

Transcript of the Testimony of
**The Joint United States Coast
Guard/Bureau of Ocean Energy
Management Investigation**

Date taken: December 9, 2010
AM Session

USCG/BOEM Board of Investigation (Re: Deepwater
Horizon)

*****Note*****

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USCG/BOEM BOARD OF INVESTIGATION
INTO THE MARINE CASUALTY, EXPLOSION, FIRE,
POLLUTION AND SINKING
OF MOBILE OFFSHORE DRILLING UNIT
DEEPWATER HORIZON, WITH LOSS OF LIFE
IN THE GULF OF MEXICO, 21-22 APRIL 2010
THURSDAY, DECEMBER 9, 2010
A.M. SESSION

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The Transcript of the Joint United States Coast Guard/Bureau of Ocean Energy Management Investigation of the above entitled cause before Cathy Renee' Powell, a certified court reporter authorized to administer oaths of witnesses pursuant to Section 961.1 of Title 13 of the Louisiana Revised Statutes of 1950, as amended, reported at the Hilton Houston Hobby Airport, 8181 Airport Boulevard, Houston, Texas 77061, on Thursday, December 9, 2010, beginning at 8:00 a.m.

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MEMBERS OF THE BOARD:

CAPTAIN HUNG M. NGUYEN
CO-CHAIR UNITED STATES COAST GUARD

DAVID DYKES
CO-CHAIR MINERALS MANAGEMENT SERVICE

JUDGE WAYNE R. ANDERSEN
UNITED STATES DISTRICT JUDGE (RET.)

CAPTAIN MARK R. HIGGINS
STAFF JUDGE ADVOCATE
COAST GUARD ATLANTIC AREA

JASON MATHEWS
MINERALS MANAGEMENT SERVICE

JOHN McCARROLL
MINERALS MANAGEMENT SERVICE

LCDR. ROBERT BUTTS, COURT RECORDER
UNITED STATES COAST GUARD

REPORTED BY:

CATHY RENEE POWELL
CERTIFIED COURT REPORTER
* * *

EXAMINATION INDEX

EXAMINATION BY CAPT. NGUYEN:4

1 JUDGE ANDERSEN:

2 Shall we begin? We have one
3 witness today, I believe: Mr. Canducci.

4 Mr. Johnson, would you state your
5 name and your representation for the record?

6 MR. JOHNSON:

7 My name is Tim Johnson; I
8 represent Jerry Canducci.

9 JUDGE ANDERSEN:

10 Thank you very much. Obviously,
11 the board is honored you are here.

12 Mr. Canducci, I have to advise
13 you, as I do each witness, that you are
14 about to testify before a federal panel. It
15 would be a violation of 18 USC 1001 not to
16 tell us the truth. As such, that could be
17 the equivalent of perjury and punishable by
18 fine or imprisonment if you don't tell the
19 truth.

20 With that as a background, why
21 don't you stand up and I will administer the
22 oath to you.

23 JERRY CANDUCCI,
24 having been first duly sworn as a witness,
25 was examined and testified as follows:

1 JUDGE ANDERSEN:

2 Thank you. Have a seat.

3 Questions from the board?

4 EXAMINATION BY CAPT. NGUYEN:

5 Q. Good morning again, Mr. Canducci.

6 Thank you for being here.

7 Would you please state your name
8 and spell your last name for the record.

9 A. My name is Jerry Canducci,
10 C-A-N-D-U-C-C-I.

11 Q. Sir, thank you. I understand that
12 you are the designated Transocean person for
13 the North American division. Is that
14 correct, sir?

15 A. Yes.

16 Q. The board has requested your
17 testimony with regard to the International
18 Safety Code. Before I ask you questions
19 relating to this issue, to put things in
20 perspective, I will direct you to this chart
21 on my right. It is "The Maritime 'Safety
22 Net' Layers and Potential System Failures."

23 This has been posted on our Web
24 site. This chart is used for the purpose of
25 background information and to facilitate

1 discussions. If any of the information we
2 discuss is not correct or incomplete, I
3 encourage all interested parties to submit
4 additional information to the board for
5 clarifying or supplementing the record.

6 The Maritime "Safety Net" is not a
7 new concept. It was developed by the Coast
8 Guard in late 1990. This diagram focuses on
9 the marine system in operation. However,
10 some aspects, since it has corporate safety
11 culture, do cover both drilling and marine
12 area.

13 For this casualty, we have four
14 major stakeholders: No. 1, the vessel
15 operator; No. 2, the lessee operator; No. 3,
16 the flag state; and No. 4, the coastal
17 state.

18 For the limited purpose of our
19 discussion with you, I did not include BP or
20 other contractors such as Halliburton.

21 For the day-to-day operation as
22 the vessel operator, Transocean has the
23 responsibility for ensuring the safety of
24 the vessel, personnel on board and the
25 prevention of pollution. As the lessee

1 operator, BP has the same responsibility.

2 The Republic of Marshall Islands,
3 vessel flag state, and its recognized
4 organizations including DNV and ABS, are
5 responsible for ensuring the vessel's proper
6 construction, equipment, manning and
7 operation in accordance with coastal state
8 and flag state requirements. For the
9 coastal state, they are to reinforce the
10 safety net by verifying documents,
11 conducting safety checks and witnessing
12 emergency drills.

13 On the bottom there, threats to
14 the safety of a vessel exist in both
15 drilling and marine operations. When holes
16 are in safety net, casualty may result. The
17 DEEPWATER HORIZON casualty included a number
18 of events, including a blowout, explosion,
19 fire and the vessel sinking.

20 Finally, as the coastal state, the
21 Coast Guard reinforces the safety net by
22 conducting inspections, witnessing safety
23 drills and inspecting documents.

24 As you know, on 1 July 2002, the
25 ISM code was implemented for Mobile Offshore

1 Drilling Units such as the DEEPWATER
2 HORIZON. They are meant to prevent injury
3 at sea, and in particular to marine
4 environment and property.

5 Looking at the next diagram, by
6 complying with the ISM code, the
7 effectiveness of a vessel's Safety
8 Management System is assured.

9 Mr. Canducci, in your position of
10 responsibility, you may have some
11 information that would help us identify
12 system failures and close the gaps.

13 Would you please briefly outline
14 your educational background?

15 A. I was educated in Boston,
16 Massachusetts. I went to Northeastern
17 University to study mechanical engineering.
18 I then went to the Massachusetts Maritime
19 Academy and graduated with a bachelor of
20 science degree in marine engineering.

