1	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA			
2	**********************			
3	3 IN RE: OIL SPILL BY THE Docket NOIL RIG DEEPWATER HORIZON Section	o. MDL-2179		
4	4 IN THE GULF OF MEXICO ON New Orle	ans, LA		
5	<u> </u>	January 20, 2015		
6	THIS DOCUMENT RELATES TO:	******		
7	UNITED STATES OF AMERICA			
8	V. Section	o. 10-CV-4536 "J"		
9	BP EXPLORATION & PRODUCTION,			
10	· ·	INC., ET AL ***********************************		
11	TRANSCRIPT OF TRIAL PROCEEDINGS			
12	HEARD BEFORE THE HONORABLE CARL J. BARBIER UNITED STATES DISTRICT JUDGE			
13	VOLUME 1, MORNING SESSION			
14				
15	APPEARANCES:			
16	FOR THE UNITED STATES OF AMERICA: U.S. DEPARTME	NT OF JUSTICE		
17	ENVIRONMENTAL	ENFORCEMENT SECTION MMELHOCH, ESQ.		
18		ROURKE, ESQ. ANDRE, ESQ.		
19	.9 NANCY FL	CASEY, ESQ. ICKINGER, ESQ.		
20		GLADSTEIN, ESQ. ZEVENBERGEN, ESQ.		
21		NIEL CHAKERES, ESQ. FIDLER, ESQ.		
22	RACHEL H	ANKEY, ESQ. ARVEY, ESQ.		
23	BRANDON	ING, ESQ. ROBERS, ESQ.		
24	GORDON Y	NCAK, ESQ. OUNG, ESQ.		
25	P.O. Box 7611 Washington, D			

1		
2		U.S. DEPARTMENT OF JUSTICE TORTS BRANCH, CIVIL DIVISION
3		BY: SHARON SHUTLER, ESQ. MALINDA LAWRENCE, ESQ.
4		LAURA MAYBERRY, ESQ. P.O. Box 14271
5		Washington, D.C. 20004
6	FOR BP AMERICA INC., BP AMERICA PRODUCTION COMPANY,	
7	BP COMPANY NORTH AMERICA, INC., BP CORPORATION NORTH	
8	AMERICA, INC., BP EXPLORATION & PRODUCTION INC., BP HOLDINGS	
9	NORTH AMERICA LIMITED, BP PRODUCTS NORTH AMERICA INC.:	KIRKLAND & ELLIS
10	FRODUCIS NORTH AMERICA INC	BY: J. ANDREW LANGAN, ESQ. MATTHEW T. REGAN, ESQ.
11		HARIKLIA KARIS, ESQ. MARK J. NOMELLINI, ESQ.
12		A. KATRINE JAKOLA, ESQ. 300 N. LaSalle
13		Chicago, IL 60654
14		MIDMIAND C ELLIC
15		KIRKLAND & ELLIS BY: ROBERT C. "MIKE" BROCK, ESQ. KIMBERLY BRANSCOME, ESQ.
16		655 Fifteenth St., N.W. Washington, D.C. 20005
17		washington, D.C. 20003
18		LISKOW & LEWIS BY: R. KEITH JARRETT, ESQ.
19		One Shell Square 701 Poydras St., Suite 5000
20		New Orleans, LA 70139
21	FOR ANADARKO PETROLEUM	
22	CORPORATION, ANADARKO E&P COMPANY, LP:	BINGHAM McCUTCHEN
23	, -	BY: KY E. KIRBY, ESQ. THOMAS R. LOTTERMAN, ESQ.
24		2020 K Street, N.W. Washington, D.C. 20006
25		-

1		MORGAN LEWIS & BOCKIUS
2		BY: JAMES J. DRAGNA, ESQ. 355 South Grand Ave, Suite 4400 Los Angeles, CA 90071
3		105 Aligeres, CA 90071
4	FOR THE STATE OF LOUISIANA:	KANNER & WHITELEY BY: ALLAN KANNER, ESQ.
5		DOUGLAS R. KRAUS, ESQ. SUSANNAH McKINNEY, ESQ.
6		CYNTHIA ST. AMANT, ESQ. 701 Camp St.
7		New Orleans, LA 70130
8		
9	OFFICIAL COURT REPORTER:	Karen A. Ibos, CCR, RPR, CRR, RMR
10		500 Poydras Street, Box 2-13 New Orleans, LA 70130
11		(504) 589-7776
12		nechanical stenography, transcript
13	produced by computer.	
14 15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

PROCEEDINGS

(TUESDAY, JANUARY 20, 2015)

(MORNING SESSION)

1

2

3

(OPEN COURT.)

)8:14:47 THE COURT: Good morning everyone. Welcome back. Stephanie, 6 7 you can call the case.)8:14:54

> THE DEPUTY CLERK: 10-MD-2179, in re: Oil spill by the oil rig Deepwater Horizon in the Gulf of Mexico on April 20th, 2010; 10-4536, United States of America v. BP Exploration & Production Inc., et al.

THE COURT: All right. What we'll do is let's take roll, just the first day, and we'll do like we did last time -- I don't know why this is way over here, Stephanie. I don't know how this got way over here. We'll get it straightened out. We had a little technical problem this morning.

So I think what we did last time, it worked well, rather than take roll every day of the trial, we'll just do it first day and make sure your name's on the list. Stephanie will have a list which will go into the minutes, the Court minutes of lawyers that are appearing at various times during this trial. So let's for the day, though, go ahead and take roll of the attorneys who will be appearing during the trial. Starting with the United States.

MR. O'ROURKE: Steve O'Rourke, your Honor.

MS. HIMMELHOCH: Sarah Himmelhoch, your Honor.

08:15:01 9

08:15:08 10

)8:14:55 8

08:15:16 11

08:15:18 12 08:15:23 13

08:15:28 14

08:15:32 15

08:15:38 16

08:15:40 17 08:15:45 18

08:15:50 19

)8:15:54 20

)8:15:57 21

08:16:01 22

08:16:04 23

18:16:09 24

08:16:12 25

MR. CHAKERES: Nat Chakeres, your Honor.)8:16:13 MS. PENCAK: Good morning, your Honor, Erica Pencak.)8:16:17 2 MS. FIDLER: Good morning, your Honor, Danielle Fidler.)8:16:20 3 MS. ANDRE: Good morning, Abby Andre.)8:16:25 MS. HARVEY: Judy Harvey.)8:16:26 MR. GLADSTEIN: Richard Gladstein.)8:16:28 7 MS. FLICKINGER: Nancy Flickinger.)8:16:31 THE COURT: You need to speak louder, Ms. Flickinger, if)8:16:31 8 you're going to be away from the microphone. I could barely hear)8:16:31 9 08:16:35 10 you. Okay. Go ahead. 08:16:35 11 MR. ROBERS: Brandon Robers, your Honor. 08:16:50 12 THE COURT: Is that it? Okay. 08:16:51 13 MS. HIMMELHOCH: Your Honor, that's everyone who is here 08:16:52 14 today.)8:16:54 15 THE COURT: Okay. BP.)8:16:55 16 Mike Brock, good morning, your Honor. MR. BROCK: 08:16:58 17 Good morning, your Honor, Hariklia Karis. MS. KARIS: 08:17:00 18 Good morning, your Honor, Matt Regan. MR. REGAN: 08:17:06 19 MS. BRANSCOME: Kimberly Branscome. 08:17:08 20 MR. JARRETT: Keith Jarrett, Judge. MS. KIRBY: Your Honor, Ky Kirby for Anadarko. 08:17:12 21)8:17:14 22 MR. LOTTERMAN: Tom Lotterman for Anadarko.)8:17:17 23 THE COURT: Okay. That's everyone who is here today?)8:17:19 24 Okay. Good. Those who are not here today, if they come later in

the trial on your team, make sure they check in with Stephanie and

)8:17:26 25

let her know that they're here.

1

3

)8:17:29

)8:17:42

)8:17:46

)8:17:50

)8:17:54

)8:17:57 7

)8:18:04 8

)8:18:07 9

08:18:09 10

08:18:13 11

08:18:18 12

08:18:22 13

08:18:26 14

08:18:30 15

08:18:35 16

08:18:38 17

08:18:41 18

08:18:43 19

08:18:45 20

08:18:51 21

)8:18:55 22

)8:18:59 23

08:19:04 24

08:19:06 25

)8:17:32 2

This is the so-called penalty phase of the government's Clean Water Act trial against BP and Anadarko. In a few minutes we'll have opening statements. Each side has been allocated one hour for opening statements. Each side, and there are only two sides in his a case: BP and Anadarko on one side, of course the United States on the other side. At the conclusion of the opening statements, I'll take a morning recess and then we'll resume with the first live witness.

Before we get to opening statements, let me just say a few things. First of all, this court, the trial schedule will be as follows: It's pretty much as we had done in the prior two trials, I plan to work generally Monday through Thursday from 8:00 A.M. to 6:00 P.M. And for this week only since we had a federal holiday yesterday for Martin Luther King Day, we'll work Tuesday through Friday, that's this week only.

As everyone notices, of course this is a bench trial, meaning there is no jury.

I ask everyone at this time if you have not already done so to make sure any cell phones, laptops, iPads, tablets, or any other electric devices are either turned off or placed on silent mode. And if you need to use your phone at any time during the trial, please step out into the outer hallway and away from the courtroom doors to do so.

Also, if you need to just talk, please don't stand right

in front of the doors outside because we can generally hear conversations there. There's plenty of room down the hall for you to carry on your conversations.

)8:19:09

)8:19:12

)8:19:15

)8:19:17

)8:19:20

)8:19:24

)8:19:23 6

08:19:30 8

)8:19:34 9

08:19:39 10

08:19:42 11

08:19:46 12

08:19:50 13

08:19:54 14

)8:19:57 15

08:20:03 16

08:20:08 17

08:20:13 18

08:20:18 19

08:20:23 20

08:20:30 21

08:20:35 22

08:20:38 23

08:20:44 24

08:20:50 25

1

2

3

5

7

No food or drinks are allowed in the courtroom, with the exception that counsel for the parties may have water at their tables.

I also want to remind everyone that photographs or video anywhere in the federal complex, not just in the courtroom, is strictly prohibited by the judicial conference of the United States. And any recording, broadcasting, or transmitting of any part of a trial in federal court, in a federal courthouse is strictly prohibited, and that anyone who violates these rules may be subjected to sanctions, including seizure of the device or possible ejection from the courtroom or courthouse.

We do have one overflow courtroom -- Ben, it's 311, right? I think it's 311 down the hall, okay. Room 311 which is on the third floor down the hall towards Camp Street. And there are video screens and sound being piped in there from this courtroom. And of course the same rules of conduct apply in the overflow room in terms of use of electronic equipment.

Again, some brief remarks about the context of this particular trial. Particularly for the benefit of the press and public to understand what this trial is about. As everyone is aware, of course, this case arises out of the April 20th, 2010, blowout explosion and fire on the Mobile offshore drilling unit

known as the *Deepwater Horizon*, and as it was temporarily abandoning the Macondo Well in Block 252 Mississippi Canyon on the outer continental shelf some 50 miles south of the Louisiana coast in the Gulf of Mexico.

1

2.

3

6

7

8

)8:20:55

)8:21:00

)8:21:06

18:21:08

)8:21:10

)8:21:14

)8:21:16

)8:21:20

)8:21:25 9

)8:21:29 10

08:21:34 11

08:21:38 12

08:21:42 13

08:21:48 14

)8:21:52 15

)8:21:57 16

08:22:00 17

08:22:06 18

08:22:10 19

08:22:16 20

18:22:21 21

)8:22:25 22

08:22:30 23

)8:22:37 24

18:22:41 25

In Phase I the Court -- following the Phase I trial the Court made certain findings of facts and conclusions of law regarding liability of the parties involved in the trial and allocation of fault. In Phase II the Court made findings and conclusions concerning so-called source control and quantification of the volume of oil that escaped from the well over the 87 days that the well was flowing before it was finally capped.

Those findings from Phases I and II will also be used by the Court in connection with this trial in terms -- in determining, that is, the amount of civil penalties to be assessed against BP and Anadarko in this penalty phase trial.

The plaintiff in this case, of course, is the United States. The defendants are BP Exploration & Production and Anadarko Petroleum Corporation. BPXP, of course, was the Leaseholder and operator of the Macondo Well. In the Phase I findings the Court further found that BPXP was an operator or person in charge of both the offshore facility or well and the Deepwater Horizon vessel for purposes of the Clean Water Act. Anadarko owned 25 percent nonoperating interest in the Macondo Well.

And as I said, this case or this trial involves the United States' claim for civil penalties under Section 311 of the

Clean Water Act. In the prior trials, Phases I and II, the United States' Clean Water Act action was tried together with Transocean limitation action because there were overlapping issues. In this case, as I indicated just now, there are only two defendants BPXP and Anadarko Petroleum.

So this case we'll proceed as follows: First, of course, the United States as the plaintiff will present its evidence; second, BP and Anadarko will present their evidence; and third the United States may present some rebuttal evidence.

As in the prior trials, there have been a number of depositions that have been taken in advance of trial, and as I understand will be admitted into evidence, is that right? Offered into evidence without the witness appearing live here to testify during the trial. However, that will be part of the evidence at this trial. And during the trial parties may at times play certain short video clips from some of those depositions.

exhibits, which will be admitted during the course -- offered and admitted during the course of the trial. And as we go along, we'll have the -- the parties will arrange to post the exhibits, the depositions that are introduced together with the expert reports and CV's of the expert, various experts who testify, all of that will be made available on a public website, it's the same website we used previously, right?

MS. HIMMELHOCH: Yes, your Honor.

)8:22:54 2

)8:22:47 1

)8:22:58 3

18:23:04

)8:23:10 5

4

)8:23:13 6

)8:23:17 7

)8:23:20 8

)8:23:24 9

08:23:30 10

)8:23:32 11

)8:23:37 12

)8:23:42 13

08:23:47 14

)8:23:51 15

08:23:55 16

08:23:58 17

08:24:02 18

08:24:06 19

08:24:12 20

08:24:17 21

08:24:24 22

08:24:29 23

)8:24:33 24

18:24:34 25

18:24:35 1 THE COURT: As I understand the government's arranging to 18:24:36 2 get that done?

MS. HIMMELHOCH: Yes, your Honor.

THE COURT: And this is not a court-sponsored website so don't call us if you have a problem with it, you can call the United States. But it's an FTP internet site, public website, www.MDL2179trialdocs.com.

All right. We reserved two benches on the left, as I am looking out at the audience, and on the right as you enter the courtroom in the front for the credentialed media, and there are a couple of benches on the other side, opposite from them for parties to the trial, as needed. I mentioned the overflow room.

For the attorneys, please remember to state your name and the party you represent each time you speak during this trial since we have so many attorneys so the court reporters can keep track of who is speaking at various times. Also, please speak into a microphone, because not only so that everyone in the courtroom can hear you, the court reporter can hear you, but people in the overflow room can hear you also. If you're not speaking fairly close into a microphone, I know the people in the other courtroom, we had a lot of complaints last time, lawyers speaking away from the microphones.

All right. Who will make opening statements for the government, Mr. O'Rourke?

MR. O'ROURKE: Yes.

)8:24:47 6)8:24:55 7)8:25:04 8

)8:24:37

18:24:38

)8:24:42

3

5

)8:25:17 **11**)8:25:21 **12**

)8:25:08 9

08:25:12 10

)8:25:32 14)8:25:36 15

08:25:28 13

)8:25:39 16

)8:25:47 18

08:25:43 17

)8:25:50 19

)8:25:54 20)8:25:58 21

)8:26:01 22

08:26:03 23

08:26:08 24

08:26:10 25

THE COURT: And for BP, Mr. Brock?)8:26:11 MR. BROCK: Yes, sir.)8:26:13 2)8:26:14 3 THE COURT: And Ms. Kirby for Anadarko. Okay. Very well. And you all have divided your time? 18:26:18 4 Yes, sir. MR. BROCK:)8:26:19)8:26:21 THE COURT: Unless someone has any other preliminary matter, we'll proceed to opening statements. Okay. Mr. O'Rourke. 08:26:23 7 MR. O'ROURKE: Good morning, your Honor, is this)8:26:32 8 microphone on?)8:26:47 9 Doesn't sound like it. 08:26:48 10 THE COURT: 08:26:55 11 MR. O'ROURKE: There it is. Good morning, your Honor. 08:26:59 12 THE COURT: Good morning. 08:27:00 13 MR. O'ROURKE: Steve O'Rourke for the United States. For 08:27:04 14 the opening statement of the Phase II -- Phase III. Your Honor, this phase is about the Court's weighing of these eight Clean Water)8:27:11 15)8:27:18 16 Act factors to determine -- sorry about this, your Honor. 08:27:47 17 THE DEPUTY CLERK: That mic doesn't work, if you have that But I do have another mic if you choose. 08:27:50 18)8:27:53 19 MR. O'ROURKE: It sounds like maybe that's necessary.)8:27:55 20 Thank you. 08:28:00 21 THE COURT: As I said, if something can go wrong with 08:28:03 22 electronics, it will.)8:28:07 23 MR. O'ROURKE: How is this? Is this better? 18:28:12 24 THE COURT: I think, let's go. Let's give it a try.)8:28:15 25 MR. O'ROURKE: Sorry about this, your Honor. So, your

Honor, this phase is about the Court's weighing eight penalty 1 factors set out in the Clean Water Act. These are the eight. They)8:28:23 2 are in the order they are in the statute. You have to weigh these. 3 You have to consider these factors to determine the appropriate penalty amount for BPXP and for Anadarko. And while you must 5 consider them, the next slide shows that we don't necessarily have 6 live witnesses on every one of these factors. The ones in bold we 08:28:42 7)8:28:46 8 do have live witnesses. The ones shaded we may have bundles or exhibits or prior phase evidence.)8:28:50 9

)8:28:18

)8:28:28

18:28:31

)8:28:34

)8:28:38

)8:28:52 10

08:28:57 11

08:29:02 12

08:29:07 13

08:29:10 14

08:29:13 15

08:29:14 16

08:29:19 17

08:29:22 18

08:29:28 19

08:29:32 20

18:29:38 21

08:29:42 22

)8:29:47 23

08:29:51 24

18:29:55 25

And now, if we rearrange these factors into factual topics, the next slide shows the order in which we will present our evidence as factual topics. We'll call our witnesses in this order. So I can use this slide for an overview, and then, after that, I'll walk through each of the witnesses in the order in which we intend to call them.

The first of the four bullet point is impacts; impacts of the spill that relates to how serious the spill was. And by any measure, this spill, this violation was extremely serious. It was the biggest spill and largest response in US history. The spill in response caused significant impacts on human health and on human, economic interests, wages, businesses. Indeed, there were serious impacts on human society, the social fabric of communities in the Gulf was disrupted. And turning to the national environment, the spill and the response had actual adverse impacts on marshes and other habitats, and on animals, and remains a continuing threat of

future harm.

Turning to the next bullet point, the response actions.

There were adequate. Of course, they were required by law. BP's claims regarding the success of its response actions and its mitigation efforts are overstated.

The third part of the case is about various economic and financial issues. This relates to several of the statutory factors, economic impact of the penalty on the violator, other matters as may be required, but it falls into these four sort of the economic financial topics.

The first up, because -- will be the United States, essentially, rebutting BP's and Anadarko's claims that they are crucial, that they are indispensable to the economies of the Gulf of Mexico. As I mentioned rebuttal, your Honor, a lot of our case in chief will actually be rebuttal because we are supposed to call our rebuttal experts in their case in chief.

The second topic will be the status of Anadarko, their attempts to avoid paying any penalty by claiming that well owners should be passive investors. That's contrary to industry standards and bad economic policy.

The third topic will be Anadarko's financial strength related to the topic of ability to pay, economic impact of the penalty on the violator. The penalty's going to have to be high enough for companies of this size to each notice it, but not so high as to be ruinous to their operations. Our forensic accountant will

)8:30:00 2

)8:30:05

)8:29:59

1

3

18:30:08 4

)8:30:11 5

)8:30:15 6)8:30:18 7

)8:30:22 8

)8:30:27 9)8:30:31 10

)8:30:32 11

08:30:35 12

08:30:40 13

08:30:43 14

08:30:46 15

08:30:50 16

08:30:52 17

08:30:55 18

08:30:59 19

08:31:04 20

)8:31:06 21

08:31:10 22

)8:31:15 23

08:31:19 24

08:31:23 25

08:31:28 1 discuss Anadarko's financial strength and BPXP's financial strength.
08:31:32 2 And as part of the BP financial analysis, of course, is the
08:31:35 3 relevance of the other BP group entities.

18:31:38

)8:31:42

)8:31:44

08:31:48 7

)8:31:52 8

)8:31:57 9

08:32:01 10

08:32:07 11

08:32:10 12

08:32:14 13

08:32:18 14

08:32:22 15

08:32:26 16

08:32:27 17

08:32:30 18

08:32:33 19

08:32:34 20

18:32:37 21

08:32:43 22

08:32:45 23

08:32:48 24

18:32:54 25

5

And finally, we have factors with no live witnesses, so I'll touch on that, only briefly.

One, what are the defendants going to say about these facts?
BPXP will say that the spill was not as bad as it could have been because only 1,100 miles of the Gulf shoreline was oil. BP might try to lay blame at the feet of the government for interfering with its response action. BP will focus on falling oil prices, that we should be focused on the suffering of BP rather than the suffering of the Gulf and its inhabitants. Both defendants, BP and Anadarko, will say, "We've paid enough" as though we should be thanking them for their expenditures. Indeed, Anadarko is pushing for zero dollar penalty even though it owns the well that caused the biggest spill in American history.

Obviously, these defendants have not accepted that this extremely serious violation of law warrants a commensurate large penalty.

So with that overview, I'll go through the witnesses on these topics. The first topic, again, impacts of the spill related to the seriousness of the violation. What do we already know about the seriousness of the violation? That the violation was serious for all of the reasons set forth in Phase I ruling. That BPXP has already admitted that this is an extremely serious violation.

Anadarko has also. In fact, Anadarko agreed with our motion that seriousness is a given and would require no new evidence, but BPXP opposed that position, so we will be presenting witnesses on the seriousness factor.

And with these witnesses in this trial, we will present testimony demonstrating actual harm, and potential harm. BP might imply that actual harm are di minimus and somehow we need to prove potential harms with certainty, but let's talk about this potential harm versus actual harm.

At the time of the spill, it was potentially massive harm and much of that harm became reality. People were injured, habitats were destroyed. Some of that's easy to see and count. Some of it's not easy to see and count, but actually happened. Some of the potential harm never actually manifested. Responders were put at risk by being put in boats with fumes. If they weren't actually harmed, the risk went away. It didn't manifest. They will have no claim in tort, but they were still put at risk, and that is relevant to the seriousness analysis.

And looking at the future giving the pollutants in the environment, people and animal habitats remain at risk of serious long-term harms. So the next slide shows our witnesses on the topic of impacts and seriousness. And the first one will be Admiral Meredith Austin of the Coast Guard.

Now, in Phase II, we started to examine the response to the spill, zoom down on source control of the well. Admiral Austin can

)8:33:01 2

18:32:57

)8:33:06 3

)8:33:10 4

)8:33:11 5

)8:33:14 6

)8:33:20 7

)8:33:25 8

)8:33:28 9

08:33:30 10

08:33:32 11

08:33:36 12

08:33:40 13

08:33:43 14

)8:33:47 15

08:33:51 16

08:33:55 17

08:33:58 18

08:34:00 19

08:34:03 20

08:34:07 21

08:34:12 22

08:34:16 23

08:34:19 24

18:34:22 25

continue that story panning back out to the entire Gulf of Mexico as 08:34:26 1 the next slide shows. Here we just have a map of where the oil 08:34:31 2 The gray is everywhere that the oil was seen on the surface 3 of the water. The darker the color, the more days it was observed. The blue line shows where response workers were sent out to look for 5 oil on the beach, and they found 1,100 miles of oil.

)8:34:36

18:34:39

)8:34:43

)8:34:47

)8:34:52

)8:34:55

)8:34:58 9

08:35:00 10

08:35:04 11

08:35:08 12

08:35:10 13

08:35:13 14

08:35:16 15

08:35:19 16

08:35:22 17

)8:35:27 18

08:35:31 19

)8:35:35 20

08:35:39 21

08:35:44 22

)8:35:48 23

)8:35:54 24

18:35:55 25

8

Admiral Austin is going to testify as to impacts on the Coast Guard and other government agencies. She is from the Philadelphia office of the Coast Guard, and her office in Philadelphia was down ten percent to staff this response action. Some of her equipment was taken away. There was interference with some of the other functions of her office. They have critical missions like search and rescue.

The next slide shows a list of agencies, state, and federal, and local that were deployed into this response. All of which, of course, detracted from performing their regular duties for the public. Admiral Austin will testify that this was a massive response. Of course, it was. It was a massive spill, but this response and her experience can be compared only to Hurricane Katrina and 9/11 as far as the intensity of the response.

Our next witness on seriousness is Dr. Diane Austin. So we have two Austins; an Admiral Austin and Dr. Austin. She is an anthropologist who uses ethnographic methods. And the next slide shows she went into five different communities from Alabama, Mississippi, South Louisiana. She conducted -- she and her team

conducted over 1,300 interviews, met hundreds of more people 1)8:36:00 interacting at community meetings, churches, and the like in these)8:36:04 2 five locations representing various aspects of Gulf living. And her)8:36:08 3 work was not done for this lawsuit. It was done prior to the time 18:36:12 we hired her. And what did she learn from these interviews from)8:36:15 5)8:36:20 this ethnographic research? That, not surprisingly, there were 6 serious impacts in these communities. Not just economic impacts,)8:36:25 7 not just human health impacts, but impacts to the fabric of the)8:36:28 8 communities themselves. For example, beyond the fact that people)8:36:31 9 08:36:33 10 lost work, they also lost their sense of pride in doing work. 08:36:38 11

08:36:44 12

08:36:51 13

08:36:57 14

08:37:01 15

08:37:05 16

08:37:06 17

08:37:11 18

08:37:16 19

08:37:20 20

18:37:23 21

)8:37:28 22

18:37:32 23

)8:37:35 24

18:37:41 25

BP's expert on this is Dr. Bonanno, and his complaint is that Dr. Austin's work is non-quantitative, it's qualitative. It is a qualitative science and she will have no qualms. But BP's expert, Dr. Bonanno, in any given disaster, and this is a disaster, his own research shows that five to 15% of people suffer PTSD after a disaster.

Our third witness on this topic of impacts of the spill is Dr. Richard Clapp. The next slide, please. He is a human health epidemiologist, and the Court -- in the first two lines, the Court knows from Phase I about the men -- the people who were injured and killed in the explosion. In this phase we'll learn about other people who were put at actual harm or risk of harm to human health. There were tens of thousands of people who were deployed and put at risk. At risk of what? Well, almost 6,000 of these people reported injuries or illnesses during the response. And, of those, over 900

required actual medical treatment beyond simple first aid. The problems included broken bones, finger cut off, puncture wounds, dehydration, back injuries, loss of consciousness, respiratory irritation. And finally, what about all of the people who are exposed to oil constituents through their skin or hair. Some of these constituents are known carcinogens.

BP will say that measured concentrations in the air were low, but Dr. Clapp's testimony will show that low concentrations does not mean no risk. For some compounds there are no safe levels. And ongoing studies are being conducted. There is a five-year cohort study with 32,000 people who participated in the response. In other words, the jury is still out. It's only five years after the spill. It's too soon to know the long-term impacts of the spill on human life, but the evidence will show that there is, at least, a risk.

