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SEN. THOMAS R. CARPER HOLDS A HEARING ON GULF COAST FINANCIAL
RESPONSIBILITY, PART 2

July 22, 2010 Thursday

EVENT DATE: July 22, 2010

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LOCATION: WASHINGTON, D.C.

COMMITTEE: SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,
SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL
SERVICES AND INTERNATIONAL SECURITY

SPEAKER: SEN. THOMAS R. CARPER, CHAIRMAN

WITNESSES:

SEN. THOMAS R. CARPER, D-DEL. CHAIRMAN SEN. CARL LEVIN, D-MICH. SEN. DANIEL K. AKAKA,
D-HAWAII SEN. MARK PRYOR, D-ARK. SEN. CLAIRE MCCASKILL, D-MO. SEN. ROLAND BURRIS, D-ILL.
SEN. JOSEPH I. LIEBERMAN, I-CONN. EX OFFICIO
WITNESSES: KENNETH FEINBERG, INDEPENDENT ADMINISTRATOR, GULF SPILL INDEPENDENT
CLAIMS FUND
JAMES HACKETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ANADARKO PETROLEUM
CORPORATION
NAOKI ISHII, PRESIDENT, MOEX OFFSHORE 2007 LLC.
SEN. JOHN MCCAIN, R-ARIZ. RANKING MEMBER SEN. TOM COBURN, R-OKLA. SEN. GEORGE V.
VOINOVICH, R-OHIO SEN. JOHN ENSIGN, R-NEV. SEN. SUSAN COLLINS, R-MAINE EX OFFICIO
SEN. THOMAS R. CARPER, D-DEL. CHAIRMAN SEN. CARL LEVIN, D-MICH. SEN. DANIEL K. AKAKA,
D-HAWAII SEN. MARK PRYOR, D-ARK. SEN. CLAIRE MCCASKILL, D-MO. SEN. ROLAND BURRIS, D-ILL.
SEN. JOSEPH I. LIEBERMAN, I-CONN. EX OFFICIO
SEN. JOHN MCCAIN, R-ARIZ. RANKING MEMBER SEN. TOM COBURN, R-OKLA. SEN. GEORGE V.

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VOINOVICH, R-OHIO SEN. JOHN ENSIGN, R-NEV. SEN. SUSAN COLLINS, R-MAINE EX OFFICIO

TEXT:

CARPER: The subcommittee will come to order, please. Well, good afternoon, or, as we say in Delaware, konnichiwa.

A week ago today, B.P. successfully placed a containment on the Gulf of Mexico oil well, which had blown out nearly 86 days before. It's a welcome development, and one in which many in our nation probably beginning to doubt they'd ever see.

And while this accomplishment brings us cautious hope, that cautious hope is tempered by the harsh reality of what is left in the wake of this disaster: the 11 men who lost their lives on the Deepwater Horizon rig and who leave behind families who are forever altered by this horrific accident, the over 185 million gallons of crude oil dumped in the Gulf of Mexico, which blackened beaches and damaged countless wildlife habitats, and the businesses and communities which, some fear, may not be fully rebuilt for a generation or more.

Indeed, while we may have removed the bull from the china shop with the capping of this well, we've got a lot of pieces left to pick up.

Last month, our subcommittee held a hearing to explore how we were ensuring America would be made whole again following this disaster without putting a hole in our pockets. We learned that the United States Coast Guard has been tracking the federal costs and responding to the oil spill and sending bills to the responsible parties for reimbursement.

Today, the federal government has billed the responsible parties for over \$222 million in incurred costs. The most recent bill, totaling over \$99 million, was sent last week.

At our hearing last month, we learned that B.P. had been cutting the checks for these invoices, and they promised us that they would continue to do so for as long as we continued to send them. While B.P. is the principal owner and operator of the oil well, and is recognized by the government as a primary responsible party, there are other companies who have also received these bills and have obligations under federal law, among them, Anadarko Petroleum Corporation, which owns a 25 percent stake in the oil well, and Moex Offshore, which owns a 10 percent stake.

But while the federal government has received payments from B.P. for taxpayers' costs, we still haven't heard back from Anadarko or Moex. The subcommittee has obtained invoices that B.P. sent these two companies asking them to share in the cost of responding to the well so far.

We've also received the company's responses to those bills, and it's clear that they have declined to date to pay them. In the event that B.P. is unwilling or unable to continue carrying the full weight of this spill's cost, the American people will want to know who else is responsible.

Under the law, Anadarko and Moex are responsible and liable for this spill. Today I hope to hear more from them about how they view their relationship with B.P. and their roles in responding to and helping to pay for this disaster.

Our hearing last month also featured testimony from the Government Accountability Office, which reported significant ongoing risks and vulnerabilities related to the Oil Spill Liability Trust Fund. This fund is responsible, as you know, for claims made by individuals and businesses who are denied or left unsatisfied by B.P.'s claims process.

Since that time, President Obama and senior B.P. officials have announced a new independent claims process

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that would be created and funded by a \$20 billion escrow fund established by B.P. Mr. Kenneth Feinberg, who joins us here today, former special master for the 9/11 victims compensation fund, among other distinctions was named by the administration to be the administrator of this new claims regime.

Today, I look forward to hearing from Mr. Feinberg about his progress to date and how the fund he manages will interact with the statutory framework that already exists within the Oil Spill Liability Trust Fund.

Our collective sigh of relief due to the good news coming from the gulf in recent days should not distract us from the significant challenges that lie before us. And while the well may now be capped, the spill will continue to play out at the kitchen table of every American whose livelihood and way of life have been affected by this calamity.

CARPER: My colleagues and I will do whatever it takes to get residents of the Gulf Coast back on their feet again, to protect our nation from the costs and impacts of this spill, and to make sure that those who are responsible for this disaster are held to account.

As my friends at the witness table may have noticed, we were joined briefly by Senator McCaskill, and my guess is she's going to be rejoining us here in just -- just a moment. And while -- rather than wait until that moment occurs, what I'm going to do is -- is begin the process of witness introduction. And this won't take too long, so hopefully she'll beat -- beat the clock and be ready to make a statement, if she'd like, and then we'll introduce our witnesses.

Panel one -- our first witness today is -- is Mr. Kenneth Feinberg, administrator of the Gulf Coast claims facility. The Gulf Coast claims facility is a new independent claims process funded by a \$20 billion escrow fund established by BP. Prior to his appointment as administrator, Mr. Feinberg served as special master of the September 11th victims compensation fund and special master for compensation.

Welcome.

FEINBERG: Thank you, Mr. Chairman.

CARPER: Our next witness is Mr. James Hackett. Mr. Hackett is chairman and chief executive officer of Anadarko Petroleum Corporation. Anadarko, as many know, is one of the world's largest independent oil and natural gas exploration and petroleum companies and those of 25 percent interest in the Deepwater Horizon oil well.

And our final witness today is Naoki Ishii -- how's that? -- Naoki Ishii, president of MOEX Offshore 2007. Mr. Ishii has worked with Mitsui Oil Exploration, MOEX parent company, for nearly 20 years. MOEX Offshore owns a 10 percent interest in the Deepwater Horizon oil well.

And we welcome you to -- to our -- our country, and particularly to the -- to this hearing today. Thank you for -- for coming. Domo arigato.

All right. Mr. Feinberg and to our witnesses, I'm going to ask you to lead off for us. Each of you will be given roughly five minutes. If you go a little bit beyond that, I won't complain. But we'd ask you to try to stick fairly close to that. If you go way over that, we'll have to rein you back in. But your entire statement will be made part of the record, and I would ask you to proceed at this time.

FEINBERG: Thank you, Mr. Chairman. I understand the rules governing the five minutes as a former special counsel to the Senate Judiciary Committee and former chief of staff to a colleague of yours, Senator Edward Kennedy. It's good to return to the Senate to testify.

I want to thank you for this opportunity to testify. Yes, I am the independent -- and I want to emphasize the independent -- administrator of the Gulf Coast claims facility.

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Now, that was a facility established by agreement between the administration and BP to set up a process, a voluntary process, to invite any claimant in the Gulf or elsewhere that has an eligible claim arising out of the spill to voluntarily come in, have their claim evaluated, and if it is found eligible and calculated correctly, that individual or that business would be entitled to compensation out of the \$20 billion escrow fund that was established by BP and the administration.

