

Highly Confidential
Pursuant to PTO 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

13160
Exhibit No. _____
Worldwide Court Reporters, Inc.

IN RE: OIL SPILL by the
OIL RIG "DEEPWATER HORIZON" in the
GULF OF MEXICO, on
APRIL 20, 2010

MDL NO. 2179
SECTION: J
JUDGE BARBIER
MAG. JUDGE SHUSHAN

EXPERT RESPONSE REPORT

OF

R. Bruce Den Uyl

September 12, 2014

I. Introduction

On August 15, 2014, the Plaintiff's expert, Ian Ratner, submitted a report in this matter (the "Ratner Report"). The Ratner Report purports to address the financial ability of the BP Group ("BP p.l.c.") and BPXP to fund or finance the payment of an assumed maximum CWA penalty amount of \$18.06 billion to the United States of America without a long-term negative economic impact to either entity's operations.¹ I have been asked by counsel for BPXP to analyze and respond to the analyses and opinions set forth in the Ratner Report.

As set forth in my Initial Report, a penalty in excess of \$2.3 billion in 2015 would exhaust BPXP's projected available funds in 2015. Mr. Ratner's report does not address this limitation on BPXP's ability to pay a penalty. Instead, Mr. Ratner simply assumes that BP p.l.c. will provide BPXP with additional capital to pay an assumed penalty of \$18.06 billion. The most BPXP can do is ask BP p.l.c. (or outside lenders or investors) for additional funds following imposition of a CWA penalty that exceeds BPXP's ability to pay. BPXP cannot compel funding beyond what is available under its IFA agreement with its affiliate NAFCO, or from any other funding source. For this reason, with respect to BPXP's parent companies, the Ratner Report fails to recognize the threshold question of whether an additional investment in BPXP makes rational economic sense, considering BPXP's projected financial performance, net present value, existing and contingent liabilities, and credit worthiness.

For purposes of this report, I incorporate the definitions, background, analyses and opinions detailed in my report dated August 15, 2014 ("Initial Report"). Based on my review and analysis of the Ratner Report, I have not made any changes to my analysis and opinions contained in my Initial Report.

II. Qualifications

I am a Managing Director with AlixPartners, LLP ("AlixPartners"), a financial and operational consulting firm. My experience covers broad types of operational, financial, valuation, litigation, bankruptcy and management consulting engagements, including damages analysis, valuation dispute resolution, solvency analysis, and related financial analysis. For my complete qualifications please see my Initial Report and Exhibits 1 through 3 thereto.

¹ Ratner Report, paragraph 3(e) and 3(f).

III. Summary of Opinions

- A. *Mr. Ratner's analysis of BP p.l.c.'s financial ability to fund or finance a Clean Water Act penalty and the related impact of such a penalty on BP p.l.c.'s operations is flawed and misleading as he focuses on an entity that he acknowledges is neither a defendant nor liable for civil penalties under the Clean Water Act.^{2,3} As a result, Mr. Ratner's analysis fails to consider how much BPXP has in available funds to pay a CWA penalty and the magnitude of a CWA penalty as compared to the equity value of BPXP.*
- i. *As shown in my Initial Report, an analysis of BPXP indicates that a penalty in excess of \$2.3 billion in 2015 would exhaust BPXP's existing IFA agreement and projected available cash in 2015. Although BPXP can ask the BP Group for additional funds following imposition of a CWA penalty, it cannot compel the BP Group to provide funding beyond what is available under that IFA agreement. For this reason, with respect to BPXP's parent companies, the Ratner Report fails to recognize the threshold question if BPXP is levied a CWA penalty, which is whether an additional investment in BPXP makes rational economic sense, considering BPXP's projected financial performance, net present value, existing and contingent liabilities, and credit worthiness.*
 - ii. *The alleged maximum penalty that Mr. Ratner assumes of \$18.06 billion for purposes of his report is greater than all of BPXP's equity value of \$16.1 billion before consideration of contingent liabilities as detailed in my Initial Report.*
- B. *Mr. Ratner's analysis of BPXP's financial ability to fund or finance a Clean Water Act penalty and the related impact of such a penalty on BPXP's operations is flawed and misleading as he:*
- i. *Fails to examine BPXP's existing and potentially significant contingent liabilities.*
 - ii. *Inaccurately depicts BPXP's reserves and their related values.*
 - iii. *Presents misleading indications of BPXP's value.*
 - iv. *Presents misleading BPXP-related financial performance metrics, including, but not limited to:*
 1. *A \$9.1 billion overstatement resulting from his failure to discount BPXP's future cash flows which, when corrected, yields a value less than the alleged maximum Clean Water Act penalty.*
 2. *A failure to consider capital expenditures in his assessment of BPXP's "net operating cash flow" since 2012. Including the impact of these capital expenditures, while excluding any incident expenses (as Mr. Ratner did), BPXP had a cash shortfall of approximately \$1.5 billion*

² Mr. Ratner also discussed other BP entities that are parent companies to BPXP, such as BP America Inc. Ratner Report, paragraph 45. This discussion is inapposite for the same reasons as Mr. Ratner's discussion of BP p.l.c.

³ BP p.l.c. examined herein is evaluated as the consolidated group.

Highly Confidential
Pursuant to PTO 13

over the same period analyzed by Mr. Ratner. Mr. Ratner does not acknowledge or address this in his analysis.

C. *In addition to improperly focusing on BP p.l.c., which is not a named defendant or violator, Mr. Ratner's analysis of BP p.l.c. is further flawed because he:*

i. *Fails to evaluate potentially significant contingent liabilities.*

ii. *Presents misleading BP p.l.c. financial performance metrics, including, but not limited to:*

1. *Misleading presentations of BP p.l.c.'s cash flow, such as by including in his summary of opinions \$34.5 billion of asset sales in "total cash flow" while failing to acknowledge that capital expenditures would need to be deducted to present a true indication of cash flow.*

iii. *Does not adequately address the historic negative impact of the Deepwater Horizon incident on BP p.l.c. to date or the future negative impact that such a penalty levied upon BPXP would have on BP p.l.c. on a consolidated basis.*