21 Q. Do you hold any professional
22 license or certificate?

23 A. No, I do not.

24 Q. Would you briefly outline your
25 maritime background?

1 A. I graduated from school and went
2 to the North Sea and worked on
3 column-stabilized drilling units for eight
4 years. From there, I moved on to the Gulf
5 of Mexico and started working on DP
6 drillships through the early '90s.

7 In 1992, I moved to Brazil, and
8 again was working on DP drillships until
9 1996, when I returned to the Gulf of Mexico
10 working with column-stabilized and DP
11 drillships.

12 From this, I moved to Thailand and
13 worked with some jack-up drilling units for
14 two years, and have been back in the Gulf
15 since 2004 working with deepwater equipment
16 since then.

17 Q. Do you hold any Coast Guard-issued
18 certificate or license?

19 A. I did at one time but it lapsed
20 when I no longer worked aboard a vessel. I
21 had a chief engineer's ticket from the
22 United States Coast Guard, but I didn't use
23 it, so it lapsed.

24 Q. Yes, sir. When was that lapsed?

25 A. It would have been in the '90s at

1 some point. I don't recall exactly when.

2 Q. So how long have you been employed
3 by Transocean, sir?

4 A. I worked for several of its
5 predecessor companies. I worked for SONAT
6 at one time, Santa Fe, then GlobalSantaFe,
7 30 years in aggregate. I was with
8 GlobalSantaFe when the merger occurred.

9 Q. How long have you held your
10 current position?

11 A. Since November of 2009.

12 Q. What are your job
13 responsibilities?

14 A. I am the QHSE manager for the
15 North American division.

16 Q. Did you hold any other position
17 with Transocean before this one?

18 A. Prior to being the division QHSE
19 manager, I was a business unit manager. At
20 some point, the decision was made to disband
21 the business unit, so I assumed the division
22 role.

23 Q. What ISM code training have you
24 had?

25 A. I was trained -- I went to an

1 external training class with Quality
2 Management International, I think was the
3 name of the vendor that sells that training.

4 Q. Yes, sir. When was that?

5 A. It would have been during 2008.

6 Q. Could you describe the training,
7 sir?

8 A. Well, it was in Newport, Virginia,
9 in a hotel where a group of about 15 people
10 were taking this 3-day training course that
11 was specific to the code. It was anecdotal
12 at some times and it was specific to the
13 code itself at other times. There was no
14 large practical component of the training.

15 Q. Where would you expect to get that
16 practical training experience?

17 A. I guess 30 years of doing what I
18 have done has given me a notion of what the
19 practicalities are.

20 Q. What internal ISM audits have you
21 participated in?

22 A. I have never been on the audit
23 team.

24 Q. What external ISM audits have you
25 participated in?

1 A. In August of 2010, we had a DNV
2 surveyor in the Gulf of Mexico office who
3 was conducting an external ISM audit, and I
4 interacted with him. That is the limit of
5 my involvement.

6 Q. Can you describe your interaction?

7 A. He asked me questions. It was an
8 interview about how we executed the Safety
9 Management System, and I responded in
10 demonstrating to him what we did to satisfy
11 the requirements of the code, and that's the
12 extent of my recollection. I don't recall
13 exactly what he asked me, but I do recall
14 providing him with documentation and
15 providing him with answers as to what we did
16 to satisfy the code with our Safety
17 Management System.

18 Q. You assumed the position in
19 November of 2009, you received a 3-day
20 training course on the subject of the ISM
21 code in 2008; you never participated in an
22 internal ISM audit, and you participated in
23 one external ISM audit?

24 A. Correct.

25 Q. Have you worked with the Republic

1 of Marshall Islands on any ISM-related
2 incidents?

3 A. I have not.

4 Q. What about with the U.S. Coast
5 Guard?

6 A. Over the years, I have had
7 interaction with the United States Coast
8 Guard on a number of occasions, but I
9 wouldn't characterize any of them as having
10 to do with the code specifically.

11 Certainly, safety and certification of
12 compliance with regs, things like that. But
13 never would I characterize it as a specific
14 discussion or interaction having to do with
15 the safety management code.

16 Q. Yes, sir. Are you familiar with
17 the layout of the DEEPWATER HORIZON?

18 A. Not specifically.

19 Q. Did you visit the vessel prior to
20 the casualty, sir?

21 A. I did not.

22 Q. Were you also the ISM designated
23 person for the DEEPWATER HORIZON?

24 A. I was.

25 Q. So you were the designated person

1 for the North American division but also the
2 DEEPWATER HORIZON?

3 A. Yes, sir.

4 Q. Any other vessel?

5 A. At the time, there were more. I
6 can't recall exactly how many, but all of
7 the vessels that operate in the North
8 American division, I would be the designated
9 person for.

10 Q. How many ISM designated persons
11 does Transocean have?

12 MR. JOHNSON:

13 Are you talking system-wide?

14 CAPT. NGUYEN:

15 Yes, sir, the whole corporation.

16 MR. JOHNSON:

17 If you know.

18 THE WITNESS:

19 I do believe that there are nine
20 divisions and each divisional QHSE manager
21 is given the role of the designated person
22 when they assume that position.

23 There is also a corporate ISM
24 designated person in the corporate QHSE
25 group.

1 I want to qualify that statement,
2 because I don't know that is absolutely a
3 fact because several of our divisions don't
4 have equipment or vessels that would require
5 or that come under the rules of the code.

6 EXAMINATION BY CAPT. NGUYEN:

7 Q. I understand, sir.

8 A. They are not self-propelled.

9 Q. Yes, sir. Is holding the QHSE
10 manager position, is that the only
11 qualification for becoming the ISM
12 designated position?

13 A. The position of QHSE manager calls
14 for assuming the role of the ISM designated
15 person ashore for that position.

16 Q. If you know, the other ISM
17 designated persons, do they have similar
18 training and experience as you do, sir?

19 A. I don't know the answer to that.

20 Q. Yes, sir. How does Transocean
21 ensure consistent implementation of the ISM
22 code throughout the company?

23 A. The design of our Safety
24 Management System is where we get
25 consistency, and that goes throughout the

1 entire company, and that is what we achieve
2 consistency with.

3 Q. What is the organizational
4 relationship between your position and the
5 manager, which I understand is currently
6 filled by Mr. Jay Harrington? What is the
7 relationship between the two positions?

8 A. The current designated person in
9 the corporate office is Ian Hudson, and he
10 has just recently assumed that role because
11 his predecessor, Jimmy Moore, has retired.

12 My relationship -- the corporate
13 role that he fills along with the ISM
14 designated person is the corporate director
15 of QHSE. On the old chart, the blue line to
16 whom I report is in his division. However,
17 I have a dotted line reporting function to
18 the director of QHSE.

