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Pursuant to PTO 13

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

13161
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 REBUTTAL REPORT

OF

R. Bruce Den Uyl

September 26, 2014

TREX-013161.0001

I. Introduction

On September 12, 2014, the Plaintiff's expert, Ian Ratner, submitted a report in this matter "[i]n [r]esponse to the August 15, 2014 Expert Report of R. Bruce Den Uyl" (the "Ratner Response Report"). The Ratner Response Report purports to address statements and opinions set forth in my August 15, 2014 Initial Report.¹ I have been asked by counsel for BPXP to analyze and respond to the analyses and opinions set forth in the Ratner Response Report.

For purposes of this report, I incorporate the definitions, background, analyses and opinions detailed in my Initial Report and my response report dated September 12, 2014 (my "Response Report"). Based on my review and analysis of the Ratner Response Report, I have not made any changes to my analysis and opinions contained in my Initial Report or my Response Report.

Mr. Ratner uses an erroneous critique, focusing largely on BP p.l.c., to obscure the key issues of what the financial and economic impact of a future CWA penalty would be on the violator, BPXP. Mr. Ratner does not dispute that BPXP is the sole BP defendant in this case, that the United States has asserted that BPXP is "the liable party in this proceeding,"² and that BPXP is the sole BP entity designated by the United States as the "responsible party" under the Oil Pollution Act ("OPA"). Mr. Ratner does not dispute that if a judgment were entered in this case, BPXP is the sole entity against which the United States could execute that judgment and the sole entity that could be required to pay any such judgment.

Furthermore, Mr. Ratner does not dispute my opinion that BPXP has reported *Deepwater Horizon* spill-related total costs including provisions and payables of approximately \$41.6 billion through the second quarter of 2014, including costs incurred of \$29.0 billion to date. These \$41.6 billion of *Deepwater Horizon* spill-related costs have been significant and have had a material impact on the financial condition of BPXP today. Mr. Ratner states that "a significant portion of the \$29.0 billion paid through the second quarter of 2014 was funded by other BP Group entities."³ It is my understanding that other BP entities provided capital to BPXP in order for BPXP to respond to and mitigate the effects of the spill and to meet its various other liabilities. Mr. Ratner also omits that to the extent that "funds" were provided to BPXP by other BP entities, BPXP incurred a liability to repay those funds, with the sole exception of the equity injection provided by BP America Production Company ("BPAPC") in February 2012. As with any equity injection made by a parent company into a subsidiary, that February 2012 equity injection was

¹ Ratner Response Report, paragraph 2.

² Memorandum In Support of Plaintiff United States' Motion in Limine to Permit Relevant Evidence Concerning BP p.l.c. and Other BP Affiliates, filed Feb. 14, 2014 (Rec. Doc. 12355) at 1.

³ Ratner Response Report, paragraph 16(b).

made based on the facts and circumstances at the time and does not suggest or guarantee that further injections will occur as potential liabilities and other factors change. Furthermore, if the commitment of debt and equity financial resources from other BP entities after a spill are used as justification to impose a higher penalty on BPXP in later litigation, parent companies would have significantly diminished incentives to respond to future spills by committing the full resources of their consolidated group to aid a subsidiary.

In my Initial Report, I opined that a penalty in excess of \$2.3 billion in 2015 would exhaust BPXP's projected available funds in 2015. As I noted in that report, "even at the level of \$2 billion, a CWA penalty would require BPXP to devote the majority of its available funds as of 2015 to a single liability, at the exclusion of funding any other liabilities or operational expenditures."⁴ Mr. Ratner's criticism that this opinion improperly takes into consideration an adjustment made by the BP Group's Upstream segment is wrong. In any event, even if I utilized the unadjusted projections, BPXP would be projected to have \$2.5 billion in available funds at the end of 2015 rather than \$2.3 billion as included in my Initial Report.⁵

Mr. Ratner assumes that BPXP has automatic "access" to additional capital from other BP entities.⁶ In fact, BPXP's agreements with other BP entities make clear that it cannot compel such capital. The most BPXP can do is to ask those companies for additional funds following imposition of a CWA penalty that exceeds BPXP's ability to pay. NAFCO can choose to provide BPXP with loans in excess of the \$5 billion set forth in BPXP's IFA agreement with NAFCO (as it has done in the past), but BPXP cannot compel it to do so. Similarly, BPXP's parent can choose to provide BPXP with additional equity, but BPXP cannot compel it to do so.

Mr. Ratner states that "[t]here are many financial factors that would economically motivate BP to choose to invest additional capital into BPXP so it could fund a CWA penalty."⁷ At the same time, there are factors that would economically motivate other BP entities to choose not to invest additional capital into BPXP, such as the CWA penalty and other contingent liabilities. Mr. Ratner offers no opinion as to how to weight these factors relative to each other. Based on my analysis of BPXP's assets, existing liabilities and contingent liabilities, it is uncertain whether additional funding would be economically rational in the event of a CWA penalty that exceeded BPXP's own ability to pay.

⁴ Initial Report at 12.

⁵ Additionally, my operating expense adjustment to Wood Mackenzie's valuation would actually increase if the unadjusted projections were used.

⁶ Ratner Response Report, paragraph 4(c).

⁷ Ratner Response Report, paragraph 20.

In his first two reports, Mr. Ratner does not reach any opinions relating to:

- the overall value of BPXP, either with or without contingent liabilities;
- how a potential investor in BPXP, including other BP entities, would view the contingent liabilities that BPXP faces, including for NRD and claims excluded from the PSC settlements; or
- whether from an investor's perspective the overall future value provided by BPXP to the BP Group will be positive or negative overall once the CWA penalty and contingent liabilities are considered.