IV. Analysis of Opinions

- A. *Mr. Ratner's analysis of BP p.l.c.'s financial ability to fund or finance a Clean Water Act penalty and the related impact of such a penalty on BP p.l.c.'s operations is flawed and misleading as he focuses on an entity that he acknowledges is neither a defendant nor liable for civil penalties under the Clean Water Act. As a result, Mr. Ratner's analysis fails to consider how much BPXP has in available funds to pay a CWA penalty and the magnitude of a CWA penalty as compared to the equity value of BPXP.*

In the current Clean Water Act civil proceeding (the "Penalty Phase"), the Court will evaluate the amount of any civil penalty owed under the CWA based on the Court's rulings as to the earlier phases and the application of "penalty factors" under the CWA, including "the economic impact of the penalty on the violator."⁴ It is my understanding that BPXP is the sole BP Group company named as a "violator," designated responsible party or defendant in this matter.⁵ The majority of the Ratner Report, however, provides an analysis of BP p.l.c.'s financial condition and its associated ability to pay an alleged maximum CWA penalty. Therefore, Mr. Ratner's analysis of BP p.l.c. is not relevant, as it focuses on an entity that Mr. Ratner acknowledges is neither a defendant nor liable to pay a CWA penalty judgment.⁶

Mr. Ratner appears to inappropriately conclude that an analysis of BP p.l.c.'s ability to pay a penalty is proper given the relationship between BP p.l.c. and BPXP. Specifically, he states:

BPXP is operationally inextricable from BP and its related group of entities (the "BP Group") as evidenced by various factors including BPXP's reliance on the BP Group for basic business services, lack of separate financial reporting prior to the second quarter of 2011, lack of separate bank accounts, revenues generated principally from sales to the BP Group, and financial dependence on the BP Group for capital. Additionally, between 2007 and the Deepwater Horizon incident, BPXP paid over \$16.4 billion in preferred and common stock dividends to other BP Group entities.⁷

Neither BP p.l.c. nor any other BP Group entity other than BPXP is named as a defendant to the current proceeding brought by the United States.⁸ As such, regardless of the relationship between BP p.l.c. and BPXP, if a CWA penalty is levied upon BPXP beyond BPXP's own ability to pay (which is limited, as addressed in my Initial Report), and BPXP requests additional funding from its parent companies as a

⁴ BP p.l.c. Second quarter and half year results 2014, p. 10. 33 U.S.C. § 1321(b)(8).

⁵ Complaint of the United States of America dated December 15, 2010, p. 1. 2010 letter from the United States Coast Guard to BPXP dated April 28, 2010, p. 1 (HCE149-003358).

⁶ Ratner Report, paragraphs 19 and 20.

⁷ Ratner Report, paragraph 3(b).

⁸ Judge Barbier has stated: "The United States seeks civil penalties against BP Exploration & Production, Inc. ('BPXP') for violating the CWA, 33 U.S.C. § 1321(b)(7). BPXP is the only BP entity named as a defendant in the United States' complaint." (Findings of Fact and Conclusions of Law Phase One Trial, paragraph 475.) In the same order, Judge Barbier stated that BP p.l.c. is not "liable under general maritime law." *Ibid.* paragraph 573.

source of funds to pay such a penalty, BP p.l.c. would have to consider whether an investment in BPXP to fund any CWA penalty levied against BPXP made economic sense. Such an analysis would consider factors that I have evaluated in my Initial Report such as BPXP's projected financial performance, net present value, liabilities and its credit worthiness. A potential investor, such as BP p.l.c., would examine these factors, taking into account existing and contingent liabilities, before making a decision whether to invest in BPXP. An investor would want to understand whether sufficient cash flows or assets exist in BPXP in order to satisfy the existing and potential future liabilities of BPXP and still operate the business and its future plan (the source of those future cash flows); otherwise the loan or investment would fail to yield an adequate return, or any return at all. These issues were addressed in my Initial Report. As described in more detail below, the Ratner Report fails to appropriately analyze these factors as they relate to BPXP and whether a potential CWA penalty and other potential spill-related obligations may overwhelm the value of BPXP.

From BPXP's perspective, as detailed in my Initial Report, any CWA penalty in 2015 in excess of \$2.3 billion would exceed BPXP's existing financing facility. In order to satisfy a larger CWA penalty, BPXP could ask for funds from BP p.l.c., but it cannot compel BP p.l.c. to provide funding beyond what is available under BPXP's existing IFA agreement just as it could not compel any outside investor or lender to provide funding to BPXP.⁹ Mr. Ratner's analysis is therefore misleading when he examines factors such as BP p.l.c.'s consolidated balance sheet, BP p.l.c.'s consolidated financial performance, BP p.l.c.'s existing access to credit and "BPXP's ability to raise equity for payment of the Penalty as an integrated part of the BP Group."¹⁰ Furthermore, the alleged maximum penalty that Mr. Ratner assumes of \$18.06 billion for purposes of his report is greater than all of BPXP's equity value of \$16.1 billion before consideration of contingent liabilities as detailed in my Initial Report.¹¹

B. Mr. Ratner's analysis of BPXP's financial ability to fund or finance a Clean Water Act penalty and the related impact of such a penalty on BPXP's operations is flawed and misleading.

As discussed in my Initial Report, BPXP's ability to pay a Clean Water Act penalty (or any liability) and the related impact of any such potential penalty on BPXP is a function of: (1) its existing access to capital; (2) the free cash flow it generates from its operations; (3) its access to potential sources of equity or debt financing; and (4) its ability to divest assets (which would potentially reduce the free cash flow

⁹ Deposition of Nicholas Bamfield dated July 24, 2014, pp. 119-122.

¹⁰ Ratner Report, paragraphs 99 - 106, 179.

¹¹ Initial Report, p. 26.

generated by BPXP's operations). As described below, through error and omission, Mr. Ratner fails to appropriately analyze these factors.

i. Mr. Ratner fails to examine BPXP's existing and potentially significant contingent liabilities.

Mr. Ratner fails to acknowledge significant existing and contingent liabilities when performing his analysis of BPXP's purported historical ability to borrow from the "BP Group as needed," ability to "pledge its assets as collateral for a loan" or his examination of indications of BPXP's value.¹² These liabilities must be considered when evaluating whether BPXP has the ability to fund a CWA penalty through any relevant financing scenario. For instance, the liabilities would impact credit metrics relevant to any debt issuance, and servicing these liabilities would be an additional use of cash from operations. Any equity investments or asset divestitures would have to consider the entity's value after these liabilities. Mr. Ratner's analysis ignores the impact of both existing and contingent liabilities.