19 Q. What position does Mr. Jerry
20 Harrington hold?

21 A. He left the company a few months
22 back.

23 Q. You should have direct access to
24 the highest level of management. Do you
25 have to go through Mr. Hudson to get to the

1 CEO of the company?

2 A. No.

3 Q. Per ISM code Part A, Section 4, it
4 says the company's designated person should
5 have direct access to the highest level of
6 management. How many management layers are
7 between you and the company CEO, Mr. Steven
8 Newman?

9 MR. JOHNSON:

10 Are you asking him, as it relates
11 to the code, if he has direct access or are
12 you asking him about the corporate
13 structure?

14 CAPT. NGUYEN:

15 I am asking him as far as his
16 ISM-related responsibility. How many layers
17 between him and the CEO of the company.

18 MR. KALIM:

19 Your Honor, I would object. He
20 answered just a moment ago that he has
21 direct access to the highest levels.

22 JUDGE ANDERSEN:

23 Well, he can testify. Maybe that
24 is the answer and maybe there is some other
25 reporting relationship.

1 THE WITNESS:

2 Let me answer like this. There is
3 a vice president of QHSE, then there is the
4 director of QHSE, and then there is me.
5 That is the org chart. But I can talk to
6 Steven any time.

7 EXAMINATION BY CAPT. NGUYEN:

8 Q. Per 13.5, if a company's document
9 of compliance is withdrawn by the issuing
10 authority for noncompliance, can any of its
11 vessels operate? If the DOC is withdrawn,
12 can any of its vessels operate?

13 A. I would have to guess no. It
14 seems so beyond anything I have had
15 experience with, I don't know. But I would
16 assume that if you had -- if you were no
17 longer in compliance, you then --
18 underwriters would be concerned, everybody
19 would be concerned. So it seems to me that
20 no, you could not.

21 Q. Per ISM code, Part A, Section
22 13.9, if a vessel's safety management
23 certificate was withdrawn by the issuing
24 authority for noncompliance, can they
25 continue to operate? You can refer to

1 Section 13.9.

2 A. Would you repeat the question?

3 Q. Yes, sir. The previous question
4 related to Section 13.5, and that had to
5 deal with the documents of compliance, and
6 your answer was that if that document was
7 withdrawn by the issuing authority, none of
8 its vessels can operate.

9 This question refers to part 13.9,
10 talking about vessel's safety management
11 certificate, if it was withdrawn, can it
12 continue to operate?

13 MR. KALIM:

14 We object on relevance. There is
15 no evidence in this record that the DOC or
16 the safety management certificate for the
17 DEEPWATER HORIZON were ever withdrawn or
18 ever not valid. So if this is a
19 hypothetical question, we object to it. If
20 it is based on some fact that the captain
21 knows about, we would object as well on
22 relevance.

23 CAPT. NGUYEN:

24 Yes, sir. We will get there. I
25 am doing everybody a favor by laying

1 foundation right now.

2 THE WITNESS:

3 Okay. You are asking me if per
4 paragraph 13.9, that if a vessel's safety
5 management certificate was removed --

6 EXAMINATION BY CAPT. NGUYEN:

7 Q. And the vessel continued to
8 operate.

9 MR. FANNING:

10 Judge, if the witness was called
11 to act on this in his professional capacity
12 at Transocean, he would get the code, look
13 at it, talk to his attorneys and talk to
14 other experts and have more opportunity to
15 make a decision.

16 It is grossly unfair to ask him to
17 come here -- he is obviously nervous coming
18 here and making this appearance; it is
19 apparent to me -- to ask him now to review
20 this and give opinions is just unfair.

21 JUDGE ANDERSEN:

22 Maybe those last two objections
23 gave him a chance to reflect here. But we
24 don't expect him -- during these questions
25 by board members as well as I am sure

1 attorneys, I am sure you are going to be
2 asked about things that you don't have
3 knowledge with respect to or you have not
4 formulated opinions on.

5 Your oath is to tell the truth, so
6 if "I don't know" is the answer, that's
7 fine. You don't have to guess or speculate.

8 Referring to the first objection,
9 somewhat, obviously one of the goals and
10 missions and duties of this board is to make
11 some prospective recommendations. If we can
12 get a gentleman who has had 30 years of
13 experience and has a particular duty and
14 focus now on this code, we would like to get
15 as much knowledge as we can so that the
16 recommendations --

17 THE WITNESS:

18 I don't understand the context of
19 the question. That is what I am struggling
20 with.

21 EXAMINATION BY CAPT. NGUYEN:

22 Q. The question is --

23 MR. SCHONEKAS:

24 Could the witness be allowed to
25 complete his response before the captain

1 interrupts him?

2 CAPT. NGUYEN:

3 Yes, sir, I apologize.

4 JUDGE ANDERSEN:

5 What is your statement?

6 THE WITNESS:

7 I don't understand in what context
8 we are talking about. What are the
9 particulars that made someone take away a
10 certificate? Was the certificate valid for
11 a long period of time and they had a mishap?
12 Or was it something that has always been in
13 question? So it is really --

14 MR. JOHNSON:

15 If I may, Captain. The problem is
16 as the question has been posed to
17 Mr. Canducci, 13.9 speaks for itself.

18 Now, if you have specific examples
19 that he would have any knowledge of during
20 his tenure as QHSE and the ISM designated
21 person for the North American division of
22 Transocean since November 1 of 2009, they
23 would be within his personal knowledge if,
24 in fact, he has dealt with them. And those
25 are the types of questions that he is

1 prepared to answer.

2 If we are being asked to read what
3 is in 13.9, it is very clear what is in
4 13.9. If you have specific examples of
5 things that have occurred that might be
6 applied or where 13.9 might be in effect, we
7 would be very happy to answer questions in
8 that regard.

9 CAPT. NGUYEN:

10 As I indicated, we will get there.
11 I am trying to establish that these items
12 are basic knowledge a person in his position
13 should know. So it should not be a question
14 of legal determination, explanation or
15 anything like that.

16 MR. LONDON:

17 I object to that in that we are
18 constantly reminded that if the information
19 doesn't further the purpose of the committee
20 and what we are doing here about this
21 particular casualty, we are wasting our time
22 talking about it. It is just irrelevant and
23 I don't understand why we are spending so
24 much time.

