper from  
17:07 16 one BP well to another BP well.

17:07 17 Q. But, of course, had it not been used on the Macondo, it  
17:08 18 wouldn't have been a wash. It would not have been charged to  
17:08 19 the Macondo if it had not been used there, correct?

17:08 20 A. I don't know what you're asking, sir.

17:08 21 Q. You don't deny, though, that you testified to Congress  
17:08 22 that the charge of \$139,000 was taken away from the BP bill, a  
17:08 23 credit, if you will, for that which was the cement that was  
17:08 24 moved from the Kodiak well to the Macondo well?

17:08 25 A. I agree, but it was credited to Kodiak and then billed to

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17:08 1 Macondo. And so --

17:08 2 Q. After it was used, correct, Mr. Roth?

17:08 3 A. No, sir. When it was transferred, it --

17:08 4 Q. It was not billed to the Macondo before it was used, was  
17:08 5 it?

17:08 6 A. Yes, sir, it was.

17:08 7 Q. And in connection with your investigation, you found that  
17:08 8 out?

17:08 9 A. Yes, sir.

17:08 10 Q. In your testimony to Congress, you only testified about  
17:08 11 the credit, correct?

17:08 12 A. I was specifically asked to provide some insight as to why  
17:08 13 a credit was issued, and I explained to them we just moved it  
17:09 14 from one well to the other at the request of BP.

17:09 15 Q. In connection with your investigation of what happened on  
17:09 16 the Macondo blowout, the investigation/presentation team did  
17:09 17 not issue a report, did it?

17:09 18 A. Would you repeat the question, please.

17:09 19 Q. In connection with your investigation of the blowout of  
17:09 20 the Macondo well, the presentation team, the gentlemen that you  
17:09 21 just identified for us, which included the president, yourself,  
17:09 22 Mr. Faul, Mr. Badalamenti, and Mr. Turton, did not issue a  
17:09 23 report of their findings, did they?

17:09 24 A. We didn't instill an investigation team.

17:09 25 Q. It continues as an investigation team?



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17:09 1 A. I was instructed the day following the blowout that the  
17:09 2 investigations from Halliburton would be led by our legal  
17:09 3 department.

17:09 4 Q. In this case you collected information and presented  
17:09 5 information to the public, including Congress --

17:09 6 A. Yes, sir.

17:09 7 Q. -- and made statements about what happened, based upon the  
17:10 8 investigation of your team, correct?

17:10 9 A. Yes, sir, and I did that with the assistance of the legal  
17:10 10 department and being able to collect that information.

17:10 11 Q. I understand. Let's turn to TREN-7718.

17:10 12 Mr. Roth, after your deposition, this document was  
17:10 13 presented many months later. I need to ask you a couple of  
17:10 14 questions about this. First, have you seen this document  
17:10 15 before?

17:10 16 A. Yes, sir, I have.

17:10 17 Q. Is this your handwriting?

17:10 18 A. It is.

17:10 19 Q. When did you write it?

17:10 20 A. I wrote this in probably October of 2010.

17:10 21 Q. This information was collected in connection with your  
17:10 22 investigation team, correct?

17:10 23 A. This was a request from the legal department to review  
17:10 24 prior lab testing.

17:10 25 Q. In connection with your review of the prior lab testing,

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17:10 1 you were reviewing that for purposes of being able to make  
17:10 2 presentations, correct?

17:10 3 A. No, sir. My presentations were completed prior to this  
17:11 4 review.

17:11 5 Q. Your presentations included presentations in May and as  
17:11 6 late as October and November, correct?

17:11 7 A. No, sir. I think my last one was in September.

17:11 8 Q. In September was your last one?

17:11 9 A. I think so, yes, sir. So this would be after my last  
17:11 10 presentation.

17:11 11 Q. You wrote this in what month?

17:11 12 A. October.

17:11 13 **THE COURT:** Mr. Roth, if you could get that  
17:11 14 microphone about two or three inches farther from you, that  
17:11 15 would be perfect. Thank you.

17:11 16 **BY MR. THORNHILL:**

17:11 17 Q. This document doesn't have a date on it, does it?

17:11 18 A. I don't see a date on it.

17:11 19 Q. You remember it having been something that you wrote in  
17:11 20 October when?

17:11 21 A. I wrote it, after direction from the legal department, to  
17:11 22 be able to review a series of tests that had been identified to  
17:11 23 me at that time. I then developed this document.

17:11 24 Q. Your investigation committee notes include this document,  
17:11 25 correct?

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17:11 1 A. My investigation committee notes?

17:11 2 Q. The work you did as an investigation committee includes  
17:11 3 the information that's on this document, correct?

17:12 4 A. These are notes that I prepared for my own use, that I  
17:12 5 reviewed with the legal department in addressing the questions  
17:12 6 that they raised --

17:12 7 Q. I'm not asking you about your conversations with your  
17:12 8 lawyers, and I'm not asking you about testimony that you may  
17:12 9 have given to them on other matters. I'm asking you about  
17:12 10 these notes that have been produced --

17:12 11 A. Yes, sir.

17:12 12 Q. -- in this litigation. They came from your custodial  
17:12 13 file, did they not?

17:12 14 A. Yes, sir.

17:12 15 Q. They reflect information of tests having been conducted,  
17:12 16 do they not?

17:12 17 A. They do.

17:12 18 Q. In fact, there were tests conducted by those of you who  
17:12 19 were on the investigation team to find out whether or not this  
17:12 20 slurry would have foamed, correct?

17:12 21 A. I found out about subsequent testing after I had made  
17:12 22 presentations. Yes, sir.

17:12 23 Q. In fact, you had tests that were run at the direction of  
17:12 24 Mr. Faul, who was part of your team, correct?

17:12 25 A. Mr. Faul was an intermittent member of the team.

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17:12 1 Q. Yes.

17:12 2 A. I later understood that he did do testing.

17:12 3 Q. In fact, Mr. Faul had tests conducted by both the Duncan,  
17:12 4 Oklahoma lab and the Broussard, Louisiana lab, correct?

17:13 5 A. Correct.

17:13 6 Q. Those tests, reflected on this exhibit right here, in  
17:13 7 part, were tests by Mr. Rickey Morgan, were they not?

17:13 8 A. Yes. This was a test that Ronnie had done in support of  
17:13 9 the relief well operations that BP was drilling.

17:13 10 Q. These tests, in fact, were on the exact same slurry that  
17:13 11 was used on the Macondo well, were they not?

17:13 12 A. I think it was the same recipe, yes, sir.

17:13 13 Q. In fact, it was the same cement, wasn't it?

17:13 14 A. I don't think it was.

17:13 15 Q. Mr. Morgan tested the cement, and the cement looked thin  
17:13 16 to him, correct?

17:13 17 A. That was the feedback that I received after discussing  
17:13 18 this with Ronnie.

17:13 19 Q. In fact, it was so thin that Mr. Morgan merely poured it  
17:13 20 out, didn't he?

17:13 21 A. If it says so on that sheet. That would be the only  
17:13 22 reference I have for it.

17:13 23 **MR. THORNHILL:** Let's look at what Mr. Morgan said.  
17:13 24 Mr. Morgan's depo No. 2, page 180 to 181. Beginning on line 22  
17:14 25 of 180.

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17:14 1 This would be Rickey Lynn Morgan, not Patrick,  
17:14 2 Carl.