Existing Liabilities

As of June 30, 2014, BPXP had existing borrowings under its IFA of \$1.6 billion, leaving available borrowing capacity under its IFA of approximately \$3.4 billion.¹³ However, as discussed in more detail in my Initial Report, BPXP is expected to draw an additional \$1.1 billion on the IFA by 2015 to fund its operations and pay the fines and environmental penalties *which have already been assessed and scheduled for payment*, even without considering any CWA penalty or any contingent liabilities.¹⁴ The Ratner Report fails to examine how these existing liabilities would affect BPXP's ability to attract financing or otherwise fund a potential CWA penalty.

Contingent Liabilities

Above and apart from any potential CWA penalty, BPXP faces significant contingent liabilities related to the *Deepwater Horizon* incident. Mr. Ratner fails to acknowledge these contingent liabilities in his report. As described in my Initial Report, these contingent liabilities include: (1) natural resource damages claims; (2) Business Economic Loss claims under the PSC Settlement; (3) state and local government entity claims; (4) other pending civil litigation; (5) other possible governmental civil fines

¹² Ratner Report, paragraphs 173, 174 and 187.

¹³ Beginning revolver balance of \$3.4 billion as of June 30, 2014 based on group finance payables balance of \$1.6 billion as of the same date. BPXP Q2 2014 Financial Statements.

¹⁴ Initial Report, page 12.

and penalties beyond the CWA litigation; (6) possible indemnity obligations; and (7) other possible obligations that may arise in the future.¹⁵

All of these contingent liabilities represent potential costs *in addition to* existing liabilities and any potential future CWA penalty. While the timing and/or amounts of these contingent liabilities are uncertain, they would be considered substantial risks to BPXP and its future financial condition by any potential investors in BPXP. These additional costs, if they occur, would further undermine BPXP's financial condition and ability to pay its obligations to current and future creditors.

ii. *Mr. Ratner inaccurately depicts BPXP's reserves and their related values.*

Mr. Ratner makes certain observations related to BPXP's reserves and their corresponding value that serve to misstate or misinterpret the value associated with these reserves. As stated above, any reserve values need to be viewed in concert with BPXP's existing and contingent liabilities, which Mr. Ratner does not examine. These errors and omissions by Mr. Ratner lead him to make inaccurate conclusions with respect to BPXP's ability to fund a CWA penalty, regardless of the funding source. For instance, BPXP's asset value would be misstated based on Mr. Ratner's erroneous and simplistic view of BPXP's Gulf of Mexico reserves described as follows:

- *With regard to BPXP's total reserves, Mr. Ratner states: "BP has approximately 1.2 billion BOE of proved reserves in the Gulf of Mexico as of December 31, 2013."¹⁶*

Mr. Ratner relies on the SMOG report in order to evaluate the Gulf of Mexico reserves. His reliance on SMOG is flawed because the SMOG valuation is limited to proved reserves with static cost and price assumptions designated by the SEC and applicable accounting guidance.¹⁷ In addition, as the SEC has acknowledged, a SMOG report is not designed to provide an estimate of fair market value. Specifically, the SEC has stated that "[t]he objective of reserves estimation is to provide the public with comparable information about volumes, not fair value, of a company's reserves available to enable investors to compare the business prospects of different companies."¹⁸

Mr. Ratner's statement is also misleading because it examines the reserves held in the Gulf of Mexico, rather than BPXP's reserves. As described in my Initial Report, BPXP owns approximately

¹⁵ Initial Report, pages 13 - 18.

¹⁶ Ratner Report, paragraph 33.

¹⁷ FASB Accounting Standards Update No. 2010-03, Extractive Activities—Oil and Gas (Topic 932) 932-234-50-29

ff.

¹⁸ Securities and Exchange Commission Federal Register, Modernization of Oil and Gas Reporting Final Rule dated January 14, 2009, p. 2161.

85.9% of the Gulf of Mexico assets. By examining the Gulf of Mexico reserves, Mr. Ratner has overstated BPXP's proved reserves by approximately 170 million BOE.

- *With regard to the lower tertiary fields, Mr. Ratner states: "Assuming full recovery at August 2014 crude oil prices (\$98.15 per barrel), the discoveries in the Lower Tertiary may be worth approximately \$2 trillion."¹⁹*

This statement is misleading in numerous ways. First, it appears that Mr. Ratner is assuming that the estimated oil deposits reside entirely in the Gulf of Mexico. However, the article that Mr. Ratner quotes states that there is "an extraordinary amount of oil in similar discoveries around the world, several of which are controlled by BP."²⁰ A press release by BP p.l.c. from earlier in 2013 states that "BP estimates it could potentially access an additional 10-20 billion barrels of resources across its global portfolio over the next two decades with the application of Project 20KTM technology."²¹ Mr. Ratner overstates these resources by referencing a *global* figure, not one that specifically pertains to BPXP's reserves in the Gulf of Mexico.

Second, while Mr. Ratner acknowledges that the technologies required for Project 20K do not yet exist to develop the lower tertiary field,²² he inexplicably takes no discount to reduce the value in any way to account for this technological uncertainty and the timing uncertainty it creates, *i.e.*, that it will likely be years before any oil can be extracted. As BP describes in its press release, Project 20K's intent is to develop applicable technologies over the next decade in multiple areas.²³

To determine the present value of future oil production, the time value of money and the risk of achieving the forecasted production need to be accounted for. This would yield a significantly lower number than simply multiplying the volume by today's oil price as Mr. Ratner does in his report. Further, Mr. Ratner's assumption that the oil field will be fully recovered is unrealistic and misleading. Globally, oilfield recovery rates are significantly below 100%, with global averages of approximately 35%. Even the most efficient firms achieve little more than a 50% recovery on reserves.²⁴

¹⁹ Ratner Report, paragraph 34(b).

²⁰ "BP pushes technical limits to tap extreme fields" dated December 5, 2013 (US_PP_MAS009109).

²¹ "BP Awards Design Studies for Project 20K™" dated February 4, 2013 at <http://www.bp.com/en/global/corporate/press/press-releases/bp-awards-design-studies-for-project-20k.html>.

²² Ratner Report, paragraph 34.