25 JUDGE ANDERSEN:

1 I know you care about this
2 witness, but if we can limit Transocean's
3 objections --

4 MR. LONDON:

5 Sir, I represent the chief
6 engineer, not Transocean.

7 JUDGE ANDERSEN:

8 That's fine.

9 If you believe you have an answer
10 to the question, that is fine. If you don't
11 or if you say it would vary based on the
12 circumstances, that is a fine answer.

13 THE WITNESS:

14 This is what I think. If the
15 document of compliance is withdrawn as is
16 stated in 13.5.9, I have to assume that the
17 safety certificate on which -- that is given
18 based on the document of compliance
19 suggesting that the company has a management
20 system in place and approved, or if it
21 became unapproved, or not in compliance,
22 well, then, the safety management
23 certificate would no longer be valid. That
24 is what I think.

25 EXAMINATION BY CAPT. NGUYEN:

1 Q. When the safety management
2 certificate is no longer valid, can the
3 vessel continue to operate?

4 A. That seems like a legal question
5 to me.

6 Q. It is not a legal question, sir.

7 A. Well, no, I would say if the
8 vessel is from a company or a country that
9 is a signatory to the code, no, it cannot
10 continue to operate.

11 Q. Now, with those potential severe
12 consequences, should Transocean take
13 compliance with the ISM code seriously?

14 A. Absolutely.

15 Q. What training has Mr. Robert Rose,
16 the company chairman of the board, had, to
17 your knowledge?

18 A. I don't know.

19 Q. What ISM-related activities has
20 Mr. Rose participated in?

21 A. I don't know anything about
22 Mr. Rose.

23 MR. KALIM:

24 Judge, we have made it clear he is
25 not the corporate designee. He has limited

1 responsibility for the division. To ask
2 questions about the board of directors or
3 other executives is not within the sphere of
4 his responsibility.

5 JUDGE ANDERSEN:

6 We don't know, okay? This is not
7 a procedure where we take 3-day depositions
8 and then whittle it down to a couple of
9 hours of testimony. If he doesn't know, he
10 doesn't know. And as everyone here is aware
11 of, despite these really long days, perhaps,
12 thankfully, the board has only a limited
13 number of weeks of hearings, and that means
14 there will be some discovery within that
15 time.

16 So we don't expect you to have the
17 answers to all of these questions, but if
18 you can shed light on any of the areas that
19 the board is interested in, that would be
20 helpful.

21 EXAMINATION BY CAPT. NGUYEN:

22 Q. Similarly, what ISM-related
23 training has Mr. Steve Newman had?

24 A. I don't know.

25 Q. What ISM-related activities has

1 Mr. Steven Newman participated in?

2 A. I don't know.

3 Q. I could not find -- who is the
4 managing director for the North American
5 division?

6 A. William Ambrose.

7 Q. Sir, what ISM-related training has
8 Mr. Ambrose received?

9 A. I have no idea.

10 Q. What ISM-related activities has
11 Mr. Ambrose participated in?

12 A. I have no knowledge specifically.

13 Q. At the time of the casualty, how
14 many DPO vessels was Transocean operating in
15 the Gulf of Mexico?

16 A. I believe it was 15.

17 Q. How many of these vessel masters
18 have received ISM code training to your
19 knowledge?

20 A. I don't know. I have never asked
21 that question. I assume to achieve a
22 captain's license, the exam would zero in on
23 the code, but I'm not sure, to be honest.

24 Q. Do you know what ISM-related
25 training they received?

1 A. I don't know.

2 Q. Does Transocean have ISM-related
3 training for the masters of the vessels, do
4 you know?

5 A. It is not on our worldwide
6 training matrix. However, our masters are
7 expected to keep their certification
8 up-to-date, and I assume that the code is
9 part of that education and training and
10 certification.

11 Q. Yes, sir. How many of these
12 vessel offshore installation managers have
13 received ISM code training?

14 A. OIMs?

15 Q. Yes, sir.

16 A. I don't know the answer to that.

17 Q. How many of these vessel chief
18 engineers have received ISM code training?

19 A. I don't know.

20 Q. How many of the vessel chief mates
21 have received ISM code training?

22 A. I don't know.

23 Q. How about senior toolpushers?

24 A. I don't know.

25 Q. Yes, sir. If you would go to the

1 book. Please read ISM code, Part A, Section
2 1.2.3.1.

3 MR. JOHNSON:

4 Please repeat that, Captain.

5 CAPT. NGUYEN:

6 Section 1.2.3.1. Please read that
7 section.

8 THE WITNESS:

9 "Compliance with mandatory rules
10 and regulations"?

11 EXAMINATION BY CAPT. NGUYEN:

12 Q. Yes, sir, if you go to Tab 1 in
13 your notebook, referencing the document with
14 Bates Nos. TRN-USCG-MMS000043662 through 64.

15 MR. JOHNSON:

16 That begins with the number 3665
17 in this book.

18 EXAMINATION BY CAPT. NGUYEN:

19 Q. In March 2009, the DNV conducted
20 an audit, and on page 2 of the report, in
21 the middle paragraph, you see --

22 MR. JOHNSON:

23 If I may, I believe we are talking
24 about the proper document, but it indicates
25 the survey was begun on April 15 and

1 concluded on April 16.

2 CAPT. NGUYEN:

3 Yes, that is the way I see it, in
4 2009.

5 MR. JOHNSON:

6 You stated March, so I wanted to
7 make sure we are on the proper document.

8 CAPT. NGUYEN:

9 Yes, sir, you are correct.

10 MR. JOHNSON:

11 Thank you.

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. Now, on the second page in the
14 nonconformities condition and memoranda
15 given paragraph, you see it says, "A major
16 nonconformity was issued to the Transocean
17 DRILLER when it was discovered that the
18 correction of eight previously identified
19 nonconformities had not been implemented as
20 reported."

21 I will give you time to read that
22 paragraph, the items there, sir.

23 MR. JOHNSON:

24 Captain, I think you misstated the
25 contents of the paragraph.

1 CAPT. NGUYEN:

2 Yes, sir, the paragraph there, it
3 talks about DNV came on board the vessel in
4 April of 2008, and -- on the OCEAN DRILLER,
5 and eight nonconformities and two
6 observations were issued. The vessel
7 provided a corrective action plan. When DNV
8 came back, it showed in the system it was
9 corrected, but when DNV tried to verify, the
10 discrepancies were not corrected, so DNV
11 issued a major nonconformity to the vessel.

12 THE WITNESS:

13 And then it says it was
14 downgraded. So either it was not a
15 nonconformity or mistakenly issued.

16 EXAMINATION BY CAPT. NGUYEN:

17 Q. Yes, sir. The major nonconformity
18 was downgraded because another major
19 corrective action plan was proposed.

20 From what I am reading is that the
21 first one was not acted on, so the first one
22 was no good and another corrective action
23 plan was proposed.