Regarding BPXP's potential access to other BP entities' capital,⁸ Mr. Ratner assumes that other BP entities will continue to invest regardless of any financial drag represented by BPXP or any negative value resulting from CWA and contingent liabilities. Operating subsidiaries that are created by a parent company are originated through the injection of capital by the parent. Future injections of capital by the parent into the subsidiary are not guaranteed and would be made based on the facts available at the time. The principle of limited shareholder liability is that once a parent invests a certain amount, the parent risks that invested amount and no more. The decision by a parent to invest further capital – beyond its past investments – depends on whether the expected benefits of that further investment outweigh the expected costs on a forward-looking basis.

The following report will provide additional detail on my critique of the Ratner Response 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.

⁸ Ratner Response Report, paragraph 4.

III. Summary of Opinions

It is my opinion that the Ratner Response Report is flawed and misleading as it assumes that other BP entities or a third party will provide additional funding to BPXP without consideration of the current value of BPXP, the size of the CWA penalty, or the impact of contingent liabilities on that value.

- A. *Mr. Ratner's conclusion that my opinions related to BPXP's access to capital to fund a CWA penalty critically ignore BPXP's ability to obtain such capital from BP p.l.c.⁹ is flawed and misleading as it:*
- i. Fails to recognize that historical investments into a subsidiary do not obligate the parent for future investments,*
 - ii. Disregards the contractual agreements that BPXP has with other BP entities,*
 - iii. Incorrectly assumes that other BP entities will continue to invest in BPXP regardless of the expected returns on such future investments, and*
 - iv. Fails to consider the impact that a CWA penalty or contingent liabilities would have on the value of BPXP and hence on the potential for returns to an investor in BPXP.*
- B. *Mr. Ratner's conclusion that "...even if BPXP had to seek debt financing outside the BP Group it would likely be able to obtain funds through the credit markets at an appropriate rate of interest"¹⁰ is flawed as Mr. Ratner:*
- i. Provides no analysis to support this claim nor discusses how a third party would assess the potential return of an investment in BPXP,*
 - ii. Disregards the fact that prior settlement obligations owed by BPXP required guarantees by BP p.l.c.,¹¹ and*
 - iii. Fails to consider BPXP's existing and contingent liabilities.*
- C. *Mr. Ratner erroneously concludes that the adjustments I made to the GOM projections are improper even though these adjustments: (1) correspond to the projection provided by BP p.l.c. to its investors and (2) were made based on discussions with management.*
- D. *Mr. Ratner's analysis of contingent liabilities is flawed and misleading as it:*
- i. Mischaracterizes my opinions,*

⁹ Ratner Response Report, paragraphs 4(a) – 4(d), 4(f).

¹⁰ Ratner Response Report, paragraph 4(f).

¹¹ Such guarantees were made by the legal entity "BP p.l.c."

- ii. *Presents misleading analysis related to the nature of contingent liabilities, and*
 - iii. *Incorrectly references BP p.l.c. within his discussion of BPXP's ability to pay a CWA penalty.*
- E. *Mr. Ratner's conclusion with respect to my use of the Wood Mackenzie valuation materials¹² is flawed as Mr. Ratner:*
- i. *Presents a misleading analysis of BPXP's projected operating expenses,*
 - ii. *Fails to provide an alternative valuation,*
 - iii. *Inadequately addresses existing liabilities,*
 - iv. *Incorrectly questions my deduction of existing debt from adjusted BPXP NPV to arrive at BPXP's equity value, and*
 - v. *Inadequately addresses the impact of potentially significant contingent liabilities.*

In summary, the financial impact on BPXP from the Deepwater Horizon spill-related liabilities has been significant and has severely limited the ability of BPXP to fund a CWA penalty on its own merit. My Initial Report contains an analysis of this limitation and concludes that BPXP's available liquidity to fund a CWA penalty in 2015 is \$2.3 billion. Any penalty over this amount would require additional funding which would present a choice to other BP entities or any third party equity investor/lender upon a request by BPXP for funding. These potential providers of funding to BPXP would consider the current value of BPXP (which I provide in my Initial Report to be approximately \$16.1 billion) and the impact that a CWA penalty and other potential spill-related liabilities would have on the likelihood of BPXP providing a return on that new investment, as detailed in my Initial Report. Mr. Ratner's reports have not changed my opinions.

¹² Ratner Response Report, paragraph 4(g).

IV. Analysis of Opinions

The opinions provided in Mr. Ratner's Summary Conclusions and his related discussion regarding my Initial Report are unreliable as they: (1) misstate my opinions and analysis; (2) present misleading information; and/or (3) are not adequately supported with corroborating evidence or analyses.

- A. *Mr. Ratner's conclusion that my opinions related to BPXP's access to capital to fund a CWA penalty critically ignore BPXP's ability to obtain such capital from BP p.l.c.¹³ is flawed and misleading.*

BPXP's Ability to Obtain Funding from Other BP Entities

Mr. Ratner asserts that my analysis of BPXP's ability to pay a CWA penalty is flawed as it "ignores the critical reality that BPXP is part of the BP Group and therefore has access to debt and equity sources within the BP Group."¹⁴ Mr. Ratner's criticism is premised on the theory that other BP entities will automatically satisfy any future funding needs associated with a CWA penalty (or other liabilities) incurred by BPXP.¹⁵ While it is true that BPXP has in the past received funds to aid in its management of *Deepwater Horizon*-related expenditures and other liabilities, formal documentation and governance processes exist related to those funding transactions.¹⁶ Any future BPXP funding needs would represent a decision point for other BP entities as to whether it was appropriate to provide additional funding. My Initial Report analyzed factors that an investor such as another BP entity would consider when deciding to make an additional investment in BPXP. Mr. Ratner criticizes this analysis because it did not simply assume that other BP entities would continue to provide funds regardless of the amount of the CWA penalty and contingent liabilities. Mr. Ratner's report fails to provide the necessary analysis of certain parameters one would consider to determine whether another BP entity would provide BPXP the funds to pay an assumed maximum CWA penalty of \$18.06 billion. I have prepared such an analysis in my Initial Report.