17:14 3 While you're looking for that, I'll move to the  
17:14 4 next one, Carl. Thank you.

17:14 5 **BY MR. THORNHILL:**

17:14 6 **Q.** The results of the tests that were run by Mr. Morgan were  
17:14 7 not recorded, correct?

17:14 8 **A.** Could you repeat the question?

17:14 9 **Q.** The results of the first mixability test run by Mr. Rickey  
17:14 10 Lynn Morgan were not recorded, were they?

17:14 11 **A.** I never saw the documentation, so I'm not certain.

17:14 12 **Q.** In fact, Mr. Morgan then talked with Mr. Quirk and  
17:14 13 Mr. Faul and ran a second mixability test, and we have no  
17:15 14 documents to reflect that test either, do we?

17:15 15 **A.** I haven't seen the documents.

17:15 16 **Q.** But you know about it because you have recorded in  
17:15 17 Exhibit 7718 --

17:15 18 **MR. THORNHILL:** You can pull it back up again, if  
17:15 19 you'd like to, Carl --

17:15 20 **BY MR. THORNHILL:**

17:15 21 **Q.** -- those exact facts, correct?

17:15 22 **A.** That's correct, after discussion with Mr. Faul.

17:15 23 **Q.** Now, Mr. Morgan did not send any e-mails or make any paper  
17:15 24 trail at all about these tests because he feared that people  
17:15 25 would use it -- they would twist it and use it in this

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17:15 1 litigation; isn't that correct?

17:15 2 A. I never spoke to Mr. Morgan about that.

17:15 3 MR. THORNHILL: Mr. Morgan's deposition, Your Honor,  
17:15 4 is part of the bundles, or he will testify live.

17:15 5 BY MR. THORNHILL:

17:15 6 Q. Now, Mr. Faul ordered Mr. Quirk to do tests in the  
17:15 7 Broussard, Louisiana laboratory at about the same time, didn't  
17:15 8 he?

17:15 9 A. I found out about those many months later, but I think  
17:16 10 that is correct.

17:16 11 Q. In fact, Mr. Faul ordered Mr. Quirk not to enter into the  
17:16 12 Viking database of Halliburton, where the test results are  
17:16 13 kept, any of the results of the tests that Mr. Quirk ran,  
17:16 14 correct?

17:16 15 A. I don't know that fact, sir.

17:16 16 MR. THORNHILL: Mr. Quirk will testify later,  
17:16 17 Your Honor.

17:16 18 BY MR. THORNHILL:

17:16 19 Q. In fact, Mr. Faul testified, just as we saw earlier, that  
17:16 20 the purpose of those tests were to give information to you and  
17:16 21 others on the presentation team so that you could tell the  
17:16 22 world, Congress, about what happened on the Macondo blowout,  
17:16 23 correct?

17:16 24 A. I don't know. I don't know what Mr. Faul --

17:16 25 Q. We just saw that in his excerpted testimony, did we not?

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17:16 1 A. Say that again, please.

17:16 2 Q. We just saw that testimony that Mr. Faul, in the excerpted  
17:16 3 testimony --

17:16 4 MR. HILL: Your Honor, I'm going to object. It  
17:16 5 misrepresents the record. He put up the wrong transcript. We  
17:16 6 didn't see anything like that.

17:16 7 MR. THORNHILL: The Faul deposition, Cut 1, page 388  
17:17 8 to 389, Your Honor, I do believe we did show that, and I'm not  
17:17 9 looking to waste the Court's time with a duplication of it  
17:17 10 again.

17:17 11 We can show it again, beginning with line 9 on  
17:17 12 page 388.

17:17 13 "QUESTION: And I know today you've talked about --  
17:17 14 and just so I'll understand, you've talked quite a bit  
17:17 15 about information gathering -- that you were conducting  
17:17 16 these tests after the fact so that you could gather facts  
17:17 17 and information" --

17:17 18 THE COURT: This is the same --

17:17 19 MR. THORNHILL: Same one we saw before, Your Honor.

17:17 20 THE COURT: This was up on the screen, and you read  
17:17 21 it, but I think that's different than talking about the Viking  
17:17 22 system. I'm kind of confused here.

17:17 23 MR. THORNHILL: The point that Mr. Hill objected to  
17:17 24 was this point, not the one about the Viking system. That was  
17:17 25 the subsequent question, Your Honor.

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17:17 1 So my point was we have already covered this.  
17:17 2 I'm happy to cover it with you again.

17:18 3 **THE COURT:** Hold on one second. Let me go back.

17:18 4 Your last question that you're trying to get an  
17:18 5 answer to: "In fact, Mr. Faul testified, just as we saw  
17:18 6 earlier, that the purpose of these tests were to give  
17:18 7 information to you and others on the presentation team so you  
17:18 8 could tell the world, Congress, about what happened on the  
17:18 9 Macondo blowout."

17:18 10 **MR. THORNHILL:** That was my question, Your Honor,  
17:18 11 yes, sir.

17:18 12 **THE COURT:** Can you answer that, sir?

17:18 13 **THE WITNESS:** I don't know what Ronnie's motivation  
17:18 14 was. I didn't receive any data on any of those tests from  
17:18 15 Mr. Faul. It was only in October, after the legal department  
17:18 16 had identified that those tests had been run, that I was  
17:18 17 informed of a portion of those.

17:18 18 **BY MR. THORNHILL:**

17:18 19 **Q.** Did you have discussions with Mr. Faul and tell him not to  
17:18 20 record any of the testing results that were coming from the  
17:18 21 various tests that were run?

17:18 22 **A.** No, sir, I did not.

17:18 23 **Q.** Now, you learned, when you conducted an investigation of  
17:19 24 the facts revealed to you by those that you were working with,  
17:19 25 that Mr. Quirk got rid of the records from his tests, correct?



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17:19 1 A. No, sir, I never learned that.

17:19 2 Q. Now, you were involved in some way in the 3D modeling of  
17:19 3 the displacement, correct?

17:19 4 A. I was a participant in a request for one 3D modeling.

17:19 5 Q. In connection with those modeling results and the actual  
17:19 6 modeling records, those records are also, in the words of  
17:19 7 Halliburton, "just gone," correct?

17:19 8 A. I don't know where that statement comes from.

17:19 9 Q. You, Mr. Roth, were the person who was involved in  
17:19 10 representing to others on the investigation presentation team  
17:19 11 that the modeling results showed that the spacer volume was  
17:20 12 sufficient to sweep the entire annulus, and yet those records  
17:20 13 do not exist, do they?

17:20 14 A. I think that you're referring to an e-mail that was  
17:20 15 produced later in a discussion that identifies that a channel  
17:20 16 did exist, and that my statement was that the spacer was  
17:20 17 sufficient to sweep the entire annulus, but due to the fact  
17:20 18 that a channel was in place, it was more than sufficient to  
17:20 19 sweep the resulting channel.

17:20 20 There's been some -- that e-mail and that statement  
17:20 21 ended up in a press release that was completely out of context  
17:20 22 of what I intended when I communicated it.

17:20 23 **MR. THORNHILL:** Let's have the Roth depo cut at  
17:20 24 page 495 to 496, beginning at line 14. It runs to the next  
17:21 25 page, Carl, to 18. Begin on 495, 14. Thank you.