24 If you can read that and explain
25 what you know.

1 A. What I know about that event is
2 that we added another layer of oversight.
3 Our focus system is used to track items to
4 closure. They can be positive, negative, or
5 any type of item that we want to make sure a
6 plan is in place, a plan is executed and the
7 plan is effective. And when we determine
8 that that is the case, that focus line item
9 is closed.

10 It was originally designed such
11 that the OIM had control of that, and he is
12 the one that went in there and closed items
13 out.

14 Now, the focus tracking program,
15 it is required that the performance rig
16 manager has final oversight. So it goes
17 from the OIM's workbench in the virtual
18 world, if you will, it goes to the rig
19 manager's workbench. He assesses the line
20 item, assesses the plan put in place to
21 rectify any problem, and then is expected to
22 go offshore on his next visit and determine
23 that the plan has been executed, the
24 mechanism that is put in place to ensure the
25 failing is no longer possible, and then he

1 closes that line item out. That was the
2 adjustment to that problem.

3 Q. This was a major nonconformity
4 that could lead to the withdrawal of the
5 safety certificate, correct?

6 A. That's right.

7 Q. Are you aware of whether this
8 incident was reported to the flag state?

9 A. I am not aware of what was done
10 about that.

11 Q. So you would not know whether the
12 flag state for the DRILLER ceased the
13 vessel's operation as per the ISM code?

14 A. The Transocean DRILLER operates in
15 the South American division.

16 Q. And that's my point. This is a
17 major noncompliance on a vessel in a
18 different place outside of the Gulf of
19 Mexico.

20 A. That's why I don't know about it,
21 because it is operating under someone
22 else -- someone else is the designated
23 person for that vessel.

24 Q. Yes, sir. Please go to Tab No. 2,
25 sir.

1 MR. JOHNSON:

2 Captain, you are about to show us
3 the exact same document we just reviewed in
4 our book. The first page of our Tab 2 is
5 the same one that ends in 43662.

6 THE WITNESS:

7 What number are we looking for?

8 MR. JOHNSON:

9 As long as we are talking about
10 the document that ends in 43665 is the same
11 page, we are on that now.

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. Referencing document Bates Nos.
14 TRN-USCG-MMS0004365 through 67, this is a
15 survey conducted by DNV April 20, 2010.

16 DNV conducted an annual audit of
17 Transocean's Safety Management System. DNV
18 noted that a major nonconformity was issued
19 to the DISCOVERER DEEP SEA for operating
20 with an invalid safety management
21 certificate.

22 Do you see that on page 2?

23 A. Observation 1?

24 Q. Yes, sir. The first sentence.

25 A. That's in the observation

1 section -- yeah. It was noted that a major
2 nonconformity was downgraded again.

3 Q. Yes, sir. But a major
4 nonconformity was issued, and the vessel was
5 operating with an invalid --

6 MR. JOHNSON:

7 Objection. That calls for a
8 conclusion. You can make statements, but he
9 is not adopting the question to that effect.

10 CAPT. NGUYEN:

11 I am just asking, are you saying
12 that the SMC was invalid and that a major
13 nonconformity was issued? Isn't that what
14 you read there, sir?

15 MR. JOHNSON:

16 He said --

17 THE WITNESS:

18 It says, "Major nonconformity,"
19 and then immediately it says "downgraded."

20 EXAMINATION BY CAPT. NGUYEN:

21 Q. Well, it was issued but it was
22 downgraded. It would not have been
23 downgraded if it was not issued in the first
24 place, right?

25 MR. JOHNSON:

1 Again, Captain, the document says
2 what it says.

3 EXAMINATION BY CAPT. NGUYEN:

4 Q. I understand. And it says, "A
5 major nonconformity was issued to the
6 DISCOVERER DEEP SEA for operating with an
7 invalid safety certificate."

8 MR. KALIM:

9 Objection. This is not fair to
10 the witness. If we are going to quote from
11 a document, read exactly what it says. The
12 captain intentionally omitted "downgraded"
13 for the second time.

14 JUDGE ANDERSEN:

15 Well, I am not a mind reader and I
16 can only assume --

17 MR. KALIM:

18 Well, Your Honor, I am a document
19 reader. I don't want this question being
20 posed to this witness when the facts are
21 taken out of context to omit key words in
22 the sentence. It is blatantly unfair to
23 this witness.

24 CAPT. NGUYEN:

25 I acknowledged it was downgraded

1 on the record, but it was issued to the
2 DISCOVERER DEEP SEA for operating with an
3 invalid safety certificate. Any dispute
4 there?

5 THE WITNESS:

6 Yes, there is a little dispute. I
7 don't think it is quite that cut and dried,
8 frankly.

9 EXAMINATION BY CAPT. NGUYEN:

10 Q. Okay. Would you read the sentence
11 there in observation No. 1, exactly what it
12 says, please.

13 A. "It was noted that a major
14 nonconformity, downgraded, had recently been
15 issued and a corrective action plan was in
16 progress for the DISCOVERER DEEP SEA where
17 the intermediate ISM code verification had
18 not been carried out between the second and
19 third anniversary dates."

20 Q. Yes, sir.

21 MR. JOHNSON:

22 Is that as far as you want him to
23 go?

24 CAPT. NGUYEN:

25 Yes. For now.

1 EXAMINATION BY CAPT. NGUYEN:

2 Q. If you are aware of that
3 situation, please explain what happened.

4 A. I am aware of the situation.

5 Q. I'm sorry to interrupt, the
6 DISCOVERER DEEP SEA was in the Gulf of
7 Mexico under your --

8 A. Yes, it is.

9 Q. Please proceed.

10 A. During that time, the DISCOVERER
11 DEEP SEA was going through its special
12 periodic survey, and on January 22, the DNV
13 was out there recertifying the vessel.

14 They were then again on board in
15 early to mid-March for several days and then
16 again on board toward the end of March. In
17 fact, I think they were on board for three
18 to five days, I'm not sure exactly, but
19 several days just prior to the lapsing of
20 the document.

21 The captain was under the
22 impression, and because it is a deep sea
23 classed vessel, they were going through all
24 of the class society certifications:
25 International load line, international

1 sewage pollution, air certification, all of
2 it was getting looked at and endorsed.

3 The captain told me that "It got
4 by me and I missed it."

5 So when it came to our attention,
6 someone at DNV called one of our people in
7 the corporate office, we found out, and it
8 was rectified in four days. As soon as we
9 could get DNV back out to endorse the
10 document, it was then endorsed. So it was
11 an oversight and a clerical error.