As discussed in my Initial Report, I concluded that a CWA penalty assessed in 2015 in excess of \$2.3 billion would exhaust all of BPXP's available funds and result in a funding shortfall under BPXP's current facilities.¹⁷ With respect to additional funding beyond BPXP's existing arrangement, the most BPXP can do is ask other BP entities (or outside lenders or investors) for additional funds following imposition of a CWA penalty that exceeds BPXP's ability to pay. Mr. Ratner fails to cite any policy or

¹³ Ratner Response Report, paragraphs 4(a) – 4(d), 4(f).

¹⁴ Ratner Response Report, paragraph 4(c).

¹⁵ Ratner Response Report, paragraphs 9-20.

¹⁶ BP-HZN-2179MDL08942142.

¹⁷ Initial Report, page 13.

contractual arrangement in place that supports his assertion that another BP entity will necessarily fund a CWA penalty assessed against BPXP. Mr. Ratner acknowledged that another BP entity would have to choose to fund any potential CWA penalty when he stated “[t]here are many financial factors that would economically motivate BP to choose to invest additional capital into BPXP so it could fund a CWA penalty.”¹⁸

As stated above, Mr. Ratner’s statements fail to acknowledge that formal documentation and approval requirements exist that govern past equity and debt investments made by other BP entities into BPXP.¹⁹ In my Initial Report, I examined factors that other BP entities or another potential investor would examine before making an additional investment to fund a potential CWA penalty. Specifically, I noted that it is likely that BPXP would receive a speculative grade credit rating, that BPXP’s total equity value is less than Mr. Ratner’s assumed maximum penalty of \$18.06 billion, and that there are potentially significant contingent liabilities in addition to a CWA penalty that might prevent an investor from earning a positive return on an investment in BPXP.²⁰

Additionally, in order to support his false assertion that BPXP could unilaterally borrow more than the stated terms under its IFA with NAFCO, Mr. Ratner conducts an analysis of BPXP’s historical borrowing levels under its IFA, implying that BPXP could borrow amounts above its existing borrowing limit if needed to fund a CWA penalty because it has done so for other reasons in the past.²¹ Mr. Ratner fails to acknowledge, however, that BPXP’s lender, NAFCO, *permitted* BPXP to borrow above its limit in previous instances. Thus, Mr. Ratner’s implication that funds above the borrowing limit are available to BPXP at its own discretion is not true.

Mr. Ratner’s discussion of the “economic reality” of the BP p.l.c./BPXP relationship does not apply to the decision of whether to make an investment. With regard to the true economic reality, BPXP is the sole BP entity named as a defendant to the current proceeding brought by the United States.²² Judge Barbier stated “The United States seeks civil penalties against BP Exploration & Production, Inc. (‘BPXP’) for

¹⁸ Ratner Response Report, paragraph 20.

¹⁹ See, for example: SFN reference number: 12/02/11 at BP-HZN-2179MDL08714143 and SFN reference number 13/12/11 at BP-HZN-2179MDL08714147.

²⁰ Initial Report, pages 19, 26.

²¹ Ratner Response Report, paragraphs 24-31.

²² Findings of Fact and Conclusions of Law Phase One Trial, paragraph 475, Sept. 04, 2014 (Rec. Doc. 13355).

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."^{23,24}

Mr. Ratner falsely asserts that BPXP automatically has access to capital given historical funds it has received from other BP entities.²⁵ In truth, an investor will evaluate each new investment to determine whether it will receive an adequate return on that investment. Simply because they have invested in the past does not mean they will blindly make future investments, as Mr. Ratner suggests, without considering the return on those investments.

As stated above, with respect to additional funding beyond BPXP's existing arrangement, the most BPXP can do is ask other BP entities (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.

BPXP's Ability to Pay a CWA Penalty

Mr. Ratner asserts that my analysis of BPXP's ability to pay CWA penalty is lacking as he wrongly concludes that I have not "engaged in a full and complete analysis of BPXP's financial situation."²⁶ This conclusion is false, as I examined factors (such as credit metrics and equity value) that a potential investor, *including other BP entities*, would examine when determining whether to invest additional capital in BPXP to fund a potential CWA penalty above this amount, something that Mr. Ratner failed to do. This analysis indicates that an investor (including other BP entities) could be faced with low or negative returns on investments in BPXP due to the great uncertainty associated with the *Deepwater Horizon*-related contingent liabilities (in addition to a CWA penalty).

In his analysis of why BP p.l.c. would choose to invest equity in BPXP, Mr. Ratner fails to provide an analysis of how the factors he cites would impact other BP entities' decision to invest or how much they would invest.²⁷ The only amount he discusses is an asset value of \$32.8 billion that has not been adjusted for BPXP's operating expenses or for debts that BPXP has already incurred. As discussed in further detail below, each of these adjustments would need to be made in order to properly analyze BPXP's value

²³ Findings of Fact and Conclusions of Law Phase One Trial, paragraph 475, Sept. 04, 2014 (Rec. Doc. 13355). In the same order, Judge Barbier stated that BP p.l.c. is not "liable under general maritime law." *Ibid.* paragraph 573.

²⁴ It appears that Mr. Ratner is attempting to avoid this fact by implying that accounting guidance may somehow be relevant to the issue of whether BP p.l.c. will fund a penalty assessed against BPXP. Mr. Ratner's discussion of the accounting principle substance over form (Ratner Response Report, paragraph 10) provides no guidance on whether or not a parent should or would make an investment into a subsidiary based on the history of past investments.