²³ "BP Awards Design Studies for Project 20K™" dated February 4, 2013 at <http://www.bp.com/en/global/corporate/press/press-releases/bp-awards-design-studies-for-project-20k.html>.

²⁴ "Statoil Targets 60% Average Oil Recovery Rate," dated August 29, 2012 at http://www.rigzone.com/news/oil_gas/a/120325/Statoil_Targets_60_Average_Oil_Recovery_Rate.

Finally and most importantly, Mr. Ratner does not reduce the value for any of the costs associated with developing and operating the oil fields, including production costs and development capital expenditures. Mr. Ratner examines only the revenue that would result from the oil assuming current WTI prices, which is not a meaningful measure of “worth.” For instance, Mr. Ratner does not evaluate the capital expenditures that BPXP will incur to develop the technology required, construct production facilities, build infrastructure, drill development wells, etc. Mr. Ratner also does not evaluate the operational costs associated with royalties, personnel, maintenance, etc. One must examine the net cash flow, inclusive of these costs, in order to determine value. He has not done that analysis. I noted that Wood Mackenzie valued the net cash flows of several of the Lower Tertiary fields including Moccasin, Tiber and Kaskida. Approximately \$2.7 billion of value related to these fields has been included in the valuation of BPXP presented in my Initial Report.

iii. Mr. Ratner presents misleading indications of BPXP’s value.

Mr. Ratner does not offer an independent valuation of BPXP, nor does he present any valuation that directly values BPXP. Instead, Mr. Ratner examines a 2012 Goldman Sachs discussion of asset values of certain GOM fields and compares them to BPXP’s book value. From this analysis, Mr. Ratner concludes that “BPXP may be able to sell partial interests in its various assets to raise funds to pay the Penalty and therefore need not alter the structure or content of its portfolio of assets.”²⁵ However, Mr. Ratner fails to account for the other claims on BPXP’s value. He does not examine the existing or contingent liabilities that already exist at BPXP and therefore overstates the amount that may be available for any CWA penalty.

Furthermore, Mr. Ratner’s assumption that each asset can be sold in excess of book value is flawed.²⁶ The value received will depend on many factors including oil prices, costs of exploration, etc. For instance, in 2010, \$310 million of impairments were realized in the Gulf of Mexico as a result of decisions to dispose of assets at a price lower than the assets’ carrying values.²⁷ Rather than making a superficial comparison to book value, a third party valuation such as Wood Mackenzie, appropriately adjusted for BPXP’s costs and liabilities, is a much better indication of value. This is the approach I have taken in my Initial Report, which indicated that BPXP is worth approximately \$16.1 billion before considering contingent liabilities. This value is less than the \$18.06 billion penalty examined in Mr. Ratner’s report.

²⁵ Ratner Report, paragraphs 187-188 and Schedule 12.

²⁶ Ratner Report, paragraph 112(b).

²⁷ BP p.l.c. 2010 Annual Report, p. 166.

iv. Mr. Ratner presents misleading BPXP-related financial performance metrics.

In addition to the errors and omission in the Ratner Report described above, Mr. Ratner performs a variety of misleading financial analyses related to BPXP in order to purportedly evaluate its ability to fund a CWA penalty. Specifically:

- *Mr. Ratner states: "Total net cash flow for the period 2014 through 2023 is estimated to be over \$24 billion for the entire Gulf of Mexico region. Therefore, it is estimated that BPXP's share of the projected net cash flow from the Gulf of Mexico region over the next ten years would be nearly \$22 billion.*

Therefore within ten years, it is reasonable to project that BPXP would generate net cash flow, after the payment of CAPEX, in excess of the Penalty without resulting in a long-term negative economic impact on operations."²⁸

In his analysis, Mr. Ratner fails to account for the time value of money. BPXP's future cash flow would need to be discounted to the present value in order to compare the economic value to a potential CWA penalty. Mr. Ratner's calculation of "nearly \$22 billion" is therefore unreliable due to this omission. Correcting for Mr. Ratner's failure to account for the time value of money would result in a present value of \$12.6 billion, which is less than the alleged maximum CWA penalty he claims BPXP should be able to pay in 2015.²⁹ See Exhibit 2.

Finally, as previously discussed, Mr. Ratner assumes that all of BPXP's cash flows will be available for a CWA penalty without any regard to BPXP's existing and contingent liabilities.

- *Mr. Ratner states "BPXP has generated net operating cash flow, excluding all incident related expenses, since 2012 of over \$5.1 billion."*³⁰

Mr. Ratner's statement is misleading as it fails to account for the fact that in order to achieve the operating cash flow, BPXP must make significant capital expenditures. Instead of Mr. Ratner's approach, if one includes the impact of these capital expenditures, while excluding any incident expenses (as Mr. Ratner did), BPXP had a cash *shortfall* of approximately \$1.5 billion over the same period analyzed by Mr. Ratner, not a \$5.1 billion surplus.

²⁸ Ratner Report, paragraphs 168-171.

²⁹ While Mr. Ratner has adjusted 2018 for the segment overview, he did not make an adjustment for 2015 through 2017. Adjusting for the segment overview in 2015 through 2017 would reduce the present value of these cash flows by an additional \$1.5 billion.

³⁰ Ratner Report, paragraph 112(a).

- *Similarly, Mr. Ratner states "BXP was profitable in each year during the analysis period except for 2010, when it posted a pretax loss of \$36.4 billion. But for costs associated with the spill, BXP would have been profitable in 2010 as well."*³¹

Mr. Ratner's statement is misleading as it fails to account for the fact that in 2012, BXP made a significant asset divestiture at a gain relative to book value of approximately \$4.6 billion. Without this gain from the sale of assets, BXP would have had a net loss in 2012.