12 It is not -- the safety management
13 certificate was not removed for an
14 infraction.

15 Well, let me clarify. The
16 management certificate, the major
17 nonconformity was issued and retracted
18 because of that misunderstanding and
19 oversight only.

20 Q. I understand that. If the
21 management certificate was out of compliance
22 and a major nonconformity was issued, what
23 clerical error and misunderstanding do we
24 have here?

25 A. As I say, the captain was going

1 through several documents, getting them all
2 endorsed, walking the decks of the vessel
3 day after day with the surveyor, making sure
4 that the vessel was in keeping with the code
5 and all of the other regulatory
6 certifications that had to be kept up too.
7 And that one document was assumed to be part
8 of that exercise. He did not -- it didn't
9 get endorsed and therefore, they were out of
10 compliance.

11 So the DNV, I assume, saw the
12 reason for downgrading this major
13 nonconformity because it was not much more
14 than an oversight.

15 Q. If it is simply putting a
16 signature --

17 A. It is not. We have that
18 certificate issued because we have a Safety
19 Management System certified, in place. That
20 vessel was up to that Safety Management
21 System and they get a certificate that says
22 so.

23 Q. Right. But the DNV has to verify
24 before they endorse it?

25 A. And they have done that, a number

1 of days late.

2 Q. But before they did that, the
3 vessel was not in compliance and a major
4 nonconformity was issued until that was
5 verified. So to me, it is not a clerical
6 mistake from what I am seeing here.

7 I will move on.

8 Now, was this major nonconformity,
9 to your knowledge, was it reported to the
10 flag state?

11 A. I don't know the answer to that.

12 Q. Yes, sir. Was -- before the
13 verification was completed and the
14 certificate endorsed, was the vessel
15 continuing in operation, whatever activities
16 it was engaging in, to your knowledge?

17 A. I don't know.

18 Q. Yes, sir.

19 A. It was brought to my attention
20 when we were reacting to get it rectified.

21 Q. Yes, sir. Continue to read in
22 observation No. 1, the rest of the sentences
23 in that paragraph.

24 A. You want me to read it out loud?

25 Q. Yes, sir, please.

1 A. "It had also been noticed that a
2 few other rigs in the North American
3 division this past year had requested
4 similar audits near the end of the window
5 and certain rigs were overdue in submitting
6 a corrective action plan. PETROGAS 10,000,
7 DEEPWATER NAVIGATOR, GS ARCTIC I, SOVEREIGN
8 EXPLORER, TRANSOCEAN SEARCHER. This also is
9 found in the current DNV company summary
10 report for the past year. Recommend that
11 these be reviewed by company to identify any
12 possible improvements in the scheduling and
13 follow-up of audits, surveys, and their
14 results."

15 Q. Yes, sir. If you have knowledge,
16 would you explain what is going on there?

17 A. I have no knowledge of the vessels
18 delineated here because they don't work in
19 my division. I don't know where they work,
20 to be honest.

21 Q. Yes, sir. But what about the
22 comment about "a few other rigs in the North
23 American division this past year"?

24 A. Have been cited --

25 MR. JOHNSON:

1 It is clear there is an
2 inaccuracy. He just told you the rigs they
3 referenced in terms of being in the North
4 American division are not in the North
5 American division.

6 CAPT. NGUYEN:

7 The sentence is in two parts. It
8 talks about a few rigs in the North American
9 division this past year have submitted
10 similar audits near the end of the window,
11 part 1.

12 MR. JOHNSON:

13 Then it says, "i.e." That is in
14 reference to the previous statement you just
15 read.

16 CAPT. NGUYEN:

17 No, sir. The i.e. refers to the
18 second part of that sentence, "and certain
19 rigs," and you are correct, those rigs are
20 not in the North American division.

21 So it is dealing with the rigs in
22 the North American division and outside of
23 the North American division from that
24 sentence, from what I read.

25 THE WITNESS:

1 It says, "Other rigs in the North
2 American division wait until the end of
3 their window to get their survey done."

4 It is inside the window. My
5 take-away from this would be to institute a
6 program in which we start talking to our
7 class surveyors at the midpoint, at the 6th
8 month of the 12-month window, and have it
9 closed out then.

10 EXAMINATION BY CAPT. NGUYEN:

11 Q. Yes, sir.

12 A. To make that a North American
13 division procedure.

14 Q. Yes, sir. I appreciate that.

15 Section 1.2.3.1 has to do with
16 compliance with mandatory rules and
17 regulations.

18 Several Transocean employees have
19 previously testified before this board about
20 condition-based maintenance system for the
21 blowout preventer, the system employed by
22 Transocean.

23 Are you familiar with this
24 condition-based maintenance system, sir,
25 that they testified to?

1 A. I am aware that we have a
2 condition-based maintenance system for our
3 BOPs. I am not very conversant in that.

4 Q. Can you explain why that system is
5 used rather than complying with Title 34 of
6 the federal regulations, 250.446, which
7 required compliance with API's 3- to 5-year
8 rule for blowout preventer maintenance and
9 inspection?

10 MR. KALIM:

11 On behalf of Transocean, we enter
12 an objection. There is no basis or
13 foundation that this witness has any
14 responsibility, knowledge or authority to
15 the particular area that the captain is
16 questioning him on.

17 JUDGE ANDERSEN:

18 As we have heard other times, we
19 don't know that until he answers. He may
20 have familiarity with it, and if not, his
21 answer is, I am not familiar with that
22 regulation.

23 EXAMINATION BY CAPT. NGUYEN:

24 Q. The question here is why would
25 Transocean ignore regulations and use a

1 system of its own?

2 MR. JOHNSON:

3 That assumes facts not in
4 evidence, Captain.

5 EXAMINATION BY CAPT. NGUYEN:

6 Q. I have facts; I hear objections,
7 but to put it simply, why would Transocean
8 choose to ignore regulations and use its own
9 system?

10 MR. KALIM:

11 Calls for speculation.

12 MR. JOHNSON:

13 With all due respect, Captain, you
14 have not given facts, you have given your
15 interpretation of the CFR and the
16 recommended practices.

17 CAPT. NGUYEN:

18 I read the CFR and the API, and it
19 clearly says that -- that goes to
20 recommended practice, and it says 3- to
21 5-year recertification of the blowout
22 preventer.

23 MR. JOHNSON:

24 Perhaps I have a misunderstanding
25 of these proceedings, and with due respect,

1 the evidence to this board comes from this
2 table, not from the table from which you are
3 speaking.