I am not part of that escrow fund. I did not create it. I have not negotiated it. I am strictly drawing on it, beginning next month, in order to pay all eligible claims.

Now, hopefully, the 20 billion will be sufficient to cover all claims not only from my facility, but also government claims -- federal, state, local -- which I have no jurisdiction over. Any government claims must be filed by that governmental entity against BP. The facility that I've been asked to administer will deal with individual claims -- wages, et cetera -- small and large private businesses -- business interruption, loss of profits, et cetera.

So I have -- I'm in charge of a facility that will draw on the 20 billion, but I'm not the exclusive distributee. Governments will also draw on it.

Now, BP has stated, as you know, Mr. Chairman, that if the 20 billion is insufficient, it has stated publicly that it will honor any and all eligible financial obligations above the 20 billion. So it is not a capped amount in terms of BP's financial obligation to pay claims.

Now, as I get ready to transition from the BP claims process, I note with some degree of credit that BP has already paid over \$200 million in claims without my involvement, without this new facility. So it's set up 35 claims offices throughout the four-state Gulf region to process claims, and have been doing so.

I believe we will do better. I think we will accelerate the claims process, make it more efficient, allow people to file online in the Internet without ever even visiting a claims process. But I am confident that when the claims facility is up and running next month, it will have a seamless transition from BP, which will be out of the private claims business, and would be part of this facility.

There are very difficult challenges ahead. What constitute eligible claims for damages? How are those damages going to be proven? I mean, I can't just -- you can't just file a claim without any cooperation. But I'll work with the people of the Gulf.

I am not beholden to the administration. I am not beholden to BP. I am working for the people and the businesses in the Gulf to try and make sure that equity is done, that justice is done, and that I -- I distribute the funds that are available as soon as I can.

I want to note with gratitude the staff of this committee. I've been working with the staff of this committee over the past few weeks in trying to listen to concerns that have been expressed by you and other members of the committee, by citizens of the Gulf. And I have been coordinating with the staff and will continue to do so.

So I am fairly confident that despite the challenges ahead, we will be able to make this facility function the way it should independently so that the citizens of the Gulf are served by this program.

Thank you, Mr. Chairman.

CARPER: Thanks very much. And I -- I think I speak for my colleagues, who say thank you for taking on this responsibility.

All right, Mr. Hackett, welcome. We're delighted that you're here. Please proceed. Thank you for joining us.

HACKETT: Senator Carper...

CARPER: Again, your full statement will be made part of the record, and feel free to summarize.

HACKETT: Thank you. I meet eager here -- to be here to answer questions. I am Jim Hackett. I serve as chairman and chief executive officer of Anadarko Petroleum. I just wanted to make some brief oral comments that are consistent with the written comments that we gave to committee.

The Deepwater Horizon explosion has been an unprecedented environmental disaster as well as has impacted many families of the 11 men lost. And our feeling is that this pain continues in terms of the Gulf Coast region and the communities in that region.

And while BP's capping of the well has, I think, brought guarded hope that the situation may soon be brought under control, we must continue to keep the people of the Gulf in our hearts and prayers unto the environment and the economy there have recovered.

We, along with others in the industry, have continued to support the response effort of the unified area command, offering technical expertise, providing specialized equipment and pledging to donate any net revenues from any oil we receive to local charities and civic organizations in the Gulf region.

We share the desires of all Americans that we are arriving at a point where efforts can now turn to restoring the Gulf region as quickly as possible. The Gulf is already suffered significant losses, and the subcommittee is rightly concerned that American taxpayers must not pay the costs associated with the spill.

We appreciate BP's recognition of its central role as operator of the well and its frequently stated public commitment to continue to pay all legitimate claims in order that the American taxpayers are not burdened.

To prevent that from happening as well, we are committed to meeting our obligations under the Oil Pollution Act. Let me re-emphasize the central point for the members of the committee and you today. I strongly believe that the taxpayers of America should not be stuck with the bill for the tragedy in the Gulf.

I am before you today, because Anadarko was a non-operating investor in the Macando well. According to long-standing industry practice and standard contractual arrangements, as a non-operator we are essentially a passive investor in the Macando well. Although we received some limited information regarding plans and progress, all day-to-day operational decisions were made by the operator, BP.

Our company and our industry have many highly skilled and committed individuals that work hard every day to safely deliver the energy resources America needs. All energy resources must be found, developed and produced safely and in a manner that protects the environment.

We all agree the well must be plugged, those that have suffered related losses must be compensated, and the Gulf must be restored. I and the 4,300 employees of Anadarko are eager to help make that happen. I look forward to your questions.

CARPER: Good. Mr. Hackett, thanks for that -- for that testimony.

Mr. Ishii? Please proceed.

ISHII: Chairman Carper, Ranking Member McCain, thank you for the opportunity to testify at today's hearing. I am Naoki Ishii, president of MOEX Offshore 2007 LLC based in Houston, Texas.

MOEX Offshore 2007 LLC has a 10 percent non-operating interest in the lease from which the Deepwater Horizon rig was drilling. We are deeply saddened by the tragedy of the Deepwater Horizon accident. Our thoughts and prayers go out to the families of those who were lost and to all of those who have been affected by this spill. We understand the significance of this matter to the people of the Gulf Coast.

MOEX Offshore will continue to cooperate with all of the parties who are responding to and investigating this accident. Moex Offshore does not conduct (inaudible) or activities to develop oil and gas. Moex Offshore has no role in the selection or operation of the Deepwater Horizon rig. We are minority, long operating investor. Moex Offshore shares the subcommittee's concerns about these tragic events. We are closely monitoring the ongoing investigations. (Inaudible) to watching in good faith with Congress. Moex Offshore will work with all levels of government to assist in their efforts to restore the Gulf Coast. I have submitted written testimony to the subcommittee the supplements to statement. I look forward to answering your questions. Thank you again for the opportunity to share Moex Offshore's view. Thank you very much.

CARPER: Thank you for your oral testimony and for your written testimony. We've been joined by Senator McCain and Senator Ensign. I've asked, Senator McCain, if you wanted to make any brief statements and he's declined. And Senator Ensign, would you like to as well? OK. All right. Mark this day as an unusual day when we have my colleagues and -- on either side declining that opportunity, but we'll get right into the questions. I'm glad you -- I'm glad my colleagues are here.

Questions now. We'll just lead off with a question for Mr. Hackett and Mr. Ishii. Let's do maybe seven minutes -- seven minutes if we could for each member. Mr. Hackett and Mr. Ishii, as we both know, your companies, Anadarko and Moex, have received, I believe, four bills from the federal government for costs related to this spill. It appears under the law that your companies are liable for these costs; however, we've yet to see any reimbursement for these costs from your companies.

Could you please tell the subcommittee and the American taxpayers watching us today why Anadarko and why Moex believe that you do not have to pay? Mr. Hackett, would you like to go first?

HACKETT: I'd be happy to, Senator Carper. The important thing to note is that the taxpayers are being paid and this operates very similar to the super fund legislation on which the Oil Pollution Act was based or formed from and that is the operator or the lessee is the primary payer and then the allocation of liability occurs behind that payment.

So we view this as a very good process, a very standard process in terms of billing and the important thing is the American taxpayers being kept whole.

CARPER: Let me ask you again. Why do you feel you don't have to pay? Just one more time explain it. Why do you feel that Anadarko does not have to pay in response to the billings from the federal government?

HACKETT: The federal government is being paid. B.P. is paying the federal government. It is stated that they want to continue to do that. The question is should the American taxpayer be paid double. The -- as long as there is a paying party, and this is the same way it works under the super fund regulation as well and administration, and I think even the testimony from the government witnesses to your committee in the earlier hearing described it the same principle. As long as the American taxpayer is kept whole, that's the key. And then the allocation of reimbursement is done behind that payment between the parties involved.

CARPER: All right. Mr. Ishii, the same question if can, can you please explain to our subcommittee and to the American taxpayers watching us today why you feel that Moex does not have to pay in response to the billings presented to it by the federal government? And we understand to our -- to those who have joined us in person here are through the media that Mr. Ishii has gave his testimony orally in English. He is going to be working through an interpreter to respond to our questions.

ISHII: Mr. Chairman?

CARPER: Yes, sir?