²⁵ Ratner Response Report, paragraphs 15 – 16.

²⁶ Ratner Response Report, paragraph 17.

²⁷ Ratner Response Report, paragraphs 20 – 22.

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to an investor. In addition, Mr. Ratner does not discuss how BPXP's potentially significant contingent liabilities could impact the value of BPXP.

Finally, Mr. Ratner's opinion that BPXP could raise equity from independent third parties contains no analysis, and he provides no indication of how much equity BPXP could raise.²⁸ As discussed in my Initial Report, BPXP's equity value before deducting contingent liabilities is \$16.1 billion.²⁹ This amount is less than the assumed maximum CWA penalty of \$18.06 billion contained within the Ratner Report.³⁰

²⁸ Ratner Response Report, paragraphs 20 – 22.

²⁹ Initial Report page 26.

³⁰ Ratner Report, paragraph 3(e).

B. Mr. Ratner's conclusion that "...even if BPXP had to seek debt financing outside the BP Group it would likely be able to obtain funds through the credit markets at an appropriate rate of interest"³¹ is flawed.

Mr. Ratner opines that my analysis of BPXP's credit metrics is "irrelevant" because it ignores BPXP's ability to raise funds from BP p.l.c. and because he believes that BPXP "would likely be able to obtain funds through the credit markets at an appropriate rate of interest."³² Mr. Ratner provides no analysis or support for this conclusion. In contrast, in my Initial Report, I provided an analysis of relevant factors that a potential debt investor in BPXP would consider. Notably, I determined that BPXP would likely be rated below investment grade and that a CWA penalty would result in further deterioration of its credit metrics, as would obligations arising from the various *Deepwater Horizon*-related contingent liabilities.³³ Mr. Ratner provides no analysis to challenge the credit metrics that I have set forth related to BPXP in my Initial Report, or to challenge my opinion that BPXP would have a speculative grade credit rating, even though he acknowledges that "NAFCO analyzed the credit metrics of BPXP in its lending process and determined the credit rating to be BB/BB+."³⁴

Further, as discussed in my Initial Report, there have been third-party concerns about BPXP's standalone credit worthiness, as evidenced by the fact that, post-incident, various third-party settlements included guarantees from one or more of BPXP's parent companies. For instance, the United States government and PSC settlement agreements included guarantors related to the settlement payment obligations owed by BPXP.³⁵ Additionally, BPXP was required to post collateral in connection with the Deepwater Trust.³⁶ The fact that these agreements required guarantees or security is reflective of third parties' view that BPXP lacked sufficient stand-alone credit worthiness and that third parties evaluate BPXP apart from consolidated BP p.l.c.

Mr. Ratner also performs a flawed analysis of BPXP's interest rates in an effort to question the nature of the loans between NAFCO and BPXP.³⁷ Mr. Ratner incorrectly examines a long-term interest rate and compares that to a short-term loan made to BPXP at a rate of LIBOR plus 1.33% (1.89% in Mr. Ratner's analysis). As stated in the SFN cited by Mr. Ratner, the \$3.1 billion loan to BPXP has a term of "up to two years."³⁸ However, Mr. Ratner uses a 20-year U.S. Treasury bond rate of 2.86% as his basis for

³¹ Ratner Response Report, paragraph 4(f).

³² Ratner Response Report, paragraph 4(f).

³³ Initial Report, page 4.

³⁴ Ratner Response Report, paragraph 35.

³⁵ Deposition of Brian Smith dated July 11, 2014, pp. 283-284.

³⁶ BP p.l.c. press release dated October 1, 2010.

³⁷ Ratner Response Report, paragraphs 35-36.

³⁸ SFN reference number 13/12/11 at BP-HZN-2179MDL08714147.

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comparison. The 2-year U.S. Treasury bond rate as of the same date analyzed by Mr. Ratner was 0.42%.³⁹ Thus, BPXP is actually being charged a rate of interest significantly above the comparable risk-free rate.

Finally, Mr. Ratner opines that BPXP would likely be able to obtain third party financing.⁴⁰ Mr. Ratner provides no analysis to support this opinion. Mr. Ratner has provided no quantification of the amount of financing that BPXP could raise, no quantification of the interest rates, payment terms or tenor of any purported third-party financing, and no opinion of whether this financing would be adequate to cover any CWA penalty amounts in excess of BPXP's \$2.3 billion of available funds in 2015.

With respect to Mr. Ratner's opinion that BPXP could obtain a secured loan facility, Mr. Ratner again provides no indication of the size or terms of such a loan.⁴¹ Importantly, his unsupported conclusions and related discussion make no mention of BPXP's existing liabilities and potentially significant *Deepwater Horizon*-related contingent liabilities.

³⁹ Federal Reserve Statistical Release dated August 18, 2014.

⁴⁰ Ratner Response Report, paragraph 4(f), 37.

⁴¹ Ratner Response Report, paragraphs 38, 39.

C. *Mr. Ratner erroneously concludes that the adjustments I made to the GOM projections are improper even though these adjustments: (1) correspond to the projection provided by BP p.l.c. to its investors and (2) were made based on discussions with management.*

Mr. Ratner asserts that the adjustments I made to the GOM projections as part of my ability to pay analysis are improper. Mr. Ratner's discussion of the adjustments made to the GOM 2018 forecast fails to acknowledge that the adjusted projection was not prepared in the context of litigation or for internal purposes, but rather that this adjusted projection underpinned graphical representations that BP p.l.c. publicly presented to its investors.⁴² In addition, the adjustments I made to the GOM projections for 2015 through 2017 were made based on discussions with management. Mr. Ratner implies that the adjusted projection for 2018 of \$5.5 billion of operating cash flow is refuted by BP p.l.c.'s own public statements regarding cash flow growth in some of its new projects. However, the adjusted projection for 2018 reflects this improved cash flow growth from these new projects with GOM operating cash flow growing from \$3.1 billion in 2013 to \$5.5 billion in 2018. Further, Mr. Ratner's conclusion regarding the propriety of adjustments made to the GOM projections that I relied on fails to analyze the impact of the adjustments, and is therefore misleading, as these downward adjustments have very little impact on BPXP's available funds as of 2015.