4 JUDGE ANDERSEN:

5 There could be a debate as to what
6 is legally correct here so perhaps the
7 question can be rephrased as follows.

8 Do you know why Transocean has
9 implemented a condition-based maintenance
10 program rather than the maintenance program
11 that is recommended in the regulations?

12 MR. DYKES:

13 Let me interject something. Billy
14 Stringfield testified that in his opinion,
15 the condition-based monitoring exceeded the
16 manufacturer's recommendations. We have
17 subpoenaed Transocean for that maintenance
18 program, and until we get that to do a gap
19 analysis between what Cameron recommends and
20 what Transocean is doing, we can't answer
21 that question one way or the other as to
22 whether or not they were in compliance or
23 out of compliance.

24 So that is where the subpoena is
25 at, and we are still waiting on that

1 response from Transocean.

2 JUDGE ANDERSEN:

3 So do you have any light to shed
4 on this issue?

5 THE WITNESS:

6 No. That is way, way beyond me.
7 I don't have anything to add.

8 EXAMINATION BY CAPT. NGUYEN:

9 Q. Yes, sir. I know you are not
10 fully conversant to the -- let me ask you
11 whether you know if these items here are
12 also covered by your condition-based
13 management system.

14 Lifesaving equipment?

15 A. We have a maintenance program for
16 our lifesaving equipment. I don't know what
17 category of maintenance we do on our
18 lifesaving equipment. I know that we keep
19 it all well-taken care of, maintained and
20 ready for use, whatever maintenance program
21 you want to call that. I don't think we
22 characterize it as "condition-based
23 management for safety equipment."

24 I'm not really sure. You are
25 asking me about things I don't know and have

1 never done. So I don't know. I know we
2 maintain our safety equipment.

3 Q. Yes, sir. The Coast Guard
4 regulation is very specific on certain items
5 in terms of servicing life raft equipment
6 and things like that.

7 A. Yes, sir.

8 Q. And I am asking you whether
9 Transocean chooses to comply with the
10 specific Coast Guard regulation or goes with
11 its own program?

12 MR. SCHONEKAS:

13 Objection, competency, the witness
14 also testified this is not his area.

15 MR. KALIM:

16 Your Honor, also on behalf of
17 Transocean, we have had two witnesses
18 testify who gave the specific names and
19 positions of those in our company who are
20 responsible for maintenance. If this board
21 wants to question in detail individuals on
22 that topic, they know the individuals
23 responsible for that, and it is not this
24 individual. It is a waste of time to go
25 through this line of questioning with this

1 witness.

2 CAPT. NGUYEN:

3 This is about ISM compliance, sir,
4 so these are examples to evaluate and
5 identify whether your company is in
6 compliance with these items or not.

7 EXAMINATION BY CAPT. NGUYEN:

8 Q. If you do not have knowledge, you
9 don't have knowledge. You don't have to
10 make anything up, but it is my right to ask
11 the questions.

12 A. You are asking me to say whether
13 it is condition-based maintenance that we do
14 on our safety equipment, and I don't think
15 that I know the answer to that. I do know
16 that we strictly maintain our safety
17 equipment. Does that help?

18 Q. No, sir. How would you know that?
19 How would you know it is strictly
20 maintained?

21 A. Well, my experience tells me.
22 When I go out to drilling rigs, it tells me.
23 When I interact with the people that do
24 that, it tells me things are being taken
25 care of.

1 Q. I have a number of items in here,
2 and you can tell me at the end whether that
3 is your same opinion. That is what I am
4 trying to find out here.

5 How about fixed platform
6 protection system, do you know whether
7 Transocean maintained it through the
8 regulation or its own system?

9 A. We do it by the regulation.

10 Q. How about firefighting equipment?

11 A. My belief is that we are in
12 keeping with the regulation.

13 Q. How about engine over-speed
14 protection system?

15 A. I can only believe that we do it
16 in keeping with the regulation.

17 Q. How about emergency shutdown
18 devices?

19 A. That is my knowledge.

20 Q. Yes, sir. Based on the few
21 examples I cited, do you think Transocean's
22 North American division is in compliance
23 with ISM code 1.2.3.1?

24 MR. JOHNSON:

25 Can you please repeat that section

1 again.

2 CAPT. NGUYEN:

3 Yes, sir, the same section.

4 MR. JOHNSON:

5 1.2.3.1?

6 CAPT. NGUYEN:

7 Yes, sir, having to do with the
8 Safety Management System, to ensure
9 compliance with mandatory rules and
10 regulations.

11 EXAMINATION BY CAPT. NGUYEN:

12 Q. Do you think, in your opinion,
13 that the Transocean North American division
14 is in compliance with that section?

15 A. I do, sir. I do.

16 Q. Please read ISM code Part A,
17 Section 3.2. Please read it out loud.

18 A. 3.2, "The company should define
19 and document the responsibility, authority
20 and interrelation of all personnel who
21 manage, perform and verify work relating to
22 and affecting safety and pollution
23 prevention."

24 Q. Yes. Were you aware of Mr. Daun
25 Winslow's presence on the rig on the day of

1 the casualty?

2 A. Not then, but now.

3 Q. What was Mr. Winslow's role aboard
4 the vessel?

5 A. His role on the vessel?

6 Q. Yes, sir, according to
7 Transocean's policies, procedures and
8 planning.

9 MR. JOHNSON:

10 Can you clarify?

11 JUDGE ANDERSEN:

12 On the DEEPWATER HORIZON.

13 THE WITNESS:

14 He had no role other than a
15 manager visiting.

16 EXAMINATION BY CAPT. NGUYEN:

17 Q. What was his role in the response?

18 A. I don't know that.

19 Q. Mr. Winslow testified that he
20 ordered the lowering of the lifeboat that he
21 was in. Was his action in accordance with
22 any Transocean written policy, procedure or
23 plan?

24 MR. SCHONEKAS:

25 I object to the competency, Your

1 Honor. I don't think this witness is
2 qualified nor is his area of expertise
3 related to this.

4 JUDGE ANDERSEN:

5 He has 30 years in his present
6 position, and I think it is reasonable for a
7 board member to expect that he has more
8 knowledge about that than the average
9 employee there, but if he doesn't, he
10 doesn't.

11 Do you have an answer to that?

12 THE WITNESS:

13 I don't know what occurred on the
14 day.

15 EXAMINATION BY CAPT. NGUYEN:

16 Q. Yes, sir. The lifeboat which
17 Mr. Winslow was in was designated as the
18 DEEPWATER HORIZON rescue boat. Mr. Winslow
19 testified that he directed it to go directly
20 to the BANKSTON to stand by for the -- the
21 supply vessel out there.