ISHII: Mr. Chairman? Mr. Chairman, regarding the invoice from the Coast Guard, there is a contract in place

among the partners and based on that contract, it states that B.P. as the operator would make the payments in the first instance. And therefore, based on that contract provision, B.P. has been making the payments.

CARPER: All right. A question again to follow-up, if I could, for both Mr. Hackett and Mr. Ishii, and here's my follow-up question: Have either of your companies contacted the National Pollution Fund Center to contest to what we could describe or call a notice of designation? In other words, have you told the federal government to really stop send you the -- these bills? Mr. Hackett?

HACKETT: We have not, Senator.

CARPER: And do -- could you explain why or do you anticipate what your anticipation is in terms of contesting this notice or reaching out to the federal government to ask them to stop sending the bills?

HACKETT: No. We actually have stated publicly that we view ourselves as being a responsible party under the Oil Pollution Act. So we do not see a need to send that note.

CARPER: All right. Mr. Ishii, (inaudible) the same question, has your company as Moex contacted the National Pollution Fund Center to contest the notice of designation and have you told the federal government to stop sending your company these billings?

ISHII: Mr. Chairman?

CARPER: Mr. Ishii?

ISHII: What are the (inaudible) -- Mr. Chairman, I do not have any recollection that we have been contacted by them, nor of any response that we made to them.

CARPER: I see. May I ask you to go beyond your recollection and respond to what's -- in writing for the record, please?

ISHII: Mr. Chairman, I understand. I will do that.

CARPER: Thank you. A next question again for Mr. Hackett and Mr. Ishii, our subcommittee received documents I'm told this week that show B.P. has now sent your companies two bills for a share of the costs that have been incurred. I believe that the most recent bill to Anadarko totaled some \$900 million and to Moex, I believe, about \$400 to \$450 million. I think I know the answer to this question, but I'll ask it anyway. But will either of your companies be paying these bills? Mr. Hackett?

HACKETT: Senator Carper, as we -- as have been reported, we have withheld reimbursement to B.P., again, the taxpayers being kept whole which is the important thing. We have a dispute behind our own agreement between the parties that I think is better left to the parties and that's where we stand and we are in discussions with B.P. on that.

CARPER: All right. Mr. Ishii, same question, please.

ISHII: Mr. Chairman?

CARPER: Mr. Ishii? Miss Sato?

ISHII: Mr. Chairman, regarding the invoice from B.P., what we are most interested in is to first to try to find out why this tragic accident occurred. And so we need to first clarify the cause of the accident. And therefore, talking about things that would follow after that I think is a little too early at this stage because we have to wait for the cause to be clarified. However, on the other hand, up until now, regarding the crude oil that was recovered we have properly stated that any proceeds that would be obtained from the recovered crude oil should be used for the people in the Gulf

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Coast impacted by this accident. And therefore, we have relinquished our rights to those proceeds.

CARPER: All right. To my -- to my colleagues, I need (inaudible) seven minutes. I'm going to go one more minute and then you'll -- everyone will have 10 -- at least 10 minutes to (inaudible). Just to follow-up, if I could, again, for Mr. Hackett and Mr. Ishii, a responsible party under the Oil Pollution Act, your companies are joint in several liable for damages relating to the Deepwater Horizon incident.

If B.P. begins to pay only their share -- what they believe to be their share received of the bills received from the federal government, will Anadarko and Moex pay their respective shares in the interim or will you wait to litigate this issue with B.P.? Mr. Hackett?

HACKETT: Senator, I think that the arrangement that's currently under way as I mentioned is very typical and I think the right arrangement for the government to have with the operator. We expect as B.P. has committed to and as the government has suggested they will do that those arrangements will stay in place. We think it's the best thing for the American public. We think it's the best thing for the taxpayer and I think that the contractual issues between the parties can be sorted out separately.

CARPER: Have -- has there been communications between Anadarko and B.P. as to -- on this issue, as to whether or not they intend to continue to pay 100 percent of the -- the billing or at some point in time they anticipate saying that's enough and to invite their partners to -- to pay their share?

HACKETT: We understandably have not asked them for any modification of their public, frequently repeated commitment to pay all bills first.

CARPER: All right.

I'll -- I'll stop there and yield, if I could, to Senator McCain. Thanks for joining us today, John.

MCCAIN: I thank the witnesses.

Mr. Hackett, BP has set aside \$20 billion in an escrow fund. Has your company set aside any funds?

HACKETT: We have not, Senator McCain.

MCCAIN: Why not?

HACKETT: We don't think it's necessary to do so.

MCCAIN: Look, here's the following facts. The federal government has named four companies as, quote, "responsible parties," Deepwater Horizon, Transocean, BP, Anadarko, and Moex. And under the Oil Pollution Act, responsible parties, which you have been named one of, is -- is obligated to pay all clean-up costs and economic damages.

So right now my understanding of the law is that responsible parties have got to pay. But you're not paying. Is that right?

HACKETT: That's -- Senator McCain, the -- if I can go back again, the issue is one of..

MCCAIN: Are you paying or not paying?

HACKETT: We are not paying.

MCCAIN: And you have not set any money aside?

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HACKETT: We have not set any money aside, but we have substantial assets.

MCCAIN: What would be wrong with -- you've been billed for \$900 million. What would be wrong with -- with -- with going ahead and paying that and then, if you can prove gross negligence or willful misconduct from BP, that you would then get that money back? Because right now the people who are in the gulf need the money, not the litigation.

HACKETT: Senator, as I understand it, nobody is being disadvantaged today from our lack of setting up that sort of fund.

MCCAIN: Because BP is paying the whole bill.

HACKETT: BP is paying the bill, and they've committed to doing that, and...

(CROSSTALK)

MCCAIN: And even though you are designated as a responsible party.

HACKETT: We -- we -- we may be confusing two different issues, is that under the Oil Pollution Act, I think that any proceedings there, as I mentioned, traditionally have occurred similar to the superfund, where the operator pays the bills first and then they allocate the responsibility amongst the parties.

MCCAIN: Well, let me turn to Mr. Feinberg.

By the way, thanks for all your good work. Your reward will be in Heaven, not here on Earth. Mr. Feinberg, we thank you for -- for all your great work.

FEINBERG: Well, your praise helps Heaven. Thanks.

MCCAIN: Mr. Feinberg, do you agree with me that there are, quote, "responsibility parties" here under the Oil Pollution Act?

FEINBERG: I don't know. All I know is that the administration and BP entered into an agreement to set up an escrow account for \$20 billion, which I'll draw on. I don't know anything beyond that.

MCCAIN: You don't know anything -- do you want to venture an opinion?

FEINBERG: No, I'm not an expert in the field, and I wouldn't dare venture an opinion.

MCCAIN: Now, Mr. Feinberg, you've -- you have ventured many opinions of which you are -- and so have I -- which we are not experts. But, anyway, let -- let me, Mr. Feinberg, again, thank you. And thanks for going down and meeting with the people and talking with them. I think that's really vital, and I thank you for doing that.

I've seen a lot of clips of you, because they not only need support in financial support, but they need sympathy and understanding. So thank you for doing that.

FEINBERG: Thank you.

MCCAIN: Do you believe that local government should be compensated for lost tax revenue and reimbursed for additional expenditures related to the response and clean-up efforts?

FEINBERG: Yes.

MCCAIN: You do?

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FEINBERG: Yes, I do.

MCCAIN: And where should that come from?

FEINBERG: Under the arrangement entered into on this -- on this Gulf Coast claims facility center that I'm setting up, any government claim -- local, state, federal -- does not go to me. By agreement, it goes to BP. I have no jurisdiction yet -- maybe it will change -- but I have no jurisdiction over reviewing and authorizing payment for government claims, but they do come out of the \$20 billion escrow account.

MCCAIN: OK. During one of your town hall meetings, you were asked about claimants who work or operate in all-cash businesses and don't necessarily have tax returns, profit-and-loss statements on check stubs. You are quoted in July 16th article as saying, quote, "Well, tell the captain of the boat or your priest to vouch for you."

Does that maybe open the door for a little bit of fraud here?

FEINBERG: I've reminded everybody down there, I'll bend over backwards to try and -- and -- and authorize emergency payments to people in need down there.

Now, I agree with you, Senator, as I usually do, that -- that -- that it does raise a real serious question. I've told everybody in the gulf that even if I authorize payments, I must send them by law 1090, a tax -- tax verification. Hopefully, we'll find a way to prove those claims without at the same time encouraging fraud. That's a challenge.