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17:21 1 BY MR. THORNHILL:

17:21 2 Q. (Reading)

17:21 3 "QUESTION: Okay. The point I wanted to ask you  
17:21 4 about is -- you sent an e-mail to -- at the top, Anthony  
17:21 5 Badalamenti" --

17:21 6 "ANSWER: Badalamenti.

17:21 7 "QUESTION: -- and Simon Turton. And you said,  
17:21 8 'Spacer volume was sufficient to sweep the entire annulus  
17:21 9 volume. As such, spacer was sufficient to sweep the  
17:21 10 channel. Subsequent testing with 3D confirms the  
17:21 11 statement that spacer was sufficient.'"

17:21 12 Should I read on, or does that refresh your  
17:21 13 recollection that you were involved in the 3D modeling and you  
17:21 14 know that there were results but there are none anymore?

17:21 15 A. What this statement says is that 72 barrels worth of  
17:21 16 spacer were planned for the Macondo well, which would be  
17:22 17 sufficient to sweep the entire annulus.

17:22 18 But following the 3D modeling, which indicated that a  
17:22 19 channel -- my statement that the spacer volume was sufficient  
17:22 20 refers to if it could sweep the entire annulus, or a thousand  
17:22 21 feet, and only a portion of the annulus is circulated, it would  
17:22 22 be more than sufficient to be able to sweep it. But this --  
17:22 23 that's what I intended. That's what I intended in this  
17:22 24 communication.

17:22 25 Q. You go on and you say:

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17:22 1 "ANSWER: Can I see that, please?"

17:22 2 "QUESTION: Do you see that?"

17:22 3 "ANSWER: Yes, I see that.

17:22 4 "QUESTION: Okay. Was that a correct statement when  
17:22 5 you made it?"

17:22 6 "ANSWER: I would think that that statement is  
17:22 7 correct.

17:22 8 "QUESTION: Okay. What 3D modeling are you referring  
17:22 9 to there?"

17:22 10 "ANSWER: 3D modeling is a software program that's  
17:22 11 available to track displacement of fluids in a well.

17:22 12 "QUESTION: Okay. Are you referring to the 3D  
17:22 13 modeling that was done after -- done after the cement --  
17:23 14 after the incident or before the incident?"

17:23 15 "ANSWER: This work is after.

17:23 16 "QUESTION: Okay. And who did the work that you're  
17:23 17 referring to?"

17:23 18 "ANSWER: I believe Mark Savery.

17:23 19 In fact, this shows, does it not, that you know  
17:23 20 that there was 3D modeling and you saw it, but it's no  
17:23 21 longer in existence?

17:23 22 A. I saw it, yes, sir.

17:23 23 MR. HILL: Your Honor, I would like to lodge an  
17:23 24 objection. I think we are confirming the witness's testimony  
17:23 25 with the improper use of a deposition transcript. He was

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17:23 1 testifying about the displaced 3D work that he saw. And that  
17:23 2 the purpose of this is to do what? Show him the content of the  
17:23 3 e-mail? He hasn't disputed anything with this transcript that  
17:23 4 the witness has said from the stand. It's improper use.

17:23 5 **MR. THORNHILL:** May I, Your Honor? I appreciate the  
17:23 6 argument, but the witness's testimony was not responsive to  
17:23 7 that which we put on the screen of the deposition transcript.

17:23 8 **THE COURT:** I, frankly, thought it was. It seemed  
17:23 9 like very similar, if not identical, to what he previously  
17:24 10 said.

17:24 11 **MR. THORNHILL:** My point was to show the  
17:24 12 equivocation, Your Honor. I will move on.

17:24 13 **THE COURT:** All right.

17:24 14 **BY MR. THORNHILL:**

17:24 15 **Q.** There were also tests run by Mr. Brian Wall, correct?

17:24 16 **A.** I don't recall Brian Wall.

17:24 17 **Q.** In fact, Brian Wall was the person who was in the Duncan  
17:24 18 lab running tests, who gave the cement slurry recipe to  
17:24 19 Mr. Morgan?

17:24 20 **A.** I don't know Brian.

17:24 21 **Q.** The notes on 7881 --

17:24 22 **MR. THORNHILL:** If you want to put that back up,  
17:24 23 Carl.

17:24 24 **BY MR. THORNHILL:**

17:24 25 **Q.** -- show that Mr. Quirk recommended conditioning the

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17:24 1 slurry, although, as you know from your investigation of the  
17:24 2 facts in this case, conditioning or necessary conditioning for  
17:24 3 there to be a foaming of the cement slurry was never reported  
17:24 4 to BP as a condition to its being used.

17:24 5 A. Repeat the question, please.

17:24 6 Q. Too many conditions in there, right?

17:24 7 A. Yeah.

17:24 8 Q. In this case, you know from these notes that conditioning  
17:24 9 of the slurry was necessary, according to what you see in your  
17:25 10 notes --

17:25 11 A. Yes, sir.

17:25 12 Q. -- before the slurry would foam. It first didn't foam for  
17:25 13 Mr. Morgan, and then later he says that it foamed because of  
17:25 14 the advice he got from Mr. Quirk. Correct?

17:25 15 A. That's correct.

17:25 16 Q. But in connection with the Macondo well, there was never  
17:25 17 any representation by your company to BP that, before they used  
17:25 18 the cement slurry, they needed to condition it, correct?

17:25 19 A. I think that's incorrect because I think the conditioning  
17:25 20 time is noted on the lab report.

17:25 21 Q. Conditioning time is noted on which lab report? All those  
17:25 22 lab reports for the tests that failed? Or the one that was  
17:25 23 given after the blowout?

17:25 24 A. I reviewed the April 12 lab report that shows the foam  
17:25 25 stability, and I know the conditioning time is noted on it.

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17:25 1 Q. So you think that on the well BP could engage in a  
17:26 2 conditioning of the cement slurry before it's pumped?

17:26 3 A. No, sir.

17:26 4 Q. You don't think that, do you?

17:26 5 A. I don't think that.

17:26 6 Q. In fact, that's an impossibility under normal operations  
17:26 7 on the well, correct? You don't condition for three hours  
17:26 8 before you pump the cement job, do you, Mr. Roth?

17:26 9 A. No, sir. Conditioning is developed for a different  
17:26 10 purpose, and that purpose is to simulate the trip downhole.

17:26 11 Q. As a matter of fact, this is one of the many things that  
17:26 12 the tests done by Halliburton do not reflect as actual  
17:26 13 conditions on the well. The well never conditions cement  
17:26 14 slurry before it's pumped. And Halliburton, in order to try to  
17:26 15 achieve any semblance of stability, had to, according to these  
17:26 16 tests, the results of which we do not have, conditioned the  
17:26 17 cement before it was pumped, correct?

17:26 18 A. That would be consistent with these tests.

17:27 19 Q. In this case -- we'll get to the details later -- we know  
17:27 20 that there was used on the Macondo well a foam cement blend  
17:27 21 that included a defoamer, correct?

17:27 22 A. That's correct?

17:27 23 Q. You would admit to me, would you not, that using a  
17:27 24 defoamer on a foam cement blend, details of which we will get  
17:27 25 to later, would be inconsistent with that which is accepted

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17:27 1 cementing practices? It's contraindicated. In fact, it's  
17:27 2 prohibited, is it not?

17:27 3 A. It's indicated in our best practices not to use a  
17:27 4 defoamer.