Before I move on to ecological harms, I'll talk briefly about Dr. Charles Mason an economist. Much of his testimony will be on the more economic part of the case that will come later, but he does have some testimony about the impact of the spill. What he does is he takes the claims paid under the class action settlement under the GCCF and uses those claims as proxy or indicator of economic harms that resulted from the spill. And those claims amount to over \$10 billion. And he, thus, concludes that there was severe economic harm resulting from this spill.

Now, turning to environmental or ecological harm. The next

)8:38:04 5)8:38:08 6

08:37:45

2

3

)8:37:49

)8:37:54

18:37:58

)8:38:11 7

8

)8:38:19 9

)8:38:14

)8:38:24 10

08:38:28 11

08:38:32 12

)8:38:34 13

08:38:37 14

08:38:42 15

08:38:43 16

08:38:47 17

08:38:51 18

08:38:55 19

08:38:58 20

08:39:03 21

08:39:09 22

08:39:14 23

08:39:19 24

08:39:21 25

slide. Again, this is our list of witnesses on impacts of the 18:39:26 spill, on the harms resulting from the spill. We have Dr. Donald)8:39:30 2 Boesch, the ecosystems ecologist, and Dr. Stanley Rice, an)8:39:36 3 environmental toxicologist. And why do we have two environmental)8:39:41 witnesses? First, because BP has three environmental witnesses, but)8:39:44 5)8:39:48 second, because Dr. Boesch gives a general overview of these harms from an ecosystems perspective, and Dr. Rice is directed at specific 7)8:39:52 mechanism of toxicity in large part to rebut BP's expert, Dr. Shea;)8:39:57 8 but, again, we bring our rebuttal witnesses in our case in chief. 08:40:03 9 08:40:07 10 Remember, this is not the NRD case and we are not here to

08:40:09 11

08:40:13 12

08:40:17 13

08:40:19 14

)8:40:25 15

08:40:29 16

08:40:33 17

08:40:40 18

08:40:43 19

08:40:47 20

08:40:51 21

08:40:53 22

)8:40:57 23

08:41:05 24

08:41:09 25

Remember, this is not the NRD case and we are not here to quantify. We are here presenting evidence for you to be able to qualitatively assess whether this violation was a serious violation.

And so moving to the testimony of the environmental experts, the next slide shows that oil moved into all sorts of habitats; 45,000 square miles of surface slicks on the water. In the lower right you see oil on the water being burned. Oil on beaches, marshes, seaweed communities. We don't have pictures of the seaweed communities or coral on the ocean floor. Some of the corals were 400 years old and they're dead now. In all, 1,100 miles of shoreline were hit by Macondo oil including many miles of heavily oiled marsh in Louisiana.

The next slide shows that animals were also harmed by the spill. Thousands of dead oil birds were recovered. Dead or recovered on the beach, as in these pictures. What this means is there were many more dead birds that did not wash up on shore that

were not found, but were still killed. Hundreds of sea turtles were 08:41:13 1 recovered and rehabilitated indicating that many more oil sea 08:41:16 2 turtles were not captured for rehabilitation. And speaking of sea 3 turtles, as you see, there is a turtle in the upper right. Thousands of sea turtle hatchings had to be moved from the Gulf 5 Coast to the Atlantic Coast because of the oil spill. Dolphins in 6 Barataria Bay Louisiana had severe disease and elevated mortality.)8:41:37 7)8:41:42 8 So these were actual harms that actually happened. Exactly how many, exactly how long will it last, this is not the phase to figure)8:41:46 9 08:41:50 10 that out. Indeed, it's not yet possible to do so.

)8:41:22

)8:41:26

)8:41:30

)8:41:34

08:41:54 11

08:41:58 12

08:42:02 13

08:42:08 14

08:42:11 15

)8:42:17 16

08:42:20 17

08:42:24 18

08:42:28 19

08:42:33 20

18:42:37 21

08:42:41 22

)8:42:45 23

08:42:50 24

18:42:54 25

What would BP's evidence on ecological issues be? The next slide is some bullets. Their first argument is likely to be it's not as bad as it could have been, because only 1,100 miles of the Gulf Coast received oil. I keep saying that number. That number comes from BP's expert. And of course, beyond the 1,100 miles, there were areas that had, quote, no oil observed by response workers in the field. That does not mean there was no oil present. The data does not include chemical samples. The observations were made from small boats, so there could be more oil than the 1,100 miles. So yes, it could have been worse. It could have been 1,200 miles or 4,000 miles, but it was bad enough to be serious.

BP's next point will be that there was no population level impacts to birds or the fish. Our first point on that is thousands of animals died, habitat was destroyed, and that is serious regardless of whether there was a population impact.

The second point on that is that BP's Dr. Tunnell looked at population data and concluded no significant population impacts to fish, shellfish, or birds. But his analysis can only detect significant impacts. And he did not determine how significant the impact would have to be before he could detect it with his model. So BP is saying that losing some percentage of the birds or fish doesn't really matter unless it's catastrophic enough to show up in his model as significant.

)8:42:57 1

08:43:01 2

3

)8:43:05

)8:43:10

)8:43:15

)8:43:18

08:43:22 7

)8:43:25 8

)8:43:27 9

08:43:31 10

08:43:37 11

08:43:41 12

08:43:46 13

08:43:50 14

)8:43:56 15

08:44:00 16

08:44:01 17

08:44:04 18

)8:44:07 19

08:44:10 20

08:44:14 21

08:44:18 22

)8:44:24 23

)8:44:29 24

18:44:33 25

The final bullet point. BP may try to engage in a premature NRD analysis with Dr. Shea. This toxicity dispute between Dr. Rice for the US and Dr. Shea for BP is really a good example of why scientific disputes like this will be coming up in the NRD case where determining the actual extent of harm will be necessary. It's not necessary in this case to determine at this point how serious, but BP is bringing in Dr. Shea and we will bring in Dr. Rice to rebut it.

Dr. Shea compares concentrations of the hydrocarbons in the environment to certain benchmarks. It concludes that there is no risk, but the benchmarks he uses are just screening tools and they are not set for purposes of determining actual harm. The benchmarks he uses are also primarily set to look for specific types of acute effects, and don't adequately assess other mechanisms of toxicity like chronic toxicity and early life stage toxicity. And above all, Dr. Shea spends a lot of time looking at places where there was no oil, and low and behold, the concentrations of oil in

)8:44:37 1

)8:44:42 2

)8:44:47 3

)8:44:51

)8:44:55

)8:44:55

)8:44:57 7

)8:44:59 8

)8:45:05 9

08:45:12 10

08:45:14 11

08:45:17 12

)8:45:22 13

08:45:23 14

)8:45:28 15

08:45:31 16

08:45:35 17

08:45:36 18

08:45:41 19

)8:45:45 20

08:45:49 21

)8:45:52 22

)8:45:56 23

08:46:00 24

08:46:03 25

those places are below toxic threshold. Dr. Rice look at places where the oil actually went and finds that there are toxic effects.

BP's theme here is not consistent with BP's prior statements from their own CEO.

(Video clip played.)

THE VIDEO: What would your assessment be now?

THE VIDEO: This is clearly an enormous catastrophe.

There is no two ways about it. It's clear -- it is clear that we are dealing with a very significant environmental crisis and catastrophe.

MR. O'ROURKE: BP's litigation position in this phase suggests it still doesn't understand the gravity of what's happened here. They continue to focus on their own hardships rather than the hardships to the environment and other people. That's it on our case about the impacts of the spill. Next slide, a reminder of what our case is like. We talked about impacts of the spill. Now, we'll talk about response to the spill.

This relates to the fact of the efforts of the violator to minimize or mitigate the discharge. And minimizing the discharge, that was Phase II. And, your Honor, you found that there was no gross negligence in Phase II, but to the extent you found any questionable behavior or failure on their part in source control, that would relate to this factor. But this phase is about efforts to mitigate the discharge.

We are not here to say that BP did a bad job in the

response action. They didn't. But what we really doing is -- here 08:46:06 1 is rebutting BP's case. Now, they'll want you to know the biggest 08:46:10 2 response action ever. And the next slide will show, again, of)8:46:15 3)8:46:18 course, it was the biggest response action ever. It was the biggest spill in US history. It was a new, fresh, major oil spill, every)8:46:21)8:46:26 6 day for 87 days. Seventeen percent of the NOAA and Fish and Wildlife were deployed; 14 percent of the Coast Guard was deployed; 08:46:32 7 BP group deployed 2,000 employees. Generously, about 2.5 percent of)8:46:36 8 their work force. Other agencies were deployed as well. But while)8:46:44 9 it was the biggest response action, it wasn't, necessarily, the best 08:46:48 10 08:46:51 11 response action ever. 08:46:53 12

08:46:55 13

08:46:58 14

08:47:02 15

08:47:04 16

08:47:08 17

08:47:12 18

)8:47:17 19

08:47:20 20

08:47:24 21

08:47:30 22

)8:47:35 23

)8:47:39 24

)8:47:41 25

Admiral Austin, the first witness, had some of her deposition testimony. We'll discuss some of the problems in the response action. Again, they did a good response action, but their claims of doing best response action are overstated.

For example, the next slide shows what Captain

VanHaverbeke will testify about. BP claims that they did a great
job removing oil from the environment. Captain VanHaverbeke will
show that BP removed about five percent of the oil from the
environment -- from the open ocean environment compared to typical
open spills where ten to 15% are removed. BP's expert will have a
higher number, but he is including all of the oil that gets
dispersed, all of the oil that gets burned. That oil is still in
the environment. Only five percent was collected and removed from
the environment.

In the interest of full disclosure, your Honor, my graphics department tells me that the slice of pie might not be exactly right in the graphics. We'll have it fixed by the time Captain VanHaverbeke testifies.

In the same vein, BP experts will argue that response action yielded various advances in Oil Spill Response technology. Captain VanHaverbeke's testimony will show that almost all of these tools were developed prior to this oil spill.

Anadarko also wants credit for response actions, even though they only sent a half dozen people to help with the response.

And if we could have the next slide. Turning to the cost incurred for response actions and mitigation. BP will ask the Court to consider all of its expenses in the response action; adding in response claims, the litigation costs, damages paid, et cetera. BP will -- it will have spent over \$40 billion and that certainly is a the lot money. Shouldn't be surprising because, again, this is the biggest spill with massive potential harm.

Of course, money spent was mostly from the BP group. The money was put through BPXP's books. And this factor is about the efforts of the violator to minimize it or mitigate the discharge, not about the efforts of the violator's parent companies. So if BP wants the payments in mitigation to be relevant, that's why we're going to be presenting evidence about the BP group entities on the financial aspects.

Another comment about these response efforts, they're

)8:47:56 5)8:48:00 6)8:48:04 7)8:48:07 8)8:48:12 9)8:48:15 10

)8:47:43

)8:47:49

)8:47:54

)8:47:45 2

1

3

)8:48:22 12)8:48:27 13)8:48:32 14

08:48:18 11

)8:48:37 15)8:48:42 16)8:48:46 17

)8:48:48 18)8:48:51 19)8:48:57 20

)8:49:05 22

18:49:02 21

)8:49:09 23

)8:49:13 24

)8:49:15 25

required to be paid by law. BPXP broke the Law in the explosion and spill, broke the Law lying during the response, and then started to comply with the law by the laws that require clean up and the laws that require payment of claims. Now, they want credit for mere compliance. And, of course, they have an economic motivation to do the response as well. First, to mitigate damages, because by paying claims sooner, they, ultimately, pay less money. For example, with early restoration for national resource damages. By fixing the marsh sooner, they'll mitigate the damages they'll, ultimately, have to pay. Second, they had to do the response action with the same quickness or their operator license would have been taken away.

As to these claims that various payments mitigated the harms, you'll see no quantitative evidence of the impacts of these payments. They'll quantify the expense, but not quantify the benefits.

In summary, BPXP's theme of we paid enough, would mean that when a spill is really bad and that are a lot of costs of damages, the penalty goes down. And that only the small spill, where there is no cost of damages, should the penalties be high.

Anadarko takes it to the next step saying they should pay zero penalty due to the fact that there were high costs in damages paid.

The last topic on response and mitigation, we expect that BPXP may go so far as to paint the government as the bad guy in this case. Arguing that decisions by the FOSC slowed down the response

1)8:49:19)8:49:25)8:49:29 18:49:33)8:49:36)8:49:40)8:49:44)8:49:49 8)8:49:54 9)8:49:57 10 08:50:01 11 08:50:03 12 08:50:07 13 08:50:11 14)8:50:17 15 08:50:18 16 08:50:21 17 08:50:24 18 08:50:29 19 08:50:32 20 08:50:35 21

)8:50:43 24)8:50:47 25

08:50:39 22

08:50:40 23

for things like topical dispersants on this. It's not entirely 08:50:53 clear what factor this relates to. What factor BPXP says this 2 relates to. We think it's irrelevant. But BP is asking for credit 3 for the response action that US states and locals performed with them, but they also want credit for the fact that the States, locals, and US had concerns during response.

> Captain VanHaverbeke will testify that having stakeholders concerns aired improved the response, giving different views on the dispersants, how and when to apply them, and help the federal on-scene coordinator make better decisions.

> Now, having said these things about response and mitigation we did say in our pretrial brief that BPXP paid for some things that were not required by law, not required by the Unified Command. we indicated that it could be appropriate for the Court to consider those as mitigating factors to reduce the penalty.

> If I could have the next slide, please. So we've discussed the impacts of the spill, response to the spill. Now, we're going to go into these various economic and financial issues. First one is about the defendant's position in the Gulf of Mexico. really rebuttal from us. We're going to call Dr. Charles Mason to discuss the defendant's argument that they're indispensable to the Gulf of Mexico economy in the oil and gas industry. Dr. Mason, I've already discussed him once. He is the one who uses the class action settlements as an indicator of the size of the harm.

> > The next slide shows Dr. Mason's analysis. What you see

)8:51:12)8:51:15)8:51:19)8:51:23 8)8:51:29 9)8:51:32 10 08:51:34 11 08:51:38 12

)8:50:57

)8:51:03

)8:51:09

08:51:56 16 08:51:59 17

08:51:42 13

08:51:47 14

08:51:50 15

08:52:03 18 08:52:09 19

08:52:12 20

08:52:18 21

08:52:22 22

)8:52:25 23

)8:52:28 24

18:52:31 25

here is for various metrics; four holes, production, leases held.

As a percentage of the entire industry in the Gulf, BPXP being modestly important; ten percent, eight percent, 20 percent, but not crucial to the successor failure of the oil and gas industry.

)8:52:37 1

2

3

6

7

)8:52:42

)8:52:48

18:52:56

)8:53:00

)8:53:03

)8:53:09

)8:53:13 8

)8:53:15 9

)8:53:19 10

08:53:23 11

08:53:26 12

08:53:33 13

08:53:37 14

08:53:40 15

)8:53:44 16

08:53:44 17

08:53:51 18

)8:53:57 19

08:54:02 20

08:54:07 21

08:54:11 22

)8:54:17 23

)8:54:22 24

18:54:26 25

The next slide shows the same information for Anadarko.

Again, modestly important, but not indispensable. In fact, these companies are, basically, fungible because this is a competitive market, and there are plenty of other companies out there who would love to come in and take over BP or Anadarko's shares.

Back to the next slide. Again, our case, we're on the third part, economic and financial issues, turning to the status of Anadarko as owner. Dr. Mason, our economist, will also rebut Anadarko's expert. Anadarko's claiming that nonoperating investors are fleeing the Gulf of Mexico drilling industry because this lawsuit was filed against Anadarko, but the data doesn't bear that out.

The next slide shows concentration. What this means is if co-owner investors were fleeing the Gulf, taking their capital, then the leases would be held by fewer and fewer operators and owners if capital flight, investor flight was happening. But here we see the concentration of ownership of leases over time, relatively constant, relatively unconcentrated. Therefore, Anadarko's argument that co-owners are fleeing the Gulf because we filed this lawsuit is not borne out by the evidence.

Next slide. Anadarko's position is that it could pay --

should pay no penalty, in part, because it already paid the damages,
but, as stated, OPA requires payment of damages and Clean Water Act
requires a penalty on top of that. But really Anadarko's major
position is that it should not pay a penalty because it was a
non-operator, and that its industry practice for non-operators to be
passive investors; and therefore, there should be no penalty.

)8:54:53

)8:54:55 8

)8:55:00 9

)8:55:07 10

08:55:10 11

08:55:14 12

08:55:20 13

08:55:24 14

)8:55:27 15

08:55:32 16

08:55:36 17

08:55:40 18

)8:55:47 19

)8:55:51 20

08:55:56 21

08:56:00 22

08:56:03 23

08:56:07 24

)8:56:14 25

Gardner Walkup will testify for the United States on this issue. His testimony will show that co-owners are not passive investors. There are good reasons why non-operating co-owners of deepwater wells actively participate, even if they've designated a different company to be the official operator under the regulations. Standard contracts support active behavior. Having active co-owners creates economic incentive for safe operations while Anadarko's position would negatively impact the safety.

Mr. Walkup's been in the industry for 30 years, and he's never heard the term "passive investor" before. In the industry, these companies are known as co-owners. They're known as partners, not as passive investors. In short, Anadarko owns the well. Their position would mean that owners of the wells pay no penalty even if their day laborers pay massive penalties as Transocean did in this case. Acting passive can't be a free pass.

Staying on the topic of Anadarko, we can move to the factor of economic impact penalty on the violator. It has to be high enough so that massive companies like Anadarko and BPXP will be deterred, high enough that companies of this size won't let

something -- a spill like this ever happen again. But, again, not so high as to be ruinous to their operation. So the maximum penalty for Anadarko is three-and-a-half billion, give or take, depending on whether you believe their argument about the Inflation Adjustment Act; but Anadarko admitted in this case that as of August 2014 it could pay \$4.6 billion out of the combination of cash on hand, borrowing, lines of credit, and the like. That's in a response to request for admission, but they did reserve the right to argue about the impact of those payments on their ongoing operations.

1

3

4

5

)8:56:18

)8:56:26

18:56:30

)8:56:34

)8:56:38

08:56:43 7

)8:56:47 8

)8:56:50 9

)8:56:54 10

08:56:57 11

08:57:03 12

08:57:08 13

08:57:12 14

08:57:16 15

)8:57:18 16

08:57:22 17

08:57:24 18

)8:57:28 19

)8:57:32 20

08:57:36 21

08:57:43 22

)8:57:49 23

)8:57:54 24

18:57:58 25

)8:56:21 2

So we're going to call a forensic accountant, Mr. Ian
Ratner. His testimony will be about Anadarko's finances, also about
BPXP's finances. But staying on the topic of Anadarko, as you know,
we stated that we don't think that Anadarko should pay the maximum
penalty. We said that in our opening brief, but it should be north
of the billion dollars, significantly north of a billion dollars,
because compared to Transocean, the day laborer, the owner should
pay a higher penalty.

Now, Mr. Ratner will testify that Anadarko could pay
4.6 billion or 3.5 billion, the maximum penalty after your ruling.
So, of course, they could pay any number less than that. Let's take
a look at their finances. They have total assets in 2014 of 58
billion. Annual cash from operations routinely far above the
\$3.5 billion statutory max. This is a company that can pay.
Routinely, deals in billion dollar increments and could pay any
penalty in this case without adversely impacting its operations.

Now, let's turn to BPXP's financials. There are two issues 08:58:01 1 to be tried related to BPXP's; one is the ability to pay itself, but)8:58:12 2 the second issue relates to funding from the other BP group 3 entities. Therefore, we have two witnesses, this is our last two, related on these issues. Dr. Fred Quivik will testify on the 5 interplay between the entities. The evidence will show that BPXP is 7 part of the group and the group is run from the top.

)8:58:19

18:58:24

)8:58:28

)8:58:35

)8:58:38

)8:58:42 8

)8:58:44 9

08:58:50 10

08:58:54 11

)8:58:57 12

08:59:01 13

08:59:06 14

08:59:11 15

08:59:13 16

08:59:17 17

08:59:21 18

08:59:25 19

08:59:29 20

08:59:35 21

08:59:40 22

)8:59:47 23

08:59:50 24

18:59:51 25

If we could have the next slide, please. This organization chart for the board of directors of BP, PLC from the CEO to and down to Andy Ingle, chief executive of exploration and production segment. You will remember a lot of these words from Phase I. Segment; doesn't say, "corporation," doesn't say, "BPXP." Below him is James Dupree, leader of the Gulf of Mexico strategic performance unit. The unit; doesn't say, "corporation," doesn't say, "BPXP."

Zooming in on Patrick O'Bryan, on the bottom, drilling and completions, the next slide. Here we have drilling and completions. Not Drilling and Completions, Inc., not BPXP. job function. All of these names that you remember from Phase I, they don't work for BPXP. Asked in deposition, the majority of the employees said they worked for BP. Almost none of them thought they worked for BPXP. Many of them hadn't heard it. BPXP has no employees; no employees to drill the well and no employees to respond to the well.

The next slide talks about BPXP's response from the spill.

BP the group invented a new organization, a new business unit called 08:59:56 1 Gulf Coast Restoration Organization. It is a business unit of BP)9:00:01 2 America, not part of BPXP. As stated in this demonstrative, the)9:00:07 3 organization reports directly to the group chief and is overseen by 19:00:13 a specific new board committee. The response was run by an)9:00:18)9:00:23 6 organization that reports to the chief of the group. report to BPXP and is not part of BPXP.)9:00:26 7)9:00:29 8

)9:00:35 9

)9:00:41 10

09:00:47 11

)9:00:52 12

09:00:56 13

09:01:01 14

)9:01:05 15

)9:01:08 16

09:01:12 17

)9:01:15 18

)9:01:20 19

)9:01:23 20

09:01:28 21

09:01:31 22

)9:01:35 23

09:01:40 24

19:01:43 25

Now, Dr. Quivik is testifying about these operational links between the BPXP company and the BP group. BP will call Professor Daines, a law professor. What you will see is Professor Daines and Dr. Quivik essentially agree on the facts. They agree that BPXP is completely integrated into the group, that BP conducted and directed operations in the Gulf, including Macondo, that the group conducted and directed the response. The group, not BPXP itself.

Both experts agree that BPXP provided 16 billion in dividends to the BP group prior to the blowout; and that, prior to the blowout, BPXP board of directors resolutions were almost entirely dedicated to paying dividends to other group entities.

So what's the difference between these two experts?

Professor Daines is just here to say that it's okay for a company to operate this way, that it's not uncommon for a company to be set up this way and to exchange their operations this way. And we don't have a problem with that. But this company operates that way. This group operates that way, and that's why the information is relevant to BPXP's penalty.

The last witness, Mr. Ratner, discusses BPXP's finances.

Following on from Dr. Quivik's opinion that BPXP is operationally linked to the group entities, Mr. Ratner's testimony will show that BPXP is financially linked to the group entities as well. It's a two-prong analysis. BPXP is completely financed by other members of the BP group. All of their debt, all of their equity is provided internal to the group.

)9:01:46 1

)9:01:52 2

3

5

7

)9:01:56

19:02:00

)9:02:05

)9:02:10

)9:02:14

)9:02:17 8

)9:02:19 9

)9:02:27 10

09:02:31 11

09:02:38 12

09:02:41 13

19:02:49 14

)9:02:54 15

)9:02:58 16

09:03:05 17

09:03:12 18

09:03:14 19

09:03:19 20

19:03:24 21

09:03:28 22

19:03:32 23

09:03:36 24

19:03:41 25

So let's look at some of the numbers. If I could have the next slide, please. Here we have BP and BPXP finances. Revenues, almost \$400 billion. It is the fifth largest public company in the world by revenues. In fact, as of last June, BP the group could have paid the maximum penalty in this case out of existing cash on hand. Since the spill, you'll see BP is still paying dividends; \$19 billion since the spill. The dividend means there is surplus cash that BP doesn't need for ongoing operations or capital investments. BPXP, prior to the spill, paid \$16 billion to the other group entities in dividends, and the maximum penalty in this case is only 13.7.

In the face of these numbers, BP's expert and Mr. Den Uyl he performs a simplistic calculation and says BPXP's ability to pay is limited to the amount of its internal line of credit with the BP bank. The group is so big they don't use bank. They have their own internal bank. BPXP has a line of credit with this bank, Mr. Uyl just says their existing line of credit is all they'll ever have. It's a static analysis that assumes nothing will ever change. The

)9:03:45 1

)9:03:49 2

)9:03:50 3

)9:03:53

)9:03:58 5

)9:04:03

)9:04:07 7

)9:04:11 8

)9:04:16 9

)9:04:19 10

09:04:23 11

)9:04:27 12

09:04:32 13

09:04:36 14

)9:04:43 15

)9:04:47 16

)9:04:53 17

)9:05:00 18

)9:05:06 19

)9:05:11 20

09:05:16 21

09:05:20 22

)9:05:24 23

)9:05:29 24

19:05:33 25

group will never offer more equity and BPXP will never do anything else.

estimate of the value of BPXP of the company itself. He prepared this value. Of course, there's no public filings about the value of BPXP. It's consolidated into the group. To do this evaluation, he looks to third-party research analysis. That's Wood Mackenzie, but that analysis is about BP assets in the Gulf, not BPXP. And it doesn't include all of the BP assets in the Gulf. Only a portion of it. And he did not perform an evaluation in accordance with any standards, and did no due diligence on the documents he relied on. He relies on an internal BP cash flow statement highly reacted. He has no detail supporting it. He's never seen the redacted parts.

Final topic on BP's ability to pay. BPXP will argue that recent decline in oil prices will impact their ability to pay. By the way, oil prices are up ten percent today. The next slide shows what BP said to their investors. This is what it presented to BP investors last month, December 2014. Price volatility is inherent in our industry. In fact, the last four years have been a remarkably stable period by historical standards. Over time we see this is potentially healthy for the industry overall. It can drive greater efficiency. BP has a good track record of managing through these cycles and we believe we have flexibility to withstand a period of low oil prices. BP is an integrated business. Lower prices should benefit our downstream business and provide some

national offsets. Lower oil prices is good for part of our business. We enter this period with a very strong balance sheet. We're on track to deliver the \$30 billion of operating cash flow planned for 2014." In sum, BPXP can pay any penalty in this case up to the statute maximum without adversely impacting its operations.

Next slide, please. So the last thing I'll talk about briefly are the factors where we are not bringing live witnesses in this phase. The first one is economic benefit. The Court has made finding in Phase I and II -- in Phase I about cost cutting. And cost cutting, that is the definition of economic benefit. So the defendants are wrong when they say the government concedes there's economic benefit. There was. What we're saying is, compared to the severity of this spill, the harms of this spill, the other factors the statutory maximum, the economic benefit is not a driving factor in the Court's analysis of this penalty.

Next, other penalties for the same incident. The only evidence from any party on this will be a stipulation. It's Rec. Document 13725. It's a stipulation outlining all the previous payments related to the oil spill. Many of them are not relevant. Like Halliburton's criminal employee for obstruction.

Other than for BP, BP paid a criminal fine. They paid a criminal fine of over a billion dollars for homicide, lying to Congress, killing migratory birds, and for violating the Clean Water Act, which seems like a very good reason to raise the penalty, but BP is going to argue that the criminal fine should be deducted from

)9:05:36 1)9:05:42 2)9:05:45 3 19:05:49)9:05:55 5)9:06:00 6 7)9:06:04 8)9:06:09)9:06:12 9)9:06:19 10 09:06:23 11)9:06:27 12 09:06:30 13 19:06:34 14

)9:06:39 15

)9:06:42 16

09:06:46 17

)9:06:51 **18**

)9:07:00 20

19:07:05 21

)9:07:09 22)9:07:13 23

)9:07:20 24

)9:07:23 25

19:07:27 1 the civil part. The result's not mandatory because the
19:07:30 2 Clean Water Act provides for civil penalty, and separately, provides
19:07:32 3 for criminal penalties.