MCCAIN: And so do you have a policy or a way that you could preemptively do -- take measures or steps to prevent fraud?

FEINBERG: Yes. First, we've been in constant communication with the Department of Justice Criminal Fraud Division. As you'll recall, Senator, in the 9/11 Victim Compensation Fund, there were 7,300 applications and there were only 35 fraudulent applications. It worked.

With the help of the Department of Justice and with my own internal auditing, fraudulent auditing program, I am confident that we will be able to prevent or deter fraudulent claims. We have to do that.

MCCAIN: Have you gotten a handle yet or -- or a rough estimate of what the costs are going to be here?

FEINBERG: No, because the oil just stopped. We'll -- we'll have in the next 30 days for you, Senator, a budget as to what we think the infrastructure will cost to administer the program and how many claims there will be and how many eligible claims, whether the \$20 billion will be sufficient. Unclear as yet, until we see the claims.

MCCAIN: Have you got a guess as to whether \$20 billion is sufficient? You have no guess?

FEINBERG: I have no guess. I would hope \$20 billion would be sufficient. I would hope so. But fortunately, as you know, BP has stated that, if \$20 billion is not sufficient, they will step up and honor all additional claims that may be eligible and compensable.

MCCAIN: Mr. Ishii, do you have a contingency fund, an escrow fund set aside for payment of damages as a result of the oil spill?

ISHII (THROUGH TRANSLATOR): Senator, Moex has not established a fund.

MCCAIN: Well, look, let me -- let me just say, here we have a situation where at least the federal government has named both of you as, quote, responsible parties. Obviously, BP feels that you should pay a share of the repayments that are necessary to try to fix and repair the damages from this terrible disaster.

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You haven't paid anything, and you haven't even put any money aside. I don't think that that's the right thing to do.

It's pretty clear what you're going to do is litigate as to whether BP had willful gross negligence or willful misconduct caused by -- caused by the accident. So I strongly recommend -- I strongly recommend that you step forward, frankly, as BP has -- I didn't think very often I would be praising BP -- but I would -- I strongly recommend that you set aside funds and that you start paying some bills so that the people will know that you are a responsible organization whose first obligation is to -- if, indeed, you are responsible parties, which is what you have been designated -- and you're going to have to prove that you're not -- that you start paying some of these bills and set up an escrow fund. And I think it would be in the best interests of the people of this country and, frankly, the image of your corporations.

I thank you, Mr. Chairman.

CARPER: Thank you, Senator McCain.

Senator McCaskill, welcome.

MCCASKILL: Thank you very much.

Mr. Feinberg, I'm curious about what's compensable and what isn't. And it is not clear to me what is compensable and what isn't in this situation.

Let me draw on your experience -- and I do think that you're a remarkable, talented lawyer, and lawyers hardly get any praise around these parts, so let me just tell you that I think you are a remarkable lawyer.

FEINBERG: Thank you.

MCCASKILL: Tell me, in -- after the tragedy of 9/11, as you administered that claim fund, what -- were there non-pecuniary damages available to the surviving spouses? Did they -- were they able to access loss of consortium and -- which for many people means the -- the value of your loss of companionship, your inability to have more children, those kinds of damages -- and punitive damages? Was -- was it available to the surviving spouses of -- of the tragedy in New York?

FEINBERG: By statute, punitive damages, no, unless you opted out of the fund and wanted to litigate.

(UNKNOWN): Right.

FEINBERG: Virtually 97 percent came into the fund voluntarily -- no punitive damages, pain and suffering, emotional distress, yes, if and only if that pain and suffering and emotional distress was accompanied by either (a) death of a loved one or (b) physical injury.

You could not recover by statute just for loss of consortium, pain and suffering, emotional distress. It had to be part of a physical injury or death arising out of the attacks.

(UNKNOWN): I'm -- I'm sure you're aware, because I'm sure you've researched and had lots of folks help you get a handle on the law, that we have what I think is a terribly unfair situation here in that the Jones Act limits the liability for the surviving spouses of the man who lost their lives in this tragedy.

And I think, if -- if my research is correct, I think Senator McCain helped take the airplane exemption out after a tragedy air crash. This used to apply to this piece, the air, all kinds of methods of transportation that were not landlocked and -- but we did not remove this unfair limit for vessels.

And so these women, who have -- many of them with small children, many of them who live day-in and day-out knowing that their spouses were engaged in -- and, frankly, some of them even have some evidence that will come to light that some of their spouses were worried about this particular rig and the problems they were having -- I'm curious as to your take on that limit.

And is it fair that depending on where you lose your spouse, if it's on the water you can't recover, but it was on land, you could?

FEINBERG: I would urge the survivors of those who lost their lives to first voluntarily come into this fund. They are eligible to come into the Gulf Coast claims facility. Deaths are included, as well as physical injury.

I am not limited by the Jones Act or any other law in terms of my ability to at least calculate damage, if -- if eligible, and to offer voluntarily some sort of compensation. No one is obligated to take that compensation, so it's -- it's sort of a free preview.

So I'm sure that all of these widows that you reference have excellent lawyers, who are well regarded. But I would urge them to first consider voluntarily providing an application to me to review, which could take into account not only existing law, but equity" would be fair and just.

(UNKNOWN): So you can -- you can do a complete equitable decision without any limitations of existing federal law.

FEINBERG: That is correct.

(UNKNOWN): Well, and -- and would you think that if someone who is -- it's certainly their right -- if they decide that they want to go into the courts and have justice the old-fashioned way that we do it in this country, is it fair that there limit on damage would be in place, whereas if there was an airplane crash or if there was a building that was blown up, they wouldn't have that limitation, do you think?

FEINBERG: I'm not an expert in the -- in the Jones Act, but I would question the legitimacy of making that distinction.

(UNKNOWN): And I -- I question it also. I think it's something that we need to look at quickly in Congress just as a matter of pure fairness that these women should not have that limitation.

I -- I understand the point you're making about a free preview. It's almost like a non-binding dispute resolution. In fact, it is a non-binding dispute resolution. That's exactly what it is. And I think that that would be something that is available to them.

But at the same time I think that should have every mechanism in the law that any other surviving spouse would have after this kind of problem, regardless of the location of the tragedy.

FEINBERG: I would also say that under the facility as it's currently as planned, anybody who is eligible can receive immediately from this facility up to six months of emergency payments without any obligation, without any requirement to waive any legal rights. If you're eligible, and we calculate that loss, and it's provable, we will immediately issue up to six months emergency compensation.

(UNKNOWN): For businesses that have gone out of business as a result of this crisis, that have actually lost their businesses, are you able to do blue sky value also?

FEINBERG: I'd consider it. I'm not sure how blue sky -- exactly how it would apply here, but we -- such businesses who are now defunct -- certainly eligible.

(UNKNOWN): OK.

Mr. Hackett, I'm -- I'm curious. You had to know going into this hearing that you were going to get some tough questions, both you and Mr. Ishii, about the failure to set up a fund or to set aside any money to address whatever part of this you may have some responsibility for.

And if you say you've got plenty of resources to do that and if it's never tapped into, I'm just curious why, just from a public perception, would you resist this? I mean, you look like that you're not stepping up. It looks like you're not taking responsibility to the members of this panel and to the American people.

Why would you suffer that kind of public relations disaster, if it's not going to make a difference in terms of how much money you might be called upon to pony up for your share of any responsibility for this -- for this occurrence?

HACKETT: Senator, I think we start with the fact that the American taxpayer is being kept whole. So we don't view it as a situation where they're not being kept whole.

The second place we start is what -- what legal position we should take, that their position is, frankly, to do what's right. And we feel very strongly about this for our shareholders, our employees and our industry.

What we have learned in public testimony -- and we without any opinions for two months -- causes us great concern. We have contractual dispute mechanisms within the joint operating agreement that we -- we think we are entitled to exercise.

We understand from many decades of practice that the Oil Pollution Act, modeled after the Superfund legislation, operates in a fashion where the operator pays the bills, and then we apportion liability. We do not feel it is right for us to have to pay first. We think it's right that BP pay first. They've publicly submitted they're committed to do it.

(UNKNOWN): Well, nobody's asking you to pay anything. What -- what we're -- I mean, I guess what I'm saying is obviously the lawyer department won out over the PR department.