17:27 5 Q. Other tests that were conducted after the fact, about  
17:27 6 which we have some semblance of information but no test  
17:27 7 results, were test results of May 28 and 29.

17:27 8 When you investigated the test that you're telling us  
17:27 9 now you didn't know anything about, you discovered Mr. Quirk  
17:27 10 also ran, at the instruction of Mr. Faul, tests on May 28 and  
17:28 11 29, did he not?

17:28 12 A. I don't recall by that date what was run.

17:28 13 Q. Those were the tests that were run for which we don't have  
17:28 14 any lab results, we don't have any results, but we have  
17:28 15 weigh-up sheets, correct?

17:28 16 A. I don't know how --

17:28 17 Q. You don't recall them?

17:28 18 A. I'd have to see them, sir.

17:28 19 Q. We'll get to the details of those later.

17:28 20 Now, you told me that, right after the blowout  
17:28 21 occurred, you were instructed to begin collecting information  
17:28 22 to investigate this. And you did, didn't you? You asked for  
17:28 23 all the records that were as part of the operations of  
17:28 24 Halliburton on the Macondo well?

17:28 25 A. No, sir, I did not.

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17:28 1 Q. They were sent to you by e-mail, weren't they?

17:28 2 A. No, sir. But this was much later. This was after my  
17:28 3 presentations were over.

17:28 4 Q. In fact, they sent them to you on April 21, and you  
17:28 5 forwarded them to Mr. Faul, didn't you?

17:28 6 A. This was a data set that was sent to me by Jesse Gagliano.

17:28 7 Q. Mr. Gagliano.

17:28 8 A. And this was the work that he had done prior to the  
17:29 9 blowout, in support of his work with BP. He sent those to me  
17:29 10 the day following the blowout.

17:29 11 Q. Okay.

17:29 12 A. This was at a request that I had made to Richard Vargo, to  
17:29 13 ask if he could provide me with a summary that I could use to  
17:29 14 brief management. In response to that request, Jesse sent  
17:29 15 those to me. But it wasn't in any investigation at that point.

17:29 16 Q. At the time of the blowout in 2010 -- you mentioned  
17:29 17 Mr. Vargo. Mr. Vargo was the person who was immediately under  
17:29 18 you and responsible for the activities of the wells in the Gulf  
17:29 19 of Mexico, correct?

17:29 20 A. Correct.

17:29 21 Q. At that time in 2010, you were in regular contact with  
17:29 22 Mr. Vargo, were you not? You talked to him every month, and  
17:29 23 you talked to him about everything, from headcount down to any  
17:29 24 problems on the well, correct?

17:29 25 A. I did a monthly performance review with each of the seven



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17:29 1 region cement managers. Richard was one of those. We had a  
17:30 2 standard template that went through those items that you just  
17:30 3 listed.

17:30 4 Q. In addition, you covered with Mr. Vargo all safety issues.  
17:30 5 You were very proactive in trying to make sure that people  
17:30 6 adhered to the company's agreed safety plans, correct?

17:30 7 A. That's correct.

17:30 8 Q. In your discussions with Mr. Vargo before the blowout,  
17:30 9 it's fair for me to say, then, that your safety training was  
17:30 10 part of that which you reviewed with him at the time?

17:30 11 A. Safety was a standing agenda item on the meeting. We  
17:30 12 would review any incidents or accidents, and as well, we would  
17:30 13 discuss each region's ability to conform with the company's  
17:30 14 annual safety plans.

17:30 15 Q. However, as a matter of fact, that safety training that  
17:30 16 you reviewed with Mr. Vargo did not include your reviewing the  
17:31 17 need to engage in training or dealing with blowouts, correct?

17:31 18 A. Well control training is not a standing requirement for  
17:31 19 our staff with the cementing group.

17:31 20 Q. Insofar as you're concerned, your supervision of Mr. Vargo  
17:31 21 included your supervision of employees who were regularly  
17:31 22 engaged in cementing wells where the hydrostatic pressures of  
17:31 23 the fluids involved in that cementing operation are critical to  
17:31 24 maintain balance of the well; and yet you didn't think that  
17:31 25 their being trained in blowouts -- at places like the Randy

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17:31 1 Smith Well Control School -- were of any import at all,  
17:31 2 correct?

17:31 3 A. No, sir, I wouldn't say that. But it wasn't a requirement  
17:31 4 to be able to maintain well control certification. That's not  
17:31 5 the function of the cementer as part of the rig team.

17:31 6 Q. You acknowledge that the rig cementers are the people who  
17:31 7 pump the cement jobs and actually engage in the negative  
17:32 8 pressure test. They read the gauges, don't they?

17:32 9 A. On occasions, they do, but this would be under direction  
17:32 10 of the well site supervisor. They are not responsible for well  
17:32 11 control, that I'm familiar with.

17:32 12 Q. To be involved in a negative pressure test, one would need  
17:32 13 to know, wouldn't they, the risk presented by the prospect of  
17:32 14 well control becoming an issue because of the underbalancing of  
17:32 15 the well, correct?

17:32 16 A. Yes, but this wouldn't be undertaken by the cementer.

17:32 17 Q. Nevertheless, you believe, don't you, Mr. Roth, that  
17:32 18 training on maintaining well control -- or, if you will,  
17:32 19 training on blowouts -- is not something that your cementers  
17:32 20 needed to know?

17:32 21 A. Our cementers are trained on hydrostatic pressures. They  
17:32 22 are trained on differential pressures. They are trained on the  
17:32 23 basic concepts of having to maintain hydrostatic pressures  
17:32 24 greater than reservoir pressures in the cementing schools that  
17:32 25 they attend, but they are not blowout- or well

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17:33 1 control-certified training.

17:33 2 Q. So it's fair for me to say, then, that if they had not  
17:33 3 been trained on the prospect of a danger, a hazard, a risk that  
17:33 4 was presented by the prospect of loss of well control in a  
17:33 5 displacement procedure, they wouldn't know the risk to  
17:33 6 communicate to others?

17:33 7 A. I think that with the training that they do receive, that  
17:33 8 they are familiar with the risks associated with loss of  
17:33 9 hydrostatic and it falling beneath reservoir pressure, but I  
17:33 10 would have to review the training that they do receive. But  
17:33 11 I'm recalling from years ago, when I took that similar  
17:33 12 training, that was a component of it.

17:33 13 Q. So you think that people who were engaged in reading the  
17:33 14 pressure gauges for Halliburton for the negative pressure test  
17:33 15 should know that if the negative pressure test indicated that  
17:33 16 the well was not in balance, that they should take steps to  
17:33 17 prevent the well from being dumped and blown out?

17:34 18 A. If they are reading the pressure gauges, that's probably  
17:34 19 their function, is reading and reporting the pressure gauges.

17:34 20 But I don't know that they were active in fully  
17:34 21 understanding what was involved in the negative pressure test.  
17:34 22 That was being led and conducted by others that they were a  
17:34 23 participant in, but they weren't leading a negative test, and I  
17:34 24 wouldn't think that they would know the differentials that had  
17:34 25 been established and what was an acceptable test or an

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17:34 1 unacceptable test. I think they were just simply participants  
17:34 2 reading gauges that was transmitted to their equipment.

17:34 3 Q. You think that maybe they just didn't understand what was  
17:34 4 going on, correct?