Second, if you were to deduct on a dollar-for-dollar basis the criminal fine from a civil fine, it would mean they never paid the criminal fine. It would just sort of evaporate.

Regarding Anadarko's prior penalties for the same incident. The only one that's really relevant to them is Transocean's settlement. Transocean paid a billion dollars civil penalty. And remember, Anadarko owns the well, owns the enterprise. Transocean was their contractor.

Finally, turning to prior violations. As to Anadarko, we will have no evidence on this. There is a stipulation. Rec.

Doc. 13808. Anadarko agrees they have ten violations in the Clean Water Act. That's ten violations of the same law. Nine of the ten in the Gulf of Mexico, all within the years preceding Macondo explosion. And they'll act like these are speeding tickets, but if I had ten speeding tickets in the aim jurisdiction, there will be a question of whether I still have a license to drive.

Turning to BP and with regard to BP as prior violations, it may also be culpability factor. Your Honor, you've ruled we can move in four plea agreements from four prior incidents. There will be no testimony about these. We'll just move them in, and I'll just present this one slide about it before I wrap up.

BP's going to say that these four prior incidents are

19:07:37 419:07:41 519:07:44 619:07:48 7

)9:07:53 8

)9:07:56 9

)9:08:00 10

)9:08:07 12

)9:08:12 13)9:08:17 14)9:08:21 15

)9:08:25 16

)9:08:28 17

)9:08:45 21

)9:08:54 23

)9:08:58 24

09:09:00 25

irrelevant, but let's look at the similarities. In 1999, they
entered a plea agreement for an oil spill in Alaska where they said
in the plea agreement they admitted that no operation would prevent
risk to the environment and they committed to identify, manage, and
avoid environmental risk. And that covered the Gulf of Mexico
operations.

Next year, three incidents in the Grangemouth where they

Next year, three incidents in the Grangemouth where they failed to insure that employees were not exposed to health and safety risks and they failed to follow their own procedures.

A few years later in Texas City an explosion where they failed to follow procedures, did not evaluate risks, ignored known hazards and failed to inform their contractors about the risks.

The year after that in Alaska, a major oil spill are BP failed to mitigate risks, and did not expense such resources to prevent the explosion. A few years after that, Macondo.

And you heard the same story in Phase I with the Bly report findings about failures to follow their own procedures. Followed by a guilty employee and promises to do better. No change in have from this company after the four prior employee agreements.

In conclusion, your Honor, at the close of evidence the United States will ask you to impose a civil penalty. As to Anadarko, the maximum is 3.5 billion, but we don't think you should impose anything that high. But it should be significantly higher than the \$1 billion that Transocean paid.

As to BPXP, the maximum penalty we believe is 13.7

)9:09:05)9:09:09)9:09:16 19:09:19)9:09:23)9:09:27)9:09:28)9:09:31 8)9:09:35 9 09:09:39 10 09:09:43 11)9:09:47 12 09:09:53 13 09:09:57 14 09:10:01 15)9:10:04 16 09:10:07 17)9:10:11 18)9:10:15 19)9:10:21 20 09:10:24 21 09:10:28 22)9:10:33 23 09:10:36 24

19:10:39 25

billion but you should stay close to what maximum amount because of)9:10:45 1 the seriousness of this violation. If you want to reduce off the)9:10:49 2 13.7 billion, we said in our opening papers that you can consider)9:10:53 3 the criminal fine and you should consider payments that were made by)9:10:57 BPXP above and beyond what was required by law. If you put those)9:11:02)9:11:06 6 together, there's \$2 billion there to consider. Again, you should not deduct all of that, but it's factors that you could consider to)9:11:11 7 mitigate the penalty that should be significantly north of 11.7 not to exceed \$17 billion.

THE COURT: All right. Mr. Brock.

MR. BROCK: Okay. Am I mic'ed?

THE COURT: Yes.

MR. BROCK: Thank you, your Honor. Mike Brock for BPXP.

Good morning, Judge Barbier and counsel. We appreciate the opportunity to make this short opening statement to your Honor this morning. I think we have seen through the pretrial statements that we've made and even some of the statements that the government has made today that we've made some progress in terms of understanding where the disputes are in this case and where they are not. And I would like to try to address a few of those issues today for you to hopefully help you, as you receive the evidence, to at least understand our perspective on the issues and the matters that will be presented to you.

I think, Judge Barbier, you gave a very nice summary of where the case is and what we are doing here. I would just note

)9:11:14 8)9:11:25 9)9:11:27 10 09:11:39 11 09:12:09 12)9:12:11 13 09:12:16 14)9:12:20 15)9:12:24 16 09:12:29 17)9:12:32 18 09:12:35 19)9:12:40 20 09:12:44 21)9:12:48 22)9:12:52 23)9:12:56 24

19:12:58 25

that the story for BPXP starts in this phase of the case with the 09:13:03 1 very unfortunate events of April the 20th, 2010. No one will ever)9:13:10 2 say that that was a good day for BPXP. The rig was on fire; 11 men)9:13:15 3 unfortunately lost their lives; there was a lot of confusion; the)9:13:24 term "fog of war" has been used a lot to describe that period of)9:13:30 5)9:13:35 time. But the evidence we will present in this phase of the case is what was going on to prepare for the impacts of the spill even while)9:13:40 7 the rig was burning and searchs were diligently being made for)9:13:47 8 potential survivors in the water.)9:13:53 9

)9:13:56 10

09:14:02 11

)9:14:07 12

)9:14:14 13

09:14:20 14

)9:14:27 15

)9:14:33 16

09:14:38 17

)9:14:41 18

)9:14:43 19

)9:14:48 20

09:14:53 21

)9:14:58 22

)9:15:03 23

09:15:06 24

)9:15:12 25

Immediately upon this incident occurring, BP put its Oil Spill Response Plan into action. It worked cooperatively with the Coast Guard to form a response organization. They worked diligently until the well was shut-in to contain the effects of the spill, to collect oil, to burn oil, to disperse oil. It was work that the Coast Guard and BPXP did together, and it significantly changed the outcome to the environment. And our focus during this trial will largely be focused on those efforts.

We're also going to address some of the issues that the government has raised today, and I think the story from BPXP's standpoint is the story of BP people who came from all over the world to help with this response. People who came out of retirement to help with this response, and stuck with it until the very end.

And I will say to you, your Honor, that we will also present evidence that BP is still on the job in terms of monitoring impacts to the environment, picking up oil when it appears on the

)9:15:16 1

)9:15:22 2

)9:15:22 3

)9:15:29

)9:15:37 5

)9:15:43 6

)9:15:47 7

)9:15:51 8

)9:15:56 9

09:16:01 10

09:16:05 11

)9:16:11 12

)9:16:15 13

09:16:19 14

)9:16:23 15

)9:16:30 16

9:16:33 17

)9:16:38 18

)9:16:44 19

)9:16:46 20

)9:16:52 21

)9:17:00 22

)9:17:04 23

)9:17:13 24

19:17:20 25

shoreline, and doing other things that are beneficial for the economy.

We're going to focus our attention today on many of the factors that Mr. O'Rourke mentioned in his opening. The mitigation factor, seriousness of the spill, BP's important contribution to the community as is recognized in the *Citgo* case as an important factor, and the economic impact on the violator.

I think as we do that, it's important for us to keep in mind -- I think it's helpful to keep in mind that, from our perspective, the Clean Water Act seeks to achieve two primary goals: Deterrence is a factor here, as it is in any penalty statute; that is, to deter the violator -- here, BPXP here -- and other companies engaging in conduct that would cause a release of oil in the future.

But also, we cannot overlook the second very important feature of the Clean Water Act in that it is in place to encourage a rapid and effective response by companies to mitigate the harm and to recognize those efforts when assessing the penalty.

We'll talk a good bit about deterrence in our post trial brief. I want to make a couple of comments about that now.

When you look at what BPXP has done since the day of the spill, it immediately committed resources capturing the oil, burning the oil, skimming the oil, keeping it offshore, doing it in a safe way, cooperating with the Coast Guard, and spent \$16 billion on clean up and collection of oil. It spent close to \$34 billion to date on the various activities that have been involved in the

response to the spill.

)9:17:24 1

)9:17:26 2

3

4

5

)9:17:32

)9:17:40

)9:17:43

)9:17:49 6

)9:17:55 7

)9:18:01 8

)9:18:03 9

)9:18:11 10

09:18:16 11

)9:18:20 12

)9:18:28 13

09:18:33 14

)9:18:37 15

)9:18:44 16

09:18:48 17

)9:18:50 18

)9:18:53 19

)9:18:57 20

09:19:02 21

09:19:07 22

)9:19:11 23

)9:19:17 24

19:19:22 25

You've heard that BP has already been assessed a criminal penalty in the amount of about \$1.2 billion. That's not the total amount of criminal recoveries; the total amount of criminal recoveries is \$4 billion. We will not claim anything over 1.2, but we have paid a significant criminal penalty under the Clean Water Act, and that number of 1.25 or 1.2 should serve as significant deterrence here.

The government says -- I think I've heard them say today, "You didn't do a bad job in the response." If I could turn it the other way, I would say, I think the government is conceding that we did a good job. And I want to be clear in response to the allegation that BPXP is going to be attacking the Coast Guard in this trial. That is not going to occur. We have never said that. You will never hear anything from a BP person other than respect and admiration for the work of the Coast Guard in this response.

Were there challenges? Of course, there were. Were there things that had to be dealt with? Of course, those kinds of things occurred. But we have always said about the Coast Guard that we thought they did a good job in this response. And it's good to hear the government say today that we did a good job, too. And we're going to present that evidence to your Honor in support of what we say should be a significant reduction of the penalty, taking into account the factor that we just discussed, which is the mitigation factor.

The government's position here, your Honor, is BPXP gets no credit
for the \$34 billion that it expended in mitigating environmental and
economic loss, in handling the response and getting the well
shut-in, because those were just things that were legally required
of them. That is not what the Law says. I have here -- and I know
your Honor is familiar with it -- the mitigation factor says that
"the nature, extent, and degree of success of any efforts." That is
what the Court is asked to look at. And I've just got a couple of
quotes here that reflect some of the statements that were made at
the time of the panel of the Clean Water Act in 1978 when it was
amended to include the mitigation factor.

Senator Stafford: "Particularly emphasis should be placed on the extent of mitigation efforts by the discharger in order to encourage prompt and effective clean up."

And Congressman Breaux -- I hope I am pronouncing his name right -- who went on, I think, to become Senator in

Louisiana -- says similarly when he presented this bill to the House that it's important to encourage prompt mitigation of the discharge by making mitigation an important consideration in establishing the size of the penalty.

We don't need congressional history to understand the statute. It's unequivocal. It's easy to read. The statute directs us to look at any efforts. And that's what we would like to do in our opening statement here a little bit and then in our trial presentations, just to demonstrate the level of effort.

1)9:19:23)9:19:30)9:19:37)9:19:41)9:19:46)9:19:50)9:19:55)9:20:01 8)9:20:06 9)9:20:11 10)9:20:17 11)9:20:21 12 09:20:24 13 19:20:28 14)9:20:31 15)9:20:34 16 09:20:37 17)9:20:42 18)9:20:46 19)9:20:50 20 19:20:54 21

)9:20:57 22

)9:21:01 23

)9:21:05 24

19:21:09 25

As I mentioned, immediately upon the reporting of the event on April)9:21:13 1 the 20th, BP put into motion the establishment of the things that it)9:21:21 2 needed to do under its Oil Spill Response Plan. You can see here)9:21:27 3 19:21:31 just a few of the dates that were -- by which important Command posts were set up. The one that was in Robert, Louisiana, was set)9:21:36)9:21:41 6 up almost immediately. But the very important Incident Command Post in Houma, Louisiana, that was responsible for all of the offshore)9:21:46 7 activity, as well as the shoreline of Louisiana.)9:21:49 8

)9:21:55 9

)9:21:58 10

09:22:02 11

09:22:06 12

)9:22:11 13

19:22:14 14

)9:22:17 15

)9:22:21 16

)9:22:24 17

)9:22:28 18

)9:22:32 19

)9:22:37 20

19:22:41 21

)9:22:47 22

)9:22:49 23

)9:22:53 24

19:22:55 25

Admiral Austin, who you will hear from a little later today I think, actually worked in this area right here (INDICATING). And soon after that, Command posts were set up in Mobile, Alabama, all the way down to Miami and Mobile. They took care of coastlines in the northwest of Florida and into Mississippi.

We had the Incident Command Post over in Houston. As your Honor is aware, it had responsibility for the source control issues. And then we had a center in Galveston that was responsible for shoreline in Texas.

I just want to make a brief point about this, because as we go through our presentation, your Honor, we'll talk about what BP's contributions to many of the activities were as the response unfolded. This is Captain James Hanzalik, Federal on-Scene Commander, and this is just an example.

What role did BP play in helping to set up the response organization at the area of command. They rented the facility.

They pretty much did all of the logistics for the facility, all of

1)9:22:59)9:23:02 2)9:23:05 3 19:23:09)9:23:14 5)9:23:18)9:23:23 7)9:23:25 8)9:23:30 9)9:23:35 10 09:23:41 11)9:23:45 12)9:23:52 13 19:23:57 14)9:24:05 15)9:24:13 16)9:24:17 17)9:24:24 18)9:24:30 19)9:24:32 20 19:24:37 21)9:24:41 22)9:24:48 23)9:24:51 24 19:24:56 25

the logistics for housing people, the communications. When you hear about the communication systems that were in place, I don't know what your reaction will be but I was astounded at all of the things that were put into place in the very early days. Everything that needed to be done to set up these command centers and to get the organization in place, BP was involved in; and for many of those things, they took primary responsibility. I mentioned to you that BP got going quickly. Before anything was even known, before we even knew that the well was flowing, BP was marshaling resources to prepare for the worst. By April the 21st, there were 105 personnel mobilized. If we get over to April the 22nd, 266 responders were involved in the response. And you will see that these numbers just go up exponentially. 1,000 personnel by April the 27th; 17,000 personnel and 700 vessels by mid-May; up to 31,000 personnel, 4400 vessels by mid June; and over to July the 15th at the time of well shut-in, by that point in time there were 44,000 people involved in this response. What was BP's contribution to the work force? I'm mentioning this point because I have heard in depositions and seen some of the reports that the government thinks that our contribution wasn't that significant. Mr. O'Rourke referenced that, Well, there were only a couple of thousand BPXP responders during portions of the response. This is a mobilization of resources chart that's dated

May the 10th, 2010. What your Honor will see is that there were

1,000 BPXP responders on that day -- contractors that we hired who

had specialties in response activities and others that had to be 1 trained -- totaled 15,233. Of the sum, 19,000 responders that were 2. working at that time, about 85 percent of them were working on 3 behalf of BPXP or they were engaged as contractors by BPXP. So a very significant contribution in terms of personnel, in terms of the contribution to the work that was being done.

The government has prepared two important reports, Judge Barbier, that we will be talking about during this case. One is referred to as the Incident Specific Response --

Yeah, that's it. Thank you.

-- Incident Specific Preparedness Report, sorry about that. ISPR, I've been calling it ISPR for a while.

The government went out and conducted a large number of interviews of all of the people that were involved in the response, and they prepared a couple of reports summarizing the work that was done.

BP will be referring to these reports a lot in this case because they speak well of BP, they speak well of the Coast Guard, they speak well of the overall response.

This is the conclusion of the government's -- of the IPSR report. BP was very proactive and placed no limits on what was needed to make this response successful.

You'll hear anecdotes of the things that were done to enable this response to be done well. Machine shops that were purchased. Manufacturing facilities where BP fronted money so that

)9:25:05)9:25:10)9:25:22 19:25:26)9:25:33)9:25:39)9:25:41)9:25:48)9:25:52 9 19:26:00 10 09:26:02 11 09:26:05 12)9:26:12 13

8

09:26:14 14)9:26:16 15)9:26:19 16

09:26:23 18 09:26:26 19

09:26:20 17

)9:26:28 20 19:26:33 21

)9:26:37 22

19:26:39 23)9:26:45 24

19:26:49 25

additional equipment could be made for the response. It was expensive to do these things but BP was proactive and placed no limits on what they did.

)9:26:57

)9:27:05

19:27:08

)9:27:11

)9:27:22

)9:27:29

)9:27:35 9

)9:27:39 10

)9:27:45 11

)9:27:50 12

)9:27:52 13

19:27:58 14

09:28:03 15

)9:28:08 16

)9:28:14 17

19:28:20 18

)9:28:24 19

)9:28:27 20

19:28:32 21

)9:28:37 22

)9:28:43 23

)9:28:43 24

19:28:47 25

)9:27:16 6

)9:27:01 2

1

3

5

7

8

The second report that we'll spend a good bit of time in this trial talking about is the Federal On-Scene Commander's Report. And this is the summary of the outcome of this report. They interviewed about 200 people who had leadership positions within the response organization and stated here as their ultimate conclusion: "The Deepwater Horizon Oil Spill Response was ultimately successful due to the unity of effort and perseverance of the more than 1,000 organizations that contributed to this unprecedented response."

That's the conclusion of the government about the quality of the response.

Now, I've heard today that the government believes that we're going to overstate our contribution or we're going to overstate the effectiveness of the spill. I hope that the evidence that you hear from us will not lead you to make a finding of that order. What we want to do in our trial presentation is to recognize the efforts of the Coast Guard. It would not have been successful, this response, without their contribution, but the same is true for BPXP, your Honor. This response and the success that was driven by this response would not have been successful without BPXP's commitment.

When we think about success, we need to think about what were the guiding principles that we would utilize to evaluate the

success of the operation, and there were two principle goals that)9:28:51 1 were set by the response organization, by the Unified Command:)9:28:55 2 Protect the safety of the responders. One of the sayings that we)9:28:59 3 hear about a lot when we interviewed people is "No blood for a tar 19:29:03 ball." Protect the safety of the responders. And protect the)9:29:07 5)9:29:13 6 sensitive Gulf shorelines. Those were the two primary goals of the response. Don't let anybody get hurt, keep the oil off the beaches.)9:29:19 7 What about safety? You've heard Mr. O'Rourke make some references)9:29:25 8 to the number of people that were injured during the response.)9:29:29 9 is the conclusion of the Federal On-Scene Commander.)9:29:34 10

"Safety report: Safety was a focus of the entire response organization. The efforts and commitment to ensure the safety of those who worked on the spill and that of the public is one of the single most notable accomplishments of the Deepwater Horizon response."

09:29:39 11

)9:29:42 12

)9:29:47 13

19:29:50 14

)9:29:54 15

)9:29:56 16

09:30:01 17

09:30:04 18

09:30:09 19

)9:30:13 20

09:30:18 21

09:30:19 22

19:30:23 23

09:30:30 24

19:30:36 25

That list of 900 people, there are a lot of bug bites, a lot of people that got overheated. Sure they did. This many vessels working at sea, this many people working on land with complicated equipment, would there be occasional injuries? Of course, there would. But focus on safety was paramount in this response.

The Deepwater Horizon response produced an exceptional safety record. This activity was done in a safe way. The government has said it was done in a safe way, that the objectives were met. And I am not sure if they're disputing their own report now or they're

)9:30:40 1)9:30:45 2)9:30:48 3 19:30:52 5)9:30:59)9:31:03 7)9:31:08)9:31:15 8)9:31:20 9)9:31:26 10 09:31:31 11)9:31:37 12)9:31:42 13 09:31:52 14)9:31:55 15)9:31:58 16 09:32:03 17 09:32:09 18)9:32:13 19)9:32:18 20 19:32:21 21)9:32:24 22 19:32:28 23 09:32:33 24

19:32:39 25

just pointing out additional details. I am not -- I'm a little baffled by what they're saying. But this is what the government says about the safety record of the response.

Now, what were the things that were being done to address the first issue that I referred to -- the second issue that I referred to, keeping oil off the shoreline? There were a number of techniques that were deployed in a layered system to keep oil off the beach. Skimmers is one of the techniques that you will hear about.

Importantly, you will see, by July of 2010, 76 offshore skimmers were engaged in operations in the offshore environment. That number grew and grew over time, and the government has said to us in their answers to interrogatories, recovery of approximately

160,000 barrels of oil occurred through the use of these skimmers.

In situ burning removed oil from the water surface.

There was an unprecedented number of burn operations that were conducted. You will see some of the metrics here, 264 personnel, 43 vessels, very complex operations. When they would do a burn, there would be multiple vessels in the area; there would be safety officers there; there would be people there to watch for the safety of the environment, making sure that there were no animals that could be exposed. There were complicated protocols that were in place for measuring the toxicity of the air and making sure that responders were not exposed to that. No injuries to wildlife or responders reported during these operations, and 260,000 barrels of oil were removed from the environment as a result of this.

This is what the government says about the success of this program.

19:32:49 2 It proved to be an effective tool for removing large volumes of oil

19:32:53 3 from the water's surface.

19:32:56

)9:33:00

)9:33:04

)9:33:09

)9:33:17 8

)9:33:20 9

)9:33:22 10

09:33:26 11

09:33:31 12

09:33:34 13

09:33:40 14

)9:33:45 15

)9:33:50 16

09:33:54 17

)9:33:58 18

09:34:02 19

)9:34:10 20

09:34:14 21

09:34:19 22

)9:34:24 23

)9:34:28 24

19:34:32 25

5

6

7

Dispersants. There will be a fair amount of discussion about dispersants. They were applied both down at the wellhead as well as on the surface by airplanes and by ships. The US estimates that 770,000 barrels of oil were chemically dispersed, removed from the environment as a result of the use of the dispersants. It was a very effective response tool.

What does the government say about dispersants in their report? "Dispersants were an effective response tool and what prevented millions of gallons of oil from impacting the sensitive shoreline."

Our expert in this case, Captain Frank Paskewich, has looked at overall spill response effectiveness. You heard Mr. O'Rourke say, in the typical case, around 10 to 15 percent of oil is removed. We'll talk to you a little bit in our case in chief about some comparer events that will be helpful to the Court.

In this case, 37 percent -- 37 percent of all oil discharged was removed from the environment. And when we look, Judge Barbier, at the figure of oil that was available to be recovered -- that is, because we're look at one number is what came out, the other number is what had already naturally dispersed, what had burned off, what had evaporated -- the number will be well north of 50 percent, we believe. We're still working on those numbers a little bit based on

)9:34:40 2

)9:34:35 1

77.54.40

)9:34:46 3

)9:34:49 4

)9:34:55 5

)9:34:59 6

)9:35:06 7

)9:35:11 8

)9:35:17 9

)9:35:22 10

09:35:26 11

)9:35:32 12

)9:35:35 13

)9:35:38 14

)9:35:45 15

)9:35:53 16

)9:35:57 17

09:36:03 18

09:36:05 19

)9:36:10 20

)9:36:15 21

)9:36:21 22

)9:36:24 23

)9:36:30 24

19:36:34 25

your Honor's recent order on the volume of oil. But it was a significant number of barrels of oil that were removed and kept off of the sensitive shoreline.

This is again Captain James Hanzalik: "Overall, burning, dispensing and skimming was successful. If you look at shoreline impact, it is relatively minimal compared to the amount of oil spilled."

Shoreline clean-up techniques. Unfortunately, some oil did get to shore, to the beaches, and to the marshes. There was a massive effort that was put forth to clean up the beaches. There were aerial overflights. There were what we refer to as SCAT teams that walked the beaches. 4,380 miles of beaches were walked. You can see the number of teams and the number of person days.

I just want to show you this briefly just to show what the recovery was of the beaches and the marshes. This slide here depicts every single area in the Gulf that was oil at any time. We call this "cumulative oiling." So if it was ever oil on the beach at any point in time, that's what this slide shows. So if we call this out and then we --

I'm sorry. This is the maximum oil level here, this is all comers, all time, this is where we have maximum oiling. And you can see that, over in the Barataria Bay and the barrier islands, there are areas that do have -- it's a small percentage but that are heavily oiled. But if we look at this over time, you can see the efforts that were being made to clean up as well as the natural processes that were in place, how the environment recovers, and does

very well. By 2011, the areas of heavy and moderate oiling have)9:36:39 1 almost disappeared. And by May of 2012, the Gulf Coast was back to)9:36:45 2 baseline condition. 3

> Still areas where there was oil. There were still areas where they couldn't get to it and clean up or small areas where the decision was made that, if you removed the oil, it could cause more damage than it would be if you just left it there to naturally weather. But there was a significant recovery of the shoreline reflected in this chart.

So the active response ended with regard to the shoreline. state had a different date and all the government standards were met as to the clean up, and you can see the dates here, April of '14 for Louisiana; Mississippi, June of '13; Alabama, June '13; Florida, June of '13. And then there was significant DOI land where active clean up was ended May of 2013.

I want to point out that, even though there is no active oil to be cleaned up at this point, BPXP is still on the job. We've got two "fire houses," we refer to them as, where we have about 30 personnel who are on standby in various shifts. And if notified by the Coast Guard or notified that they need to respond to oil that's on the shore, they respond immediately. They go out, they pick it up, and they deal with it. Their utilization rate or time is around ten percent. There are not many calls occurring at this point in time, but we are still standing by to do that in the event that it is necessary.

)9:36:55 19:36:56)9:37:01)9:37:05)9:37:09)9:37:13 8)9:37:17 9)9:37:19 10 09:37:24 11)9:37:29 12)9:37:35 13 19:37:39 14

5

6

7

)9:37:49 16)9:37:54 17

)9:37:59 18

)9:37:45 15

09:38:03 19 09:38:08 20

09:38:14 21

09:38:18 22

)9:38:24 23

)9:38:28 24

19:38:32 25

)9:38:33 1)9:38:39 2)9:38:49 3 19:38:55)9:39:00 5)9:39:07 6 7)9:39:10)9:39:15 8)9:39:21 9)9:39:27 10 09:39:35 11)9:39:41 12)9:39:47 13 19:39:50 14)9:39:57 15 09:40:03 16 09:40:09 17)9:40:15 18)9:40:19 19)9:40:23 20 19:40:30 21)9:40:35 22)9:40:40 23)9:40:43 24 19:40:51 25

Let's turn quickly to environmental impact. On this issue, I want to be clear now that there was significant impact to the Gulf region. No one disputes that. Oil reached the shorelines; it caused injury to the marshes; it caused injury to birds; it caused injury to other wildlife. The issue that we want to make sure the Court understands or hope the Court will understand as part of this presentation today and trial is that we now have a massive amount of data that demonstrates that the Gulf did not suffer what was feared in April, May, June, July, August of 2010. There has been no collapse of the ecosystem. In fact, we know now that the incident did not cause significant adverse impact to populations. We have a lot of data now about shellfish and fish and other -- and the species of the Gulf. And we'll present that evidence to you. what we'll see when we do is that, when we look at the important data related to the populations of the different species, that they're doing pretty well. They're within their historical numbers, if you look back in time. And we think that that is in part due to the robustness of the response. It's due somewhat to the environment and the conditions in the environment that were present during the spill. But it is, it is the case that the injury was not nearly what folks feared back in 2010. Why is that? Just a couple of data points here. As I mentioned, there's been a massive amount of information that's been collected over time. This is a chart that shows water sampling that was taken during the period of time of May 2010 to July 2012. There are about

18,000 samples here and if I go to the next chart, you will see)9:41:01 1 that, of these 18,000 samples, using the EPA benchmarks for)9:41:07 2 toxicity, 17,000 of the samples that were taken during the response)9:41:16 3 were safe for aquatic life. That's using EPA benchmarks. 19:41:22 The same is true for sediment samples, that's another environmental concern.)9:41:29 5)9:41:34 When we look at this, we have to think about what)9:41:37 7

)9:41:43 8

)9:41:51 9

09:42:00 10

09:42:07 11

)9:42:11 12

09:42:19 13

19:42:23 14

)9:42:29 15

)9:42:32 16

09:42:40 17

)9:42:45 18

)9:42:50 19

)9:42:57 20

09:43:01 21

09:43:09 22

)9:43:15 23

)9:43:18 24

19:43:21 25

exposure has occurred to potentially toxic components of hydrocarbons. Again, over two years of sampling and the outcome is very similar. Using EPA benchmarks, 98 percent of the samples were safe for aquatic life. So it's a very, very significant finding in terms of what the exposure was.