As discussed in my Initial Report, I utilized the adjusted GOM 2018 projection, which underpinned information presented publicly to investors, as the basis for developing the projections in my ability to pay analysis. I understand that in GOM's planning process, the projections prepared by regional management are reviewed at the Upstream level and adjusted as part of the evaluation and consolidation of the various Upstream operations worldwide. Within the Upstream segment, the reservoir development function is responsible for the stewardship of the BP Group's resource portfolio.⁴³ I understand that this function applies its judgment to the regional projections of production and adjusts those projections accordingly. In this instance, the 2018 projections from the GOM region were reduced by the Upstream to reflect that the forecasted increases in production in 2018 may not be feasible.⁴⁴

Mr. Ratner's discussion regarding capital expenditure for new discovery development mischaracterizes my analysis and is inaccurate.⁴⁵ While the capital expenditures associated with a new discovery are immediate or near-term, the benefits resulting from a new discovery would be enjoyed after the forecast

⁴² Investor Update dated March 4, 2014, p. 42 (BP-HZN2179MDL07816677) and Investor Update dated May 2014 (BP-HZN-2179MDL08958983).

⁴³ Upstream Segment Description *available at* <http://www.bp.com/en/global/corporate/about-bp/company-information/group-organization/upstream.html>.

⁴⁴ March Investor Day Upstream Proof Points (BP-HZN-2179MDL09111854). Deposition of David Bucknall dated July 2, 2014, pp. 100-03, 174-75.

⁴⁵ Ratner Response Report, paragraph 41.

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period and, as such, Mr. Ratner mischaracterizes the economics of new discovery. Mr. Ratner's assertion that capital expenditures could be deferred ignores the fact that any deferral will result in a delay of future cash flows.⁴⁶

Finally, Mr. Ratner cites BXP's production rates from the second quarter of 2014 in order to suggest that the projections should be "...revised upwards, not downwards as Mr. Den Uyl suggests."⁴⁷ Production is only one input to free cash flow. Free cash flow takes into account production, pricing, operating expenses and capital expenditures. BXP's actual free cash flow for the first half of 2014 (\$.087 billion) was materially similar to BXP's portion of the GOM projection for the same period (\$.009 billion).

Mr. Ratner cites BP p.l.c. public statements touting GOM's future increased production and/or cash flow coupled with the second quarter 2014 production levels as evidence that the Upstream segment downward adjustment to the 2018 forecast may be incorrect and that "the Base Projected Cash Flows need to be revised upwards."⁴⁸ Notably, these statements referenced by Mr. Ratner are from an investor presentation which contains a graph that represented the \$5.5 billion 2018 Segment adjusted projection. Mr. Ratner's discussion fails to acknowledge that current asset production will decline over time, offsetting future projects as they come online. The 2018 adjusted projection predicts that the "Base & Wedge" projects will decline from production of 179 mboed in 2013 to 125 mboed in 2018.⁴⁹ Mr. Ratner fails to account for this current asset depletion in his opinions.

Finally, Mr. Ratner provides no quantification of the impact of the Upstream adjustment on my ability to pay analysis. Removing the impact of this adjustment would increase the available funds at the end of 2015 by only \$0.2 billion.⁵⁰

⁴⁶ Additionally, BXP lease terms require BXP to conduct continuing operations in order to qualify for lease extensions. BOEM's Gulf of Mexico Lease Terms & Royalty Relief, November 5, 2012, http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Energy_Economics/Fair_Market_Valu_e/GOMLeaseTermsRRSummary.pdf; Code of Federal Regulations Title 30 Chapter II Subchapter B Part 250 – Oil and Gas and Sulphur Operations in the Outer Continental Shelf, §250.180, http://www.ecfr.gov/cgi-bin/text-idx?SID=14c7ce73b9f8b5c7f53c04108bef9112&node=sg30.2.250_1177.sg&rgn=div7.

⁴⁷ Ratner Response Report, paragraphs, 48 – 52.

⁴⁸ Ratner Response Report, paragraph 52.

⁴⁹ March Investor Day Upstream Proof Points (BP-HZN-2179MDL09111854).

⁵⁰ Additionally, my operating expense adjustment to Wood Mackenzie's valuation would increase from \$7.8 billion to \$10.0 billion if the unadjusted projections were used.

D. Mr. Ratner's analysis of contingent liabilities is flawed and misleading.

Mr. Ratner rebuts my opinion that an investor would consider the significant *Deepwater Horizon*-related contingent liabilities when making a decision regarding investing in BPXP by concluding that: (1) contingent liabilities may not be relevant to BPXP's ability to pay a CWA penalty, (2) my analysis fails to address how an investor would view these liabilities, and (3) my analysis misstates the parties responsible for such contingencies and mischaracterizes the amount of the liabilities that BPXP may incur. Mr. Ratner's conclusions are flawed and misleading.

First, Mr. Ratner's statement that I present an imbalanced view of the contingent liabilities is misleading.⁵¹ Where available, however, I presented third-party estimates of the ultimate liability that BPXP may incur.⁵² Moreover, Mr. Ratner provides no evidence to contest that these contingent liabilities are potentially significant and would be important considerations to any potential providers of future debt or equity capital to BPXP.