17:34 5 A. I don't think their role was to do anything other than to  
17:34 6 read gauges, as requested.

17:34 7 Q. You acknowledge that they weren't trained to understand  
17:34 8 what was going on, correct?

17:34 9 A. I would not ask a cementer to be able to lead a negative  
17:34 10 test. No, sir, I would not.

17:34 11 Q. Although he is involved in it, correct?

17:34 12 A. He may be involved in it.

17:35 13 Q. In this case, in addition to their lacking training on  
17:35 14 things like blowout control, the employees before this blowout  
17:35 15 who were engaged in selling foam cement jobs were not  
17:35 16 technically trained on the operations associated with foam  
17:35 17 cement, were they?

17:35 18 A. Would you repeat the question, please.

17:35 19 Q. Isn't it true that before the blowout the executives at  
17:35 20 Halliburton had deep concern over the lack of training of  
17:35 21 employees to design and sell foam cement jobs?

17:35 22 A. I'm not aware of any issues that executives had in that  
17:35 23 area.

17:35 24 Q. You have never heard that before?

17:35 25 MR. THORNHILL: Let's see Roth deposition, Cut 11 at

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17:35 1 page 754, line 23, through 755 at line 15.

17:36 2 Just for the record, this is from TREN-4356.

17:36 3 It's a call-out from TREN-4356, again at line 23, and we will  
17:36 4 wrap around to the next page.

17:36 5 **BY MR. THORNHILL:**

17:36 6 **Q.** This is from your Roth deposition. It says: "Simon,  
17:36 7 yesterday, I bumped into Ron Shuman, vice president, U.S.  
17:36 8 South."

17:36 9 That's a person who is vice president of the entire  
17:36 10 United States for Halliburton, correct?

17:36 11 **A.** Of the Southern region, yes, sir.

17:36 12 **Q.** Of the Southern region.

17:36 13 "During our conversation, Ron mentioned that he has  
17:36 14 noticed that our operations, engineers, and BD teams are  
17:36 15 reluctant to design and sell solutions to their customers. In  
17:37 16 the past three years, we have increased our workforces  
17:37 17 substantially; and as such, our teams may not have the  
17:37 18 technical and operations experience in foam cementing that  
17:37 19 would enable them to be comfortable to design and present to  
17:37 20 our customers.

17:37 21 "Ron suggested that we address the basic engineering  
17:37 22 and operation -- operational information needed that would give  
17:37 23 our teams the ability to begin designing, selling, and  
17:37 24 executing jobs."

17:37 25 **MR. HILL:** Your Honor, I would lodge an objection,

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17:37 1 foundation. I don't know if we are introducing documents  
17:37 2 through a transcript but that somebody else has read. That's  
17:37 3 also a hearsay.

17:37 4 **MR. THORNHILL:** This is Mr. Roth's deposition.

17:37 5 **MR. HILL:** Your Honor, this is his deposition, but  
17:37 6 that's a verbatim -- there's been no foundation of what this  
17:37 7 document is. Why doesn't he throw it up on the screen and let  
17:37 8 Mr. Roth see it?

17:37 9 **MR. THORNHILL:** Because Mr. Roth has denied the issue  
17:37 10 with respect to training.

17:37 11 **THE COURT:** Apparently, in the deposition, whoever is  
17:37 12 doing the questioning is reading from some other document.

17:37 13 **MR. THORNHILL:** It's his e-mail, Your Honor.

17:37 14 **MR. HILL:** He read the e-mail, but the question is:  
17:38 15 Did I read it correctly?

17:38 16 **THE COURT:** Why don't you put the e-mail up.

17:38 17 **MR. THORNHILL:** This is -- TREX -- I'm sorry.

17:38 18 **THE COURT:** That's not the e-mail.

17:38 19 **MR. THORNHILL:** TREX-4356, this is an exact take-out  
17:38 20 from that.

17:38 21 **THE COURT:** Why don't you show him the e-mail.

17:38 22 **MR. THORNHILL:** We can actually show it in a  
17:38 23 demonstrative form.

17:38 24 **THE COURT:** It's right up here.

17:38 25 **MR. THORNHILL:** Okay. Great.

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17:38 1 THE COURT: Which part of it?

17:38 2 MR. THORNHILL: It should begin with the word

17:38 3 "Simon."

17:38 4 It's the bottom section, Carl.

17:38 5 This is Demonstrative 3195, Your Honor. It  
17:38 6 shows the take-out from the e-mail. That's what I just read,  
17:38 7 Your Honor.

17:38 8 THE COURT: So what's the question today?

17:38 9 MR. THORNHILL: And the question was -- and, of  
17:38 10 course, Mr. Roth had previously answered that he did not recall  
17:38 11 the exchange among the executives at Halliburton about the lack  
17:38 12 of training of employees to design and sell foam cement jobs.

17:38 13 And this is an e-mail, which we reviewed with  
17:38 14 him in his deposition, that shows that he had.

17:39 15 THE COURT: What's the question for the witness?

17:39 16 MR. THORNHILL: That was it.

17:39 17 "Is it not true, Mr. Roth, that the executives  
17:39 18 at Halliburton expressed, during the three years before, their  
17:39 19 concern over the lack of training of employees to design and  
17:39 20 sell foam cement jobs?"

17:39 21 He said he didn't recall that. We put it on the  
17:39 22 screen to show him.

17:39 23 THE COURT: Do you have a question for him about it?

17:39 24 BY MR. THORNHILL:

17:39 25 Q. Does this refresh your recollection?

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17:39 1 A. I have seen this e-mail previously.

17:39 2 Q. You acknowledge that, in fact, there were concerns about  
17:39 3 the lack of training to perform foam cement jobs?

17:39 4 A. This was raised by Mr. Shuman.

17:39 5 Q. You said that that was a good point, did you not? Later  
17:39 6 in the e-mail, the same e-mail.

17:39 7 A. Could we see it?

17:39 8 Q. It should be further down in 4356. You say, do you not:  
17:40 9 "Good points below."

17:40 10 Do you not?

17:40 11 A. Yes, that's my understanding.

17:40 12 Q. "I think that we need to continue to market foam cement."

17:40 13 Correct? It was your intent, in responding, to  
17:40 14 comment upon the concern of your sales force about marketing  
17:40 15 foam cement, correct?

17:40 16 A. This is correct.

17:40 17 Q. So you now acknowledge, do you not, that there was serious  
17:40 18 concern among the executives at Halliburton about the ability  
17:40 19 of those who were employees at Halliburton to engage in the  
17:40 20 design and marketing of foam cement jobs?

17:40 21 A. I saw the comments from Mr. Shuman.

17:40 22 Q. You recognize it as good points, right?

17:40 23 A. I do.

17:40 24 Q. In connection with your work on the investigation team,  
17:40 25 you, Mr. Roth, were asked to and you issued certain



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17:40 1 observations about your findings on the Macondo well, did you  
17:40 2 not?

17:40 3 A. Would you be specific, please.

17:41 4 Q. In connection with your work on the Macondo well, you  
17:41 5 issued certain observations -- we can put TREN-4357 up on the  
17:41 6 screen -- in our discussion about that which occurred on the  
17:41 7 Macondo well?

17:41 8 A. I made a number of presentations.

17:41 9 Q. In fact, 4357 represents one of those presentations --

17:41 10 THE COURT: Wait, wait, wait.