- *Mr. Ratner states "BXP does not hold cash or cash equivalents; its cash needs are fulfilled by NAFCO. In some instances, it carries a cash deficit balance in its internal funding account as shown on the December 31, 2010 through 2012 balance sheets above."*³²

Mr. Ratner mischaracterizes BXP's relationship with NAFCO. BXP's cash needs are not "fulfilled" by NAFCO. As discussed in my Initial Report, though BXP does not have external bank accounts, it utilizes an in-house Internal Funding Account ("IFA") with its affiliate NAFCO for both deposits and interest-bearing borrowing. This account is separate, and BXP retains ownership of its own funds (or its obligation to repay funds) by use of a formal IFA agreement and internal bank process.³³ The formal IFA agreement obligates BXP to pay back any funds that it borrows and obligates NAFCO to pay BXP surplus funds BXP demands, should a surplus exist. Furthermore, this IFA agreement contains a maximum borrowing amount, a market rate of interest and is based on a credit analysis of BXP. Mr. Ratner incorrectly implies that NAFCO will simply satisfy BXP's cash needs where, in fact, formal agreements govern BXP's access to funds. Mr. Ratner ignores the formal agreements that give NAFCO the option of whether to fund above the maximum borrowing amount based on the terms of these agreements; this decision to extend additional credit is not BXP's to make.

- *Mr. Ratner also states that "if BXP is unable to obtain financing on an unsecured basis from the BP Group as it has in the past, it could pledge its assets as collateral for a loan to either a BP Group entity or third-party lender."*³⁴

As discussed above, Mr. Ratner fails to perform any analysis from BP p.l.c.'s perspective regarding how BP p.l.c. would evaluate a formal borrowing or other funding request from BXP following the imposition of the \$18.06 billion penalty assumed by Mr. Ratner. Mr. Ratner fails to do any credit analysis on BXP from the perspective of BP p.l.c. or any other potential creditor. Mr. Ratner

³¹ Ratner Report, paragraph 110(c).

³² Ratner Report, paragraph 111(c).

³³ Deposition of Brian Smith dated July 11, 2014, pp. 119-120.

³⁴ Ratner Report, paragraph 174.

ignores BPXP's existing liabilities and he performs no analysis of BPXP's ability to take on additional debt, unsecured or otherwise, beyond BPXP's existing and contingent liabilities.

C. In addition to improperly focusing on BP p.l.c., which is not a named defendant or violator, Mr. Ratner's analysis of BP p.l.c. is further flawed.

BPXP is a wholly owned, indirect subsidiary of BP p.l.c. As long as BP p.l.c. continues to own BPXP, any BPXP liability also derivatively impacts BP p.l.c. and is consolidated into the BP Group's financial results. Mr. Ratner's analysis is flawed because he: (i) fails to evaluate BP p.l.c.'s potentially significant contingent liabilities; (ii) presents misleading BP p.l.c. financial performance metrics; and (iii) does not adequately address the historic negative impact on BP p.l.c. to date, or the further negative impact that such a penalty levied upon BPXP would have on BP p.l.c. on a consolidated basis.

i. Mr. Ratner fails to evaluate potentially significant contingent liabilities.

Mr. Ratner's analysis ignores the BPXP-related contingent liabilities that BP p.l.c. faces as a consolidated entity in addition to the CWA penalty as described above. These contingent liabilities include:

- natural resource damages claims;
- certain Business Economic Loss claims;
- state and local government entity claims;
- other pending civil litigation;
- other possible governmental civil fines and penalties beyond the CWA litigation;
- possible payments under indemnity obligations; and,
- other possible obligations that may arise in the future.

As discussed in my Initial Report, based on third party estimates and claimed amounts, these contingent liabilities are uncertain, but could range in the tens of billions of dollars.³⁵ In addition to these BPXP-related contingent liabilities that BP p.l.c. faces on a consolidated basis, BP p.l.c. also faces its own contingent liabilities, including one relating to the shareholder actions pending in MDL 2185.³⁶ Mr. Ratner fails to consider the impact on BP p.l.c. of a CWA penalty coupled with these contingent liabilities.

³⁵ Initial Report, pages 13 - 16.

³⁶ BP p.l.c. 2013 Annual Report, p. 39.

ii. Mr. Ratner presents misleading BP p.l.c. financial performance metrics.

- *In his summary of opinions, Mr. Ratner states “BP generated over \$43 billion of total cash flow in 2013 and it projects to generate approximately \$35 billion of total cash flow for each of the years 2014, 2015, and 2016.”³⁷*

Mr. Ratner’s opinion is misleading as it includes \$34.5 billion of asset sales during this period (2013 through 2016) and fails to acknowledge that capital expenditures would need to be deducted to present a true indication of BP p.l.c.’s cash flow. For example, 2013 operating cash flow less capital expenditures is *negative* \$3.4 billion based on Table 22 in Mr. Ratner’s report. Later in his report, Mr. Ratner acknowledges this necessity by including the impact of capital expenditures when arriving at “discretionary cash flow before dividends.”³⁸ Mr. Ratner ignores this more relevant measure in his summary of opinions.

- *Mr. Ratner states that “BP generated a significant amount of cash from operations. Cash flow ranged from \$13.6 billion in 2010 to \$27.7 billion in 2009, with \$21.1 billion generated in 2013. During the first half of 2014, BP continued to generate significant cash from operations of approximately \$16.1 billion.”³⁹*

In a capital intensive business such as the oil and gas industry, continual capital expenditures are required to offset natural declines in production and bring new fields/projects online. As such, Mr. Ratner’s presentation of cash flow from operations without accounting for capital expenditures is misleading. Significantly, BP p.l.c.’s operating cash flow less capital expenditures is *negative* \$2.0 billion over the period 2010 through Q2 2014 based on Table 10 in Mr. Ratner’s report.

- *Mr. Ratner states: “Moreover, while the SMOG Analysis is a required disclosure made available in conjunction with BP’s audited financial statements, the estimate of the net present value of proved reserves contained therein is not reflected on BP’s balance sheet.”⁴⁰*

BP p.l.c. records capitalized expenses related to exploring and developing proved reserves on its balance sheet. As of 2013, BP p.l.c.’s \$195.3 billion of fixed assets included a portion of these capitalized costs related to proved reserves.⁴¹ As such, adding the SMOG values to the balance sheet would overstate these assets as the balance sheet already includes a portion of the value related to these assets.

³⁷ Ratner Report, paragraph 3(a).

³⁸ Ratner Report, paragraph 163 and Table 22. I also note that Mr. Ratner’s presentation in Table 22 excludes acquisition and investments.

³⁹ Ratner Report, paragraph 101(a).

⁴⁰ Ratner Report, paragraph 126.

⁴¹ Deposition of David Bucknall dated July 2, 2014, pp. 204-205. BP p.l.c. 2013 Annual Report, p. 124.