HACKETT: I don't -- I -- I think I said what's right, ma'am. I didn't say that the lawyers won out.

(UNKNOWN): Well, no one here is saying that you should have to be paying something right now. I understand that there are liability issues that have to be determined. And there is going to be some real cat fights among lawyers among all of the four parties as to how that liability ultimately plays out.

BP knows that they have primary liability. They've stepped up after the president asked them to, I think, in a -- in a show of strong leadership, and they put \$20 billion cash on the nose. I think that is appropriate, and I think, frankly, it's gone a long way with the American people that they understand this.

I guess what I'm saying is if no one's asking you to pay anything, if all we're asking you to do is to acknowledge somewhere in your corporate accounting that there may be a day that you might have to pay something and to show the American people and to show these senators and to show that people in the Gulf that if that day came, you are prepared to address it, if it's not going to make any difference in your bottom line right now, why in God's green earth wouldn't you do it?

HACKETT: We've just -- there was a piece of information under the Department of Justice. They -- as you know, they had sent us a letter regarding any extraordinary transactions that would compromise that asset position. We have committed to them that we will fully inform them of that.

We have a very strong balance sheet. There is cash on hand. We don't believe that an escrow fund is required

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for us to show bona fides with regard to our ability to pay. We are going to be very careful about not compromising that position, because we understand the concern you have.

(UNKNOWN): Well, I -- I don't think you completely understand it, because I think you are so focused on what it might signal in terms of liability that you're losing sight of what it might signal in terms of acknowledging that there may be a day that others might have to pay something besides BP.

I think you've made a mistake. I think it's come to this hearing in a much weaker position because of it. I think both of your companies have. And I would certainly ask you to reconsider that. No one's going to make you pay anything unless you're liable for something.

BP is paying, because they know they would be liable, and they believe that what they're gaining in the short run by a cooperative agreement and by working with Mr. Feinberg in the long run is going to serve their company, and I think they're spot on. And I think both of your companies have made a mistake and -- but we do appreciate you being here today.

And, Mr. Feinberg, whatever that place is in heaven that you find, I hope there's someone there that has a dispute that you can negotiate.

FEINBERG: Thank you.

CARPER: Senator Ensign?

ENSIGN: Thank you, Mr. Chairman. Thanks for holding this important hearing.

I want to start with Mr. Feinberg. You mentioned before about the governments -- local governments, state governments -- being able to -- you don't have jurisdiction over those payments. Who has jurisdiction over those payments? It comes out of the \$20 billion, correct?

FEINBERG: BP. It comes out of the \$20 billion, but those claims should be submitted, right now at least, directly to BP.

ENSIGN: And then BP would draw that money -- they would authorize the money. The point -- the point of the question is, you know, if we're getting down toward -- you know, toward the end of that, and you've got governments over here claiming they are owed money, and you have private sector over here claiming they, you know, need the money, and who gets that money?

FEINBERG: Well, there's \$20 billion to hopefully defer any argument. There's no priority, whoever has a claim, first in, first considered. The claims have to be proven, of course.

And finally, BP has again made it clear that if the \$20 billion proves to be insufficient -- and I hope it won't be insufficient -- but if it is, BP has stated publicly it will honor any additional financial obligations that it is -- that are proven.

ENSIGN: OK. Taxes will be owed, I would imagine, on just whatever state taxes, local taxes, whatever on those, if they have state and local income taxes on that -- on that money to be paid?

FEINBERG: Sales taxes. Oh, I see. Yes, it's -- it's the equivalent of wages or lost income, yes.

ENSIGN: Yes. What if you have a hotel and you're -- I mean, these are -- these are questions that probably need to be answered. What if you have a hotel and that -- part of that lost revenue is from rooms, but now that local government doesn't get room tax?

FEINBERG: I assume that local government is -- is going to submit a claim for lost room taxes, sales taxes, ad valorem real estate taxes. I can see some innovative claims.

ENSIGN: Right. No, and the reason for the question is, if they submit that to BP, then do you deduct that value, because the hotel would have had to pay -- to pay those taxes? In other words, are you just going to be looking at the net?

FEINBERG: That's right. I think I have to mitigate if there are other sources of income, yes.

ENSIGN: OK. One -- one of the concerns you always have during these times, you know, when you have massive potential lawsuits and -- and things like that -- and I know you're a lawyer, so maybe you're arguing against your own interests here -- but how do we minimize fees going to lawyers so that the money actually gets to the victims?

FEINBERG: Well, that is a controversial question. Now, I am a lawyer. First of all, I want to remind -- Senator McCain will recall that, in the 9/11 fund, we had over 1,500 lawyers who worked pro bono to help 9/11 victims. I am committed to setting up in this program some sort of pro bono program so that lawyers can represent claimants without -- without fee.

When it comes to any private arrangement that a claimant has with a lawyer, that is not on my watch. That's a private contractual understanding.

I would say that, when I calculate awards under the \$20 billion, those are awards -- are the damage awards that are owed the claimant, and there will be no add-on or gross-up for -- for lawyers' fees.

ENSIGN: OK. We're -- try to give us some idea, you know, how you determine who's eligible. And, I mean, this is -- this is very difficult. And I understand you have -- you have a monumental task ahead of you.

What Senator McCain -- I mean, there's no question. You're probably going to get criticized some day because there will be some fraud. I think...

FEINBERG: You say "some day."

(LAUGHTER)

ENSIGN: Yes. It's impossible not to have some fraud in there, and you have to try your best to try to minimize that. There's going to be some shysters out there and people trying to take advantage. And there -- there will be on -- on cable news and the Internet and blogs and the whole thing that there will be stories, and you'll be made to look bad, because you weren't doing your job. I think it's impossible to -- to not have that.

But try to give this subcommittee an idea of -- of, you know, some of the criteria that you're going to be looking at, you know, for legitimate claims.

FEINBERG: Let's start as a base point. What is the law of Louisiana, Alabama, Mississippi, Florida, and especially the federal pollution control act say about who's eligible? That's the first question. That's a base point.

Mr. Claimant, you know, you're ineligible and, frankly, if you litigate, you'll be declared ineligible. So I'm trying to use as a base point what the law would say.

Then, above that, I want to try and do better. I think equitably I want to try and do better. So the problem's going to come. There are the easy cases, Senator, the easy cases. Oil on the beach. I can't fish in these waters. I can't shrimp. I can't harvest oysters. Those claims are relatively straightforward, pay them 100 percent under any fair reading of law.

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ENSIGN: Except that you don't know how long this is going to last.

FEINBERG: Well, that's a separate question, which is there's no oil on the beach yet. Now, fortunately, the well is capped, so we're -- we're -- we're starting to get a handle on where that oil may...

(CROSSTALK)

ENSIGN: No, but what we don't understand is maybe some of the damage that was done by the dispersants and some of the other things on the oyster beds, on the shrimp, you know, and we don't know two years from now, three years from now the potential damage that could be done to the industry.

FEINBERG: I'm going to have to get some expertise and some help on that. This program will be up and running for three years. Hopefully, we'll have a pretty -- a pretty good handle on that.

The problem -- you're focused exactly on one of the big problems, the indirect claims. "Mr. Feinberg, I have a motel four blocks from the beach. There's no oil on the beach, none. But because of the publicity and the tourism, I'm off 30 percent. Here's my records from the past. Here are my records post-spill. I have a claim. Pay me."

You're absolutely right. I'm going to have to draw some lines and some distinctions, make those distinctions well-known, and try and do equity as best I can.

ENSIGN: Are there types of businesses that -- that you won't give claims to?

FEINBERG: Well, I don't know off -- off the top what those businesses might be. There are some types of businesses I obviously will pay: fishermen, shrimpers, oyster harvesters, motels right on the beach.

The problem is going to be, there -- there may be a restaurant that's right on the beach that's dependent on its livelihood with shrimp from the gulf. What do I do with a restaurant in Las Vegas who writes a claim and says, "We've lost 30 percent of our business because here in Vegas we're the only restaurant -- we have that gulf shrimp, and now it's gone, and people aren't coming to that restaurant."

Where the proximity is so far removed from the gulf, where do you draw the line? And I'm trying to figure that out now.