Additionally, Mr. Ratner misleadingly claims that certain of BPXP's contingent liabilities may be "mitigat[ed]" by the fact that similar claims have been brought against other BP entities, such as BPAPC.⁵³ Mr. Ratner supports this assertion by citing the claim brought under the Louisiana Oil Spill Prevention and Response Act ("LOSPRA") which has been dismissed against BPXP and other BP entities. Judge Barbier dismissed the State of Louisiana's LOSPRA claims in 2011.⁵⁴ In addition, Mr. Ratner cites claims against BPAPC by certain Gulf States under OPA. It is my understanding that BPXP is the sole BP entity named by the United States as OPA responsible party.⁵⁵

Mr. Ratner further states that my report "ignores the fact that such contingent liabilities would likely not materialize into actual liabilities until well after the potential imposition of a CWA penalty."⁵⁶ But even if certain contingent liabilities were not required to be paid until after a CWA penalty, they would still be considered by a potential investor in BPXP. Mr. Ratner implies that these contingent liabilities would only impact BPXP's ability to pay a CWA penalty if they took precedence.⁵⁷ However, Mr. Ratner ignores the fact that a significant CWA penalty, followed by potentially significant contingent liabilities, may exceed the future cash flows or value of BPXP. A potential investor, including another BP entity,

⁵¹ Ratner Response Report, paragraphs 57 – 58.

⁵² Initial Report, page 14.

⁵³ Ratner Response Report, paragraph 58.

⁵⁴ Order and Reasons As to the Motions to Dismiss the Complaints of the States of Alabama and Louisiana, Part of Pleading Bundle "C", Nov. 14, 2011 (Rec. Doc. 4578).

⁵⁵ Letter from the United States Coast Guard to BPXP dated April 28, 2010, p. 1 (HCE149-003358).

⁵⁶ Ratner Response Report at 23.

⁵⁷ Ratner Response Report, paragraph 59(b).

would evaluate how these contingent liabilities would affect BPXP's ability to repay or provide a return on an investment. Mr. Ratner's discussion fails to account for this fact.

- E. *Mr. Ratner's conclusion with respect to my use of the Wood Mackenzie valuation: (i) presents a misleading analysis of the projected operating expenses; (ii) fails to provide an alternative valuation; (iii) inadequately addresses existing liabilities; (iv) incorrectly questions my deduction of existing debt from adjusted BPXP NPV to arrive at BPXP's equity value; and (v) inadequately addresses the impact of potentially significant contingent liabilities.*

Mr. Ratner makes several critical observations of the Wood Mackenzie valuation that I relied upon in my Initial Report and then offers additional critiques to the adjustments I have made as part of my analysis of BPXP's equity value.⁵⁸ Notably, however, Mr. Ratner provides no calculations or alternative valuations to the equity value of \$16.1 billion that I set forth in my Initial Report.⁵⁹ Mr. Ratner's criticisms are misleading and do not change my opinion of BPXP's equity value.

Wood Mackenzie uses a discounted cash flow approach which is a form of the income approach that is a commonly used approach to value businesses and assets in the oil and gas industry as well as most other industries. Notably, the valuation that I have relied upon was performed by a disinterested third party, Wood Mackenzie, and therefore is unbiased relative to this proceeding. Although Mr. Ratner critiques the valuation for not considering other valuation approaches, Mr. Ratner does not apply any of these approaches nor does he articulate whether the application of these alternative approaches would result in a higher or lower valuation.

Mr. Ratner suggested that the Wood Mackenzie valuation excluded certain potential future value from BPXP's leases due to the fact that Wood Mackenzie only included estimates for proved plus probable reserves.⁶⁰ Mr. Ratner's discussion of Wood Mackenzie's valuation fails to account for the economic uncertainty and significant future expenditures required to find and develop new exploration discoveries. With respect to its analysis of assets, Wood Mackenzie states that discovered reserves are sub-divided into commercial and technical reserves based upon the potential to exploit those reserves commercially. Specifically:

- *“Commercial fields are defined as those in production, under development or likely to be developed in the near future. Certain commentators might regard the third category, which Wood Mackenzie terms probable developments, as being potentially commercial rather than commercial. Probable developments are included in the partner's long-term plans; therefore we expect them to be developed under our base case assumptions. Detailed coverage of commercial fields that are depleted and/or abandoned will usually stop one or two years after abandonment, although the details of these fields are retained in our databases.”*

⁵⁸ Ratner Response Report, paragraphs 64 – 83.

⁵⁹ Initial Report, page 26.

⁶⁰ Ratner Response Report, paragraph 67-68.

- *“Technical reserves are defined as discovered volumes of petroleum that are potentially, but are not yet considered to be, commercial. This may be due to a number of reasons, for example, a lack of development plans, low resource volumes, technical constraints, low product quality and the lack of accessible markets (e.g. stranded gas deposits) or of viable price regimes.”⁶¹*

Notably, Wood Mackenzie analyzes the BP Group’s exploration acreage, specifying the 14,176 km² of gross area held by GOM, but only assigns a value to discoveries deemed commercial. Wood Mackenzie did analyze each of the BP Group’s discoveries to date and specifically noted that Gila was a “sub-commercial discovery.”⁶² Mr. Ratner’s statements that the Wood Mackenzie analysis did not consider certain assets is misleading because they considered and documented these assets and did not assign any present value to them due to their sub-commercial nature.

Operating Expense Adjustment

Mr. Ratner questions my \$7.8 billion operating expense adjustment.⁶³ In response to my analysis, Mr. Ratner presents a misleading comparison which does not address the issue of whether BPXP’s operating expenses differ from Wood Mackenzie’s projections.