- *Mr. Ratner states: "Per the March 4, 2014 Investor Update, total asset sale proceeds were approximately twice the net book value of those assets reported on BP's balance sheet. This indicates that the fair market value of BP's assets generally exceeds their book value."⁴²*

Some BP p.l.c. assets have historically had a book value higher than their fair market value, resulting in write downs that BP p.l.c. has taken. For example, BP p.l.c.'s upstream segment recognized net impairment losses of approximately \$5.1 billion from 2011 to 2013, and recognized net impairment losses of approximately \$4.0 billion to its downstream assets over the same time period.⁴³ Mr. Ratner reaches a general conclusion about the value of BP p.l.c.'s assets based on historical book value multiples without preparing an analysis of the value of BP p.l.c.'s assets.

- *Mr. Ratner states: "If BP funded the Penalty from new debt its gearing ratio would be 22%."⁴⁴*

Mr. Ratner does not provide an adequate explanation of the assumptions underlying his presentation of BP p.l.c.'s prospective gearing ratio, assuming an \$18.06 billion CWA penalty. For instance, Mr. Ratner does not provide support for the 2015 equity amounts included in his analysis. Notably, a penalty of \$18.06 billion would result in a charge of \$14.5 billion (the amount above the related current provision) which would reduce equity by \$14.5 billion. It is unclear whether or how Mr. Ratner accounts for the impact of his assumed penalty. Additionally, Mr. Ratner does not provide support for the cash balance of \$33.5 billion included in his analysis. I further noted that Mr. Ratner does not indicate for what future date he has calculated the prospective gearing ratio.⁴⁵

iii. *Mr. Ratner does not adequately address the historic negative impact of the Deepwater Horizon incident on BP p.l.c. to date or the future negative impact that such a penalty levied upon BPXP would have on BP p.l.c. on a consolidated basis.*

Mr. Ratner's analysis of BP p.l.c.'s ability "to fund or finance the Penalty" is superficial and fails to adequately consider the impacts of these liquidity raising methods. To begin with, Mr. Ratner ignores the negative impacts of the *Deepwater Horizon* incident to date, including: (1) *Deepwater Horizon*-related expenditures; (2) asset divestments since 2010; (3) additional debt; (4) downgraded credit ratings; and (5) negative shareholder returns.⁴⁶

⁴² Ratner Report, paragraph 89.

⁴³ BP p.l.c. 2013 Annual Report, p.145.

⁴⁴ Ratner Report, paragraph 172(c)(i).

⁴⁵ Ratner Report, Table 23.

⁴⁶ The analysis contained in this section provides a response to Mr. Ratner's analysis of the impact of the *Deepwater Horizon* incident on BP p.l.c. Note that my Initial Report provides an examination of the significant negative impact of a CWA penalty on BPXP.

1. *Deepwater Horizon*-Related Expenditures

On a consolidated basis, BP p.l.c. has spent a total of \$35.1 billion to date related to the *Deepwater Horizon* incident and has approximately \$7.9 billion in remaining, provisioned liabilities.⁴⁷

2. Asset Divestments Since 2010

BP p.l.c.'s divestments have significantly reduced the size of the company moving forward. BP p.l.c.'s asset divestments from 2010 to 2012 alone⁴⁸ (which raised approximately \$38 billion) accounted for approximately 16% of BP p.l.c.'s total production in 2010.⁴⁹ These assets provided \$5 billion in annual post-tax cash flow that BP p.l.c. will not have moving forward as a result of their divestiture.⁵⁰

3. Additional Debt

BP p.l.c. has increased its cash balances from \$8.3 billion in 2009 to \$27.5 billion in Q2 2014.⁵¹ Mr. Ratner points to BP p.l.c.'s cash balance of \$27.5 billion as of Q2 2014 as a sign of its financial strength.⁵² In order to understand BP p.l.c.'s true cash position, BP p.l.c.'s cash must be considered together with its debt. BP p.l.c.'s gross debt increased from \$34.6 billion in 2009 to \$52.9 billion in Q2 2014. As such, the increase in cash that Mr. Ratner describes is offset by additional debt such that BP p.l.c.'s net debt is essentially unchanged over the period.

4. Downgraded Credit Ratings

Since the *Deepwater Horizon* incident, BP p.l.c. has had its credit ratings downgraded from AA/Aa1 to A/A2 by S&P and Moody's, respectively, as a result of the impacts described above. While Mr. Ratner's discussion of BP p.l.c.'s financial performance states that BP p.l.c. has largely recovered from the effects of the *Deepwater Horizon* incident,⁵³ BP p.l.c. remains at the A/A2 credit rating from S&P and Moody's that they were downgraded to shortly after the *Deepwater Horizon* incident.⁵⁴

⁴⁷ BP p.l.c. "2Q 2014 Results" dated July 29, 2014 at page 13.

⁴⁸ BP p.l.c. 2013 Annual Report, pp. 9, 22. In October 2013, BP p.l.c. announced that it would divest around a further \$10 billion of assets before the end of 2015. BP p.l.c. announced that it expected to use the proceeds predominantly for distributions to shareholders, with a bias to share buybacks. *Ibid.*

⁴⁹ BP p.l.c. "4Q 2012 Results", page 17.

⁵⁰ BP p.l.c. "4Q 2012 Results", page 17.

⁵¹ BP p.l.c. 2009 Annual Report, p.144. BP p.l.c. Second quarter and half year results 2014, p.16.

⁵² Ratner Report, paragraph 3(e)(i).

⁵³ Ratner Report, paragraph 92(c).

⁵⁴ Moody's Investor Service Rating Action, September 8, 2014; Standard & Poor's Ratings Services Research Update, September 9, 2014.

5. Negative Shareholder Returns

As a result of the impacts described above, BP p.l.c.'s shareholders have been negatively impacted. BP p.l.c.'s stock price is approximately 23% lower than it was prior to the spill. Additionally, in June 2010, BP p.l.c.'s dividend was cancelled for three quarters. It was subsequently resumed at half the April 20, 2010 level (7 cents per share versus 14 cents per share) and is presently at 9.75 cents per share.⁵⁵ As shown in the table below, BP p.l.c.'s shareholders have experienced significant losses while comparable investments have yielded significant returns, with and without the impact of dividends.