ENSIGN: Well, one of the reasons I asked, I actually thought of this when -- when I was -- you know, some people might -- might have a problem with you, because you have casinos in -- in -- in Gulfport and down in Biloxi and everything that can be affected by this. Do you have a problem with reimbursing if a casino is down 20 percent of their revenues?

FEINBERG: Not if they can demonstrate that they're on the beach, that they're down 20 percent, that people come to gamble, but they also use the beach, they go on fishing charters, they sightsee. I mean, I'll look at each claim, but I don't have a problem with tourism being compensable under this program. The question is, what tourism and -- exactly what you're saying -- where do you draw that eligibility line?

ENSIGN: OK.

Thank you, Mr. Chairman.

CARPER: I have one question, if I could, for -- for Mr. Feinberg. And, Mr. Feinberg, I want to go back to a point made by -- by Senator McCain, if I could. The president signed in a signing ceremony today at White House legislation that I introduced with the support of a number of my colleagues, Democrat and Republican, on this -- on this committee, and that legislation is called the Improper Payments Act of 2010.

Last year, we learned that almost \$100 billion in federal funds were improperly paid to payees, some cases mistakes, honest mistakes, in other cases, fraud.

And the legislation that the president just signed into law today says, federal agencies across the board from A to Z, we want you to, one, report improper payments; number two, we want you to stop making improper payments; and, number three, for the improper payments that have been made, we want you to go out and recover as much of that money as you can for -- for the Treasury or, in some cases, for the Medicare Trust Fund.

I -- I just want to underline again the concern that -- that we have especially on the same day that this law has been signed into effect, that you be diligent, and there's a -- there's a tension here between being diligent and trying to make sure that we protect ultimately the -- the fund that's -- from which these monies are going to be paid, but at the same time trying to be fair.

You spoke to this once before. Could you just respond to it again?

FEINBERG: Mr. Chairman, nothing will undercut the credibility of this fund that I'm administering more than fraud, nothing. If it gets around that \$20 billion is being wasted, it's -- there are fraudulent payments, it will destroy the credibility of the program in the eyes of the public and, frankly, in the eyes of the claimant.

So I am determined, as I was with the 9/11 Victim Compensation Fund, to make sure that fraud is addressed promptly, quickly, efficiently, that we deter any fraudulent payments.

And I've got the cooperation of the Department of Justice Criminal Division -- no better than them. And also, we will have -- internally in the infrastructure that I'm designing, we will have anti-fraud mechanisms to deal exactly with the problem you are raising.

CARPER: Good, thanks. Eternal vigilance. We continue to be vigilant. Thank you.

Mr. Hackett, again for you, please. You said publicly that you believe B.P. may have acted with willful misconduct and with gross -- or with gross negligence as the operator of the Deepwater Horizon rig. This has been Anadarko's primary argument for withholding payments, I believe, to B.P.

Could you please take a moment and tell us what evidence or information you have that has led Anadarko to that conclusion.

HACKETT: Yes, Senator. The information we have gathered has been through testimony and investigations and through public disclosures, because we've not received any root causes directly from the operator.

The majority of the things that we make that likely gross negligence statement surrounding were covered in the Congressman Waxman-Stupak letter to B.P. prior to Tony Hayward's testimony.

CARPER: All right. A question again, if I could, for you and also for Mr. Ishii, please.

I understand, let me just ask, the joint operating agreement between your companies and B.P. spells out, I believe, certain data, certain information about the well's operation that Anadarko and Moex were to be given access to on a regular basis. In fact, some information was to be provided, I'm told, on a real-time basis.

In addition, to this information that your companies received or should have received you also had to approve of, I believe, certain expenditures for work on the well.

It would seem that if B.P. had been doing something wrong, you would have known about it. And I would just ask, am I correct in that assumption?

HACKETT: Would you like me to answer?

CARPER: Please.

The standard industry practice is that you do get a budget description of a model or template well design. That is then altered, depending on what the drilling results are.

You also get real-time data on the geological prognosis, so that once you have TDed a well, which occurred on the 9th of April in this case, you then have logging runs, which occurred, I think, up to the middle of April, or around the 13th.

At that point, the real-time data is not -- we don't go to the real-time data because the geological prognosis is done and it should be a fairly routine process at that point then to finish the well.

What you then get, up until they no longer give you reports is a daily drilling report which is generally very broad, very high level, about actual events, as opposed to procedures used or designs that were used. The last one of those we received was on the morning of the 20th for the activities on the 19th.

CARPER: All right.

Mr. Ishii?

ISHII: Mr. Chairman...

CARPER: Miss Sato (ph)? Would you make sure your mike is on, please.

SATO (ph): Excuse me.

ISHII (THROUGH TRANSLATOR): Mr. Chairman, we receive daily reports from B.P., and these reports are received with a one-day delay. And in addition, we have the rights to access some of the technical or detail data.

However, our position is that, as we have been saying, of course, we are committed to complying with all of our legal obligations.

However, when we made the decision to participate in this well, the drilling had already started at that time. And that drilling was started based on the government approving the drilling plan.

And, therefore, as the operator, we felt that B.P. would properly operate the well. And, therefore, based on that information, we decided to participate in this project.

And, therefore, we feel the same as all of the people who have suffered in this great tragedy, in that we would like to know and determine why this accident occurred, and we would like to have that properly clarified. Until that is investigated and determined, we feel that it is too early to discuss anything further.

CARPER: All right. Mr. Ishii, in America we like to play baseball. As it turns out in your country, your people like to play baseball, too. Some of your best players actually end up playing here in this country, as you know.

We have a term in baseball that we use outside of baseball. It's called a pitch that is well telegraphed. And the idea behind the concept of a pitch well-telegraphed is to kind of know what the pitch -- fastball, curveball, split finger, change-up -- you know what the pitchers are going to pitch because he has telegraphed that in the past.

I want to kind of drill down, if I can, on the communications between B.P. and with Anadarko and with Moex in the days leading up to April 20th.

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And were you taken by surprise on April 20th when the accident occurred? Was this a pitch well telegraphed? Had you been receiving updates from the primary operator of the well that there were problems?

We have received, as you may know, communications between B.P. and, I believe in this case, Anadarko that indicate, according to one, April the 9th that we're -- "we are aggressively fighting losses as the drilling has gone forward." Another, "I'll try to post the well spaces shortly. We're troubleshooting some MDT issues this morning. Having a difficult time getting good seal around the wellbore and wall. And it looks like LCM." What does LCM mean here -- what is LCM?

HACKETT: Senator, that's a loss of circulation material.

CARPER: Oh, a loss of circulation material. Maybe the culprit. That was eight days before the blowout.

Just characterize for us, please, the kind of communications flowing back from B.P., the primary operator of the well, to your companies as to how things were going in the days leading up to the -- to the incident.

Mr. Hackett, do you want to go first and then we'll go to Mr. Ishii.

HACKETT: Certainly. As you state in the dates on the documents, those -- that's that period during when we are talking real time about the well. None of those pressure issues are unique to this particular part of the Gulf of Mexico.

Again, this was not an extraordinary well either in terms of depth or complexity. What then happens is the most critical.

CARPER: You're saying a well at 5,000 feet below the surface of the water with this great distance under the subsurface is not a unique or unusual circumstance?

HACKETT: I apologize if I'm underestimating that in American people's minds, because it appears, as one person said, like NASA science to many people.

But Anadarko itself is one of the most active deep water drillers in the world. We've drilled, in water depths twice this deep, wells that are nearly twice this deep in terms of total depth. So this, again, is not an extraordinary well for the industry.

The activities that occur after the period in which you spoke to are really the -- the ones that are very critical, and that is when you actually go to finish the well.

Again, pressure responses is not -- is not an issue with regard to our business. It's something you control and take care of when you go to finish that well.

CARPER: Mr. Ishii, please?

ISHII: Mr. Chairman (SPEAKING FOREIGN LANGUAGE)

CARPER: All right. Ms. Sato (ph)? Ms. Sato (ph), if you got all that, you're pretty good.

SATO (ph): Thank you.

ISHII (THROUGH TRANSLATOR): Mr. Chairman, when we decided to participate in this project, BP had already obtained government approval for the drilling plan, and the drilling had already started, based on this approved plan. That is what I would like to say, first of all.

And then, next, about one week before April 20th, BP sent an e-mail. And in that e-mail BP sent that -- said

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that, based on some safety concerns, they thought it would be difficult to continue further drilling in this well, so they were going to stop the drilling.