Why is it that there has been such a nice recovery of the Gulf? One of the things that you'll hear about in this case is that the Gulf of Mexico is a hydrocarbon-rich environment. What does that mean? There are seeps out in the Gulf of Mexico that produce on the order of up to about 1.2 million barrels of oil into the Gulf every year. And as a result of that, there are bacteria who have -- that have evolved to consume hydrocarbons. So when hydrocarbons are in the water, this bacteria proliferates and it actually consumes the oil.

It's also the case that this -- the oil in this case was a very light oil. And light oil will also -- will also not have the same sort of toxicity and length of life that the heavier oils will.

And of course, we have weathering and evaporation that occurs. When the oil does get to the surface, there is a significant weathering and evaporation. And the response efforts, I

think, also are significant to this.

So Mr. O'Rourke has said that BP's position is that the available data reflects that there is limited impact to wildlife.

And I agree with that. And I just put a few metrics here for your Honor to consider.

As we start the case, this right here is a published article in the peer-reviewed literature. There is an absence of measurable negative impacts among populations looking at fish.

For birds, from the US live bird oiling data collection of the birds that were observed in the relevant period, over 99 percent have no visible oil.

There were a number of sea turtles that were picked up.

Of the ones that were, 400 or so, through a very vigorous, very effective rehabilitation program, almost all were returned to the Gulf.

Coral, we mentioned coral. Most known deepwater coral communities in the Gulf of Mexico do not appear to have been acutely impacted by the spill. That's a Fisher study. This study does identify a few corals that have been affected and we will talk about that in this case. But most do not appear to have been affected.

You heard about dolphins from Mr. O'Rourke. No medical records identified not a single dolphin that died as a result of the oil. And he mentioned that there were dolphins that were sick in Barataria Bay. There was an event that was being tracked on dolphins that began before the *Deepwater Horizon* spill occurred. So

)9:43:30 2)9:43:37 3 19:43:42 4)9:43:48 5)9:43:49 6)9:43:53 7)9:43:56 8)9:44:00 9)9:44:05 10 09:44:10 11)9:44:12 12)9:44:16 13 19:44:21 14)9:44:28 15

)9:43:26 1

)9:44:30 16)9:44:35 17)9:44:39 18

)9:44:43 19)9:44:46 20

)9:44:55 22

)9:44:51 21

)9:44:58 23

)9:45:03 24

)9:45:07 25

)9:45:12 1

)9:45:16 2

)9:45:20 3

)9:45:22 4

)9:45:31 5

)9:45:36 6

)9:45:43 7

)9:45:48 8

)9:45:52 9

)9:45:56 10

09:46:01 11

09:46:06 12

)9:46:11 13

)9:46:15 14

)9:46:20 15

)9:46:25 16

)9:46:31 17

)9:46:32 18

)9:46:42 19

)9:46:48 20

)9:46:53 21

)9:46:58 22

)9:47:04 23

)9:47:09 24

)9:47:14 25

there was already a trend and it was already being studied that there was an event of some kind going on with dolphins. And that is still under study.

We do want to convey, your Honor, that BPXP is still there, still working on environmental issues. The money that has been spent to study the environment to date to collect data and analyze it is on the order of about a billion dollars, which BP has paid for. BP has also engaged in what is referred to as an "Early Restoration Program," so there are a number of projects that have been negotiated with the government and the trustees to ensure and help the environment recover. And that money will be spent and those activities will occur even before the NRD assessment occurs.

And then \$500 million was used to fund an independent research group through the Gulf of Mexico. And BP has -- does not control the research that is done there. It does not make the decisions as to what will be done. It is truly -- it is truly independent research.

What about economic mitigation? I want to just address a few things here in summary fashion. Shortly after the spill, BP committed about \$25 million to each of the Gulf states to help them with their response needs. It increased those amounts over time. \$230 million was advanced to the states for tourism promotion. Those amounts to Louisiana, Mississippi, Alabama, and Florida, in most instances, doubled their tourism budgets for the states. And we'll see in this case that this had a very significant impact on restoring tourism to

1 the Gulf states.

> There's a seafood testing and marketing program, I think your Honor has heard about. The rig workers fund was established and \$100 million was placed in that. Gulf Coast claims, 11.2 billion.

One point I would make about this is that there was about \$400 million that was distributed even before the Gulf Coast claims facility was set up so that money could get out in a quick way.

And the Vessels of Opportunity Program, we will talk about a good bit, close to \$600 million. This provided important work for fishermen who could not carry out their normal activities during the response. And actually, the Vessels of Opportunity Program proved to be very beneficial to the work of the response. Citgo tells us that the company should -- BPXP in its role in the community should be looked at as a whole, as opposed to just looking at it in the context of the event.

I just want to convey a few things to you, please, about BP's significant role in the Gulf. BP employs, provides for employment of about 2300 high-paying jobs. That's about \$483 million of employee compensation for the period of time 2009 to 2013. BPXP has paid about \$5 billion to the government in royalty, bonus, and rental payments. They say that the company is not a significant contributor in the Gulf. I just have to take issue with that. For this period of time, BPXP has spent approximately \$13 billion in capital expenditures in the Gulf of Mexico. It's a

)9:47:20)9:47:21 2)9:47:24 19:47:29)9:47:34)9:47:36)9:47:40)9:47:46 8)9:47:51 9)9:47:54 10 09:48:00 11 09:48:06 12 09:48:10 13 09:48:13 14

)9:48:24 15

)9:48:29 16

09:48:33 17

)9:48:37 18

)9:48:43 19

)9:48:48 20

)9:48:55 21

09:49:01 22

)9:49:05 23

09:49:10 24

19:49:14 25

3

4

5

7

99:49:19 1 significant company, it makes a significant contribution. This just characterizes BP's significant role in the Gulf.

)9:49:31

19:49:34

)9:49:39

)9:49:44

)9:49:48

)9:49:53 8

)9:49:58 9

)9:50:03 10

09:50:06 11

09:50:10 12

)9:50:18 13

09:50:23 14

)9:50:28 15

)9:50:37 16

09:50:43 17

)9:50:47 18

)9:50:52 19

)9:50:57 20

09:51:02 21

09:51:06 22

)9:51:16 23

)9:51:20 24

19:51:26 25

3

4

5

7

We have to keep in mind when we think about Gulf of
Mexico production that most of the production now, Judge Barbier is
in deepwater. The shallow water wells have mostly -- they're not as
productive as the ones in deepwater. Deepwater is also the place
where it's expensive to develop -- to develop resources. And that's
why the number is so high for BP's capital expenditure because, to
stay in business in the oil business, you have to continually be
replacing your resources.
Vendor spending, not only does it provide significant employment for

its employees, this chart here shows that BPXP spent over \$16 billion on its contractors in the same period of time, 2009 to 2013, providing for significant employment.

Just a word today on the issue of BPXP and the analysis that the government has given about its parent. In this case, as we know, the government is not seeking to pierce the corporate veil. They have said that. When we make a statement that we're not seeking to pierce the corporate veil, that means a subsidiary sits here and the parent sits here, that we don't reach through the veil to the assets of the parent. That's the corporate veil.

That means and it's a general important principle of corporation law that, if you have an investment of \$100, you only risk the \$100 that you invested, not your entire portfolio of assets. And in this case, there's going to be a lot of agreement between Mr. Quivik and

And

Mr. Daines. Parental control of the subsidiary is proper; that's)9:51:31 1 the way they're set up. Payment of dividends by a subsidiary is)9:51:39 2 proper. That's the way corporations are set up; that's the way they)9:51:42 3)9:51:46 do business. It's the case that large multi-national corporations with hundreds of subsidiaries usually do business through three or)9:51:49)9:51:53 four business units. That's the way they're organized and the legal function is carried out by the corporation, the subsidiaries.)9:51:57 7 we'll talk about that a good bit in the case. 8)9:52:01 Discretionary injections of capital by the parent are proper.)9:52:04 9)9:52:10 10 don't mean that the veil should be pierced. And a parent board is 09:52:14 11 always going to be more active than a subsidiary board.)9:52:18 12 that? A subsidiary has a single shareholder; a public company has)9:52:24 13 thousands or millions of shareholders. And so the Corporate 09:52:29 14 governance of the two is very, very different, and we'll talk about 09:52:33 15 those issues during this trial.)9:52:38 16 Now, I want to turn, your Honor, to the issue of the economic impact on the violator. As we talked about, the violator and sole 09:52:43 17)9:52:49 18 defendant here is BPXP and BPXP only, and the question for this trial is:)9:52:55 19 What would be the impact on the violator now? You'll)9:53:02 20 have under consideration a penalty for BPXP, and to understand the impact of that penalty that is imposed, the first step we think is 09:53:07 21)9:53:12 22 to understand the condition of the company before any penalty is)9:53:17 23 assessed; that is: What is their condition today? So what we want)9:53:23 24 to talk about here, over the next ten minutes or so, let's see what its condition was after it went through the incident and expended 19:53:29 25

1 the monies that we have talked about, what it looks like today in 19:53:39 2 2015. And then we'll look at the model for what it will look like 19:53:42 3 going forward.

19:53:44

)9:53:48

)9:53:53

)9:53:57

)9:54:00

)9:54:07 9

)9:54:14 10

09:54:22 11

)9:54:26 12

)9:54:34 13

09:54:39 14

)9:54:42 15

)9:54:47 16

09:54:53 17

)9:54:59 18

)9:55:06 19

)9:55:10 20

09:55:13 21

)9:55:18 22

)9:55:27 23

)9:55:31 24

19:55:41 25

5

7

8

First of all, I mentioned this number. \$14 billion is the number that BP has spent on response and clean-up activities. As I mentioned earlier, that's not the only thing they spent money If you look at the chart here, you'll see that progression of what has been spent by BPXP over the period of time leading to the fourth quarter of 2013. It's a massive amount of money. So when we look at BPXP in light of these costs, the first question that we think needs to be answered is: What are the funds that are still available to BPXP in light of these costs? And to answer that question, we will present testimony from Mr. Bruce Den Uyl, who has over 30 years of experience providing valuation and financial, economic consulting services, has spent a lot of time in the energy industry. And what he will describe for your Honor is that, after the negative change in cash is accounted for in the second half of '14 and the first half of '15, in 2015, based on projections, that if we assume that a judgment is taken in 2015 -- and I understand that that's completely within your Honor's discretion, but we've looked at it as something that would occur in 2015 -- the funds that BPXP has available is \$2.277 billion.

Now, that, your Honor, is a number that represents available credit. That's what they could pay in 2015 based on these projections, but keeping in mind that that 2,000 -- that

)9:55:46 1

)9:55:52 2

)9:55:57 3

)9:56:04

)9:56:06 5

)9:56:12

)9:56:17 7

)9:56:21 8

)9:56:31 9

)9:56:33 10

)9:56:41 11

09:56:46 12

)9:56:51 13

09:56:54 14

)9:56:57 15

)9:56:59 16

19:57:02 17

)9:57:05 18

09:57:07 19

)9:57:14 20

)9:57:17 21

)9:57:20 22

)9:57:24 23

)9:57:28 24

19:57:32 25

\$2.2 billion also needs to stand for the support of the operations of the company. So that's the short-term picture.

What about the long-term picture? We have used Wood

Mackenzie, who is a global leader in commercial intelligence for the
energy industry. They have hundreds of people who analyze the value
of resources in the oil and gas business. We are using a
third-party asset valuation that they have conducted of the assets
that have been -- assets that are in the Gulf of Mexico portfolio.

We were interested to know what the plaintiff's expert,
Mr. Ratner, thinks about Wood Mackenzie and using them as resource
here. And we asked him the question: "You would expect equity
investors to rely on things like Wood Mackenzie analysis, correct?

"I think so, with respect to the individual Gulf of Mexico assets that were valued by Wood Mackenzie as cited by Mr. Den Uyl.

"Have you developed any opinion that any of those asset valuations are incorrect?

"No."

So there's going to be no dispute about the Wood

Mackenzie numbers. It's also the case that we wanted to know from

Mr. Ratner: "Have you done your own valuation from BPXP?"

We heard from the government today that BPXP is where the focus should be. What has he done? I'll just read this to you. I have the tape keyed up but just in the interest of the time.

"You knew the valuation of BPXP would be relevant to the

question of future funding or financing at the time you issued your)9:57:35 1 report. Correct? But you did not perform a valuation of BPXP.)9:57:38 2 know that to be true. 3

> "Yes. Correct. I didn't -- I did not perform a valuation."

So the numbers that we present to your Honor are going to be the only valuation that you are going to receive, and we know from Mr. Den Uyl that he doesn't take issue with the asset valuation.

So I would like to just walk you through what we did in August very quickly and the changes that were made to the BP position when we get over to December.

This number right here, 38.3 billion, that's a valuation of all of the assets of any of the BP companies in the Gulf of Mexico. That's the work that they do. An adjustment has to be made for that because BPXP doesn't own this entire \$38.3 billion asset. They own 85 percent of that, so we take off 5.4. There is an operating expense adjustment that is made to the Wood valuation.

There is going to be an area of dispute in the case. Wood Mackenzie does not have access to the operating expenses of the company when they do their valuation. We've made an adjustment for that, and there will be an issue about that particular issue in trial.

BPXP has intercompany debt of 3.4 billion, intercompany payable of 1.6, future incident provisions and payables of

)9:57:44 19:57:46

)9:57:49 5)9:57:51 6

7)9:57:54)9:57:59 8

)9:58:03 9

)9:58:05 10

09:58:09 11

)9:58:13 12

)9:58:16 13 09:58:20 14

)9:58:28 15

)9:58:33 16

09:58:41 17

)9:58:47 18

)9:58:53 19

)9:58:58 20

19:59:02 21

09:59:06 22

)9:59:10 23

)9:59:11 24

19:59:17 25

)9:59:25 2

)9:59:21

)9:59:30

1

3

7

)9:59:34 4

)9:59:38 5

)9:59:42)9:59:48

)9:59:53 8

)9:59:59 9

10:00:06 10

10:00:12 11

10:00:18 12

10:00:22 13

10:00:26 14

10:00:31 15

10:00:36 16

10:00:39 17

10:00:44 18

10:00:50 19

10:00:54 20

10:00:59 21

10:01:06 22

10:01:07 23

10:01:12 24

10:01:15 25

\$4 billion if we are not including any provisions for CWA here. So we come to \$16 billion as the valuation of BPXP in terms of the report that we presented in August.

As your Honor is aware, there's been a significant change in the oil price since then. We have appreciated the opportunity to present a new report to you on the impact that the oil price has on BPXP's valuation. And if you look at this, you see there's a lot of variation in the price of oil, even in the year period of time January of 2010 coming over to 2015. But what we know is we've had a significant change in the price of the commodity because of oversupply in January of -- by January of 2006. That's the new reality that we have here.

What the revised expert report does, your Honor, is it takes -- this is really an important feature of this. Present oil price is important to the analysis. It is an important feature. But the more important feature in looking at valuation when you're saying, "What is the revenue stream going to be out for 45 years? What are the future prices being predicted for oil in the market?"

This blue line here represents the future prices of oil over time as they were being expressed in late December, early January. And you can see that that's up in the \$6,465 barrel range order.

Then Wood Mackenzie, in the report that we furnished and provided to the Court when we originally filed the report, has a sensitivity analysis. That is: What if the price of oil goes down,

what would a worst case look like? And what is the sensitivity?

And you can see that their worst case -- we're close to what we're

lo:01:30 3 looking at now. That is, basically their worst case was based on

\$65 or \$66 barrel oil at this time -- is very close to what people

are actually paying on the market for oil for contracts to deliver

out in the future.

The Wood Mackenzie analysis, we needed to talk to Mr. Ratner about that because we wanted to know if they had any disagreement with that sensitivity analysis and we asked him and he did not.

So very quickly, I just want to go through what we're looking at now. This board right here depicts it probably as good as anything I can probably furnish to your Honor.

If we look at the adjustment for the future prices of oil and the present price of oil, we come down by about \$12 billion. So that the value of the assets is now 25 instead of 38. And then if we make the other adjustments that we talked about, operating expenses and these things that are fixed, 3.4, 1.6, and 4, we get down to a valuation of BPXP of \$5.1 billion.

And, your Honor, DOJ knows that this is not -- that BPXP cannot afford a penalty in the range that they're asking for. And so that's why they're saying, "Look to the parent."

That's the issue that is framed here. And I think the only point --

THE COURT: I hate to interrupt but I should have asked you this question because I think this is going to be relevant in

10:01:25 10:01:30 0:01:34 10:01:38 10:01:44 10:01:48 7 10:01:56 8 10:01:58 9 10:02:04 10 10:02:08 11 10:02:18 12 10:02:18 13 0:02:22 14 10:02:28 15 10:02:35 16 10:02:39 17 10:02:46 18 10:02:52 19 10:03:01 20 10:03:04 21 10:03:10 22 10:03:14 23 10:03:16 24

10:03:19 25

10:03:23 this case and because of these recent developments: Is there any reason that any penalties can't be structured to be paid over a 10:03:27 2 10:03:31 3 number of years? MR. BROCK: We have talked about that, your Honor, and I 0:03:32 do not know the answer. I don't know the answer to that. 10:03:35 5 10:03:38 THE COURT: The government can certainly agree to that, 6 10:03:40 7 right? MR. BROCK: I suspect they might could. But we've had no 10:03:42 8 discussions with them about that, and we don't know of any precedent 10:03:47 9 for that. I guess, as I've looked at it, I guess I've thought of it 10:03:50 10 10:03:55 11 as a judgment that would be entered. I don't know if I've ever seen 10:03:59 12 one that was structured, but I don't think I could rule out, as I'm 10:04:01 13 standing now, that as being something that could be possible. 10:04:05 14 THE COURT: Nothing to preclude that? 10:04:07 15 MR. BROCK: I don't have a precedent either way. 10:04:10 16 THE COURT: Mr. O'Rourke, do you want to comment on that? 10:04:12 17 MR. O'ROURKE: I am aware of at least one Clean Water Act 10:04:15 18 judgment entered by a federal court that required payments over 10:04:20 19 time. And --10:04:21 20 THE COURT: Seems like that's certainly relevant, that question, that issue, to -- if this becomes a factor as to what the 10:04:23 21 10:04:31 22 company can afford to pay all in one swoop. But anyway... 10:04:36 23 MR. BROCK: All right. Thank you. 10:04:37 24 I'll just wrap up with this. When an investor -- either a

parent corporation or a private investor, if you go to a market to

10:04:41 25

look at equity, what they would look is they would look at this 5.1.

10:04:46

2.

3

5

6

7

10:04:50

10:04:53

0:04:57

10:05:02

10:05:08

10:05:11

10:05:13 8

10:05:14 9

10:05:17 10

10:05:21 11

10:05:27 12

10:05:31 13

10:05:33 14

10:05:40 15

10:05:45 16

10:05:51 17

10:05:56 18

10:05:56 19

10:06:00 20

0:06:05 21

10:06:16 22

10:06:22 23

10:06:27 24

10:06:31 25

And I will make one other point: If the price of oil goes way back up between now and the time of a judgment, this number is going to change. I think you will have the tools from our trial presentations at least to give rough justice to what an valuation would be if the changes were made. If you wanted to have a discussion about that later, we could but we could only present what we know today.

But when an investor looks at this, they are going to look at a lot of things. They are going to look at the amount of the judgment. We also know that BPXP still has cases to deal with, state and local cases. We've got the Alabama test case that they're working up. Louisiana and Mississippi and others have them.

There's still some OPA issues to deal with, including the test cases that we've talked about from moratorium. There's NRD and that's a case that will be filed some day and it will be something that BPXP will have to deal with. And as I mentioned, there's the Clean Water Act.

From our point of view it's the Clean Water Act where the Court has discretion. These are compensatory components. This is where the Court has the discretion to fashion a fair penalty. The government would say that the Court should speculate as to a source of funding and its terms, they're not going to provide any model or analysis as to the cost of such funding, its components, or its impact. They're not considering this valuation. They're not

considering the contingent liabilities in assessing the ability of 10:06:36 BP to track additional funding. 10:06:40 2

> And just from a policy standpoint, the last thing I would like to convey to the Court, BPXP did the right thing bringing it to this financial condition. They expended the funds. They committed to do it and they did it well. The government now says, because the parent contributed to the terrific outcome that occurred in the response, they're obligated to contribute again now. And we just don't think in any world that's a good policy. And I think that would be the last thing I would share with the Court. I thank you for the time and we look forward to presenting our case.

> > THE COURT: All right. Thank you, Mr. Brock.

Ms. Kirby?

MS. KIRBY: Is it working?

THE COURT: I think so.

MS. KIRBY: Good morning, your Honor. May it please the Court, Ky Kirby on behalf of Anadarko.

Anadarko's role in this case is straightforward and We are here today because the Court has already ruled that, as a co-owner of the Macondo well, Anadarko is strictly liable for a civil penalty under the Clean Water Act. But that ruling by itself says nothing about whether a penalty should be assessed.

The Clean Water Act CWA says that a party shall be subject to a penalty, which is a far cry from saying "shall pay a penalty." Whether and what a penalty should be is committed to the Court's

10:06:44 0:06:50 10:06:58 10:07:03 10:07:09 10:07:16 8 10:07:22 9 10:07:27 10 10:07:32 11 10:07:35 12 10:07:37 13 0:07:40 14 10:07:57 15 10:07:58 16 10:08:01 17 10:08:16 21

3

5

7

10:08:05 18 10:08:08 19 10:08:11 20

10:08:21 22

10:08:28 23

10:08:34 24

10:08:40 25

discretion and must be tailored to a particular defendant's conduct and circumstances. It is to be guided by the goals of the Clean Water Act which is, everyone agrees, including the government, are to punish violators and deter future violations.

The Clean Water Act gives us a road map for making this evaluation. It sets forth eight factors that the Court is to consider. But the problem here -- and this is where the case is really unusual -- is that most of those factors are irrelevant to Anadarko as a non-operator.

One factor that is extremely relevant, that is culpability or wrongful conduct. As this Court has repeatedly held, Anadarko was not culpable for the events that led up to, occurred on, and followed April 20, 2010. That ruling removes any reason for punishing Anadarko.

Well, what about deterrence? We also believe, your Honor, that there is no basis for a deterrence-based penalty because Anadarko committed no act that needs to be deterred. Anadarko will elicit expert testimony that a penalty is not justified under traditional economic theories of deterrence.

Professor Sunding, an economist and an authority on the economics of deterrence and environmental penalties, will testify that the damage provisions of the Oil Pollution Act provide ample deterrence here because they assure that the violator will address the harms caused by the violation.

This is particularly true here where the Court has already

 10:08:49
 2

 10:08:54
 3

 10:08:58
 4

 10:09:02
 5

 10:09:06
 6

 10:09:11
 7

 10:09:15
 8

 10:09:20
 9

 10:09:22
 10

 10:09:24
 11

 10:09:31
 12

 10:09:36
 13

1

10:08:44

10:09:46 15

0:09:43 14

10:09:54 17

10:09:59 18

10:10:05 19

10:10:13 21

10:10:17 22

10:10:22 23

10:10:26 24

10:10:29 25

allocated fault for the damages. But if that isn't enough and the Court is looking for additional deterrence against a non-culpable, non-operator, Anadarko has already paid \$4 billion in damages and millions more in mitigation.

penalty, and that is to remove any economic benefit that may have

Now, there is a second reason for deterrence-based

10:10:33

10:10:38 2

3

10:10:42

0:10:47

10:10:49

10:10:54 6

10:10:58 7

10:11:03 8

10:11:10 9

10:11:15 10

10:11:21 11

10:11:27 12

10:11:31 13

10:11:35 14

10:11:40 15

10:11:43 16

10:11:52 17

10:11:54 18

10:11:58 19

10:12:03 20

0:12:07 21

10:12:10 22

10:12:16 23

10:12:20 24

10:12:21 25

been realized from the violation. In this case, the government has conceded that any economic benefit to BP, let alone Anadarko, is merely background noise, and there has been no finding that Anadarko received any benefit or saved any cost as a result of any violation. Now, Professor Sunding also will testify that the penalty doesn't serve the deterrence goal of the Clean Water Act and it's not economically rational. And in fact, will testify that, if a penalty is warranted it should be assessed against the culpable operating party, not the non-culpable non-operator. Now, since a penalty is not warranted by the twin goals of the Clean Water Act, punishment and deterrence, the government presents a different theory. Its theory is that a \$1 billion-plus penalty should be assessed to send a message. But what's the message? That a non-operator should be punished for doing no wrong? That a non-operator should be forced to intervene in the offshore operations on a rig? That is a risky, cavalier, and unprecedented approach that will have negative consequences both on the rigs and beyond.

Ken Arnold, Anadarko's second expert and a world-renowned expert on

safety, who has devoted his career to trying to improve safety on offshore facilities, will testify that penalizing a non-operator will not improve safety but will impede it. He will testify that trying to incentivize nonoperating parties to intervene in offshore drilling operations will not only blur lines of authority but it will delay and impede time-critical -- time-sensitive, critical decisions.

10:12:26

10:12:30 2

10:12:36

10:12:41 4

10:12:47 5

10:12:51 6

10:12:56 7

10:12:57 8

10:13:01 9

10:13:06 10

10:13:11 11

10:13:15 12

10:13:20 13

0:13:26 14

10:13:31 15

10:13:33 16

10:13:37 17

10:13:39 18

10:13:43 19

10:13:50 20

10:13:55 21

10:14:00 22

10:14:04 23

10:14:07 24

10:14:11 25

He also will testify that federal agencies responsible for offshore safety on offshore facilities have passed new regulations since Macondo, and those new regulations make clear that only the operator can ensure that the rules and regulations are followed. Those new regulations embrace and promote the approach that it is the operator who must create the culture of safety across the entire operation that will produce a safe and productive environment.

Conversely, there have been no new regulations that affect non-operators.

Now, Professor Sunding will testify as well that, if
Anadarko is penalized, it may deter future investment in offshore
Gulf of Mexico operations by non-operators who, of course, are
diverse in a competitive marketplace. In fact, Professor Sunding's
studies indicate that we already are seeing a retreat in
non-operating investment in the Gulf and an increase in
concentration in lease shares, which should concern even the
government.

So how does the US justify its \$1 billion-plus demand 10:14:12 against Anadarko? Not with any evidence but with a tortured analogy 10:14:18 2 to Transocean. The argument goes that that, if Transocean paid a 10:14:24 3 10:14:31 4 billion dollars to settle its liability at Macondo, Anadarko should pay more. The flaws in this analogy are self-evident and don't 10:14:34 10:14:40 6 deserve lengthy discussion this morning. But let me point out two reasons why any amount paid by Anadarko is require -- I mean, pardon 10:14:43 7 me -- Transocean is irrelevant to Anadarko. 10:14:48 8 First of all, Transocean's payment was a settlement. 10:14:51 9 No

10:14:55 10

10:15:00 11

10:15:01 12

10:15:06 13

10:15:11 14

10:15:16 15

10:15:22 16

10:15:27 17

10:15:30 18

10:15:36 19

10:15:40 20

10:15:45 21

10:15:50 22

10:15:55 23

10:16:00 24

10:16:02 25

First of all, Transocean's payment was a settlement. No evidence even remotely suggests that Transocean's settlement strategy should apply to Anadarko.