As an initial matter, Wood Mackenzie’s projections for operating expenses relate to GOM and not to the operating expenses of the legal entity BPXP.

Moreover, Mr. Ratner’s Table 6 and related discussion focuses solely on Wood Mackenzie’s projected operating expenses relative to the adjusted BPXP forecast. Mr. Ratner fails to acknowledge that my Initial Report contained an analysis of BPXP’s actual operating expenses and BPXP’s detailed trial balance which supported my operating cost adjustment. This historical analysis demonstrated that BPXP’s actual operating costs adjusted to remove unusual items were significantly higher than Wood Mackenzie’s operating cost estimates for previous periods. In my Initial Report, I demonstrated that BPXP’s actual operating expenses were \$1.472 billion, \$1.423 billion and \$1.438 billion *higher* than BPXP’s portion of Wood Mackenzie’s operating expense estimate during 2012, 2013 and YTD 2014 (annualized), respectively.⁶⁴

⁶¹ Wood Mackenzie Methodology and Assumptions (BP-HZN-2179MDL09216033).

⁶² Wood Mackenzie BP Corporate Report (BP-HZN-2179MDL09216019).

⁶³ Ratner Response Report, paragraph 71.

⁶⁴ Initial Report, page 24 and Exhibit 8. Note that the “Total Adjusted Production & Other Operating Expenses” line item at Exhibit 8 inadvertently indicates that these total costs exclude insurance while this line item does include insurance expense. Exhibit 8 includes references to BPXP’s trial balances that provide the underlying support for Exhibit 8 which includes insurance expense.

In addition to this historical analysis that Mr. Ratner ignored, Mr. Ratner's analysis of BPXP's projections relative to the Wood Mackenzie forecast is flawed and misleading. Mr. Ratner focuses on operating cash flow, which includes different assumptions related to oil price and production rather than simply examining the differences in operating expenses between the two forecasts. Mr. Ratner's analysis only serves to hide the divergence in projected operating expenses between these two forecasts. The table below provides the relevant comparison of projected operating expenses in Wood Mackenzie's forecast and BPXP's adjusted projections.

Table 1

Comparison of BPXP and Wood Mackenzie Projected Operating Expenses					
<i>(\$millions)</i>	2014	2015	2016	2017	2018
GOM Adjusted Operating Expense	\$ 2,225	\$ 1,939	\$ 1,807	\$ 1,741	\$ 1,934
Wood Mackenzie Projected Operating Expense	508	561	603	599	590
GOM in Excess of Wood Mackenzie	\$ 1,717	\$ 1,378	\$ 1,203	\$ 1,142	\$ 1,344
BPXP Ownership of GOM	85.9%	85.9%	85.9%	85.9%	85.9%
BPXP Portion of Excess	\$ 1,474	\$ 1,183	\$ 1,033	\$ 981	\$ 1,154

As shown in the table above, the projected operating expenses in the adjusted GOM projections remain significantly above Wood Mackenzie's through 2018, which is less than, but in line with, recent historical trends as discussed above. Mr. Ratner fails to address this lasting divergence in his analysis.

Mr. Ratner questions the use of BPXP's cost structure to the extent that it is greater than the purported industry standard of costs.⁶⁵ The purpose of my analysis is to examine BPXP's ability to pay a potential CWA penalty. A potential investor will be making an investment in BPXP and as such it will be faced with the actual costs incurred by BPXP. As such, it is appropriate to examine BPXP's actual cost structure as a potential investor would.

Liability Adjustments

Mr. Ratner criticizes my Initial Report for making adjustments to the Wood Mackenzie analysis. Specifically, Mr. Ratner questions: (1) the adjustment for liabilities as of June 30, 2014 and (2) the application of adjustments for working capital amounts, such as accounts payable.⁶⁶

⁶⁵ Ratner Response Report, paragraph 80.

⁶⁶ Ratner Response Report, paragraphs 81 and 82. Furthermore, Mr. Ratner provides no citations or support for his allegation that my analysis deviated from some purported "generally accepted valuation methodology," which it does not. Ratner Response Report, paragraph 83.

With respect to my use of the liability balances as of June 30, 2014 for purposes of determining BPXP's equity value, an assessment of BPXP's true financial condition should incorporate the most current information known or knowable as of the valuation date, which in this case includes June 30, 2014 financial information.⁶⁷ As such, my analysis appropriately includes BPXP's June liability balances. Mr. Ratner provides no quantification of the impact of using June 30, 2014 values and in total, the adjustments I have made would be \$0.3 billion higher based on the December 2013 balance sheet.

Mr. Ratner's second criticism that it is improper to adjust for "working capital amounts, such as accounts payable" is irrelevant,⁶⁸ as I did not make a reduction for BPXP's \$2.4 billion of "Trade, accruals and other payables" which is a liability included on BPXP's balance sheet as of June 30, 2014.⁶⁹

Notably, Mr. Ratner does not dispute that certain adjustments to Wood Mackenzie's analysis are necessary. For example, my Initial Report reduces BPXP's value for \$4.0 billion in *Deepwater Horizon*-related liabilities. Mr. Ratner does not criticize this \$4.0 billion deduction from BPXP's value, other than to suggest that the number should be calculated as of January 1, 2014 instead of June 30, 2014. In other words, Mr. Ratner does not dispute that, in valuing the legal entity BPXP, certain deductions from Wood Mackenzie's asset valuations are appropriate, because they were not considered by Wood Mackenzie. Wood Mackenzie did not value BPXP's legal liabilities and had no reason to do so for its Gulf of Mexico-asset-focused valuation. Indeed, BPXP's financial statements are not publicly available.