Now, this Deepwater Horizon project was the first Gulf of Mexico project that we were involved in, whereas BP is the largest operator in that area and the largest producer, so they have a lot of experience and track record in that area.

And, therefore, since BP started the drilling, based on government-approved plan, we placed trust in that and in them when we participated. And then we received that notice about one week prior to the accident.

And since we are a 10 percent minority interest investor, we were not involved in any direct decision-making with BP, so we relied on BP's experience, and we trusted that they had been operating properly.

CARPER: All right. Thank you.

Senator McCain, thank you for your patience.

MCCAIN: Thank you.

Mr. Hackett, have you provided personnel to help clean up the shores?

HACKETT: We have offered to do so, Senator. We've also provided technical expertise to the well control efforts. We've provided specialized equipment from other fields for the control efforts of the well, as well.

MCCAIN: You have -- those assets have been committed or offered?

HACKETT: They have been offered and, in some cases, committed.

MCCAIN: Have you sent boats or skimmers to the affected waters?

HACKETT: We have not been asked to do so. And we don't control those, Senator. Those would be provided by other people. They're usually contracted for.

MCCAIN: You've not been asked to send boats or skimmers?

HACKETT: No, sir.

MCCAIN: Mr. Feinberg, you mentioned that you had 1,500 lawyers volunteer their services in the compensation issue associated with 9/11. And how much money was that?

FEINBERG: In 9/11, we expended taxpayer money a little over \$7 billion.

MCCAIN: And here we're talking about considerably more?

FEINBERG: Yes.

MCCAIN: Have you sent out the call yet for volunteers to come and assist you in this project?

FEINBERG: Yes. We're working right now with the ABA, with the alliance of trial lawyers, with local bar associations, and law schools in the region in an effort to make sure there's plenty of pro bono assistance.

MCCAIN: And their response has been?

FEINBERG: Positive. We're setting it up now.

MCCAIN: So you are confident that you will have sufficient legal assistance to -- because, as you mentioned, fraud is always a very significant issue, but not the most significant issue.

So we thank you for your hard work. It's great to have the opportunity to see you again. And I'm sorry we took you away from your very busy schedule. And we feel very confident, Mr. Feinberg, with this issue under your stewardship, and I think I speak for the American people when I say that.

Thank you, Mr. Chairman.

FEINBERG: Thank you.

CARPER: Thank you, Senator McCain.

Mr. Hackett, as I understood in one of your earlier comments, Anadarko in this case is a -- a partner with Moex and also with BP. In this case, the primary operator is -- is BP.

And there are other instances where Anadarko is the -- presumably the primary partner. In some cases, I presume you -- you drill these wells and you're the only participant. In other cases -- did you ever partner with other -- other -- others, other companies?

HACKETT: We do that as a normal course of business, Senator.

CARPER: Do you?

HACKETT: It's actually very atypical to drill a well 100 percent in our business. It's a way of managing financial and technical risk. So most of the deep water, there are partners, and there is a very distinct relationship with the operator being the decision-maker.

CARPER: And are there other situations where in these deep wells that Anadarko has drilled where you may have a couple of other partners?

HACKETT: Yes, sir.

CARPER: And in most of those situations, would Anadarko be the majority partner and you may have a couple of others, such as we have here, with 25 percent participant and a 10 percent participant? Is that...

HACKETT: Yes, in fact, we might have less interest than BP had in this well, in fact, as an operator.

CARPER: Do you have many situations where you're -- where you're the lead, but you do so not as a majority, but also, if you will, in our terms here, a plurality? You may have a 45 percent stake or 40 percent stake rather than a 50 percent or 51 percent.

HACKETT: Yes, we do have situations like that where you have multiple partners, but that 40 percent or 45 percent is usually determined as being the primary interest.

CARPER: OK. In a situation -- let's say the -- sort of put the shoe on the other foot here for -- for a moment. And -- and let's say, in this case, Anadarko was the lead and that you were the primary party, primary responsible party. And we'll just say you were at 65 percent of a -- of a participant.

And in a situation where you ran into trouble and had this kind of blowout and -- and -- and accident, and you were called upon to -- to help set up a fund, \$20 billion fund, in this case, to meet the demands by the government to -- for reimbursement by -- by individuals, by families, by businesses.

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And you were being billed by the federal government, and so were your partners, and you were ponying up, and -- and -- and they weren't, sort of putting the shoe on the other foot and keeping in mind the golden rule -- I know you're a person of faith -- but treating other people the way we'd want to be treated, how -- how does that mesh -- how does that mesh with treating other people the way we want to be treated?

HACKETT: Senator, I think it's very consistent. I don't think my beliefs are at all compromised in this instance. We were not consulted on the escrow agreement that was set up. It was very particular to BP's circumstances, I suspect both corporately and on this well.

We stand ready to honor our obligations. If BP fails, we are a responsible party under the Oil Pollution Act. We do not want the taxpayers to be on the hook for this. And we stay committed to that, sir.

CARPER: All right. We -- I don't pretend to understand well the -- the financial condition or strength of -- of both of your companies. I believe you to be successful companies and profitable companies. Are -- are you both publicly traded companies?

HACKETT: We are a publicly traded company, yes, sir.

CARPER: Mr. Ishii?

ISHII (THROUGH TRANSLATOR): Moex is not a publicly traded company.

CARPER: I see.

Since you're a publicly traded company, Mr. Hackett, could I just follow up with this question? BP, looking at the prospect of -- of -- if the full \$20 billion were -- were drawn down upon, looking for an -- maybe the obligation to -- to pay the whole bill, to foot the whole \$20 billion. or if they -- this apportionment, it would occur 25 percent to Anadarko and 10 percent to Moex, their obligation would be, what, \$13 billion. Their -- their thinking would say, well, Anadarko should handle \$5 billion and Moex would handle, I guess, about \$2 billion. I think that's the way it would -- it would work out.

Could you just talk with us about the ability of -- of your company to meet that kind of -- of -- of demand for payment over a period of time?

HACKETT: Yes, sir, understanding that those payments, as you mentioned, would be over a period of time. We have -- we generate as a company somewhere north of \$5 billion a year. We...

CARPER: Is that gross revenue?

HACKETT: No, that's cash flow, sir, that's available for spending. And what we generally do is put that right back into drilling for more resources for America. That is typical of the independents in this country. And we are doing so again this year.

The cash on the balance sheet at the end of the first quarter was over \$3 billion and we also had the -- an undrawn credit facility of over \$1 billion. We also have net book equity of about \$20 billion.

CARPER: All right. Thank you.

Mr. Ishii, could you respond to the extent that you are able to, given the fact that you're not a publicly traded company?

Ms. Sato?

ISHII: (THROUGH TRANSLATOR) Mr. Chairman, first of all I would like to say that we will honor all of our legal obligations. However, before we discuss that any further, it is important that we properly investigate and find out why this accident occurred. And therefore any discussion after that is I think too early now.

CARPER: All right.

Mr. Hackett, can you just share with us how -- what role does insurance play in this? And to what extent can -- can your company or another company who is in a similar situation cover these kinds of expenses through insurance or reinsurance?

HACKETT: I think it's a critical issue with regard to where we crash legislation going forward, Senator, is that if in fact we have pilot error like this occur again, we've got make certain obviously for the American public and probably for global society that we are prepared to answer this in a better way than we were this time. So I think a number of us have learned lessons in that regard.

The insurance market historically has not been terribly deep. You and I had a conversation about that not too long ago. We had probably per revenue unit for our company as much as anybody in our industry. And we might have been able to get another -- more than that, as it turns out, maybe double that.

But as we have publicly stated, that amounts to about \$176 million on per incident, and at 25 percent work interest, about \$776 million gross. And what you've got to do then is make certain that people have balance sheets to back it up beyond that, which we do. And so I think we've got to be, you know, crafting the oil spill legislation properly where we both have liability limits, properly determined contributions to the fund, and also an ability to get an insurance exchange working that makes this very important resource for domestic production available to all of us long term.

CARPER: I'm going to come back on that point in just a moment, if I could.

Mr. Feinberg, we're going to have the opportunity in the Senate to take up perhaps next week energy legislation that will attempt to conserve energy, will attempt to reduce somewhat our dependence on petroleum and fossil fuels, especially on foreign oil. And will attempt to do something with respect to addressing the cap -- the cap for oil spill liability.