Table 1

Stock Performance: 4/16/10 - 9/5/2014		
	Price Change	Total Shareholder Return
BP p.l.c.	-23%	-9%
Total S.A.	15%	49%
Royal Dutch Shell p.l.c.	31%	65%
Exxon Mobil Corporation	46%	64%
Chevron Corporation	58%	83%

- *Mr. Ratner evaluates BP p.l.c.'s: (1) internal cash generation; (2) ability to defer capital expenditures; (3) debt capacity; (4) ability to raise equity; and (5) ability to divest assets in order to conclude that "BP has the financial flexibility to fund or finance the Penalty without a long-term negative economic impact to its operations."*⁵⁶

1. Internal Cash Generation

In Mr. Ratner's analysis of BP p.l.c.'s internal cash generation, Mr. Ratner includes asset sales.⁵⁷ Without the impact of these asset sales, which Mr. Ratner addresses separately, BP p.l.c.'s operating cash flow less capital expenditures from 2010 through 2013 was *negative* \$5.6 billion.⁵⁸

2. Ability to Defer Capital Expenditures

Mr. Ratner, without any analysis of its feasibility, states that BP p.l.c. could "defer some portion of planned CAPEX."⁵⁹ Mr. Ratner ignores that projects are long-term in nature and continually require maintenance-related capital expenditures, and that a change in such capital expenditures resulting from a penalty would have an impact on BP p.l.c.'s future cash flows.

⁵⁵ BP p.l.c. Second quarter and half year results 2014, p.1.

⁵⁶ Ratner Report, paragraphs 167, 172, 175, 180 and 189(c).

⁵⁷ Ratner Report, table 22.

⁵⁸ Includes "Other" from Ratner Report, table 22.

⁵⁹ Ratner Report, paragraph 167.

3. Debt Capacity

Mr. Ratner's opinion regarding BP p.l.c.'s ability to raise debt and borrow funds to pay a CWA penalty states that BP p.l.c. has "unused credit facilities in excess of \$60 billion."⁶⁰ Mr. Ratner cites several existing arrangements that BP p.l.c. has in place as evidence that it is able to borrow funds. Notably, however, several of these are uncommitted, meaning that lenders have not approved such borrowings or that they have not committed to provide the funding, if such funding is requested. The \$30 billion under the Debt Issuance Programme is a registration or prospectus that BP p.l.c. filed to *offer* debt securities.⁶¹ No commitment to purchase any additional securities under this offering has been suggested or guaranteed. Similarly, the \$30 billion U.S. shelf registration is also a regulatory filing that would allow BP p.l.c. to attempt to issue securities and does not suggest or guarantee that BP could actually raise the desired amount.⁶² As Mr. Ratner's Table 12 shows, BP p.l.c. has committed or secured bank debt and letters of credit of \$17.3 billion, far less than the approximately \$60 billion in "credit facilities" that he references in his summary of opinions.

Finally, Mr. Ratner fails to analyze how any potential additional borrowings or *Deepwater Horizon* liabilities would negatively impact BP p.l.c.'s credit metrics, including the key metric of funds from operations to debt ("FFO/Debt") and the resulting impact on BP p.l.c.'s ability to raise additional funding.

In deposition, Nick Bamfield, Deputy Group Treasurer for BP p.l.c., described some of the potential impacts that BP p.l.c. could face if an adverse credit rating occurs, stating it could:

- Limit BP p.l.c.'s access to the financial markets.
- Impact the scale of projects BP p.l.c. could take part in.
- Result in counterparties requiring collateral, which may require BP p.l.c. to exit certain types of business activity.
- Result in additional pension funding requirements to reflect BP p.l.c.'s heightened credit risk.⁶³

⁶⁰ Ratner Report, paragraph 3(e).

⁶¹ Deposition of David Bucknall dated July 2, 2014, p.144. BP Capital Markets p.l.c. US\$30,000,000,000 Debt Issuance Programme Prospectus dated 14 August 2013.

⁶² Deposition of David Bucknall dated July 2, 2014, p.146.

⁶³ Deposition of Nicholas Bamfield dated July 24, 2014, pp. 38-39.

On September 4, 2014, BPXP was found grossly negligent in Phase I of the MDL 2179 trial.⁶⁴ Soon thereafter, Moody's and S&P both released statements reducing BP p.l.c.'s credit outlook. Moody's and S&P have both indicated that additional *Deepwater Horizon* related expenditures could have additional negative credit implications.⁶⁵

4. Ability to Raise Equity

Mr. Ratner's analysis of BP p.l.c.'s ability to raise equity does not address the regulatory limitations and requirements for issuing stock. Additionally, while Mr. Ratner acknowledges that a treasury stock issuance would have a dilutive impact and thus reduce the proceeds, he fails to account for this impact in any way.⁶⁶

5. Ability to Divest Assets

Any additional asset divestitures necessitated to fund a CWA penalty may harm BP p.l.c.'s credit metrics by potentially reducing cash flow going forward, including the key metric of FFO/Debt.

⁶⁴ Findings of Fact and Conclusions of Law Phase One Trial.

⁶⁵ Moody's Investor Service Rating Action, September 8, 2014; Standard & Poor's Ratings Services Research Update, September 9, 2014.

⁶⁶ Ratner Report, paragraph 175.

V. Conclusion

- A. Mr. Ratner's analysis of BP p.l.c.'s financial ability to fund or finance a Clean Water Act penalty and the related impact of such a penalty on BP p.l.c.'s operations is flawed and misleading as he focuses on an entity that he acknowledges is neither a defendant nor liable for civil penalties under the Clean Water Act. As a result, Mr. Ratner's analysis fails to consider how much BPXP has in available funds to pay a CWA penalty and the magnitude of a CWA penalty as compared to the equity value of BPXP.
- i. As shown in my Initial Report, an analysis of BPXP indicates that a penalty in excess of \$2.3 billion in 2015 would exhaust BPXP's existing IFA agreement and projected available cash in 2015. Although BPXP can ask the BP Group for additional funds following imposition of a CWA penalty, it cannot compel the BP Group to provide funding beyond what is available under that IFA agreement. For this reason, with respect to BPXP's parent companies, the Ratner Report fails to recognize the threshold question if BPXP is levied a CWA penalty, which is whether an additional investment in BPXP makes rational economic sense, considering BPXP's projected financial performance, net present value, existing and contingent liabilities, and credit worthiness.
 - ii. The alleged maximum penalty that Mr. Ratner assumes of \$18.06 billion for purposes of his report is greater than all of BPXP's equity value of \$16.1 billion before consideration of contingent liabilities as detailed in my Initial Report.
- B. Mr. Ratner's analysis of BPXP's financial ability to fund or finance a Clean Water Act penalty and the related impact of such a penalty on BPXP's operations is flawed and misleading as he:
- i. Fails to examine BPXP's existing and potentially significant contingent liabilities.
 - ii. Inaccurately depicts BPXP's reserves and their related values.
 - iii. Presents misleading indications of BPXP's value.
 - iv. Presents misleading BPXP-related financial performance metrics, including, but not limited to:
 1. A \$9.1 billion overstatement resulting from his failure to discount BPXP's future cash flows which, when corrected, yields a value less than the alleged maximum Clean Water Act penalty.
 2. A failure to consider capital expenditures in his assessment of BPXP's "net operating cash flow" since 2012. Including the impact of these capital expenditures, while excluding any incident expenses (as Mr. Ratner did), BPXP had a cash shortfall of approximately \$1.5