17:41 11 MR. HILL: Your Honor, I know what we are about to  
17:41 12 get into. This is the definition of subsequent remedial  
17:41 13 measures. Your Honor, I understand this has been lodged  
17:41 14 before, but if you would allow me to take this witness on voir  
17:41 15 dire, I can establish that.

17:41 16 This is a list of observations Mr. Roth made to  
17:41 17 others as he was leaving about things that could be done better  
17:41 18 post-incident. If that's not the definition of a subsequent  
17:41 19 remedial measure, I don't know what is.

17:41 20 MR. THORNHILL: Your Honor, may I respond to that,  
17:41 21 please?

17:41 22 THE COURT: Yes.

17:41 23 MR. THORNHILL: Investigations that were done by  
17:41 24 Mr. Roth included a report, about which you heard questions to  
17:41 25 Mr. Probert earlier, on lack of basis of design and lack of

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17:42 1 management of change and other deficiencies in the operations  
17:42 2 of this company. Now, this witness was identified by the prior  
17:42 3 witness, the president, as the person who knew.

17:42 4 Second, I would submit to you that 407 of the  
17:42 5 Federal Rules of Evidence speaks only to issues of negligence.  
17:42 6 And even in cases where negligence is at issue, negligence does  
17:42 7 not preclude testimony on findings such as these reports where  
17:42 8 they demonstrate the feasibility of precautionary measures.

17:42 9 And this is the textbook of feasibility of  
17:42 10 precautionary measures, not to mention the fact --

17:42 11 **THE COURT:** Well, that's true, under 407, if  
17:42 12 feasibility is disputed. I don't know if it is or it isn't  
17:42 13 because I don't know what you're talking about.

17:42 14 **MR. THORNHILL:** I submit to you, that's just half the  
17:42 15 issue, Your Honor. There's also the contract issue and the  
17:42 16 issue with respect to duty established in the contract. That  
17:43 17 duty is at issue with respect to these very same process  
17:43 18 engineering requirements.

17:43 19 **MR. HILL:** Your Honor, feasibility is not an issue  
17:43 20 here. This is not a products liability case.

17:43 21 Now, I understand that Your Honor allowed prior  
17:43 22 testimony on the basis of design, which is part of this  
17:43 23 document --

17:43 24 **THE COURT:** It doesn't have to be a product liability  
17:43 25 case for feasibility to be an issue. If the issue is whether

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1 Halliburton could have done things that might have prevented an  
2 accident -- or could have done things that they now recognize  
3 but deny that -- for some reason deny that it could have been  
4 done before the accident, that seems to be an exception to 407.

5 **MR. THORNHILL:** It is, Your Honor.

6 **THE COURT:** I don't know what the specifics are. I'm  
7 talking in a vacuum here.

8 **MR. THORNHILL:** Not only with respect to those  
9 issues, Your Honor, the specific contractual obligations of  
10 Halliburton to engage in risk identification, mitigation, and  
11 continual assessment are part of that which -- this gentleman  
12 will be presented, and you will see that his recommendations  
13 track that which they were required to do in the contract.  
14 Therefore, we submit that with respect to the duty analysis  
15 under a contract, not a negligence or a fault analysis, the  
16 duty analysis speaks exactly --

17 **THE COURT:** You don't have a contract claim against  
18 him.

19 **MR. THORNHILL:** We do, by assignment, have a contract  
20 claim against him. Yes, sir.

21 **THE COURT:** Contract claim.

22 **MR. THORNHILL:** We do, Your Honor.

23 **THE COURT:** You know, this is a bench trial. Let's  
24 see where it goes. If it's something that's clearly subsequent  
25 remedial measures that I should disregard, I know how to do

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17:44 1 that.

17:44 2 Let's go.

17:44 3 **MR. THORNHILL:** Thank you, Your Honor. We will  
17:44 4 continue. Let us begin with these documents.

17:44 5 This is the first page. It shows it was  
17:45 6 natively produced, 4357, Your Honor.

17:45 7 We'll go to the next page, which identifies  
17:45 8 observations.

17:45 9 **BY MR. THORNHILL:**

17:45 10 **Q.** Mr. Roth, you wrote these documents, did you not?

17:45 11 **A.** I did.

17:45 12 **Q.** The next page speaks to, if you will, an index of that  
17:45 13 which the document shows, right, Mr. Roth?

17:45 14 **A.** That's correct.

17:45 15 **Q.** It shows that --

17:45 16 **THE COURT:** What is the document we are talking  
17:45 17 about? I know you put a number up. It says "Observations."  
17:45 18 What is this document?

17:45 19 **MR. THORNHILL:** This document is the observations of  
17:45 20 Mr. Roth with respect to the deficiencies in the operations of  
17:45 21 Halliburton on its process engineering.

17:45 22 **THE COURT:** Is this for some -- is this like a  
17:45 23 presentation that you gave?

17:45 24 **THE WITNESS:** This was in a presentation that I gave  
17:45 25 to my manager, Marc Edwards, based upon opportunities for

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17:45 1 improvement that I identified over the course of the time that  
17:45 2 I had participated in developing the presentations, gathering  
17:45 3 information. And this was just the opportunities that I saw we  
17:46 4 could build into our processes going forward.

17:46 5 **THE COURT:** Go ahead.

17:46 6 **MR. THORNHILL:** The next page, please, Carl.

17:46 7 **BY MR. THORNHILL:**

17:46 8 **Q.** The first identified observation is "Basis of Design,"  
17:46 9 correct? And then you speak to the design system, correct?

17:46 10 **A.** Yes, sir.

17:46 11 **MR. THORNHILL:** The next slide, Carl. This we have  
17:46 12 actually in a demonstrative, 3198. Let's use this, Carl.  
17:46 13 Let's use the original because it's easier for the judge to see  
17:46 14 it. Let's start at the top, if you will. Just the top three  
17:46 15 bullet points, capture them and expand them for us, Carl.  
17:46 16 Thank you very much.

17:46 17 **BY MR. THORNHILL:**

17:46 18 **Q.** Now, Mr. Roth, when you wrote this, that there was no  
17:46 19 formal basis of design standard today at Halliburton, that was  
17:46 20 your conclusion after reviewing the documents on work methods  
17:46 21 for Halliburton, correct?

17:46 22 **A.** That's correct.

17:46 23 **Q.** So in connection with your work evaluating that which  
17:47 24 would be good process engineering requirements for a company  
17:47 25 like Halliburton to design cement programs, you recognized that

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17:47 1 there was a disconnect, a lack of a formal basis of design.

17:47 2 And you speak to the needs or the requirements in  
17:47 3 your hashmarks directly below that, do you not?

17:47 4 A. That's correct.

17:47 5 Q. In fact, the basis of design is a process engineering  
17:47 6 requirement, isn't it, Mr. Roth, that formalizes the  
17:47 7 bottom-line agreement between the client of Halliburton and  
17:47 8 Halliburton on that which would be the cement job, correct?

17:47 9 A. That's what a basis of design would provide.

17:47 10 Q. And it would capture in one place an identification of the  
17:47 11 well hazards -- or "red flags," as you called them -- during  
17:47 12 well construction, correct?

17:47 13 A. Correct.

17:47 14 Q. Moreover, you say that this basis of design -- and I  
17:48 15 submit to you, Mr. Roth, this is a standard process engineering  
17:48 16 analysis of risks. Is it not?