Secondly, this Court has found Transocean 30 percent liable.

Transocean owned and operated the rig. Transocean even pled guilty and paid an additional criminal fine for its conduct in connection with Macondo. So how can Anadarko and Transocean be similar?

In short, your Honor, any comparison between Transocean and Anadarko is a world class stretch.

Not even the MOEX offshore civil penalty of \$90 million can serve as a benchmark here. Like the Transocean payment, that was a settlement that occurred years ago before the Court ever ruled that the non-operators for the Macondo well were not culpable, and it saved MOEX the cost of years of litigation. I can assure you that if MOEX was here today it would be saying "\$90 million is too much for a non-operator to pay in penalty."

Now, the government has an expert who intends to testify that

Anadarko can pay a million dollars -- a billion dollars or more in a penalty. But he will admit that every dollar that is paid in the penalty takes away from Anadarko's operations and capital expenditures. And that expert relies on projections that were created in March of 2014 when the forecasted oil price was \$90 for 2016:31 6 2015 and 2016.

10:16:34 7

10:16:37 8

10:16:42 9

10:16:49 10

10:16:53 11

10:16:54 12

10:16:59 13

0:17:04 14

10:17:10 15

10:17:15 16

10:17:18 17

10:17:23 18

10:17:29 19

10:17:33 20

10:17:38 21

10:17:42 22

10:17:47 23

10:17:54 24

10:18:00 25

Well, we all know that we live in a different world today. Those prices have declined by 50 percent since June of last year. Those prices drive the engine of Anadarko's growth and profitability, and slashing them by 50 percent has an impact on Anadarko.

The bottom line is that the full economic impact of a penalty on Anadarko is as unknown as the future path of oil prices. But since a penalty would serve none of the goals of the Clean Water Act, punishment or deterrence, really, any analysis of Anadarko's ability to pay is just a distraction.

I want to pause for a moment to address Mr. O'Rourke's comment about Anadarko probably treating prior violations like speeding tickets. Let me say that Anadarko does not view any discharge as if it is merely a speeding ticket to be brushed off.

As far as the Gulf of Mexico violations that Mr. O'Rourke was alluding to, let me also say that those nine violations, which occurred between 2004 and 2010, were always two gallons or fewer of oil or synthetic mud, that most fines were \$250, and that the total amount of fines total -- total -- was \$12,834.

Now, in conclusion, I would like to say that we do not dispute that 10:18:06 the spill was extremely serious when it occurred. And we do not 10:18:11 2 take lightly the impact that it has had on the families of those 10:18:15 3 killed in the tragedy, on the environment, or on the folks who live 0:18:20 and work in the Gulf. 10:18:24 5 In fact, Anadarko's third witness, Darrell Hollek, senior 10:18:26 6 vice-president, will testify about Anadarko's efforts to mitigate 10:18:31 7 the effects of the spill, including its \$4 billion payment to BP, 10:18:36 8 which was explicitly directed to be used to pay damages to persons 10:18:41 9 who were injured from this event. 10:18:45 10 10:18:49 11 We do dispute, however, your Honor, that Anadarko should be punished for acts it did not take and for actions it could not 10:18:52 12 10:18:56 13 control. Since the penalty will serve neither of the goals of the 0:19:01 14 Clean Water Act, we respectfully submit that the Court should 10:19:04 15 decline to impose one. Thank you 10:19:06 16 THE COURT: All right. Thank you. All right. Let's take about a 15-minute recess. We will come back and take the 10:19:09 17 10:19:12 18 government's first witness.

10:19:13 19 THE DEPUTY CLERK: All rise.

(WHEREUPON, A RECESS WAS TAKEN.)

(OPEN COURT.)

10:19:23 20

10:41:33 21

10:41:33 22

10:41:41 23

10:41:43 24

10:41:47 25

THE COURT: All right. Please be seated everyone. The government can call its first witness.

MS. HIMMELHOCH: Good morning, your Honor, Sarah

Himmelhoch of the United States. As our first witness, we call Rear

```
10:41:50
           Admiral Meredith Austin.
                      THE COURT: That is a fact witness, correct?
10:41:54 2
10:41:56
                     MS. HIMMELHOCH: Yes, your Honor.
10:41:57 4
                      THE COURT: Okay.
                      MS. HIMMELHOCH: Head on up to the witness stand.
10:42:04
                 (WHEREUPON, MEREDITH L. AUSTIN, WAS SWORN IN AND TESTIFIED AS
10:42:04 6
10:42:06 7
                FOLLOWS:)
10:42:06 8
                      THE DEPUTY CLERK: If you'll take a seat.
                      If you'll state and spell your name for the record,
10:42:08 9
10:42:10 10
          please.
10:42:11 11
                      THE WITNESS: Meredith, M-E-R-E-D-I-T-H, Lee, L-E-E,
          Austin, A-U-S-T-I-N.
10:42:22 12
10:42:22 13
                                     DIRECT EXAMINATION
0:42:22 14
          BY MS. HIMMELHOCH:
          Q. Good morning, Admiral, I'm Sarah Himmelhoch, and I have you on
10:42:25 15
10:42:31 16
          direct examination.
                      You've given us your name. Can you please identify your
10:42:32 17
10:42:34 18
          current rank?
              Rear Admiral, lower half, in the U.S. Coast Guard.
10:42:35 19
10:42:38 20
              Where are you currently stationed?
           Q.
              At the Coast Guard Personnel Service Center in D.C.
10:42:39 21
           Α.
10:42:42 22
               How long have you been with the Coast Guard?
           Q.
10:42:44 23
          Α.
              Twenty-nine years.
10:42:45 24
          Q.
              Could you please give the Court a brief overview of the types
          of positions you've held while serving in the Coast Guard?
10:42:50 25
```

- 1 10:42:52
- 10:42:55 2
- 10:43:02 3
- 0:43:05
- 10:43:07
- 10:43:07
- 7 10:43:09
- 10:43:13 8
- 10:43:17 9
- 10:43:19 10
- 10:43:22 11
- 10:43:23 12
- 10:43:34 14
- 10:43:35 15
- 10:43:37 16
- 10:43:41 17
- 10:43:43 18
- 10:43:46 19
- 10:43:52 20
- 10:43:53 21
- 10:43:57 22
- 10:44:00 23
- 10:44:06 24
- 10:44:09 25

- For the majority of my career, I've been in marine safety.
- that's accident investigation, mariner documentation, oil spill
- hazardous materials response operations, that kind of thing.
- Have you had any command positions?
- Yes.
- Please identify those for us.
- In addition to my current command, Personnel Service Center, I Α.
- was the commanding officer of the Coast Guard Pacific Strike Team,
- commander of the National Strike Force, and commander of the Coast
- Guard Sector Delaware Bay in Philadelphia.
- What is the Pacific Strike Team?
- It's one of three special teams under the National Contingency
- 10:43:29 13 Plan to help Federal On-Scene Coordinators as search forces and oil
 - and hazardous material response.
 - What degrees, if any, do you hold?
 - I have a Bachelor of Science in Marine Science from the Coast
 - Guard Academy; Master of Science in Public Health and Industrial
 - Hygiene from the University of North Carolina Chapel Hill; and a
 - Master in National Defense Studies in the Naval Postgraduate School
 - in Monterey.
 - What professional certification do you hold? Ο.
 - Certified Industrial Hygienist, Certified Emergency Manager,
 - and a Coast Guard-Certified Type 1 Incident Commander, Type 1
 - Operations Section Chief, and Type 1 Planning Section Chief.
 - Admiral Austin, were you involved at all in the response to the

- 10:44:12 1 explosion and fire and the subsequent oil spill that began on
- 10:44:17 2 April 20th, 2010, as a result of the Deepwater Horizon?
- LO:44:18 3 A. Yes.
- 10:44:19 4 Q. Roughly over what period of time were you involved in that
- 10:44:22 5 response?
- 10:44:23 6 A. I first arrived in Houma on May 25th of 2010. I was there
- 10:44:27 7 until about the 10th of July, went back to my unit for a couple of
- 10:44:32 8 | weeks and returned on the 24th of July and stayed until the 20th of
- 10:44:35 9 August.
- 10:44:36 10 Q. We will they get into the details of your involvement in the
- 10:44:39 11 response. But before April 20th, 2010, had you been involved in the
- 10:44:42 12 | response to any oil spills?
- 10:44:44 13 A. Yes.
- 10:44:44 14 Q. Roughly how many?
- 10:44:45 15 A. Probably a couple of hundred.
- 10:44:47 16 Q. Generally what types of work did you do while working on those
- 10:44:50 17 | prior oil spills?
- 10:44:51 18 A. Early on, I would go out in the field to make sure that the oil
- 10:44:54 19 is being picked up in accordance with the National Contingency Plan.
- 10:44:59 20 As I became more senior in my employment, I became, first, the
- 10:45:03 21 Operations Section Chief, Planning Section Chief, and then
- 10:45:06 22 | eventually Incident Commander for responses.
- 10:45:08 23 | Q. During your experience with oil spill response for the Coast
- 10:45:12 24 | Guard, did you become familiar with what is known as the Incident
- 10:45:16 25 | Command System or the ICS?

- 10:45:18 1 A. Yes.
- 10:45:18 2 Q. What is the ICS?
- 10:45:20 3 A. The Incident Command System is a way to manage activities,
- 10:45:25 4 events, using management by objectives, and it's a way to ensure
- 10:45:28 5 | that resources and personnel are used efficiently.
- 10:45:31 6 Q. There's -- is there a concept used in the management of oil
- 10:45:36 7 | spill response known as "span of control"?
- 10:45:38 8 A. Yes.
- 10:45:39 9 Q. What is meant by "span of control"?
- 10:45:41 10 A. Span of control is a way to make sure that the personnel and
- 10:45:44 11 resources are used efficiently, that there's -- any one supervisor
- 10:45:50 12 does not get overwhelmed by having too many personnel working for
- 10:45:53 13 them, too many activities going on.
- 10:45:55 14 | Q. Was the ICS used in response to the Deepwater Horizon disaster?
- 10:45:59 15 A. Yes.
- 10:45:59 16 Q. What positions within the ICS did you personally hold during
- 10:46:04 17 | the response to the *Deepwater Horizon* disaster?
- 10:46:06 18 | A. When I first arrived in May, I was a Deputy Incident Commander.
- 10:46:09 19 | And then when I returned in July, I was -- for the State of
- 10:46:13 20 | Louisiana, deputy for the State of Louisiana. And then when I
- 10:46:15 21 | returned, I took over as the incident commander for the state of
- 10:46:19 22 | Louisiana.
- 10:46:19 23 Q. And the Louisiana Incident Command Post was at Houma, is that
- 10:46:22 24 | correct?
- 10:46:22 25 A. Yes.

- 1 10:46:22
- 10:46:25 2
- 10:46:30 3
- 0:46:33
- 5 10:46:37
- 10:46:41 6
- 10:46:46 7
- 10:46:50 8
- 10:46:55 9
- 10:46:57 10
- 10:47:03 11
- 10:47:10 13
- 10:47:13 14
- 10:47:20 15
- 10:47:20 16
- 10:47:20 17
- 10:47:24 18
- 10:47:28 19
- 10:47:33 20
- 10:47:37 21
- 10:47:42 22
- 10:47:46 23
- 10:47:52 24
- 10:47:53 25

- What was your role as Deputy Incident Commander? Ο.
- activities going on in relation to this response, it was too much work for any one person to do. So the Incident Commander, Captain

Getting back to span of control, because there were so many

- Laferriere at the time, focused his attention on the work that had
- to be handled external to the command post. So visiting in the
- field, talking with politicians, dealing with stakeholders
- externally to the response. And I was in the command post making
- sure that the planning for the next operational cycle took place,
- and any decisions that had to be made in the course in the command
- post, I was there to make. If we had to wait for Roger to get back,
- 10:47:06 12 then there would have been a delay that would be not good for the
 - response. And so this way, we were able to split the work.
 - Q. Was the Incident Commander at Houma a federal On-Scene
 - Commander's Representative?
 - Yes. Α.
 - As Deputy Incident Commander, did you have any responsibilities
 - with respect to the federal On-Scene Coordinator position?
 - The federal On-Scene Coordinator was at the Unified Area
 - Command, at first in Robert and then New Orleans. And he or she,
 - whoever it was at the time, was in charge of the entire response,
 - taking care of critical resources and other things. So at each of
 - the five or four Incident Command Posts, we had a federal On-Scene
 - Coordinator Representative who was the Coast Guard Incident
 - Commander for those command posts.

- 10:47:55
- 10:48:00 2
- 10:48:07 3
- 0:48:09 4
- 10:48:11
- 10:48:12
- 10:48:16 7
- 10:48:18 8
- 10:48:22 9
- 10:48:23 10
- 10:48:28 11
- 10:48:32 12
- 10:48:37 13
- 0:48:41 14
- 10:48:45 15
- 10:48:50 16
- 10:48:53 17
- 10:48:58 18
- 10:49:03 19
- 10:49:08 20
- 10:49:12 21
- 10:49:13 22
- 10:49:18 23
- 10:49:19 24
- 10:49:23 25

- Q. As Deputy Incident Commander, were you a FOSC representative?
- A. Yes, Captain Fairer and I were designated as FOSC-Rs.
- Q. I would to talk for a minute about the ICS used in the Deepwater Horizon as compared to your prior experiences in oil spills.

How does the ICS used in the *Deepwater Horizon* compare to your experience in the prior oil spills?

- A. It was the most complex application of ICS in history.
- Q. How so?
- A. It was -- first of all, the spill was designated as a spill of national significance. That was the first time that had happened in the US. They designated a NIC, National Incident Commander. There were five incident command posts that spanned five states throughout the Gulf. It was just a very complex operation.
- Q. Were there also things known as "forward operating bases"?
- A. There were. In Louisiana, because, again, the span of control was so big at each of the -- there were nine forward operating bases, you know, in ICS vernacular, "branches" that were set up in order to respond and some of them were big enough to be incident command posts in their own right, had it been that was the only spill that we were dealing with.
- Q. What was the function of the National Incident Commander and his staff?
- A. The NIC's job was to coordinate national resources and to coordinate the activities of the federal government --

- 10:49:26 1 Q. And --
- 10:49:27 2 A. -- and the agencies.
- 10:49:28 3 Q. I apologize. Just for clarity, who was the National Incident
- 10:49:32 4 | Commander for the Deepwater Horizon?
- 10:49:33 5 A. Admiral Thad Allen.
- 10:49:35 6 | Q. What function in comparison to the NIC and your role as
- 10:49:39 7 | Incident Commander did the Unified Area Command serve?
- 10:49:44 8 A. The Unified Area Command served to broker critical resources
- 10:49:49 9 amongst the five states that were involved. They also would answer
- 10:49:55 10 | questions that would come down from Washington and other places.
- 10:49:59 11 | They would get information from us, but they were able to then feed
- 10:50:01 12 | that information up to the national level.
- 10:50:04 13 | Q. In the course of your coming to understand the ICS, did you
- 10:50:09 14 | become familiar with a distinction between strategic and tactical
- 10:50:13 15 | decision making?
- 10:50:14 16 A. Yes. Unified Area Command was a little bit more strategically
- 10:50:20 17 | focused because they were dealing with the response throughout the
- 10:50:23 18 entire affected region throughout the Gulf, whereas in Houma,
- 10:50:27 19 | probably like the other state, we were tactically focused on the oil
- 10:50:31 20 | impacting when it hit the surface and when it hit the shores of
- 10:50:35 21 | Louisiana.
- 10:50:35 22 Q. Why was the ICS for the Deepwater Horizon disaster so much more
- 10:50:40 23 | complex than the other spills that you've worked on?
- 10:50:42 24 A. First, it was the sheer size; the fact that it impacted five
- 10:50:48 25 states that was big part. Another part was that it was a major -- a

new major oil spill every day for 87 days. So not only were we 1 10:50:52 worried about the oil as it impacted the beach or as it was 10:50:56 2 approaching the beach, we also had to worry about forecasting where 10:51:00 3 will the oil be a couple of days from now? A couple of weeks from 5

What would be the impact of changing currents on it? So there was quite a bit of forecasting in the command post to try to figure out the best placement of equipment.

Were there any mechanisms put in place to keep track of such a complicated response?

Α. Yes.

Please give us some examples of those. Q.

Every day -- at least early on and then, later, the operational period got a little bit longer but we created an Incident Action There were daily calls with the branches to see what was going on. We had daily calls with the governor's office of Homeland Security and Environmental and Emergency Preparedness to find out what the issues were in the various affected parishes. We also had a common operating picture.

What do you mean by a "common operating picture"?

It's a place -- sometimes, literally, a wall where you post maps and weather forecasts and resources at risk and other things -or it could be virtual, could be in a computer, and it's a way to make sure that everyone involved with the response is operating off the same sheet of music, is operated off the same conditions and so we're all unified in our efforts.

0:51:04

10:51:07

10:51:11 6

10:51:14 7

10:51:17 8

10:51:21 9

10:51:22 10

10:51:22 11

10:51:25 12

10:51:29 13

10:51:33 14

10:51:37 15

10:51:42 16

10:51:45 17

10:51:49 18

10:51:50 19

10:51:53 20

10:51:57 21

10:52:02 22

10:52:05 23

10:52:08 24

10:52:12 25

- 10:52:16 1 Q. What tool or platform was used to provide the common operating
- 10:52:19 2 picture in the Deepwater Horizon event?
- 10:52:21 3 A. We used a computer program called ERMA.
- 10:52:24 4 Q. Does that stand for "Environmental Response Management
- LO:52:27 5 Application"?
- 10:52:27 6 A. Yes.
- 10:52:28 7 O. Please call --
- MS. HIMMELHOCH: Mr. Jackson, if you could please call up
- L0:52:32 9 D 3200.
- LO:52:32 10 BY MS. HIMMELHOCH:
- 10:52:34 11 | Q. Admiral, do you recognize this figure?
- 10:52:35 12 A. Yes.
- 10:52:36 13 Q. What is it?
- 10:52:36 14 | A. It's a screen shot from ERMA.
- 10:52:39 15 | Q. What kinds of information could you retrieve from ERMA?
- 10:52:43 16 A. Geographic boundaries between the different incident command
- 10:52:49 17 posts, resources at risk, critical -- where skimmers were.
- This particular picture shows -- I think it's several days or several periods of time where the oil was.
- 10:53:02 20 Q. And who could access the information contained in ERMA?
- 10:53:05 21 A. The Incident Command Post had access to this as well as the
- 10:53:09 22 | Unified Area Command and the National Incident Commander.
- 10:53:12 23 Q. I want to turn to a slightly different topic now and I want to
- 10:53:15 24 talk about your experience with prior oil spills.
- When you worked on those prior oil spills, did you

10:53:21 1 undertake an assessment of whether or not your response efforts were

- 10:53:25 2 successful?
- 10:53:25 3 A. Yes.

10:53:28

10:53:33 6

10:53:36 7

10:53:39 8

10:53:42 9

10:53:47 10

10:53:53 11

10:53:58 12

10:54:00 13

0:54:02 14

10:54:06 15

10:54:10 16

10:54:13 17

10:54:16 18

10:54:20 19

10:54:21 20

0:54:25 21

10:54:31 22

10:54:33 23

10:54:37 24

10:54:41 25

- 10:53:25 4 Q. And how did you go about doing that?
 - A. In the mid '90s a couple of Coast Guard officers with a lot of experience with oil spills wrote a paper, which they call Best Response, and it discussed how it's not enough to just clean up the oil, that there's other factors that have to be taken into account in order for a spill response to be considered successful. This paper was they turned it into a survey tool that could be handed out after a response or exercises to kind of gauge how well you did for lessons learned capturing.

It could also be used during a response, you can kind of in your mind do a mental note, "are we hitting everything we need to hit." This was presented at our training center in the mid '90s, so I know a lot of Coasties saw it.

- Q. One of the criteria that we included in that survey to evaluate, that you used in evaluating the past oil spill responses that you were involved in?
- A. Safety and health of responders and the community, environmental impacts, economic impacts, public information, stakeholder support, and response organization.
- Q. I would like to explore each of these criteria just very briefly. Let's start with respect to human health and safety. What have you looked at in applying this factor to your past response?

10:54:44

10:54:49 2

10:54:53

0:54:56

10:54:58 5

10:54:59 6

10:55:02 7

10:55:06 8

10:55:11 9

10:55:13 10

10:55:17 11

10:55:19 12

10:55:22 13

0:55:24 14

10:55:31 15

10:55:35 16

10:55:37 17

10:55:40 18

10:55:42 19

10:55:44 20

0:55:48 21

10:55:51 22

10:55:51 23

10:55:56 24

10:56:01 25

A. As we would be drafting up tactics for the next operational period, we made sure that they scrubbed the tactics to see if there's any controls that we had to do to make sure that the operation would be as safe as possible. So that's what we did ahead of time.

Kind of on the flip side, we would be looking at accident rate, injury rate, near misses, that kind of thing.

- Why was it that you were seeking to incorporate human health and safety into the planning of response actions?
- Because responding to an oil spill is an inherently dangerous or can be inherently dangerous.
- What kind of dangers were you planning for when you were developing your health and safety plans?
- Some were the chemical hazards, oil, it could be an inhalation hazard from the volatile chemicals coming off. It could be a skin hazard to the people who are responding.

Also you have physical hazards, oil is slippery, so I have slips, trips and falls for that.

And then also you have to look at the environment in which the spill happens, is it really hot, is it really cold, is it near water, are there dangerous wildlife in the area that you have to worry about.

Q. With respect to the natural environment, which was the second criteria you listed, what did you look for when evaluating your prior oil spill response?

- 10:56:02
- 10:56:05 2
- 10:56:08 3
- 10:56:10
- 10:56:14
- 10:56:16 6
- 10:56:19 7
- 10:56:26 8
- 10:56:29 9
- 10:56:32 10
- 10:56:35 11
- 10:56:39 12
- 10:56:43 13
- 10:56:46 14
- 10:56:49 15
- 10:56:52 16
- 10:56:56 17
- 10:57:00 18
- 10:57:03 19
- 10:57:06 20
- 10:57:11 21
- 10:57:16 22
- 10:57:20 23
- 10:57:22 24
- 10:57:26 25

- A. Again, looking at the tactics, you want to make sure that you took into account the environmental conditions and what was being affected in the environment because you wanted to make sure that when you did your response you were doing it in the most environmentally benign way possible.
- Q. What do you mean by most environmentally benign way possible?
- A. In oil spill response there is trade-offs and sometimes -well, the easiest thing to do would be, I am going to go in there
 and take steam and blast everything away to make it look nice and
 pretty, that might not be the best for the environment, for the then
 environmental benefit. So, for example, if it's oil impacted marsh,
 if it's during the growing season, the best bet might be to wait
 until the growing season is over or wait until a different part of
 that growing cycle to go in there because you might be trampling
 down and driving the oil or damaging the root system.
- Q. With respect to the economic impact, which was the third criteria that you listed, what do you consider in determining whether you were successful in your prior oil spill responses?
- A. Again, looking at the tactics and looking on where the oil spill has occurred, what economic disruptions might have been caused by it. If you're closing a channel because that's where the oil is, maybe that heating oil barge isn't getting where it needs to go and that means that people are going to run out and it's going to be really cold tomorrow and that could be really bad. So you might alter the way you're going to do the -- you might decide to do

- 10:57:29 1
- 10:57:33 2
- 10:57:40
- 10:57:43 4
- 10:57:47
- 10:57:52
- 10:57:55 7
- 10:57:56 8
- 10:57:59 9
- 10:58:04 10
- 10:58:07 11
- 10:58:08 12
- 10:58:13 13
- 10:58:14 14
- 10:58:18 15
- 10:58:23 16
- 10:58:27 17
- 10:58:31 18
- 10:58:33 19
- 10:58:38 20
- 10:58:43 21
- 10:58:46 22
- 10:58:50 23
- 10:58:54 24
- 10:58:59 25

- cleanup in this area -- in one area versus another area to account to make sure that -- again, the environment is, you know, key but if it's possible to delay something in order to lessen the disruption to economics, that's something that has to be part of the equation.
- Q. What have you done with respect to past oil spill responses to address concerns regarding public communication, which was your next factor?
- A. It's very important to keep the public involved with what's going on, or at least notified as to what's going on. An oil spill is a high concern event and people want to know that the right things are being accomplished.
- Q. What actions did you take in prior oil spill responses to address that concern?
- A. We would set up a joint information center so that media and members of the public can get information directly from the Unified Command and to make sure that we got accurate information out.
- Q. You indicated that it was important for the public to understand what was going on, why is that?
- A. Because if you lose public trust, if the public doesn't think that what you're doing is correct, then you can lose trust. And it's bad if you lose trust because a couple of things happen: One is they might say, I don't think you're doing the right thing, I'm going to go ahead and do my own thing and might start freelancing, which could put them in harm's way or do actions that are counter in what we in the Unified Command want to do. That's one issue.

10:59:02

1

10:59:05 2

10:59:08 3

0.59:15

10:59:18

10:59:21 6

10:59:22 7

10:59:26 8

10:59:30 9

10:59:34 10

10:59:36 11

10:59:40 12

10:59:42 13

0:59:46 14

10:59:50 15

10:59:53 16

10:59:56 17

10:59:59 18

11:00:02 19

11:00:04 20

11:00:06 21

11:00:10 22

11:00:10 23

11:00:13 24

11:00:14 25

The other issue is they will try to get information wherever they can get it and that could be totally inaccurate.

- Q. The last -- the next factor that you mentioned was the stakeholder service and support. When evaluating your prior oil spill responses, how have you evaluated whether or not you address that factor?
- A. Well, ahead of time you try to identify who all the stakeholders are and hopefully you're meeting their information needs. One way to find out that you haven't met them or you have is their demeanor in meetings. For instance, you can go to a stakeholder meeting and if everyone is yelling at you, chances are they're not happy with what's going on.

And it's been seen that if you do some of these trust building activities, which I failed to mention before, that when you lose the trust sometimes you have to take trust building activities because if you just say, hey, trust us and they don't, that doesn't work; so you have to show them that you're doing things where they can say, okay. They're actually doing what they say they're doing and get some of the trust back.

So with the stakeholders, with the demeanor, if you've built the trust back with them, they calm down and become more cooperative.

- Typically, who are the stakeholders you took into account when applying this criteria?
- A. Government officials, affected property owners, affected

- 11:00:20 1 businesses, schools.
- 11:00:22 2 Q. Let's turn to another topic more closely related to the
- 11:00:26 3 DEEPWATER HORIZON response. Let's call, Mr. Jackson, if you could
- 11:00:29 4 | call up TREX 012481-R. Do you recognize this document, Admiral?
- 11:00:36 5 A. I do.
- 11:00:36 6 Q. What is it?
- 11:00:37 7 A. It's an e-mail that I sent to everyone in Houma in the command
- 11:00:43 8 post to let them know that I had assumed the Incident Commander
- 11:00:47 9 position.
- 11:00:47 10 | Q. And why generally -- were there any other reasons why you sent
- 11:00:52 11 | this e-mail?
- 11:00:53 12 | A. Also to boost morale and give kind of a rallying cry.
- 11:01:00 13 | Q. Mr. Jackson, if you could please show callout TREX
- 11:01:07 14 | 012418.1.1.US (VERBATIM). Admiral, if you could please read for the
- 11:01:11 15 | court the second full paragraph in your e-mail.
- 11:01:14 16 THE COURT: It's pretty blurry on my screen, how about
- 11:01:16 17 | yours? Is it blurry? Can you read it?
- THE WITNESS: I can read it.
- 11:01:21 19 THE COURT: You have better eyes than me.
- MS. HIMMELHOCH: We can go back to the original document.
- THE COURT: I am just saying my screen, if I get close to
- 11:01:29 22 it I can read it. Maybe it's just me.
- MS. HIMMELHOCH: No, it is the document quality, your
- 11:01:34 24 | Honor, because it was a deposition exhibit it was scanned twice.
- 11:01:37 25 THE COURT: Okay. As long as the witness can read it, go

11:01:39 1 ahead.