***Highly Confidential
Pursuant to PTO 13***

billion over the same period analyzed by Mr. Ratner. Mr. Ratner does not acknowledge or address this in his analysis.

- C. In addition to improperly focusing on BP p.l.c., which is not a named defendant or violator, Mr. Ratner's analysis of BP p.l.c. is further flawed because he:
- i. Fails to evaluate potentially significant contingent liabilities.
 - ii. Presents misleading BP p.l.c. financial performance metrics, including, but not limited to:
 1. Misleading presentations of BP p.l.c.'s cash flow, such as by including in his summary of opinions \$34.5 billion of asset sales in "total cash flow" while failing to acknowledge that capital expenditures would need to be deducted to present a true indication of cash flow.
 - iii. Does not adequately address the historic negative impact of the Deepwater Horizon incident on BP p.l.c. to date or the future negative impact that such a penalty levied upon BPXP would have on BP p.l.c. on a consolidated basis.

VI. Consideration List

A list of documents that I considered in conducting my analysis is attached as Exhibit 1.

VII. AlixPartners Compensation

AlixPartners is being compensated at my normal and customary rate of \$735 per hour for my time and between \$225 and \$650 per hour for staff working at my direction.

VIII. Additional Analysis and Demonstrative Aids

I reserve the right to amend and/or supplement this report based upon any new and/or additional facts or other documents which may come to my attention, or information, including expert reports, deposition testimony and related document exhibits thereto, which may be produced.

If I am called upon to testify, I may prepare demonstrative aids, such as graphs, charts or tables.



R. Bruce Den Uyl

Dated: September 12, 2014

Exhibit 1: R. Bruce L. Oyl Consideration List

Beg Bates	End Bates	Exhibit Number	Document Title / Description
N/A	N/A	N/A	Initial Report
N/A	N/A	N/A	All documents considered per Exhibit 4 of Initial Report
N/A	N/A	N/A	August 15, 2014 Expert Report of Ian Ratner Regarding BP p.l.c. and BP Exploration & Production Inc. and Documents Cited Therein
N/A	N/A	N/A	Findings of Fact and Conclusions of Law Phase One Trial
US_PP_MAS009109	US_PP_MAS009115	N/A	"BP pushes technical limits to tap extreme fields" dated December 5, 2013
N/A	N/A	N/A	"BP Awards Design Studies for Project 20K TM " dated February 4, 2013
N/A	N/A	N/A	"Statoil Targets 60% Average Oil Recovery Rate," dated August 29, 2012
N/A	N/A	N/A	BP p.l.c. "2Q 2014 Results" dated July 29, 2014
BP-HZN-2179MDL07817136	BP-HZN-2179MDL07817182	N/A	BP p.l.c. "4Q 2012" Results
TBD	TBD	N/A	Moody's Investor Service Rating Action, September 8, 2014
TBD	TBD	N/A	Standard & Poor's Ratings Services Research Update, September 9, 2014
TBD	TBD	N/A	BP Capital Markets p.l.c. US\$30,000,000,000 Debt Issuance Programme Prospectus dated 14 August 2013
N/A	N/A	N/A	Screen Shots from Bloomberg Containing Total Shareholder Return Data for Oil Majors
N/A	N/A	N/A	"BP Suspends Dividend to Help Pay for Spill Claims" dated June 16, 2010
N/A	N/A	N/A	"BP to Pay First Dividend Since Gulf of Mexico Spill" dated February 1, 2011
N/A	N/A	N/A	BP "2Q 2014 dividend information"
N/A	N/A	N/A	FASB Accounting Standards Update No. 2010-03, Extractive Activities—Oil and Gas (Topic 932) 932-234-50-29 ff

HIGHLY CONFIDENTIAL

Expert Report of R. Bruce Den Uyl

Exhibit 2

(\$ millions)

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Operating Cash Flow - GOM	\$ 3,235	\$ 4,019	\$ 5,593	\$ 6,305	\$ 5,500	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Investing Cash Flow - GOM	(3,215)	(3,630)	(3,381)	(2,466)	(2,581)	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Net Cash Flow - GOM	20	389	2,212	3,839	2,919	3,000	3,000	3,000	3,000	3,000
Period	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Mid-Year Convention	0.50	1.50	2.50	3.50	4.50	5.50	6.50	7.50	8.50	9.50
Discount Factor	10% 0.95	0.87	0.79	0.72	0.65	0.59	0.54	0.49	0.44	0.40
Discounted Cash Flow - GOM	\$ 19	\$ 337	\$ 1,743	\$ 2,750	\$ 1,901	\$ 1,776	\$ 1,615	\$ 1,468	\$ 1,334	\$ 1,213

Total Discounted Cash Flows - GOM	\$ 14,156
BPXP Ownership [1]	89.0%
BPXP Discounted Cash Flows	\$ 12,599

2014 - 2023 Net Cash Flows - GOM	\$ 24,379
BPXP Ownership [1]	89.0%
Mr. Ratner's BPXP Cash Flows	\$ 21,697

Impact of Discounting	\$ 9,098
------------------------------	-----------------

[1] Per Ratner Report.

Source: Ratner Report, paragraphs 114, 169-170.

HIGHLY CONFIDENTIAL