17:48 17 A. That would be one of the fallouts from this.

17:48 18 Q. Yes. So the second objective that you see here is that  
17:48 19 the basis of design is "to provide a means to continuously  
17:48 20 assess the fitness of purpose of the cementing recommendation  
17:48 21 by engineering interpretation against the client challenges and  
17:48 22 well hazards (red flags) encountered while drilling," correct?

17:48 23 A. Right.

17:48 24 Q. This is integral, is it not, for the beginning of any  
17:48 25 major well construction effort by Halliburton as the cementer,

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17:48 1 correct?

17:48 2 A. This would be an opportunity for us to improve by bringing  
17:48 3 that into a formal standard that we would collect on each well.

17:48 4 Q. The second thing that you found did not exist is that  
17:48 5 which is in the next bullet: "No formal management of change  
17:49 6 standard exists today."

17:49 7 Correct?

17:49 8 A. That is correct.

17:49 9 Q. You explained that as you're making this presentation, do  
17:49 10 you not? You say: "Where engineering interpretation concludes  
17:49 11 well challenges or hazards reduce the probability of success of  
17:49 12 cementing service recommendation to an unacceptable level,  
17:49 13 formal management of change action to be taken and documented."

17:49 14 That was your recommendation so that Halliburton  
17:49 15 wouldn't experience again that which it experienced on the  
17:49 16 Macondo well, correct?

17:49 17 A. A formal management of change process would be an  
17:49 18 improvement.

17:49 19 Q. Now, your recommendations are even more specific in the  
17:49 20 paragraph below, are they not? You even recommend the  
17:49 21 engagement of a consultant to format, lay out, and to identify  
17:49 22 the applicability to compliment the client well construction  
17:50 23 plans, don't you?

17:50 24 A. Yes, sir. A number of our clients have formal processes  
17:50 25 in this area, and so the statement was to be able to ensure

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17:50 1 that our standard would interface or dovetail into their  
17:50 2 standard as well.

17:50 3 Q. In fact, these ideas were ultimately placed in a  
17:50 4 PowerPoint presentation that Mr. Marc Edwards gave using your  
17:50 5 information and those documents --

17:50 6 MR. THORNHILL: Your Honor, may I just quickly --  
17:50 7 because I see we are not too far from the end of the day. I  
17:50 8 won't finish today if we stop at our regular time, but I would  
17:50 9 like to at least begin to tie together --

17:50 10 THE COURT: I'm starting to really get concerned that  
17:50 11 I think I should have sustained Mr. Hill's objection because  
17:50 12 this is really going into subsequent remedial measures, and I  
17:50 13 don't see how any of this could be disputed that it was  
17:50 14 feasible to do these things. So how do you get around 407?  
17:50 15 This is a classic subsequent remedial measure.

17:50 16 MR. THORNHILL: May I establish it through reference  
17:50 17 to the contract, Your Honor? That would be my next point.  
17:51 18 I'll be happy to do that --

17:51 19 THE COURT: I don't understand how it makes any  
17:51 20 difference. This is Rule 407, you know. When measures are  
17:51 21 taken which would have made an earlier injury or harm less  
17:51 22 likely to occur, evidence of subsequent remedial measures is  
17:51 23 not admissible to prove negligence, culpable conduct, which  
17:51 24 could be a breach of contract, I guess, a defect in a product  
17:51 25 or design or a need for warning or instruction. The Court may



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17:51 1 admit this evidence for another purpose such as impeachment  
17:51 2 or -- if disputed -- proving ownership, control, or feasibility  
17:51 3 of precautionary measures.

17:51 4 I don't think any of this fits under any of  
17:51 5 those objections. I'm going to sustain his objection. Let's  
17:51 6 move beyond this.

17:51 7 **MR. HILL:** Thank you, Your Honor.

17:51 8 **MR. THORNHILL:** Thank you, Your Honor.

17:51 9 May we pull up TREN-4477.

17:51 10 **BY MR. THORNHILL:**

17:51 11 **Q.** The contract is shown in 4477.

17:51 12 **MR. THORNHILL:** And if we can, Carl, let's turn to  
17:52 13 pages 36 and 37. We have a demonstrative for this, 3211.

17:52 14 **BY MR. THORNHILL:**

17:52 15 **Q.** Now, in connection with the obligations of Halliburton to  
17:52 16 BP for its cementing services, it owes, does it not, an  
17:52 17 obligation to produce an update of basis of design document for  
17:52 18 the project, correct?

17:52 19 **A.** If it's in the contract. I'm not familiar with the  
17:52 20 contract in depth.

17:52 21 **Q.** Let's look at what that is. Look at under the basis of  
17:52 22 design takeout. That includes identification of the  
17:52 23 objectives, what needs to be achieved, what the objective would  
17:52 24 incur, cementing or nonproductive time is achieved.

17:52 25 And to summarize, we'll go through each of the

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17:52 1 bullets: The boundaries, the assumptions, the risks, the  
17:52 2 mitigations, the options, the selection of the technical  
17:52 3 identified risks and the best options for responding to them,  
17:52 4 the measurement, frequency, and ultimately the project study  
17:53 5 updates, correct?

17:53 6 A. That's what it says.

17:53 7 Q. That is a caption, a snapshot of the very same basis of  
17:53 8 design recommendations that you made to the company, are they  
17:53 9 not?

17:53 10 A. It looks very similar.

17:53 11 Q. In fact, if Halliburton had followed these specific  
17:53 12 objectives, identifying the risks, mitigating the risks,  
17:53 13 determining what design should be used, considering options and  
17:53 14 ultimately continually assessing that, we wouldn't have had  
17:53 15 this blowout, would we?

17:53 16 A. That is a statement of risk management.

17:53 17 Q. Risk management is process risk management that we are  
17:53 18 talking about, which was not undertaken on a routine basis as  
17:53 19 you saw it, correct?

17:53 20 A. No, sir, I wouldn't say that.

17:53 21 Q. In fact, that's why you made the recommendations, correct?

17:53 22 A. No, sir. I simply saw that as an opportunity for us to  
17:53 23 have a formal system to be able to do that on all wells going  
17:54 24 forward.

17:54 25 Q. Had this been followed, you would have had it on the

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17:54 1 Macondo well, right?

17:54 2 A. I don't know that it wasn't followed.

17:54 3 Q. We'll get to that later.

17:54 4 Now, there's also required under this that the risk  
17:54 5 management, the risk-based engineering process, to prepare the  
17:54 6 BOD and the individual programs and all associated engineering  
17:54 7 and documentation should be part of the program, correct?

17:54 8 A. Would you repeat the question, please.

17:54 9 Q. Looking at G, "apply risk-based engineering process to  
17:54 10 prepare the basis of design." That was the obligation of the  
17:54 11 company?

17:54 12 A. That's what it says on this document.

17:54 13 Q. You were also required under J to provide solutions where  
17:54 14 the conventional cement design and procedures are not suitable,  
17:54 15 such as blend and foam cement, correct?

17:54 16 A. That's what it says.

17:54 17 Q. Now, in this case we know, do we not, that there was no  
17:54 18 basis of design on the Macondo well, correct?

17:54 19 A. I don't know.

17:55 20 Q. I know you wouldn't have been involved personally in  
17:55 21 preparing it. But after the fact, did you look for one?