11:01:41 3

11:01:43 4

11:01:45 5

11:01:48 6

11:01:51 7

11:01:54 8

11:01:57 9

11:01:57 10

11:01:57 11

11:02:00 12

11:02:01 13

11:02:04 14

11:02:08 15

11:02:12 16

11:02:16 17

11:02:20 18

11:02:21 19

11:02:25 20

11:02:28 21

11:02:31 22

11:02:35 23

11:02:36 24

11:02:39 25

11:01:40 2 THE WITNESS: Yes, your Honor. Perfect.

THE COURT: That's much better.

MS. HIMMELHOCH: Thank you, Mr. Jackson.

THE WITNESS: "I ask that all of you keep each other safe as you work together to respond to this incident in a professional, efficient, and effective manner, keeping foremost in our minds that that this is a fight to save a way of life for the people of Louisiana."

BY MS. HIMMELHOCH:

- Q. Why did you remind the troops that they were fighting for a way of life?
- A. Because the communities, because the areas impacted by the oil spill meant the closure of fisheries for a period of time and the concern was that if they didn't get the fisheries -- if the areas weren't cleaned up to be able to get the fisheries opened, then people who had been fishing for generations would have to find another line of work and potentially would have to move away.
- Q. I want to turn to another aspect of the response, and that is dispersant. In its opening statement BP mentioned the use of dispersants as an issue that arose in the response. As part of the United States rebuttal case, I will ask you some questions regarding dispersants.

As part of your duties as Deputy Incident Commander and then Incident Commander in Houma, did you deal with decisions as to

1:02:42

11:02:45 2

11:02:45 3

1:02:47 4

11:02:51 5

11:02:56 6

11:02:56 7

11:02:58 8

11:03:02 9

11:03:05 10

11:03:09 11

11:03:09 12

11:03:10 13

11:03:12 14

11:03:15 15

11:03:17 16

11:03:17 17

11:03:19 18

11:03:23 19

11:03:27 20

11:03:31 21

11:03:34 22

11:03:38 23

11:03:42 24

11:03:44 25

whether or not to apply dispersants as part of the response?

A. Yes.

MR. BROCK: Your Honor, just for the record, I don't need to say this but briefly. We don't necessarily agree that this is rebuttal case, but with that I have no objection.

THE COURT: All right.

MS. HIMMELHOCH: Your Honor, I want the record to reflect that we are not waiving our relevance objections to certain deposition designations that they have made that go towards the theme that Mr. O'Rourke referenced regarding blaming the United States.

THE COURT: All right. Go ahead.

BY MS. HIMMELHOCH:

- Q. Admiral Austin, prior to the *DEEPWATER HORIZON* disaster, did you have experience in the application of dispersants?
- A. Yes.
- Q. Please describe that experience.
- A. When I was stationed in Galveston in the late '90s, any time you had an offshore oil spill we would pull out the Regional Response Team pre-approval checklist, which was actually a flow chart that you put in some factors like the weather condition, wave heights, type of oil, what not, into the top of the flow chart and then you'd work your way through. And when you get to the bottom, it would say either not recommended to use dispersants or recommended to spray dispersants.

11:03:46

11:03:48 2

11:03:52

11:03:52 4

11:03:56 5

11:03:59 6

11:04:01 7

11:04:04 8

11:04:06 9

11:04:06 10

11:04:06 11

11:04:10 12

11:04:14 13

1:04:17 14

11:04:20 15

11:04:25 16

11:04:26 17

11:04:27 18

11:04:32 19

11:04:35 20

11:04:39 21

11:04:44 22

11:04:48 23

11:04:49 24

11:04:50 25

For the most part, we would end up with a no answer, but on a handful of occasions we ended up with a yes and then we did use dispersants.

Q. Was your experience with the DEEPWATER HORIZON with respect to deepwater -- slow down. We need to both slow down a little bit for the court reporter, actually.

Was your experience different with respect to the use of dispersants in the DEEPWATER HORIZON disaster?

- Α. Yes.
- 0. How so?
- On the DEEPWATER HORIZON disaster -- well, let me back up a little bit. Dispersants, the window that you can use dispersants is pretty short. For a typical oil spill, there's a point source release, so there's a blop of oil out there. And then the clock starts. Once the oil gets too weathered, you can't use dispersants anymore.

Contrast it with the DEEPWATER HORIZON spill where you had a fresh spill over day, we would start at the top of the Region VI pre-approval checklist and we'd get to the bottom and we would get to a yes, recommended using dispersants on many, many days in a row.

- Did there come a time when EPA raised concerns regarding the use of dispersants in the DEEPWATER HORIZON disaster response?
- Yes. Α.
- When was that? Q.
- A. Right around the time I got to Louisiana, Admiral Landry who

- 1:04:55
- 11:05:00 2
- 11:05:03
- 1:05:07 4
- 11:05:13 5
- 11:05:14 6
- 11:05:20 7
- 11:05:22 8
- 11:05:22 9
- 11:05:29 10
- 11:05:30 11
- 11:05:35 12
- 11:05:41 13
- 11:05:47 14
- 11:05:49 15
- 11:05:54 16
- 11:05:59 17
- 11:06:03 18
- 11:06:06 19
- 11:06:07 20
- 11:06:12 21
- 11:06:16 22
- 11:06:20 23
- 11:06:24 24
- 11:06:29 25

- was at the time the Federal On-Scene Coordinator, made an addendum to a memo to BP saying that they needed to limit the amount of dispersants used, they wanted to lower the amount of dispersants used by 75 percent and then only use aerial dispersant in rare occasions.
- Q. Mr. Jackson, if you could please call up TREX 010576. Admiral Austin, do you recognize this document?
- A. Yes.
- Q. Is there a focus we can fix on this, Mr. Jackson? Thank you.
- What is this document?
- A. This is the addendum three and it's signed by Admiral Landry and by Sam Coleman, who is the Region VI cochair of the RRT.
- Q. Is it typical for EPA to have a role in decision making for oil spill responses being handled by the Coast Guard?
- A. In the respect that EPA is a cochair to a regional response team, any time there's a meeting of the RRT in response to an oil spill, or hazmat spill for that matter, EPA would be a part of that.
- Q. Was EPA part of the Unified Command for the DEEPWATER HORIZON response?
- A. They were not but they were an agency representative, so it's typical for there to be other agencies involved with an incident command, they just want to be part of the Unified Command.
- Q. Please describe what happened with respect to Houma's decision making once EPA raised these concerns and addendum three was signed?
- A. From my vantage, for the first couple of days after the

11:06:34

11:06:38 2

11:06:40 3

11:06:45 4

11:06:49 5

11:06:54 6

11:06:58 7

11:07:03 8

11:07:03 9

11:07:05 10

11:07:06 11

11:07:12 12

11:07:15 13

11:07:22 14

11:07:24 15

11:07:29 16

11:07:34 17

11:07:37 18

11:07:38 19

11:07:42 20

11:07:46 21

11:07:49 22

11:07:50 23

11:07:53 24

11:07:54 25

addendum as signed the way we did business was the way -- what I mean by that is, we put the request in and then we would hear the answer back yes or no that we could spray pretty quickly.

After about a week, suddenly there were more commands for information and they wanted more information and sometimes it took a little bit of time and sometimes we would get an answer that was no.

- Q. Did that cause any frustration for the Incident Commander staff at Houma?
- A. It did.
- Q. Why was that?
- A. You got to remember we're all working really hard and we're working really long hours, and I think people said things in e-mails that were pretty condescending and kind of not diplomatic. And so, where we were in the command post, we were like, "why are they suddenly requiring more information and what's going on?" And at the time it seemed a little "us versus them," realizing now in hindsight that they had reason, probably just would have been a better way to have communicated it.
- Q. During the course of your duties for the response or for the Coast Guard, did you later come to understand the reasons for the change or for the issuance of addendum three?
- A. Yes.
- Q. What did you understand the reason for the issuance of addendum three to be?
- A. That there was concern with the use of so much dispersant over

- 11:08:00 1
- 11:08:05 2
- 11:08:09 3
- 11:08:14 4
- 11:08:14 5
- 11:08:19 6
- 11:08:25 7
- 11:08:27 8
- 11:08:32 9
- 11:08:33 10
- 11:08:34 11
- 11:08:40 12
- 11:08:43 13
- 11:08:44 14
- 11:08:47 15
- 11:08:49 16
- 11:08:52 17
- 11:08:55 18
- 11:08:59 19
- 11:09:01 20
- 11:09:01 21
- 11:09:07 22
- 11:09:09 23
- 11:09:17 24
- 11:09:21 25

- so many days that what would the impact, the long-term impact to the environment be by having so many applications of dispersants.
- Q. Do you know how many days dispersants were not applied out of Houma?
- A. You know, totally no. But I know when I was there between May 26th and when we stopped spraying, that was 56 days and I think they sprayed 36 times during that 56 days.
- Q. So if my math is right, does that leave 19 that dispersants weren't applied?
- A. That sounds about right.
- Q. And was the reason that dispersants weren't applied on all
- 19 days that there was a "no answer" from the Unified Area Command?
- A. No.
- Q. What were some of the other reasons that dispersants weren't applied during those 19 days?
- A. That the weather conditions were not right for the use of dispersants, that there was other activities going on in the area and they wanted, out of an abundance of caution, you wanted to make sure you wouldn't over spray the other activities that were going on.
- Q. During the response, did requesting approval for application of dispersants require a lot of your time and attention?
- A. It took some of my focus because initially early on with so many requests I would get a request back, I could check that off my to do list for the day. But as more information was requested then

- 1 11:09:24
- 11:09:28 2
- 11:09:34 3
- 11:09:36
- 11:09:40
- 11:09:41 6
- 11:09:42 7
- 11:09:44 8
- 11:09:45 9

- 11:09:59 12
- 11:10:02 13
- 11:10:05 14
- 11:10:08 15
- 11:10:08 16
- 11:10:12 17
- 11:10:17 18
- 11:10:19 19
- 11:10:20 20
- 11:10:21 21
- 11:10:22 22
- 11:10:26 23
- 11:10:31 25
- 11:10:27 2.4
- Q. How many days a week?

- that just meant something I had to go back more than once to either
- ask for more information from the staff in Houma or go to the
- Unified Area Commander to get an answer.
- Were dispersants the only issue that stole a little bit of your
- focus during the response?
- No. Α.
- Q. What other kinds of issues commanded your focus during the
- response?
- Personnel issues, there was suddenly we needed resources
- somewhere that I had to stop everything and kind of answer that 11:09:50 10
- 11:09:53 11 question. The big thing was tropical storm, hurricane, bad weather
 - planning because it was in the Gulf in the summer and you always
 - have to worry about the next storm that might be coming.
 - And that's what you mean by heavy weather?
 - Yes.
 - Let's turn now to the impact of this disaster on the Coast
 - Guard. Let's focus at the level of you first. How many hours a day
 - did you typically work during the response?
 - Twelve to 16. Α.
 - How many days a week? Q.
 - Α. Seven.
 - What was the standard duty shift for Coast Guard personnel
 - employed to the response?
 - A. Twelve hours on, 12 hours off.

- 11:10:32 1 A. Six to seven.
- 11:10:33 2 | O. Did there ever come a time when the Coast Guard command
- 11:10:36 3 expressed concern over the work hours of its personnel?
- 11:10:39 4 A. Yes.
- 11:10:40 5 Q. What steps, if any, did they take to address that concern?
- 11:10:43 6 A. The Federal on-Scene Coordinator ordered that everyone would
- 11:10:47 7 | take at least a day off.
- 11:10:48 8 Q. At the peak of the response -- moving out to the broader
- 11:10:51 9 picture, at the peak of the response, how many Coast Guard employees
- 11:10:54 10 | were involved in the response?
- 1:10:56 11 A. 2,900.
- 11:10:57 12 | Q. In the first year, approximately how many Coast Guard personnel
- 11:11:01 13 | rotated through the response?
- 11:11:03 14 A. 8,000.
- 11:11:04 15 | Q. Prior to the DEEPWATER HORIZON disaster with respect to oil
- 11:11:09 16 | spills that you were involved in, what was the maximum number of
- 11:11:12 17 | Coast Guard personnel involved?
- 11:11:14 18 A. During the oil spill response as a result of Hurricane Katrina,
- 11:11:20 19 | there were two to 300 Coast Guard personnel involved in that oil
- 11:11:24 20 response.
- 11:11:24 21 | Q. Did the Coast Guard personnel involved in the response include
- 11:11:27 22 | reserve personnel?
- 11:11:28 23 A. Yes.
- 11:11:28 24 Q. And what was the impact of using the Coast Guard's reserve
- 11:11:31 25 | personnel?

- 11:11:32 1 A. When Coast Guard, when reserves are involuntarily activated,
 - 11:11:38 2 you can only -- you can't use them again for another two years.
 - 11:11:41 3 Q. And what percentage of reserve personnel were deployed to the
 - 11:11:45 4 response?
 - 11:11:45 5 A. Fifty percent, 5-0.
 - 11:11:47 6 Q. What is the implication of not being able to call up those
 - 11:11:51 7 reservists for another two years?
 - 11:11:52 8 A. Our reservists are our search forces, so by not having them
 - 11:11:56 9 available that meant if we had another either large natural disaster
 - 11:12:00 10 or man-made disaster they wouldn't be available.
 - 11:12:02 11 Q. Did the Coast Guard have personnel available to backfill the
 - 11:12:06 12 | active duty positions that were vacated by personnel deployed to the
 - 11:12:10 13 | response?
 - 1:12:10 14 A. No.
 - 11:12:10 15 Q. Why not?
 - 11:12:11 16 A. The Coast Guard doesn't have -- carry forces so people just
 - 11:12:17 17 | waiting to respond like a firehouse. Every Coast Guard person has a
 - 11:12:20 18 position that they fill day in and day out, so any time we have a
 - 11:12:24 19 | large event where we have to surge forces in some place, that leaves
 - 11:12:29 20 a gap back at their home unit.
 - 11:12:30 21 | Q. Now, at the time you became involved in the response you were a
 - 11:12:35 22 | sector commander, correct?
 - 11:12:36 23 A. Yes.
 - 11:12:36 24 Q. Where were you a sector commander?
 - 11:12:38 25 A. Delaware Bay in Philadelphia.

- 11:12:40 1 Q. Is oil spill response the only mission that the Coast Guard
- 11:12:43 2 sectors are responsible for?
- 11:12:44 3 A. No.
- 11:12:45 4 Q. And I know there are a lot of them, if you could just give a
- 11:12:49 5 | couple to give the court a sense of what else the Coast Guard does
- 11:12:52 6 in the sector offices?
- 11:12:53 7 A. Search and rescue, drug interdiction, migrant operations,
- 11:13:02 8 vessel inspection.
- 11:13:04 9 Q. What percentage of your command at Delaware Bay was involved in
- 11:13:10 10 | the response at its peak?
- 11:13:12 11 A. About 14 percent.
- 11:13:13 12 Q. Did that include you?
- 11:13:16 13 A. Yes.
- 11:13:16 14 | Q. Overall, what percentage of the Coast Guard was involved in the
- 11:13:19 15 response to the DEEPWATER HORIZON disaster at its peak?
- 11:13:23 16 A. It was about the same, about 14 percent.
- 11:13:25 17 | Q. Did the timing of the spill have any impact on the Coast Guard?
- 11:13:29 18 A. Yes.
- 11:13:30 19 Q. How so?
- 11:13:31 20 A. The Coast Guard being a military organization transfers its
- 11:13:35 21 | people relatively frequently. So at any one year about a third of
- 11:13:40 22 the person -- between 25 percent and a third of the personnel
- 11:13:44 23 | transfer, and typically that happens between May and August. So
- 11:13:49 24 that was going on, where units have to deal with a gap and then you
- 11:13:52 25 | overlay that with the response to the oil spill.

- 11:13:54
- 11:13:59 2
- 11:14:00 3
- 11:14:04 4
- 11:14:07 5
- 11:14:11 6
- 11:14:15 7
- 11:14:19 8
- 11:14:22 9
- 11:14:25 10
- 11.14.25 10
- 11:14:28 11
- 11:14:28 12
- 11:14:28 13
- 11:14:33 14
- 11:14:36 15
- 11:14:36 16
- 11:14:43 17
- 11:14:45 18
- 11:14:49 19
- 11:14:51 20
- 11:14:54 21
- 11:14:58 22
- 11:14:59 23
- 11:15:01 24
- 11:15:03 25

- Q. And did the fact that it happened during transfer season have any other impact?
- A. It did. It meant that units, number one, had a much bigger gap than they normally have. The second implication was that people, it took them longer to get up to speed in their new positions. And then for people, a lot of people who were deployed were also transferring that summer, so that meant that their families had to take care of moving their household goods. And missing graduations, as everyone did, so.
- Q. Was the Coast Guard the only federal agency involved in the response?
- A. No.
- Q. Again, I am not going to ask you to list them all, but if you could the give the court some examples of other agencies that were involved?
- A. Minerals Management Service, NOAA, EPA, National Weather -that's NOAA, Fish and Wildlife Service.
- Q. Can you give some examples, if you know, of how the oil spill response compacted these other agencies?
- MR. BROCK: I am going to object to her speaking to other agencies as beyond her personal knowledge.
 - MS. HIMMELHOCH: I will lay some foundation, your Honor.
 - THE DEFENDANT: All right. Go ahead.
- BY MS. HIMMELHOCH:
- Q. As Deputy Incident Commander and Incident Commander, part of

- 11:15:06 1 your duties included response planning; is that correct?
- 11:15:08 2 A. I yes.
- 11:15:09 3 Q. And does that include all personnel involved in the Unified
- 11:15:13 4 Area Command?
- 11:15:13 5 A. In Houma, yes.
- 11:15:14 6 Q. And at Houma, were there individuals from federal agencies
- 11:15:19 7 | other than the Coast Guard in part of the Unified Area Command?
- 11:15:23 8 A. Yes.
- 11:15:23 9 Q. Based on that experience, do you have knowledge as to any of
- 11:15:27 10 | the impacts of the DEEPWATER HORIZON response on those other
- 11:15:31 11 | agencies?
- MR. BROCK: Same objection, it would be based on hearsay.
- THE COURT: Overrule the objection. Go ahead, ma'am.
- THE WITNESS: NOAA provides scientific support
- 11:15:42 15 | coordinators to assist Coast Guard during oil spill response and
- 11:15:46 16 | they are geographically stationed around the country, and in order
- 11:15:50 17 | to meet our needs down in Houma, they cycled through, just like a
- 11:15:53 18 | lot of other people cycled through, and I think they hit every SSC
- 11:15:59 19 | was either at our command post or in Mobile and even brought in some
- 11:16:02 20 retirees to cover that.
- 11:16:06 21 BY MS. HIMMELHOCH:
- 11:16:06 22 Q. I want to turn now to a slightly different topic, which is any
- 11:16:08 23 | impacts that might have happened outside of the Gulf. And I want to
- 11:16:11 24 | ask you whether the Coast Guard -- well, I will ask you rather than
- 11:16:14 25 | just want to.

11:16:15 1

11:16:18 2

11:16:22 3

11:16:23

11:16:25

11:16:27 6

11:16:31 7

11:16:34 8

11:16:38 9

11:16:40 10

11:16:43 11

11:16:46 12

11:16:50 13

11:16:55 14

11:16:59 15

11:17:02 16

11:17:02 17

11:17:05 18

11:17:10 19

11:17:13 20

11:17:17 21

11:17:22 22

11:17:25 23

11:17:25 24

11:17:25 25

Did the Coast Guard make any changes to the requirements to private party oil spill preparedness as part of the response?

A. Yes.

Q. What was that change?

MR. BROCK: Your Honor, I am going to object to changes that were made after this incident. I may not understand the nature of the question, but I think she is being asked what changes did you make after the incident. I don't think those would be relevant.

MS. HIMMELHOCH: Your Honor, my question was as part of the response and this was done as part of the response.

THE COURT: All right. Overrule the objection.

THE WITNESS: The common issue and emergency rule that relaxed the requirements for vessel and facility operators to have a certain number of or certain amount of oil spill response equipment at the ready in the case they had a spill.

BY MS. HIMMELHOCH:

- Q. And what was the practical implication of that rule change?
- A. That enabled those -- that equipment to offshore skimmers and other skimming vessels to leave where they were stationed around the country and brought down to Louisiana, or brought down to the Gulf.
- Q. And did that change affect, for instance, offshore oil spill response vehicles that were stationed in your sector in Delaware Bay?
- A. Yes.
- Q. And did the Coast Guard receive any opposition to this

- 11:17:30 1 emergency rule?
- 11:17:30 2 A. Yes.
- 11:17:30 3 O. From whom?
- 11:17:31 4 A. At my sector the state of New Jersey had great objections to
- 11:17:37 5 losing, having the equipment leave. And we had to assure them that,
- 11:17:43 6 you know, had there been another incident we would be able to get
- 11:17:46 7 | equipment flown back in there.
- 11:17:47 8 Q. Were there any other -- what was the concern expressed by the
- 11:17:53 9 state of New Jersey about those oil spill vessels leaving their
- 11:17:56 10 jurisdiction?
- 11:17:56 11 A. Twofold: One is they were convinced that the loop current
- 11:18:01 12 | would capture some of the oil and turn some of the oil and bring it
- 11:18:06 13 up the east coast and foul New Jersey beaches; and then there were
- 11:18:10 14 | also concerns had there been another spill somewhere along their
- 11:18:13 15 | border.
- 11:18:13 16 Q. I am going to turn now to BP's role in the response to the
- 11:18:17 17 disaster. BP participated in the response, did it not?
- 11:18:20 18 A. Yes.
- 11:18:20 19 Q. Did the Coast Guard expect BP to participate in the response?
- 11:18:25 20 A. Absolutely. BP was designated the responsible party, so as
- 11:18:29 21 required under the Oil Pollution Act they had to, they had to
- 11:18:33 22 participate in the response.
- 11:18:35 23 Q. Does having the responsibility party participate in the
- 11:18:38 24 response pose any challenges?
- Let me rephrase the question because you're looking like

- 11:18:46 1 you don't know what I'm asking you.
- In your training have you been advised regarding any
- 11:18:49 3 challenges posed by the inclusion of the responsible party in the
- 11:18:54 4 response?
- 11:18:54 5 A. Yes. We've been taught that an oil spill response is a
- 11:18:59 6 multi-million dollars corporation set up overnight with partners who
- 11:19:03 7 don't necessarily want to be in business with each other.
- 11:19:05 8 Q. And has that been in your experience in the oil spill response
- 11:19:08 9 | for the Coast Guard?
- 11:19:08 10 A. It has.
- 11:19:09 11 Q. Overall, how would you rate BP's efforts in response to the
- 11:19:13 12 | spill based on what you saw?
- 11:19:15 13 A. I think BP did a pretty good job, I give it a B plus or an A.
- 11:19:19 14 | Q. Were there any problems or frustrations in working with BP
- 11:19:22 15 | during the response?
- 11:19:23 16 A. There was a few.
- 11:19:24 17 Q. Did you personally have any concerns with the way in which BP
- 11:19:29 18 | was performing the response action?
- 11:19:30 19 A. I was concerned -- after the well was capped and there was no
- 11:19:38 20 | more oil flowing into the Gulf, I had heard from some of the branch
- 11:19:43 21 | directors -- and when I visited the branch directors I saw this --
- 11:19:46 22 | that some of their BP counterparts were trying to demobilize
- 11:19:52 23 | equipment. It's not what was being discussed in Houma, the BP
- 11:19:56 24 | incident commanders were very clear to the folks there that, no, no,
- 11:20:00 25 | we're not demobilizing until the well is killed and past hurricane

- 1:20:05
- 11:20:09 2
- 11:20:12 3
- 11:20:15
- 11:20:20 5
- 11:20:23 6
- 11:20:26 7
- 11:20:27 8
- 11:20:29 9
- 11:20:33 10
- 11:20:37 11
- 11:20:42 12
- 11:20:47 13
- 11:20:51 14
- 11:20:56 15
- 11:21:00 16
- 11:21:02 17
- 11:21:06 18
- 11:21:10 19
- 11:21:14 20
- 11:21:15 21
- 11:21:18 22
- 11:21:20 23
- 11:21:24 24
- 11:21:25 25

- season. But it took a little bit of, I guess, goating to make sure that the folks at the branch understood to not demobilize anything.
- Q. In the course of your duties assisting in the planning or conducting the planning and allocation of resources within Houma, did you become aware of any other concerns that the Houma incident command had regarding BP's performance in the response?
- A. Yes.
- Q. Please describe that.
- A. Every morning we would have an OPS, operations call with the different branches, and one of the things we do is ask them, do you have the resources you need, do you need anymore resources; and one day they said, yeah, we need X, Y and Z, everyone took notes in the meeting, and then the next day or two days later they say, hey, that stuff still hasn't shown up yet. And I know there would be a closed-door meeting between Captain Laferriere and Mike Utsler and then a day later the equipment would show up.
- Q. I want to wrap up your questioning with one final line of questioning. In its opening statement BP has emphasized that it dedicated significant resources to the response. Do you agree with that statement?
- A. I agree and I also think that massive amounts of resources were required for this response given its size.
- Q. How would you characterize the level of resources dedicated to this response by the Coast Guard?
- A. The Coast Guard used unprecedented amount of resources in this

- 11:21:29 1 response.
- 11:21:30 2 Q. And if you add in the other federal agencies, how would you
- 11:21:33 3 | characterize the level of resources dedicated to this response by
- 11:21:36 4 the U.S. Government?
- 11:21:37 5 A. The U.S. Government used a significant amount of resources,
- 11:21:43 6 they also had people who were deployed who don't normally go for oil
- 11:21:48 7 | spill response, and it was a protracted response, a lot more people
- 11:21:52 8 were involved in their agencies.
- 11:21:53 9 Q. Are you aware of any other incident response efforts undertaken
- 11:21:57 10 by the Coast Guard that were similar in terms of their impact on the
- 11:22:00 11 | Coast Guard?
- 11:22:01 12 A. Yes.
- 11:22:01 13 | Q. Which ones?
- 11:22:02 14 A. The response after 911, the response to Hurricane Katrina.
- 11:22:07 15 Q. How were those responses similar to the DEEPWATER HORIZON
- 11:22:11 16 | response?
- 11:22:11 17 | A. That they were large-scale events that required Coast Guard
- 11:22:18 18 | resources and time because we are the lead agency for search and
- 11:22:24 19 | rescue or oil spill response.
- 11:22:27 20 | Q. And how did those responses differ?
- 11:22:29 21 A. They differed in a couple of ways. Give you an example, for
- 11:22:35 22 | 911 it was a lot of Coast Guard men and women were involved for a
- 11:22:39 23 long period of time, except typically they were involved where their
- 11:22:43 24 | home unit was. So you had extra security zones, you had extra ship
- 11:22:51 25 | transit escorts, but you were in your home unit, so at the end of

11:22:57 1 the day you could go home to your family.

Or in the case of the search and rescue aspect after Katrina, we floated a massive amount of resources, helicopters from Alaska for instance; but once the search and rescue effort was over after the first couple of weeks, they all went back, so it was a much shorter period of time.