Let me just ask you your recommendations, your advice, if you feel comfortable in giving it. As we take up looking at the current law on the oil spill liability cap, the portions -- the actually rather modest liability that exists under the current law, and then a larger, you know, fund contributed to by companies like Anadarko, like Moex. What? I think it's about \$1.5 billion what the fund is. And then beyond that it's basically on the taxpayer.

B.P., to their credit, has stepped forward and said, "Nope, we're good for at least \$20 billion," and they certainly want to have their partners to share in that.

But as we try to craft in the next week or two legislation revisiting the oil spill liability fund, what should we keep in mind?

FEINBERG: Well, I can't really speak to the legislation. I'm not aware of it, so I don't know the language. I don't know the public policy.

CARPER: If you will, just keep in mind what the current law calls for and trying to say what's good or bad about that, and what might we think about in changing it. Because I think we're going to -- I think it's pretty clear we're going to change it.

FEINBERG: All I can say, and it probably is not very helpful, Senator, is that at least in this case the cap is sort of

irrelevant because B.P. on its own has stepped up to make the cap sort of an irrelevant consideration. Whether the cap ought to be raised -- I remember I was on a commission that looked at Price Anderson involving nuclear power years ago. That -- that's for others to think about, but I think that the, at least in this case fortunately the cap has not been a barrier to compensation.

CARPER: Mr. Hackett, any advice for us as we revisit this issue legislatively?

HACKETT: Again, I would just restate, and I think Ken's reference to the nuclear industry and perhaps to the marine industry is relevant, is that we have to for this very important American source of energy come up with a workable plan that allows us to have liability caps that work for the public, that have insurance capability that works for the public, oil spill response capability that works for the public. And there's a lot of detail and complexity around that, but none of them should be dealt with in isolation, in my view.

CARPER: All right.

Mr. Ishii, would you like to respond briefly?

ISHII: Mr. Chairman?

CARPER: Yes, sir.

ISHII: (THROUGH TRANSLATOR) Mr. Chairman, I am very sorry, but could I have you repeat your question?

CARPER: Yes. A number of years ago, legislation was enacted that established an oil spill liability fund, called for oil companies to pay into that fund, and set a cap, a limit out of which monies could be paid from that fund, but said if there's a primary -- a party is primarily responsible, that they would have first -- first responsibility to pay.

And I'm trying to remember what the amount was, but \$75 million. In the case -- in a situation like this, obviously \$75 million doesn't go very far, and frankly neither does \$1.5 billion. We're going to change that law and we're going to start working on it very seriously, probably on the Senate floor next week.

And I was asking Mr. Feinberg and Mr. Hackett if they had any advice for us as we assume that legislative responsibility, and if you have a thought on that, we would welcome hearing it. And you may not. That's OK.

ISHII: (THROUGH TRANSLATOR) Mr. Chairman, I believe that this is a U.S. political issue and so we are not in a position to comment on it.

CARPER: All right. Fair enough.

A question for Mr. Hackett and Mr. Ishii, if I may. There was -- I referred to this already -- but while there was some communication information exchanged between B.P. and Anadarko and Moex related to the well-drilling and the challenges that were being encountered in the days before the accident, there also appear to be some lapses on B.P.'s part.

I'm told on April 19th, that's the day before the rig exploded, a geological adviser for Anadarko e-mailed a B.P. official asking why they're no longer receiving any drilling reports. In fact, they said that they've not received any reports I think for five days.

Mr. Ishii, I think you personally appear to have had problems communicating with B.P. exactly what was going on with the well in the days leading up to this disaster.

May I ask both of you, Mr. Hackett and Mr. Ishii, please give us a sense of the problems that your companies had in receiving information in the days prior to the accident?

And if you don't mind starting -- starting off, Mr. Hackett, I'd appreciate it. Thank you.

HACKETT: Senator, I don't -- I'm not aware of that particular issue, but in -- in my review of the drilling reports myself, there is nothing that we would have received through that final report on the 19th of April that would have been a red flag to us to alert BP to. We didn't have anybody on the rig, we weren't consulted, and there was nothing in the materials that I have read all the way through the 19th that would have been a red flag for us.

CARPER: Is it common or uncommon for a minority partner, in this case a 25 percent partner, not to have someone on the rig? Is that common practice?

HACKETT: It's very common practice to not have someone on the rig.

CARPER: All right.

HACKETT: It's rare that anybody does have somebody on the rig.

CARPER: Fair enough.

Mr. Ishii, would you care to respond to the same question, please?

ISHII: Mr. Chairman...

CARPER: All right.

Ms. Sato (ph), what did he say?

(LAUGHTER)

ISHII (by interpreter): Mr. Chairman, we had the right to access the technical data from BP. However, I myself do not have an engineering background, and therefore, we had a service agreement with our parent company whereby the engineers from our parent company would receive the reports from BP and monitor their progress. And therefore, or today, I am not in a position to comment on that.

CARPER: All right.

The last question I would have is -- is this. And now that we're all better -- I used a baseball analogy earlier -- the pitcher will telegraph. I'll use a football analogy. They don't play much football in Japan, I'm told, but I'll use a football analogy.

And the -- the concept of being a Monday morning quarterback is something that we talk about here in this country. We play college football games usually on Saturdays. We play professional football games on Sundays. And we talk about being Monday morning quarterbacks. It's a lot easier to be a quarterback on Monday morning when you're looking back than it was to be that quarterback on Saturday or Sunday.

I want to ask you to put on your Monday morning quarterback hearts for us. And knowing now what -- what you know, what -- what might you have done differently? What should have been done differently to have averted this -- this disaster that -- that we're facing and going to be facing for some time?

Mr. Hackett?

HACKETT: Senator, I think proper procedures and practices need to be followed. And this -- our view is that this accident was preventable, this tragic accident. Our -- our answer to that is that you need to use the proper engineering practices and procedures.

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It is clear that we have lessons learned from this for the industry, where if we do have in fact this series of bad engineering decisions ever happen again, and we hope to goodness we never do, is that we are in a position to assure the public that there is a better response capability.

CARPER: All right.

Mr. Feinberg, do you want to -- do you want to venture anything on that one?

FEINBERG: Just that what -- what this tragedy has led to it an -- one more example, fortunately rare, where policymakers and private individuals think out of the box and come up with a -- a remedy like this fund that I'm administering, which will work in a way that, hopefully, will avoid protracted uncertainty and litigation and overhead costs and will provide a quick, efficient remedy for people in need down in the Gulf.

CARPER: Mr. Ishii?

ISHII: Mr. Chairman...

CARPER: All right.

Ms. Sato (ph)?

ISHII (by interpreter): Mr. Chairman, as I said before, when we participated in this project, the drilling had already been started based on the government-approved plan. And for us this was the first deep water drilling project.

However, BP is the largest player and had experience in this area, whereas we are only a 10 percent minority interest non-operator; therefore, we were not involved in any of the decision-making. And so we relied on BP, because BP has the experience and the drilling technology. So we placed trust in them and participated.

CARPER: All right.

Any closing comments from our witnesses?

Mr. Feinberg, just a brief closing comment? No? All right.

Mr. Hackett, a brief closing comment?

HACKETT: No, sir. Thank you.

CARPER: Mr. Ishii, a brief closing comment? All right.

Then, well, let me close, if -- if I may.

First of all, thank you all for -- for taking this much time in -- in your day to travel here and to be with us today to testify.

Mr. Feinberg, our thanks to you for taking on this responsibility.

Mr. Hackett, we're somewhat comforted by the fact that you have that wherewithal to -- your company appears to have the wherewithal, if called upon, to -- to participate in the providing of the resources needed to help not in cleanup, but pay damages. It sounds like you're in a position to -- to do that. I know you probably don't want to, but it sounds like it's comforting to know that you do have that wherewithal.

And, Mr. Ishii, it means a lot to us that you have traveled this far and to participate day in -- in this testimony.

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This is a challenge that is not going to go away, a lot of lessons learned, legislation to be worked on next week and probably implemented in the -- in the months to -- to come.

Again, our thanks to each of you. And we look forward to -- to working with you on this to, one, make sure it doesn't happen again, to try to make sure that the right things done to -- to those who were affected by this disaster. Thank you very much.

And with that, this hearing is concluded.

END

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