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

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

MDL 2179, SECTION J

JUDGE BARBIER; MAGISTRATE JUDGE SHUSHAN



REPLY EXPERT REPORT OF PROFESSOR ROBERT DAINES

September 26, 2014

HIGHLY CONFIDENTIAL

I. INTRODUCTION

I am Professor Robert Daines and I am the Pritzker Professor of Law and Business at Stanford Law School. On August 15, 2014, I submitted an expert report in this case (my "Initial Report") addressing the governance of wholly-owned subsidiaries, including BP Exploration & Production Inc. ("BPXP") and the policy implications of imposing higher penalties on subsidiaries because the parent group is well-capitalized. On September 12, 2014, I submitted a second expert report in this case (my "Responsive Report") addressing the Expert Report of Fredric L. Quivik (the "Quivik Initial Report").

My Initial Report contained a summary of my qualifications and a description of my background and experience. My curriculum vitae, which includes a list of my publications and presentations, was attached as Appendix B to my Initial Report, and Appendix C to my Initial Report contains a list of all cases in which I have testified as an expert at trial or by deposition in the last four years.

Professor Quivik filed a responsive report on September 12, 2014 (the "Quivik Responsive Report"), and I have been asked by BPXP to review and respond to that report. The Quivik Responsive Report does not affect any of the expert opinions I expressed in my Initial Report or Responsive Report. My responses to the Quivik Responsive Report are described in the remainder of this report. I understand discovery is ongoing, and if Professor Quivik identifies additional expert opinions or if new evidence becomes available, I may supplement or amend this reply report.

II. OPINIONS

Professor Quivik's Responsive Report does not claim that BPXP's governance practices were improper, unsafe, or otherwise harmful. Nor does it say why firms should adopt the

practices he expects. Instead, Professor Quivik's Responsive Report points to additional facts in the record that he claims support three propositions: (1) there is a "distinction between corporate governance and management of operations;" (2) the "management of operations follows a different set of delegations from those involving ownership and corporate governance;" and (3) the "BP Group has directed and managed BP's operations in the Gulf of Mexico, including at the Macondo well."

Professor Quivik states that there is "a distinction between corporate governance of BP's subsidiaries and management of BP's operations" and that some important decisions were made by the functional group rather than the legal entity BPXP, but he does not say why a distinction between corporate governance and management of operations is a relevant inquiry. As an initial matter, as set forth in my last report, "I understand that BPXP has entered into a General Services Agreement with BP America Production Company ('BPAPC'), and relies on (and pays its affiliates for the time of) over 2,000 BP Group employees used each year to conduct its operations in the Gulf of Mexico." In any event, as I discussed in my Initial Report, centralized functions can be "efficient and make sense for shareholders because they lower costs and create economies of scale." Centralized operations are entirely appropriate from a corporate governance perspective and in and of themselves demonstrate nothing more than a normal

¹ Quivik Responsive Report at 3.

² *Id*. at 8.

 $^{^3}$ Id

⁴ *Id.* at 3.

⁵ *Id*. at 4.

⁶ Responsive Report at 6.

⁷ Initial Report at 39.

parent-subsidiary relationship.⁸ Further, the involvement of a sole shareholder in significant decision-making is wholly consistent with good corporate governance for a wholly-owned subsidiary because, as discussed in my Initial Report, "if the parent's will is clear, there is no governance problem that a meeting of the subsidiary's board needs to solve."⁹

Professor Quivik next claims that "the management of operations follows a different set of delegations from those involving ownership and corporate governance," and states that seven employees working on BPXP assets were not on BPXP's payroll and others were unaware of their roles with BPXP. However, Professor Quivik does not claim that this alleged lack of awareness would cause any harm or describe why this would be improper, particularly for an employee engaged day to day in operational activities for deepwater drilling. Moreover, Professor Quivik does not claim that the management of operations and legal entities should be perfectly aligned; they are designed to solve different problems and it is unsurprising if they did not align. 13

Finally, Professor Quivik states that the "BP Group has directed and managed BP's operations in the Gulf of Mexico, including at the Macondo well." In my opinion, as discussed in my earlier reports, if subsidiary companies were to face higher penalties because they do not structure themselves like publicly owned companies and because they instead rely on centralized functions (payroll, tax, treasury, legal, etc.), several harmful consequences could follow, such as

⁸ *Id.* at 30-40; Responsive Report at 15-18.

⁹ Initial Report at 22.

¹⁰ Quivik Responsive Report at 8.

¹¹ Id. at 8-16.

¹² See Responsive Report at 11 n.28.

¹³ Id. at 5-14.

¹⁴ Quivik Responsive Report at 8.

increasing costs for firms without any identified benefit.¹⁵ In addition, it remains my opinion that assessing a higher penalty because of a parent's involvement in response efforts could lead to less robust response efforts.¹⁶ Finally, Professor Quivik does not dispute that well-capitalized parent shareholders may be reluctant to invest if their subsidiaries face higher penalties because the parent group is well-capitalized.¹⁷

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¹⁵ See, e.g., Initial Report at 41-42; Responsive Report at 24-27.

¹⁶ Id.

¹⁷ Id.