MS. HIMMELHOCH: Thank you, I have no further questions at this time.

THE COURT: Thank you. Mr. Brock.

MR. BROCK: Thank you, your Honor.

CROSS-EXAMINATION

11:23:28 12 BY MR. BROCK:

11:22:58 2

11:23:02 3

11:23:06 4

11:23:10 5

11:23:14 6

11:23:15 7

11:23:18 8

11:23:18 9

11:23:20 10

11:23:27 11

11:24:04 13

11:24:05 14

11:24:05 15

11:24:11 16

11:24:13 17

11:24:19 18

11:24:22 19

11:24:24 20

11:24:29 21

11:24:38 22

11:24:39 23

11:24:44 24

11:24:48 25

Q. Good morning, Admiral.

A. Good morning.

Q. Thank you for the B plus or A, I gave you the same grade earlier today. So just to be clear on that.

Just a few questions for you on some of the things you've testified to, and then I have a few documents that I want to ask you about also, if that's okay.

First of all, the incident command in Houma was responsible for response operations in the deepwater as well as the Louisiana coast, correct?

A. We were responsible once the oil hit the surface, so anything with source control or subsurface activities was not run out of the Houma office, just once the oil hit the surface.

- 11:24:51 1 Q. What about the application of subsea dispersants?
- 11:24:54 2 A. No, that was out of Houston.
- 11:24:56 3 Q. So offshore, on the water, all the way to the shore of
- 11:25:02 4 Louisiana?
- 11:25:04 5 A. Aerial dispersant and to the shore, yes.
- 11:25:06 6 Q. Correct. When you were Deputy Incident Commander at the ICP
- 11:25:13 7 | Houma, you would have provided input and guidance on a daily basis
- 11:25:21 8 to the daily plan, correct?
- 11:25:22 9 A. Yes.
- 11:25:23 10 | Q. And there would be people representing BPXP who would be
- 11:25:27 11 | working alongside you in terms of helping to develop those plans?
- 11:25:31 12 A. Yes.
- 11:25:31 13 Q. And when you later became the Incident Commander at Houma, you
- 11:25:40 14 | would have then been responsible for approving the operational
- 11:25:44 15 | plans?
- 11:25:45 16 A. Yes.
- 11:25:45 17 | Q. And probably did some of that even when you were Deputy
- 11:25:50 18 | Incident Commander, if Mr. Laferriere was not present?
- 11:25:54 19 A. Yes.
- 11:25:55 20 Q. Now, is it correct that the Coast Guard had final authority on
- 11:26:04 21 | the daily plans?
- 11:26:05 22 | A. The Unified Command had final authority on the daily plans, so
- 11:26:09 23 | it wasn't just the Coast Guard, it was Coast Guard, BP, and the
- 11:26:14 24 states.
- 11:26:14 25 Q. Okay. And that's a good point, and that is that the Unified

- 11:26:21 1 | Command was made up of the Coast Guard, representatives of BPXP, and
- 11:26:25 2 representatives of the states?
- 11:26:27 3 A. Yes.
- 11:26:27 4 Q. Out of ICP Houma in terms of the work that was being done, it
- 11:26:40 5 | would have included the in situ burning, aerial dispersants, and
- 11:26:46 6 offshore skimming?
- 11:26:47 7 A. Yes.
- 11:26:48 8 Q. And the operations for which you were responsible while at
- 11:26:55 9 | Houma were overall performed well?
- 11:26:59 10 A. Yes.
- 11:27:00 11 | Q. You believe that they limited the effects of the spill?
- 11:27:03 12 A. Yes, they had effects.
- 11:27:07 13 | Q. And contributed to minimizing the effects of the spill?
- 1:27:10 14 A. Yes.
- 11:27:11 15 Q. Put another way, less oil hit the beach because of the actions
- 11:27:17 16 of the ICP Houma group?
- 11:27:20 17 A. Yes.
- 11:27:21 18 Q. Let me turn to the concept now of unity of effort. That's a
- 11:27:30 19 | phrase that is utilized a good bit in thinking about effective
- 11:27:35 20 responses, correct?
- 11:27:36 21 A. Yes.
- 11:27:37 22 Q. And in your experience as Deputy Incident Commander and
- 11:27:44 23 | Incident Commander during the response, you believe that BP and the
- 11:27:47 24 | Coast Guard worked effectively together?
- 11:27:50 25 A. For the most part, yes.

- 11:27:51 1 Q. They worked hard?
- 11:27:52 2 A. Yes.
- 11:27:52 3 Q. And with a common purpose?
- 11:27:54 4 A. Yes.
- Q. The individuals from BPXP with whom you had personal experience
- 11:28:04 6 were professional in their approach to issues?
- 11:28:06 7 A. Yes.

11:28:08 8

11:28:10 9

11:28:13 10

11:28:19 11

11:28:23 12

11:28:24 13

11:28:28 14

11:28:32 15

11:28:35 16

11:28:37 17

11:28:39 18

11:28:44 19

11:28:49 20

11:28:56 21

11:29:03 22

11:29:07 23

11:29:09 24

11:29:15 25

MS. HIMMELHOCH: Your Honor, I am going to object to the phrasing of the question, the witness beat me to it, but just for the record, BPXP has no employees. So these individuals could not have been BPXP employees, so for that reason I have an objection to the question.

- MR. BROCK: That's just an argument -- I'm sorry.
- THE COURT: Well --

MS. HIMMELHOCH: To put it in evidentiary phrases, it lacks foundation.

THE COURT: I think part of the confusion is throughout this thing most of the time we've just been referring to BP, and I assume that's what you're doing now, Mr. Brock. All of the resources brought to bear by BP, which as has been pointed out by you and the government, include employees, contractors that don't technically work for BPXP.

MR. BROCK: Yes, they were working on behalf of BPXP during the response, their time and expenses were being charged to BPXP.

So I don't mind, understanding that BPXP is the defendant,
11:29:20 2 I don't mind saying BP but with the understanding that I am
11:29:25 3 referring to the defendant.

THE COURT: Okay. All right. Let's go.

BY MR. BROCK:

- Q. Now, with regard to the interaction with BP, the Federal
 On-Scene Commander had the discretion to issue directives to the
 responsible party in the event that was needed, correct?
- 11:29:53 9 A. Yes.

11:29:27

11:29:29

11:29:31 6

11:29:44 7

11:29:50 8

5

- Q. And you're not aware of any instance in which BP refused an order by yourself or Captain Laferriere as Incident Commander in Houma, do you?
- 11:30:05 13 A. Me personally, no.
- Q. You were shown an e-mail a little bit ago about the announcement that you made when you were coming to Houma, and do you recall that in that e-mail you made reference to being honored to serve with the individuals who were involved in the response?
- 11:30:27 18 A. Yes.
- 11:30:27 19 Q. And that would include the representatives of BP?
- 11:30:30 20 A. Yes.
- Q. You would agree that the responders as a whole, including BP and the Coast Guard, were a world class group?
- A. For the most part, yes; there could be individuals in there, but, yeah, people worked very well.
- 11:30:50 25 Q. Now, I want to turn to the issue of communication for just a

- minute. If we could have TREX 12486.2.1. Do you see that this is
- 11:31:13 2 an e-mail that was written by you to James Sommer --
- 11:31:18 3 A. Yes.
- 11:31:18 4 Q. -- on June the 7th, 2010.
- 11:31:21 5 A. Yes.
- 11:31:23 6 Q. And if I could focus your attention on the portion that I've
- 11:31:27 7 | highlighted. You write, "Don't believe what you see on TV. People
- 11:31:33 8 here are working very hard and we're keeping the vast majority of
- 11:31:37 9 the oil off of the beaches. We need to do a better job telling our
- 11:31:42 10 | story." Is that what you wrote on June the 7th?
- 11:31:47 11 A. It's what I wrote, but I need to put it in the right context.
- 11:31:54 12 James Sommer is a friend of mine. At the time he was also in the
- 11:31:57 13 | Coast Guard. We were very frustrated at the time because what was
- 11:32:02 14 | being portrayed in the media was not accurate, even though we were
- 11:32:06 15 | trying to get our story out. And so I wanted Jim to understand that
- 11:32:12 16 | what he might perceive based on what he saw in the accounts of the
- 11:32:16 17 | media was not reality on the ground, that there was a lot of oil not
- 11:32:20 18 getting on the beach, some of that due to mother nature just the
- 11:32:24 19 | currents not bringing it to shore, some of it due to our response
- 11:32:28 20 actions.
- 11:32:28 21 | Q. So you wanted to convey to him everyone is working hard, we're
- 11:32:32 22 | keeping the vast majority of the oil off the beaches; you would say
- 11:32:37 23 | that was due to a combination of factors to include mother nature
- 11:32:42 24 and the work of the response group?
- 11:32:43 25 A. Yes.

- 11:32:44 1 Q. And at that time the media was portraying individuals and the
 - 11:32:53 2 response as not working as hard as they needed to work, was that the
 - 11:32:57 3 issue you were addressing?
 - 11:32:58 4 A. Yes.
 - 11:32:58 5 Q. And that was not true either for the representatives of the
 - 11:33:03 6 | Coast Guard or the representatives of BP and the states, correct?
 - 11:33:06 7 A. Yes.
 - 11:33:08 8 Q. Let's see 12486.2.2. Is this an e-mail, another e-mail that
 - 11:33:24 9 you wrote to James Sommer on June the 7th, 2010?
 - 11:33:33 10 A. Yes.
 - 11:33:33 11 | Q. And I would like to focus your attention, if I could, please,
 - 11:33:36 12 on the last sentence. "They keep showing the same small area of
 - 11:33:40 13 | impacted shoreline/marsh, because that's all that they can show."
 - 11:33:46 14 Do you see that?
 - 11:33:47 15 A. Yes.
 - 11:33:47 16 Q. And is that what you communicated to Mr. Sommer on June the
 - 11:33:52 17 7th, 2010?
 - 11:33:54 18 A. Yes. And again, he is a friend so I was probably using a
 - 11:33:58 19 | little bit of hyperbole there. There might have been other areas
 - 11:34:04 20 | they could have showed, but it was very frustrating to us at the
 - 11:34:09 21 | time of the response.
 - 11:34:09 22 | Q. You knew that what was being represented on TV was an
 - 11:34:14 23 | exaggeration of the reality of what was happening in the marshes,
 - 11:34:17 24 | correct?
 - 11:34:17 25 A. Yes. In scale, but, yes.

- 11:34:21 1 Q. Let's look at TREX 12487. Now, we're over into July of 2010.
- 11:34:35 2 Do you see that e-mail?
- 11:34:36 3 A. Yes.
- 11:34:36 4 Q. Do you see that?
- 11:34:39 5 A. (WITNESS NODS HEAD IN THE AFFIRMATIVE.)
- 11:34:40 6 Q. And do you report to Mr. Burch at this time that, "you're still
- 11:34:46 7 here fighting the oil spill. Don't believe what you see on the
- 11:34:49 8 news. We are working hard and are keeping the VAST majority of the
- 11:34:56 9 oil off the beach."?
- 11:34:57 10 A. Yes.
- 11:34:58 11 Q. Now, it is correct, is it not, that one of the primary
- 11:35:01 12 | objectives was to -- of the response team was to keep the oil off of
- 11:35:10 13 | the sensitive beaches and shorelines?
- 11:35:12 14 A. Yes.
- 11:35:13 15 Q. Now, you are familiar with the federal on-scene commanders
- 11:35:23 16 | report that was dated September of 2011, are you not?
- 11:35:26 17 A. Yes.
- 11:35:26 18 | Q. You actually contributed to this report, correct?
- 11:35:30 19 A. Yes.
- 11:35:31 20 | Q. And you reviewed the draft sections of the report, correct?
- 11:35:34 21 A. Some of the sections, yes.
- 11:35:36 22 Q. Could we have 9105, please. Do you see that this is the cover
- 11:35:47 23 page to the Federal on-Scene Commander -- Coordinator Report?
- 11:35:55 24 A. Yes.
- 11:35:55 25 | O. And if we could now turn to callout .14.1. This is callout

11:36:05 1 from a slide that I put up for Judge Barbier earlier, I would just li:36:09 2 like to review it with you briefly.

"The DEEPWATER HORIZON oil spill response was ultimately successful, due to the unity of effort and perseverance of the more than 1,000 organizations that contributed to this unprecedented response." Do you see that?

- A. Yes.
- Q. And you agree with that statement, do you not?
- A. For the most part, yes.
 - Q. Now, it says, the agencies, including the Coast Guard, worked collectively with BP towards a common goal as part of the response."

 Do you see that?

I'm sorry. We need to go to the next callout, I thought it was at the bottom of that one. Let me just ask you the question -- let me put it this way.

Do you agree that the agencies, including the Coast Guard, worked collectively with BP towards a common goal as part of the response?

- A. Yes.
- Q. And you described for us in your deposition that BP's approach was unlike some other responsible parties you had dealt with in the past where the responsible party came kicking and screaming into the response, do you recall that?
- A. Yes.
- Q. And you don't put BP in that category, do you?

11:37:15 19

11:36:12

11:36:15 4

11:36:21 5

11:36:24 6

11:36:25 7

11:36:25 8

11:36:28 9

11:36:30 10

11:36:36 11

11:36:41 12

11:36:47 13

11:36:50 14

11:36:56 15

11:37:08 16

11:37:11 17

11:37:15 18

3

- 11:37:16 20
 11:37:22 21
- 11:3/:22 **21**
- 11:37:26 22
- 11:37:31 23
- 11:37:33 24
- 11:37:33 25

- 11:37:36 1 A. No.
- 11:37:36 2 Q. They came in willingly, correct?
- 11:37:39 3 A. They did, but they were also required to.
- 11:37:41 4 Q. And with their resources?
- 11:37:43 5 A. Yes.
- 11:37:43 6 Q. And they were committed to obtaining the best result possible?
- 11:37:50 7 A. Yes.
- 11:37:55 8 Q. Now, let's look at a callout from the report 9105.79.1. Do you
- 11:38:05 9 see that this is a section from the operations portion of the
- 11:38:09 10 | report?
- 11:38:10 11 A. Yes.
- 11:38:10 12 | Q. I'll read this for the record, please and then ask you a
- 11:38:15 13 | question. "The shoreline protection tactics, techniques and
- 11:38:18 14 | procedures used by the Operations Sections, and within individual
- 11:38:21 15 | states across the response area ensured a layered defense beyond
- 11:38:26 16 | sub-sea dispersant, skimming at the source, in situ burning, aerial
- 11:38:34 17 | dispersant use, and VOOs skimming." Do you see that?
- 11:38:37 18 A. Yes.
- 11:38:37 19 Q. And is this statement consistent with your experience?
- 11:38:41 20 A. Yes.
- 11:38:45 21 Q. The report continues in the non-highlighted section, "All those
- 11:38:49 22 | measures helped minimize the environmental impacts of oiling along
- 11:38:52 23 | the Gulf Coast." Do you see that?
- 11:38:54 24 A. Yes.
- 11:38:54 25 Q. And you agree with that?

- 11:38:55 1 A. Yes.
- 11:38:56 2 Q. Let's look at 9105.79.3, Operations. Do you see here the part
- 11:39:09 3 that I have highlighted, "The protection plans and actions were made
- 11:39:11 4 possible through cooperation between federal, state, and local
- 11:39:14 5 officials, the RP -- which was BPXP -- "and environmental experts."
- 11:39:19 6 Do you see that?
- 11:39:20 7 A. Yes.
- 11:39:22 8 Q. And do you agree with it?
- 11:39:23 9 A. Yes.
- 11:39:24 10 Q. And if I could have one more callout 9105.79.4. To sum up,
- 11:39:35 11 | "These plans and actions minimized not only the threat, but also the
- 11:39:39 12 | actual impact of oil in the marshes and on the beaches." Do you see
- 11:39:44 13 that?
- 11:39:45 14 A. Yes.
- 11:39:46 15 Q. And do you agree with that?
- 11:39:46 16 A. Yes.
- 11:39:47 17 Q. Let's go to TREX 12484.1.2, please. Do you see here I have
- 11:40:14 18 | called out at the top an e-mail from you to Kathleen Neary?
- 11:40:20 19 A. Yes.
- 11:40:20 20 | Q. Can you see it okay?
- 11:40:22 21 A. I can.
- 11:40:23 22 Q. All right. Thank you. And do you see that this was sent,
- 11:40:26 23 | please, on June the 13th of 2010?
- 11:40:30 24 A. Yes.
- 11:40:31 25 Q. And I'll just read this for the record and then I have a

- 1:40:35
- 11:40:39 2
- 11:40:43 3
- 1:40:47 4
- 11:40:53 5
- 11:40:58 6
- 11:41:02 7
- 11:41:04 8
- 11.41.04
- 11:41:12 9
- 11:41:16 10
- 11:41:20 11
- 11:41:24 12
- 11:41:28 13
- 11:41:30 14
- 11:41:33 15
- 11:41:35 16
- 11:41:40 17
- 11:41:44 18
- 11:41:48 19
- 11:41:50 20
- 11:41:54 21
- 11:41:55 22
- 11:41:58 23
- 11:41:59 24

A. Yes.

11:41:59 25

- question. "The shoreline damage is actually not as bad as is being portrayed...frankly, they are showing the same heavily oiled patch and making it seem that it represents miles and miles of shoreline -- it absolutely does not! What you mostly see along the affected coast, which, by the way is much less than 200 miles are sheens (which will burn off) and tar balls, which are being picked up one at a time." Did you write that?
- A. Yes. Again, to put it in the proper context, Kathleen Neary is a friend, she called me and sent me e-mails very concerned thinking that it was an ecological holocaust that was going on down in Louisiana, and I wanted to ensure her that it was not as bad as it was being portrayed on TV. It was bad, but not as bad as it was being portrayed.
- Q. You characterized what you were seeing in terms of impact accurately in this e-mail, did you not?
- A. I would say qualitatively -- I would not absolutely say, yes, it was 200 miles; but qualitatively, yes.
- Q. You were trying to convey to her your point of view about the impact to the shoreline damage, correct?
- A. I was trying to reassure her that it wasn't as bad as she was perceiving it.
- Q. And then you go on to give some information about that, correct?
- Q. If we now look at 12484.1.3. And if we can focus on the

11:42:11 1

11:42:16 2

11:42:20 3

11:42:24 4

11:42:29 5

11:42:32 6

11:42:35 7

11:42:40 8

11:42:46 9

11:42:52 10

11:42:56 11

11:42:58 12

11:42:58 13

11:43:02 14

11:43:03 15

11:43:08 16

11:43:15 17

11:43:16 18

11:43:20 19

11:43:21 20

11:43:40 21

11:43:44 22

11:43:48 23

11:43:52 24

11:43:58 25

highlighted part. You write in this note of June 13th, 2010, "The marshes will recover...they have been impacted by oil spills in years past, including in the aftermath of Katrina. After a year or so, you can't even tell there was ever any oil there."

And then just to finish it out I'll go down to the bottom. You continue in the last sentence, "The oil coating the marsh has pretty much lost its toxicity and just sticks to the reeds...then falls off. It is very resilient this way." Is that what you wrote?

A. Yes. And I wrote that because, again, she was very concerned,
I was trying to allay her concerns and I was passing information that I had had in a conversation with folks in the environmental end.

- Q. The folks, experts in the environmental unit conveyed these facts to you?
- A. I would say, again, qualitatively, not quantitatively.
- Q. The qualitative statement they conveyed to you was that the marshes will recover, correct?
- A. Yes, yes. But the timing, I said it was a year, I could be totally wrong about the time frame.
- Q. Just one more on this, please. 12484. You write, "There is some damage, but not nearly what's being portrayed. And that's sad, because people are really working hard to make a difference and when they hear what's being said about the responders and the condition of the shoreline, it's pretty demoralizing." And you're addressing here a morale issue, correct?

- 11:43:59 1 A. Yes.
- 11:44:00 2 | Q. Now, one of the things that you had to do as a leader at Houma
- 11:44:04 3 was to support the morale of the response team that was working out
- 11:44:12 4 of that location, correct?
- 11:44:13 5 A. Yes.
- 11:44:14 6 Q. And you would be interacting with a good number of people
- 11:44:19 7 | there, including folks who were there on behalf of BPXP?
- 11:44:23 8 A. Yes.
- 11:44:23 9 Q. It's also the case that BP provided leadership in terms of
- 11:44:33 10 | maintaining the morale of the group that was working in the
- 11:44:38 11 | response?
- 11:44:38 12 A. Yes.
- 11:44:38 13 | Q. And you give them high marks for their leadership in that way?
- 11:44:42 14 A. Yes.
- 11:44:42 15 Q. Did you interact with Mike Utsler as the Incident Commander for
- 11:44:52 16 BPXP during the time that you were there?
- 11:44:53 17 A. Yes.
- 11:44:54 18 Q. And do you give him good marks for leadership?
- 11:44:56 19 A. I do, yes.
- 11:44:57 20 Q. Can we put him in the B plus, A category?
- 11:45:03 21 A. Yes.
- 11:45:03 22 Q. How about A plus?
- 11:45:08 23 A. Well, from where I sat for the things that he was responsible
- 11:45:11 24 | for, you know, I have to say A because I was not privy to things
- 11:45:14 25 | that went from him and above.

- 11:45:16
- 11:45:19 2
- 11:45:21 3
- 11:45:21
- 11:45:33
- 11:45:38
- 11:45:39 7
- 11:45:43 8
- 11:45:48 9
- 11:45:55 10

- 11:46:03 12
- 11:46:08 13
- 1:46:14 14
- 11:46:17 15
- 11:46:20 16
- 11:46:20 17
- 11:46:27 18
- 11:46:37 19
- 11:46:41 20
- 11:46:45 21
- 11:46:50 22
- 11:46:55 23
- 11:46:58 24
- 11:47:04 25

- That's all I can ask you about is your personal knowledge. Ο.
- give him an A for what you observed?
- Α. Yes.
- Now, let's look at TREX 12485.1.1, please. This again is a
- note to Kathleen Neary dated June 23rd, 2010. Do you see that?
- Α. Yes.
- And do you write, "It might make you feel a bit better to know
- that a similar thing happened in 1980 off the Gulf Coast of Mexico
 - when the Ixtoc I well blew out, discharging over 100 million gallons
 - Tarballs reached the coast of Texas that needed to be
- 11:45:59 11 cleaned up, but over the next several years Mother Nature took care
 - of the oil and water, fisheries recovered and beaches were again
 - supportive of life. There is an incredible resiliency to our
 - environment -- it's our job to help the process in the most
 - environmentally benign way possible." Do you see that?
 - Yes. Α.
 - And that's what you conveyed to Ms. Neary on June the 23rd?
 - Yes. Α.
 - I want to talk just a minute about the effectiveness of some of
 - the response techniques that were utilized, please. And I'll ask
 - you first about in situ burning. Is it right that in situ burning
 - was determined to be a viable response technique by late April 2010?
 - I'm not sure what you mean.
 - When I say viable, I am talking about a response technique that
 - can be carried out in a safe and effective way.

- 11:47:07 1 A. Yes.
- 11:47:07 2 Q. And if we could see TREX 9105.65.1. Admiral, this is a callout
- 11:47:17 3 from the FOSC report that we were looking at earlier, and I'd direct
- 11:47:22 4 | your attention down to the sentence that begins finally. "Finally
- 11:47:26 5 the OSC determined in situ burning was a safe and effective way to
- 11:47:31 6 remove large volumes of oil from the ocean surface, based on in situ
- 11:47:38 7 data from previous spills." Do you see that?
- 11:47:39 8 A. Yes.
- 11:47:40 9 Q. And you agree with that?
- 11:47:43 10 A. Yes.
- 11:47:43 11 Q. And then if we look at TREX 9105.65.2, this refers to, "SMART
- 11:47:52 12 | in situ burning monitoring protocols, " and it says that, "they were
- 11:47:56 13 designed to protect the general population and response workers from
- 11:48:00 14 | smoke particulates. SMART sampling revealed no detectable
- 11:48:08 15 particulates in work zones and population centers." Do you see
- 11:48:11 16 | that?
- 11:48:11 17 A. Yes.
- 11:48:12 18 Q. And that was an important component of these operations, was it
- 11:48:16 19 not?
- 11:48:17 20 A. Yes, because you're taking the oil off the surface, now it's
- 11:48:23 21 going to be airborne and you want to make sure that it's going to
- 11:48:27 22 not affect the population or the workers that are near the site.
- 11:48:30 23 | Q. And there was a very sophisticated testing plan that was in
- 11:48:33 24 | place to ensure that that occurred, correct?
- 1:48:34 25 A. Yes.

- 11:48:35 1 Q. And it's also correct that these operations were conducted in a
- 11:48:39 2 very safe manner --
- 11:48:40 3 A. Yes.
- 11:48:41 4 O. -- correct?
- Now, if we look at 9105.66.1. I'll mention this to you,
- 11:48:53 6 please. In the opening comments that we made to Judge Barbier, I
- 11:48:57 7 | mentioned that safety and keeping oil off the beaches were two of
- 11:49:00 8 the primary goals of the response organization. Do you agree with
- 11:49:05 9 that
- 1:49:05 10 A. Yes.
- 11:49:05 11 Q. And do you see here that with regard to safety and smoke
- 11:49:11 12 | plumes, that the FOSC report reports that attention to safety was
- 11:49:16 13 | always paramount. Do you see that?
- 1:49:18 14 A. Yes.
- 11:49:18 15 Q. And do you agree with that?
- 11:49:19 16 A. Yes.
- 11:49:19 17 Q. There were no injuries or illnesses resulting from the burning
- 11:49:22 18 operations. Do you see that?
- 11:49:23 19 A. Yes.
- 11:49:24 20 Q. And do you agree with that?
- 11:49:25 21 A. Yeah.
- 11:49:26 22 Q. And these are very complex operations, are they not?
- 11:49:30 23 A. Yes.
- 11:49:31 24 Q. It takes several vessels to manage the various activities that
- 11:49:37 25 | take place with regard to in situ burning?