My Initial Report also deducted \$3.4 billion from BPXP's value for BP p.l.c. finance debt owed by BPXP. Mr. Ratner does not criticize this deduction from BPXP's value, other than to suggest that the number should be calculated as of January 1, 2014. Again, Mr. Ratner does not dispute that, in valuing BPXP, it is appropriate to subtract intercompany liabilities, because they were not considered by Wood Mackenzie, which did not analyze BPXP as a legal entity.

Finally, as discussed in my Initial Report, BPXP's equity value of \$16.1 billion has not been reduced for any potential CWA penalty or potentially significant contingent liabilities. These would further reduce BPXP's value.

⁶⁷ I noted that while the Wood Mackenzie analysis is discounted to January 1, 2014, the report was updated as of April 2014.

⁶⁸ Ratner Response Report, paragraph 82.

⁶⁹ BPXP Q2 2014 Financial Statements (BP-HZN-2179MDL07817681).

V. Conclusion

It is my opinion that the Ratner Response Report is flawed and misleading as it assumes that other BP entities or a third party will provide additional funding to BPXP without consideration of the current value of BPXP, the size of the CWA penalty, or the impact of contingent liabilities on that value.

- A. Mr. Ratner's conclusion that my opinions related to BPXP's access to capital to fund a CWA penalty critically ignore BPXP's ability to obtain such capital from BP p.l.c.⁷⁰ is flawed and misleading as it:
- i. Fails to recognize that historical investments into a subsidiary do not obligate the parent for future investments,
 - ii. Disregards the contractual agreements that BPXP has with other BP entities,
 - iii. Incorrectly assumes that other BP entities will continue to invest in BPXP regardless of the expected returns on such future investments, and
 - iv. Fails to consider the impact that a CWA penalty or contingent liabilities would have on the value of BPXP and hence on the potential for returns to an investor in BPXP.
- B. Mr. Ratner's conclusion that "...even if BPXP had to seek debt financing outside the BP Group it would likely be able to obtain funds through the credit markets at an appropriate rate of interest"⁷¹ is flawed as Mr. Ratner:
- i. Provides no analysis to support this claim nor discusses how a third party would assess the potential return of an investment in BPXP,
 - ii. Disregards the fact that prior settlement obligations owed by BPXP required guarantees by BP p.l.c.,⁷² and
 - iii. Fails to consider BPXP's existing and contingent liabilities.
- C. Mr. Ratner erroneously concludes that the adjustments I made to the GOM projections are improper even though these adjustments: (1) correspond to the projection provided by BP p.l.c. to its investors and (2) were made based on discussions with management.
- D. Mr. Ratner's analysis of contingent liabilities is flawed and misleading as it:
- i. Mischaracterizes my opinions,
 - ii. Presents misleading analysis related to the nature of contingent liabilities, and

⁷⁰ Ratner Response Report, paragraphs 4(a) – 4(d), 4(f).

⁷¹ Ratner Response Report, paragraph 4(f).

⁷² Such guarantees were made by the legal entity "BP p.l.c."

- iii. Incorrectly references BP p.l.c. within his discussion of BPXP's ability to pay a CWA penalty.
- E. Mr. Ratner's conclusion with respect to my use of the Wood Mackenzie valuation materials⁷³ is flawed as Mr. Ratner:
- i. Presents a misleading analysis of BPXP's projected operating expenses,
 - ii. Fails to provide an alternative valuation,
 - iii. Inadequately addresses existing liabilities,
 - iv. Incorrectly questions my deduction of existing debt from adjusted BPXP NPV to arrive at BPXP's equity value, and
 - v. Inadequately addresses the impact of potentially significant contingent liabilities.

In summary, the financial impact on BPXP from the *Deepwater Horizon* spill-related liabilities has been significant and has severely limited the ability of BPXP to fund a CWA penalty on its own merit. My Initial Report contains an analysis of this limitation and concludes that BPXP's available liquidity to fund a CWA penalty in 2015 is \$2.3 billion. Any penalty over this amount would require additional funding which would present a choice to other BP entities or any third-party equity investor/lender upon a request by BPXP for funding. These potential providers of funding to BPXP would consider the current value of BPXP (which I provide in my Initial Report to be approximately \$16.1 billion) and the impact that a CWA penalty and other potential spill-related liabilities would have on the likelihood of BPXP providing a return on that new investment, as detailed in my Initial Report. Mr. Ratner's reports have not changed my opinions.

⁷³ Ratner Response Report, paragraph 4(g).

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 26, 2014

Bates Begin	Bates End	Document Title / Description
		Initial Report
		All documents listed in Exhibit 4 to the Initial Report
		Response Report
		All documents listed in Exhibit 1 to the Response Report
		30 C.F.R. § 250.180
		33 U.S.C. § 2702(a)
		BOEM's Gulf of Mexico Lease Terms & Royalty Relief (November 5, 2012)
		BP Press Release: Upstream Segment Description
		Federal Reserve Statistical Release - H.15 (519) Selected Interest Rates (August 18, 2014)
		Findings of Fact and Conclusions of Law Phase One Trial (Rec. Doc. 13355)
		Order and Reasons as to the Motions to Dismiss the Complaints of the States of Alabama and Louisiana, Part of Pleading Bundle "C" (Rec. Doc. 4578)
		Response Expert Report prepared by Ian Ratner (September 12, 2014) and Documents Cited Therein
		Statement of Financial Accounting Concepts No. 2 - Qualitative Characteristics of Accounting Information
		United States' Motion In Limine to Permit Relevant Evidence Concerning BP P.L.C. and Other BP Affiliates (Rec. Doc. 12355)
BP-HZN-2179MDL08958983	BP-HZN-2179MDL08959022	BP Investor Update (May 2014)
BP-HZN-2179MDL09249216	BP-HZN-2179MDL09249216	Press Release: BP Pledges Collateral for Gulf of Mexico Oil Spill Trust