17:55 22 A. No, sir, I did not.

17:55 23 Q. Did you task someone with trying to find one?

17:55 24 A. No, sir, I did not.

17:55 25 Q. So you're unable to confirm or to disagree with my

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17:55 1 proposal one way or another?

17:55 2 A. I don't know, sir.

17:55 3 MR. THORNHILL: Your Honor, I would next propose --  
17:55 4 to avoid objection, the idea is that we are going into  
17:55 5 subsequent remedial measures -- to identify the changes in the  
17:55 6 U.S. land work methods. Mr. Breit tried to show some of that,  
17:55 7 and I believe that you found that that was outside the scope.  
17:55 8 But in light of these contractual requirements, it would be my  
17:55 9 proposal to show that the U.S. land work methods changed to  
17:55 10 include a basis of design and management of change after the  
17:55 11 fact.

17:55 12 THE COURT: I just don't think you can get around 407  
17:56 13 by saying it's a contract issue and not a tort issue.

17:56 14 MR. THORNHILL: You know our argument, Your Honor.  
17:56 15 We understand and we respect and honor your opinion. Just note  
17:56 16 our objection, Your Honor.

17:56 17 THE COURT: Okay.

17:56 18 BY MR. THORNHILL:

17:56 19 Q. Now, let me ask you, in the limited time we have today,  
17:56 20 about lab best practices.

17:56 21 You don't deny, do you, Mr. Roth, that there should  
17:56 22 have been identified, in the work done by Halliburton on the  
17:56 23 Macondo well, that there was D-Air 3000 in the slurry?

17:56 24 A. D-Air 3000 was in the slurry.

17:56 25 Q. There should have been identified the risks associated

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17:56 1 with D-Air 3000?

17:56 2 A. Yes.

17:56 3 Q. In fact, to follow your analysis of identifying risks, if  
17:56 4 a basis of design had been engaged in by Halliburton, it would  
17:56 5 have identified to BP the risks associated with using D-Air in  
17:57 6 a foam job, correct?

17:57 7 A. That would be correct.

17:57 8 Q. In this case it did not, correct?

17:57 9 A. I don't know that it did. I don't know specifically.

17:57 10 Q. Have you seen any of the lab reports issued by BP -- I'm  
17:57 11 sorry -- issued by Halliburton to BP?

17:57 12 A. Yes, sir.

17:57 13 Q. Did you see on any of those lab reports any identification  
17:57 14 of the risk of using D-Air 3000?

17:57 15 A. No, sir, I did not.

17:57 16 Q. Moreover, did you see on those lab reports anything that  
17:57 17 would indicate a risk associated with using SCR-100, which is a  
17:57 18 dispersant?

17:57 19 A. No, sir, I did not; but SCR-100 would be a retardant  
17:57 20 rather than a dispersant. It would have subsequent secondary  
17:57 21 dispersing characteristics, but itself is not a dispersant.

17:57 22 Q. Right. In fact, in this case if one were to follow the  
17:57 23 best practices and to follow the manuals of Halliburton,  
17:57 24 SCR-100 would not have been used on this job, would it?

17:57 25 A. I think that there is a statement that identifies not to

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17:58 1 use dispersant or retarders with foams.

17:58 2 Q. The risk associated with using SCR-100 should have been  
17:58 3 identified, should it not?

17:58 4 A. That would be best.

17:58 5 Q. In this case, it was not, correct?

17:58 6 A. I don't think that it was. I haven't seen anything.

17:58 7 Q. In connection with the work that you reviewed in  
17:58 8 conducting your investigation, it's fair for me to say, then,  
17:58 9 that the reports that you have reviewed show no identification  
17:58 10 of risks, no identification of mitigations of risks, no  
17:58 11 alternatives, and no continuous assessment of risks as would be  
17:58 12 required in a standard process engineering analysis, correct?

17:58 13 A. From that perspective, the hazards that you have  
17:58 14 identified were not specifically identified in that regard; but  
17:58 15 I wouldn't say that they weren't addressed through a mitigating  
17:58 16 technique.

17:59 17 Q. Had one followed the requirements of the contract, he  
17:59 18 would have done that, correct?

17:59 19 A. Say it again, sir.

17:59 20 Q. Had Halliburton followed the requirements of the contract  
17:59 21 in identifying these risks we just reviewed with respect to  
17:59 22 D-Air 3000, SCR-100, the issues that we just reviewed, they  
17:59 23 would have been identified as risks and mitigations would have  
17:59 24 been included in the reports of Halliburton; is that correct?

17:59 25 A. That would be correct.

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17:59 1 Q. In this case, they were not, correct?

17:59 2 A. I'm not aware of any.

17:59 3 Q. Had those risks been identified, alternatives or options  
17:59 4 would also have been revealed, such as we don't need a foam  
17:59 5 cement for this particular production casing job, correct?

17:59 6 A. Possibly.

17:59 7 Q. And that was not included, correct?

17:59 8 A. I haven't seen anything like that.

17:59 9 Q. I want to refer you to some of the testing that was done  
18:00 10 specifically.

18:00 11 MR. THORNHILL: May I see TREN-5593, Carl.

18:00 12 BY MR. THORNHILL:

18:00 13 Q. In connection with the testimony of Mr. Quirk, Mr. Roth,  
18:00 14 did you see that he performed on May 28, as is shown by this  
18:00 15 cover sheet, 5593, tests involving the cement that was used on  
18:00 16 the Macondo well and to do so, he first pulled up and  
18:00 17 reprinted, as you see on 5593, the exact weigh-up sheet that  
18:00 18 was used before the last test done by Halliburton in advance of  
18:00 19 the blowout? You have told us previously that you --

18:00 20 THE COURT: Mr. Thornhill, it seems like you are  
18:00 21 moving into another area.

18:00 22 MR. THORNHILL: I am, Your Honor.

18:00 23 THE COURT: I'm just trying to figure out, is this a  
18:01 24 good point to break?

18:01 25 MR. THORNHILL: It is. It's a perfect point.

18:01 1           **THE COURT:** Let's break for the day. It's 6:00. We  
18:01 2 will recess until 8:00 a.m. in the morning.

18:01 3           **THE DEPUTY CLERK:** All rise.

18:01 4           **THE COURT:** Before everybody leaves, who is going to  
18:01 5 be plaintiffs' next witness or one or two witnesses after  
18:01 6 Mr. Roth?

18:01 7           **MR. ROY:** Perkins is next.

18:01 8           **THE COURT:** Mr. Perkins. And then who after him?

18:01 9           **MR. ROY:** Keith.

18:01 10          **THE COURT:** Mr. Keith. Perkins is an expert, right?

18:01 11          **MR. ROY:** A BOP expert, Judge.

18:01 12          **THE COURT:** Thank you.

18:01 13          **MR. ROY:** To shorten the trial, Your Honor, we want  
18:01 14 to pull down Lindner and Chaisson and submit them as bundles  
18:01 15 instead of call them live. They are listed as will-calls by  
18:01 16 Halliburton and BP.

18:01 17          **THE COURT:** You-all can sort that out. I was just  
18:01 18 trying to get the next couple of witnesses.

18:02 19                   Everyone have a good day.

18:02 20                   (Proceedings adjourned.)

18:02 21                                   \* \* \*

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled matter.

*s/ Toni Doyle Tusa*  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter

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