- 11:49:39 1
- 11:49:40
- 11:49:48 3
- 11:49:50
- 11:49:50
- 11:49:56 6
- 11:50:00 7
- 11:50:05 8
- 11:50:09 9
- 11:50:14 10
- 11:50:18 11
- 11:50:25 13
- 11:50:26 14
- 11:50:30 15
- 11:50:35 16
- 11:50:36 17
- 11:50:39 18
- 11:50:45 19
- 11:50:50 20
- 11:50:54 21
- 11:50:57 22
- 11:51:04 23
- 11:51:12 24

- Α. Yes.
- And it also is important to take due consideration to issues of
- the environment, including wildlife, correct?
- Α. Yes.
- And when these in situ burning operations were being conducted,
- it's correct, is it not, that there were environmental
- representatives on the vessels to ensure that turtles and dolphins
- and other wildlife weren't affected by the operations?
- They were there to minimize it, but I think there's no way that
- we could say that for 100 percent surety the animals weren't
- affected. But I know it was in keeping with the regulations of
- Section 7 activities that have to go on to minimize the threat to 11:50:21 12
 - the affected wildlife.
 - Q. Do you agree that the folks that were involved in the
 - operations did a good job of minimizing any potential impact to
 - wildlife?
 - To --Α.
 - Do you agree that the individuals who were involved in in situ
 - burning did a good job of protecting against any potential impact to
 - wildlife while the operations were being conducted?
 - Yes, they were very mindful of protecting the animals.
 - Let's just look at one callout on that, please.
 - 12489.6.2. It refers to what I just mentioned, "the existing
 - wildlife monitoring effort was augmented with two trained and
- 11:51:16 25 qualified turtle observers per task force, including observer

- 11:51:20 1 trainees. There were as many as five observers on the vessels at
- 11:51:23 2 one time." Do you see that?
- 11:51:26 3 A. I do. To be fair, though, and it's great that it happened, but
- 11:51:32 4 | it was also required. So it wasn't just luck that there was these
- 11:51:37 5 observers out there.
- 11:51:38 6 Q. I'm trying to focus on the effectiveness of the response, the
- 11:51:43 7 | sensitivity to the environmental issues, and the protection of
- 11:51:47 8 individuals who are working on the response, that's what I'm
- 11:51:52 9 focussing in on right now, okay?
- 11:51:54 10 A. Okay.
- 11:51:54 11 Q. Let's look at the conclusion about wildlife monitoring,
- 11:52:00 12 | 12489.6.3. It says, "To the best of our knowledge, no turtles were
- 11:52:10 13 | spotted in or near the fire boom during this period or previous
- 11:52:15 14 | operational periods." Do you see that?
- 11:52:17 15 A. Yes.
- 11:52:17 16 | Q. And you have no reason to disagree with that?
- 11:52:20 17 A. No.
- 11:52:21 18 | Q. You were asked some questions about dispersants, so I am going
- 11:52:27 19 | to ask you a few questions about those, okay.
- You know that dispersants were being used during the
- 11:52:35 21 response, both subsea and on the surface, correct?
- 11:52:37 22 A. Yes.
- 11:52:38 23 Q. And dispersants are a valid and useful tool in removing oil
- 11:52:46 24 | from the environment, correct?
- 11:52:47 25 A. It's a tool to break it down into smaller pieces to allow the

- 11:52:53 1 environment -- to allow weathering quicker, it doesn't remove it
- 11:52:58 2 | from the environment, it helps to speed up the removal from the
- 11:53:00 3 | environment.
- 11:53:01 4 Q. Right. There's also a process that we call biodegradation --
- 11:53:06 5 A. Right.
- 11:53:06 6 Q. -- that is facilitated by the action of the dispersant,
- 11:53:11 7 | correct?
- 11:53:11 8 A. Yes.
- 11:53:12 9 Q. And that allows for the removal of a substantial amount of oil
- 11:53:16 10 | from the environment, correct?
- 11:53:18 11 A. Yes.
- 11:53:19 12 | Q. Now, you agree that dispersants were effective when used during
- 11:53:26 13 | the response?
- 1:53:27 14 A. Yes.
- 11:53:27 15 Q. And you agree that dispersants were used in a careful and
- 11:53:34 16 | judicial way during the response?
- 11:53:36 17 A. Yes.
- 11:53:37 18 Q. And that dispersants contributed to preventing oil from
- 11:53:42 19 | reaching the shoreline and injuring wildlife?
- 11:53:45 20 A. Yes.
- 11:53:45 21 | Q. You agree that there was a net benefit for the approval of
- 11:53:51 22 | dispersants on those occasions when they were used?
- 11:53:54 23 A. Yes.
- 11:53:54 24 | Q. You agree that dispersants are less toxic than freshly spilled
- 11:54:04 25 | crude oil?

- 11:54:04 1 A. That's what the reports say.
- 11:54:07 2 Q. Now, let's turn to the SCAT work that was done. Would you tell
- 11:54:24 3 | the court what SCAT is?
- 11:54:26 4 A. Shoreline Cleanup Assessment Teams.
- 11:54:30 5 Q. Thank you. And that process, that SCAT process is the accepted
- 11:54:36 6 standard procedure in the United States for evaluating shoreline
- 11:54:41 7 | oiling and developing cleanup techniques?
- 11:54:44 8 A. Yes.
- 11:54:45 9 Q. And the SCAT program used in the response was consistent with
- 11:54:51 10 | what was needed for the response?
- 11:54:53 11 A. Yes.
- 11:54:55 12 Q. Now, your knowledge is that the SCAT teams would locate oil and
- 11:55:05 13 | then recommend appropriate treatment for the oil, correct?
- 1:55:09 14 A. Yes.
- 11:55:09 15 | O. And the recommendations would need to take into account
- 11:55:14 16 | environmental conditions?
- 11:55:15 17 A. Yes.
- 11:55:16 18 Q. And then once the environmental conditions or recommendations
- 11:55:20 19 | were made, the cleanup actions would be conducted in accordance with
- 11:55:25 20 | the recommendations?
- 11:55:26 21 A. Yes.
- 11:55:26 22 Q. And it would be a process for signing off on all of that?
- 11:55:30 23 A. Yes.
- 11:55:31 24 | Q. You would say that the Coast Guard and BP worked together
- 11:55:36 25 | cooperatively to cleanup oiling along the shoreline?

- 11:55:40 1 A. Yes.
- 11:55:42 2 Q. And effectively?
- 11:55:44 3 A. Yes.
- 11:55:44 4 Q. You would agree that BP worked with the Unified Command to
- 11:55:51 5 provide appropriate resources for shoreline cleanup?
- 11:55:54 6 A. BP was part of the Unified Command, so, yes.
- Q. That's probably not, probably not a good question. I'll do it this way.
- The Unified Command provided appropriate resources for shoreline cleanup?
- 11:56:10 11 A. For the most part, yes.
- Q. And BP was an important participant and contributor to that process?
- 11:56:16 14 A. Yes.
- 11:56:17 15 Q. You are familiar -- new topic booming. You're familiar with
- 11:56:23 16 | booming as a response technique?
- 11:56:25 17 A. Yes.
- Q. And you were personally involved in deployment of boom during the response?
- A. I had personal knowledge of it, I didn't lay any of the boom personally.
- 11:56:34 22 Q. Right. That would have been dangerous if I had tried it, too.
- But you would have known of the activity, you would have 11:56:43 24 signed off on some of the activities of those types of things?
- 11:56:46 25 A. Yes.

- 1:56:46 1
- 11:56:50 2
- 11:56:54
- 11:56:58
- 11:57:00 5
- 11:57:07 6
- 11:57:11 7
- 11:57:14 8
- 11:57:18 9
- 11:57:22 10
- 11:57:27 11
- 11:57:33 12
- 11:57:35 13
- 11:57:40 14
- 11:57:46 15
- 11:57:50 16
- 11:57:53 17
- 11:57:57 18
- 11:58:00 19
- 11:58:03 20
- 11:58:05 21
- 11:58:09 22
- 11:58:12 23
- 11:58:13 24
- 11:58:19 25

- Q. And there was an issue in terms of making sure that boom was allocated in a manner that would be the most effective across the response at preventing the oil from reaching the shoreline or containing it in certain areas?
- A. Boom was a critical resource because there wasn't enough to go around all at the same time initially. So that was one of the resources that was brokered by the Unified Area Command, they saw the bigger picture, we were just worried about Louisiana and Houma.
- Q. Your view was that, from your perspective in Houma, you would be responsible for triaging what was needed and making sure that the highest needs got the boom, and your view further would be that you were able to get boom to where it was needed?
- A. We were following the -- sorry, I forget the name of the acronym, but there was a plan that was developed that with the state, BP, the Coast Guard, others in the Unified Command to delineate where the most critical needs and the priorities were.

 And so when we got boom, we followed that plan that was approved.
- Q. And did you tell us in your deposition that you believed that you were able to get boom to where it needed to be?
- A. Eventually, yes.
- Q. Now, you also agree that the boom deployment strategy that was utilized during the response minimized the effects of the spill?
- A. Yes.
- Q. Skimmers were also used as a response technique, correct?
- A. Yes.

- Q. Will you confirm for the court that not oil, not all oil that's
- 11:58:25 2 on the surface is skimmable?
- 11:58:27 3 A. Yes.
- 11:58:27 4 Q. And that there are challenges to skimming in the open water?
- 11:58:33 5 A. Yes.
- 11:58:33 6 Q. Challenges that include wave height?
- 11:58:36 7 A. Yes.
- 11:58:37 8 Q. Other weather conditions?
- 11:58:39 9 A. Yes.
- 11:58:39 10 Q. And the conditions have to be right in order to deploy the
- 11:58:42 11 | skimming technique, correct?
- 11:58:44 12 A. Yes.
- 11:58:44 13 Q. You also can't do it at night, can you?
- 11:58:47 14 A. Offshore, it's possible that it can, but it's much more
- 11:58:52 15 | complicated.
- 11:58:53 16 Q. Let me just ask you quickly about 12493. And do you see this
- 11:59:20 17 | is a cover e-mail from you, Admiral, to a number of recipients,
- 11:59:27 18 | including is that Christal Bryant is the first person named there?
- 11:59:33 19 A. Right, yes.
- 11:59:34 20 | Q. And there's an attachment that goes with this document,
- 11:59:37 21 | correct?
- 11:59:38 22 A. Yes.
- 11:59:39 23 Q. And the attached document is the ICP Houma's input to the FOSC
- 11:59:47 24 | report that we've looked at earlier today, correct?
- 11:59:50 25 A. Yes.

- 11:59:51 1 Q. This is a part of the process that goes into creating that
- 11:59:55 2 report?
- 11:59:56 3 A. Yes.
- 11:59:57 4 Q. If you look down to, I'm going to go down to a new callout,
- 12:00:05 5 12493.3.3.1. And I think this is consistent with what you said just
- 12:00:14 6 a minute ago, but let me just make sure. "Hundredes of skimmers
- 12:00:18 7 | were on-scene with factories around the world upping their
- 12:00:22 8 | throughput (like Lamor in Finland). There were ample numbers of
- 12:00:28 9 skimmers, but it did take some time for them to arrive on scene and
- 12:00:32 10 | be employed." Do you see that?
- L2:00:34 11 A. Yes.
- 12:00:35 12 Q. And then you go on to speak to some of the challenges with the
- 12:00:42 13 use and staging of skimmers and the environment in which you are
- 12:00:46 14 working?
- 12:00:47 15 A. Yes.
- 12:00:48 16 Q. If we go down to 12493.8.1, please. You see there that you
- 12:01:00 17 | refer to Frank Paskewich with Clean Gulf?
- 12:01:03 18 A. Yes.
- 12:01:03 19 | Q. And you knew Frank personally?
- 12:01:05 20 A. Yes.
- 12:01:06 21 | Q. And you had worked with him in New Orleans during Hurricane
- 12:01:11 22 | Katrina, correct?
- 12:01:11 23 A. Yes.
- 12:01:12 24 Q. And he had a significant leadership role during that response,
- 12:01:16 25 | did he not?

- 12:01:17 1 A. Yes.
- 12:01:17 2 Q. And you would characterize Frank Paskewich as someone who is
- 12:01:23 3 | very experienced in oil spill response?
- 12:01:25 4 A. Yes.
- 12:01:25 5 Q. And you would rely on his judgment about issues that come up in
- 12:01:28 6 oil spill response?
- 12:01:29 7 A. Yes.
- 12:01:29 8 Q. Let's turn to just a few questions on health and safety,
- 12:01:38 9 please.
- Admiral Austin, you are a certified industrial hygienist,
- 12:01:45 11 | as I understand it?
- 12:01:45 12 A. Yes.
- 12:01:46 13 | Q. And your certificate comes from the American Board of
- 12:01:49 14 Industrial Hygiene. Does industrial hygiene refer to protecting and
- 12:01:56 15 enhancing the health and safety of people at work and in their
- 12:01:59 16 | communities?
- 12:02:00 17 A. Yes.
- 12:02:04 18 Q. And from your perspective with regard to the DEEPWATER HORIZON
- 12:02:09 19 | incident, you agree that safety was a top priority for the Unified
- 12:02:16 20 | Command during the response?
- 12:02:16 21 A. Yes.
- 12:02:17 22 Q. I want to ask you about air monitoring now. TREX 241736.2.1.
- 12:02:43 23 Do you see that this is a note of July the 30th, 2010?
- L2:02:47 24 A. Yes.
- 12:02:47 25 Q. And I'll ask you to focus on the highlighted portion. "All of

- the sampling to date has shown no air emissions of concern across
- 12:02:56 2 our AOR." Is that area of responsibility?
- 12:03:00 3 A. Yes.
- 12:03:01 4 Q. "Additionally, BP is paying for a third party IH firm --" what
- 12:03:08 5 is IH?
- 12:03:09 6 A. Industrial hygiene.
- 12:03:11 7 Q. "-- to conduct extensive air sampling throughout the Gulf. The
- 12:03:14 8 | company conducting the sampling is accredited to do this work, and
- 12:03:18 9 in fact is frequently hired by Reg VI EPA to conduct sampling on
- 12:03:25 10 | their behalf." Do you see that?
- L2:03:27 11 A. Yes.
- 12:03:27 12 Q. Do you agree that this was a very positive step for BP to
- 12:03:34 13 engage the third party industrial hygienist firm to conduct this air
- 12:03:39 14 | sampling?
- 12:03:39 15 A. Yes. Because again, trying to make sure that there was trust
- 12:03:44 16 | in the response having a third party or an objective observer is a
- 12:03:49 17 | good way to go.
- 12:03:49 18 Q. I want to talk a little bit about BP's contribution of
- 12:04:00 19 resources to the response, please.
- If we could look at 9105.131. This is the logistics
- 12:04:14 21 | section of the FOSC report. Do you see that?
- 12:04:17 22 A. Yes.
- 12:04:17 23 Q. "The responsible party --" that would be BPXP, correct?
- 12:04:20 24 A. Yes.
- 12:04:21 25 | Q. "Made large-scale and significant contributions to logistics

- 12:04:26
- 12:04:30 2
- 12:04:34 3
- 12:04:39 4
- 12:04:39 5
- 12:04:40 6
- 12:04:46 7
- 12:04:47 8
- 12:04:48 9

- 12:05:00 12
- 12:05:07 14
- 12:05:08 15
- 12:05:13 16
- 12:05:14 17
- 12:05:15 18
- 12:05:21 19
- 12:05:25 20
- 12:05:25 21
- 12:06:05 22
- 12:06:10 23
- 12:06:10 24

- - decontamination equipment, and providing food, housing and

procuring much-needed resources, such as booms, skimmers, and

- transportation for the more than 47,000 response personnel." Do you
- see that?
- Yes. Α.
- And is that consistent with your experience in terms of what
- occurred in Houma?
- Α. Yes.
- The RP also managed -- I'm sorry, thank you. This is a Q.
- separate callout, so I just need to state it for the record, I'm 12:04:53 10
- 12:04:55 11 sorry. This is 9105.131.2.
 - "The RP also managed the logistics and finance of the
- 12:05:05 13 Vessels of Opportunity program." Do you see that?
 - Α. Yes.
 - Do you agree that the VOO program contributed to the
 - effectiveness of the response?
 - Α. Yes.
 - And also provided much needed income and revenue to commercial
 - fishermen during periods of time when the fisheries were closed?
 - Α. Yes.
 - Another question for you on dispersants, please. TREX 12495. Ο.
 - Is this a note from Captain James Hanzalik to yourself and others?
 - Α. Yes.
 - Q. And, please, for the benefit of the court, who was Captain
- 12:06:15 25 James Hanzalik?

- 12:06:16
- 12:06:21 2
- 12:06:24 3
- 12:06:28
- 12:06:31 5
- 12:06:31 6
- 12:06:39 7
- 12:06:43 8
- 12:06:49 9
- 12:06:53 10
- 12:06:58 11
- 12:07:04 12
- 12:07:04 13
- 12:07:06 14
- 12:07:09 15
- 12:07:13 16
- 12:07:17 17
- 12:07:21 18
- 12:07:22 19
- 12:07:23 20
- 12:07:24 21
- 12:07:26 22
- 12:07:29 23
- 12:07:29 24
- 12:07:33 25

- A. Let me get the context. I think at this point he was working at the UAC, the Unified Area Command.
- Q. And he is describing here an instance in which a request was made for dispersant application, correct?
- A. Yes.
- Q. And he writes, if we can look down at 12495.1.2: "Don't you think it is odd that the EPA would be directing the FOSC when and when not to use dispersants. We have a 2 mile x 6 mile slick offshore that skimmers cannot get to and we have the EPA telling us to justify our use of surface dispersants which are already preapproved/preauthorized by the RRT." Do you see that?

 A. Yes.
- MS. HIMMELHOCH: Your Honor, I object to this question on the grounds of hearsay. This was not a statement on which the captain was authorized to speak on behalf of the United States, therefore, is not an admission of a party opponent, nor is it a business record under your prior rulings regarding what e-mails constitute business records.
- MR. BROCK: Your Honor, the witness has already testified --
 - THE COURT: I'll overrule the objection, go ahead,
- Mr. Brock.

BY MR. BROCK:

- Q. I just asked you, did I read that right?
- A. You did. But, again, this e-mail probably needs to be put in

- 12:07:36
- 12:07:37 2
- 12:07:40 3
- 12:07:42 4
- 12:07:44
- 12:07:55 6
- 12:07:59 7
- 12:08:04 8
- 12:08:08 9
- 12:08:14 10
- 12:08:16 11
- 12:08:16 12
- 12:08:20 13
- 12:08:21 14
- 12:08:28 15
- 12:08:35 16
- 12:08:40 17
- 12:08:44 18
- 12:08:46
- 12:08:47 20
- 12:08:57 21
- 12:09:02 22
- 12:09:06 23
- 12:09:07 24
- 12:09:08 25

the right context.

have a discussion about it.

Q. I will give you a chance to do that. I have a couple of other things I want to put in the record, if that's okay, and then we can

If we pull up 12495.1.5. "We also have an agency that is "outside" the response calling the shots at the national level. We have senior leadership intimidated by repercussions of their decisions and the unwillingness to make them based on what EPA's desires are and the potential to alleviate/prevent interagency tensions." Do you see that?

- A. Yes.
- Q. I am going to show you one more and then I'll let you explain, if you need to.

This is 12495.1.4 -- well, I'm sorry, I have two more.

12495.1.3. "It would be a travesty if the oil hits the beach
because we did not use the tools available to fight this offshore.

This responsibility needs to be placed squarely in EPA's court if it does hit the shoreline." Do you see that?

- A. Yes.
- Q. Now one more. 12495.1.4. This is from you responding to Captain James Hanzalik's e-mail, where he has just said it would be a travesty if the oil hits the shore. And do you answer there, "Amen James!"?
- A. Yes.
- Q. And I'll just ask you, when you were speaking earlier in your

direct examination about frustrations that related to the use of L2:09:13 1 dispersants, does this e-mail capture it pretty well? 12:09:20 2 A. It does. I would like to make one statement though. I think 12:09:23 3 it's a little unfair -- again, we're all a little cranky. I think 2:09:27 it was a little unfair for James to say "agency outside of the 12:09:31 5 response" because EPA is a cochair of the regional response team. 12:09:34 6 And so while they may not have been designated FOSC for this 12:09:39 7 response, they would have input as part of the ROT. 12:09:45 8 12:09:48 9 Q. But it is the case, is it not, that in Houma you thought you had an understanding of how dispersants could be used, you would 12:09:53 10 12:09:57 11 bring forth proposals and then you would get denials to use dispersants when you thought you should be permitted to use them and 12:10:02 12 12:10:06 13 that was frustrating? 12:10:07 14 A. Yes. At the time, yes. 12:10:09 15 And BP folks were a bit frustrated by that, too, weren't they? 12:10:14 16 A. Everyone was frustrated. 12:10:25 17 MR. BROCK: I believe that's all I have, Admiral. Thank you very much for your time and for your service. 12:10:27 18 12:10:28 19 THE COURT: Redirect? 12:10:30 20 MS. HIMMELHOCH: Very short redirect, your Honor. 12:10:32 21 REDIRECT EXAMINATION 12:10:33 22 BY MS. HIMMELHOCH: 12:10:33 23 Q. Admiral, do you recall Mr. Brock showing you a number of 12:10:36 24 e-mails that you sent to your friends during the course of the

12:10:40 25

response?

- 12:10:40 1 A. Yes.
- 12:10:40 2 Q. During what time period do you recall were those e-mails sent?
- 12:10:44 3 A. Probably early June.
- 12:10:46 4 Q. The spill that occurred began 50 miles offshore; isn't that
- 12:10:50 5 correct?
- 12:10:50 6 A. Yes.
- 12:10:51 7 Q. How long did it take for oil to hit the shoreline?
- 12:10:54 8 A. It took several weeks.
- 12:10:55 9 Q. I also want to ask you if we could please call up -- Mr. Brock
- 12:11:08 10 asked you a number of questions based on the FOSC report, do you
- 12:11:11 11 | remember that?
- 12:11:12 12 A. Yes.
- 12:11:13 13 Q. When was the FOSC report written? That's TREX 9105 for the
- 12:11:18 14 record.
- 12:11:20 15 A. I think it was published in September of 2011.
- 12:11:25 16 | Q. Had the response concluded by then?
- 12:11:27 17 A. No.
- 12:11:27 18 | Q. Has the response concluded today?
- L2:11:29 19 A. No.
- 12:11:30 20 | Q. Is the Coast Guard dedicating any resources to the response
- 12:11:34 21 | right now?
- 12:11:35 22 A. Yes.
- 12:11:35 23 Q. How many? What is the nature of the Coast Guard's resources
- 12:11:38 24 | assigned at this time?
- 12:11:40 25 A. Still the management oversights on those reporting of oil in

- certain areas that they're dispatching the folks needed to deal with 12:11:45
- it and to do the monitoring. 12:11:48 2
- Q. And is that being handled by the FOSC in the district, in the 12:11:51 3
- applicable district office? Has the Coast Guard designated a 12:11:55
- specific FOSC for the spill still? 12:11:59
- 12:12:02 6 Typically the sector commander -- when you're sector
- commander you wear several hats, one of those hats is FOSC for a 12:12:07 7
- predesignated area. Because of the ongoing requirements for the 12:12:13 8
- 12:12:16 9 spill, instead of having a local sector commander deal with that
- response as well as all of his other duties, we still have a 12:12:21 10
- 12:12:24 11 separate FOSC designated for DEEPWATER HORIZON.
- Q. You were asked several questions about efforts to keep the oil 12:12:30 12
- 12:12:33 13 off of the shoreline. And I want to ask you, is the shoreline the
- 12:12:37 14 only part of the environment to which the response was directed?
- 12:12:40 15
- 12:12:40 16 Q. Are there other sensitive areas that you were concerned about
- 12:12:44 17 in planning your response activities?
- 12:12:46 18 A. Yes. We were also concerned about -- some areas it's better to
- 12:12:52 19 not go in there, it's better to let things weather. Also offshore
- 12:12:58 20 you have to worry about breeding season, you have to worry about
- 12:13:01 21 what species of fish might be in a certain area. And I know there's
- 12:13:05 22 concern about the cumulative effects of having dispersant in the
- 12:13:09 23 water.
- 12:13:09 24
- 12:13:11 25
 - Louisiana's coast line and also the plume offshore, the Unified Area

So I know that while we in Houma were concentrated on

- 12:13:17 1 | Command was worried strategically about the entire Gulf and
- 12:13:21 2 long-term effects.
- 12:13:22 3 Q. And Mr. Brock asked you a number of questions about whether
- 12:13:27 4 there were very good plans for the safety of the application of
- 12:13:31 5 dispersants and other response actions. Do you recall those?
- 12:13:34 6 A. Yes.
- 12:13:35 7 Q. Does the fact that there were very good plans insure that there
- 12:13:39 8 was absolutely no risk?
- 12:13:40 9 A. It was the plans minimized the risk. You can never say that
- 12:13:44 10 | there is -- you can never rule out 100 percent risk.
- 12:13:46 11 | Q. And is that also true for the wildlife efforts that were
- 12:13:50 12 | undertaken?
- L2:13:50 13 A. Yes.
- 12:13:55 14 | Q. Mr. Brock asked you about a statement you made in one of your
- 12:13:59 15 e-mails about comparing this spill to the Katrina spill, do you
- 12:14:02 16 | recall that?
- 12:14:03 17 A. Yes.
- 12:14:03 18 Q. How many barrels, if you know, were spilled in the Katrina and
- 12:14:06 19 | Rita spills?
- 12:14:07 20 A. After the storm passed I think it was about 8 million gallons
- 12:14:12 21 | left that had to be cleaned up.
- 12:14:14 22 Q. And do you know how many barrels that is?
- 12:14:17 23 A. I would have to do the math, so 8 million divided by 42.
- MR. BROCK: Just for the record, I think I asked about
- 12:14:25 25 | Ixtoc. If I asked about Katrina, I don't remember that question.

MS. HIMMELHOCH: He called out a portion of her e-mail in which she talked about the effects of Katrina.

THE COURT: She did. Go ahead.

BY MS. HIMMELHOCH:

Q. So, to find out how many barrels that is I would divide by 42?

Q. I won't make you do that on the fly because I couldn't possibly.

Mr. Brock, as Mr. Brock just referenced, he also asked you about Ixtoc. Do you make an effort as part of your duties in the Coast Guard to be aware of the scientific literature regarding the study of the effects of oil spills?

- A. Broadly. But quite frankly, we have scientific support, and so when questions arise I would always defer to them to get the answers, I don't have it off the top of my head.
- Q. Do you know whether the effects of the Ixtoc spill were carefully studied after it was over?

MR. BROCK: I am going to object, beyond the scope.

MS. HIMMELHOCH: Your Honor, he called out a portion of her e-mail in which he pointed out her view of the effects of the Ixtoc spill on the Gulf of Mexico. I am simply inquiring into the basis of that statement.

THE COURT: Overrule the objection.

MR. BROCK: That's fine.

BY MS. HIMMELHOCH:

12:14:40 7

12:14:39 6

Right.

L2:14:43 9

12:14:43 8

12:14:47 10

12:14:52 11

12:14:55 12

12:14:58 13

12:15:05 15

12:15:07 16

12:15:11 17

12:15:14 18

12:15:18 19

12:15:20 20

12:15:26 21

12:15:31 22

12:15:32 23

12:15:33 24

12:15:34 25

12:15:35 1	Q. Admiral Austin, when you made that statement about the Ixtoc
12:15:38 2	spill, had you read any of the scientific literature relating to the
12:15:41 3	effects of the Ixtoc spill?
12:15:42 4	A. No, it was a qualitative statement I heard by a scientific
12:15:47 5	support coordinator.
12:15:48 6	Q. I am going wrap up with one final set of questions. You were
12:15:51 7	asked a number of questions about whether or not there were any
12:15:54 8	effects of the oil. Did you make the statements that Mr. Brock read
12:15:58 9	you based on any scientific studies?
12:16:00 10	A. No.
12:16:01 11	Q. And are you aware of any studies going on now about the effects
12:16:05 12	of the various oil dispersant and response actions that were
12:16:10 13	undertaken?
12:16:10 14	A. You can look in many journals and see there's a lot of studies
12:16:14 15	going on about the future effects.
12:16:16 16	MS. HIMMELHOCH: I have no further questions, your Honor.
12:16:17 17	THE COURT: All right. Thank you, ma'am. You're
12:16:19 18	finished.
12:16:20 19	Okay. It's 12:15, we're going to recess for lunch, we'll
12:16:24 20	come back at 1:15, one hour. Okay.
12:16:28 21	THE DEPUTY CLERK: All rise.
12:16:30 22	(WHEREUPON, A LUNCH RECESS WAS TAKEN.)
23	
24	* * * * *

1	
2	
3	
4	REPORTER'S CERTIFICATE
5	
6	I, Karen A. Ibos, CCR, Official Court Reporter, United
7	States District Court, Eastern District of Louisiana, do hereby
8	certify that the foregoing is a true and correct transcript, to the
9	best of my ability and understanding, from the record of the
10	proceedings in the above-entitled and numbered matter.
11	
12	
13	/s/ Karen A. Ibos
14	Karen A. Ibos, CCR, RPR, CRR, RMR
15	Official Court Reporter
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
	1