22 Was his action in accordance with
23 any Transocean written policy, procedure or
24 plan?

25 A. I have no knowledge of what

1 transpired under those circumstances.

2 Q. I understand. Mr. Winslow
3 testified that he coordinated -- it is not
4 your knowledge as to what he did out there,
5 a person in his position visiting a vessel.
6 I am just trying to find out whether --

7 MR. LONDON:

8 I object to that, if I may. This
9 is a series of hypothetical questions, "what
10 if this happened, what if that happened."

11 The man has no knowledge as to
12 what happened. I don't see how this
13 possibly advances the board --

14 JUDGE ANDERSEN:

15 I think the captain is asking is
16 the visiting high-ranking supervisor, does
17 he have the authority to assume functions
18 that others would assume had he not been
19 there?

20 CAPT. NGUYEN:

21 That is the question.

22 MR. LONDON:

23 But he has answered it four times.

24 CAPT. NGUYEN:

25 I am getting to a point, and I

1 apologize.

2 EXAMINATION BY CAPT. NGUYEN:

3 Q. The thing about a Safety
4 Management System, you have to have
5 documented policies, procedures and plans to
6 guide the performance of that vessel. Is
7 that correct, Mr. Canducci?

8 A. That's correct.

9 Q. What I am trying to find out here,
10 there is actions of certain individuals out
11 there, you know, relating to this casualty.
12 Were their actions in accordance with these
13 rules, policies and procedures that your
14 Safety Management System consists of?

15 So I am not asking you about
16 whether you knew what Mr. Winslow was doing
17 out there --

18 A. What do you mean? You brought up
19 Winslow. You kept asking questions about
20 what Winslow did and is it in keeping. I
21 think he did an impeccable job, and yes, it
22 is in keeping --

23 Q. But that is not the point of my
24 question. My point is the Safety Management
25 System for Transocean has written policies,

1 procedures and plans.

2 A. It does.

3 Q. And that employees are to comply
4 to those policies and procedures and plans.
5 If they did not, what was the reason?

6 That is what I am trying to find
7 out here. Because if you have policies,
8 plans and procedures and everything else,
9 and nobody complies with it, what good is
10 the system?

11 A. I agree.

12 MR. JOHNSON:

13 Captain, part of the issue is that
14 you are taking the actions of one individual
15 in a vacuum. The regulations don't assume
16 that the DAMON BANKSTON is going to be there
17 with a fast rescue craft. In a time of
18 emergency, all of these other assets that
19 are not considered by the code were in
20 place, fortuitously.

21 So to make the point that lifeboat
22 No. 2 was supposed to assume the lifesaving
23 function that the fast rescue craft assumed
24 is really unfair to my witness when you are
25 asking him repeatedly, in a hypothetical

1 fashion, what Mr. Winslow did. Because
2 first, you are asking him to assume that he
3 knows what Mr. Winslow did.

4 And the proof, as they say, is in
5 the pudding. 115 people got off the
6 DEEPWATER HORIZON. That's where we have a
7 little bit of a disconnect. He is trying to
8 be as open with you as he possibly can, but
9 the questions are being posed in such a way
10 that we are being asked to assume
11 hypotheticals and the effect they had on the
12 events of a night that can be described as
13 nothing more than chaotic.

14 CAPT. NGUYEN:

15 Yes. And we have 11 people
16 presumed dead, millions of gallons oil in
17 the water and other damages. I am trying to
18 find out where the gaps are so that nothing
19 like this will happen again. That is my
20 intention.

21 EXAMINATION BY CAPT. NGUYEN:

22 Q. I am not after a particular
23 individual, Mr. Winslow, Captain Kuchta or
24 anybody else. I am just asking the
25 questions. If you can help me clarify the

1 issue, I appreciate that, but at the end of
2 the day, that is what I am doing. We just
3 can't say that 115 people were rescued, and
4 forget the blowout of the well. We have to
5 think about the blowout, the explosion, the
6 fire and the sinking, every one of those
7 events, and systematically look at the
8 conditions and events.

9 A. I understand.

10 Q. One last point about Mr. Winslow.
11 He was --

12 A. I'm sorry. I didn't understand.
13 Could you slow down?

14 Q. Yes, sir. Mr. Winslow testified
15 that he coordinated the firefighting effort.
16 Were his actions in accordance with any
17 Transocean procedures and plans?

18 A. I am not aware of that.

19 Q. Based on those cited examples --
20 and you may bring up other examples where
21 you believe that Transocean was in
22 compliance -- based on these few examples,
23 do you think Transocean's North American
24 division is in compliance with ISM code
25 Section 3.2 which is defined as "The company

1 should document the responsibility,
2 authority and interaction of all personnel
3 who manage, perform and verify work relating
4 to and affecting safety and pollution
5 prevention"?

6 A. Yes, I do. I think our document
7 of compliance demonstrates that we are in
8 compliance with that requirement.

9 Q. Yes. I will go through another
10 section, and we will take a break. Is that
11 okay with you?

12 A. Sure.

13 JUDGE ANDERSEN:

14 Let's try and make it about ten
15 minutes or so.

16 MR. FANNING:

17 I think the captain wanted to go
18 through another section.

19 CAPT. NGUYEN:

20 Yes, sir.

21 EXAMINATION BY CAPT. NGUYEN:

22 Q. Read aloud Part A, Section 5.

23 MR. SCHONEKAS:

24 Can we have that again?

25 CAPT. NGUYEN:

1 Yes.

2 MR. JOHNSON:

3 You want him to read the entirety
4 of that section? It is 5.1.1.2.3.4.5.

5 CAPT. NGUYEN:

6 Yes, it is not very long.

7 THE WITNESS:

8 "The master's responsibility and
9 authority: 5.1. The company should clearly
10 define and document the master's
11 responsibility with respect to:

12 "5.1.1. Implementing the safety
13 and environmental protection policies of the
14 company.

15 ".2. Motivating the crew in the
16 observation of that policy.

17 ".3. Issuing appropriate orders
18 and instructions in a clear and simple
19 manner.

20 ".4. Verifying that specified
21 requirements are observed.

22 ".5. Periodically reviewing the
23 Safety Management System and reporting its
24 deficiencies to the shore-based management."

25 Do you want me to carry on?

1 Q. Yes, sir. 5.2, please.

2 A. "5.2. The company should ensure
3 that the Safety Management System operating
4 on board the ship contains a clear statement
5 emphasizing the master's authority. The
6 company should establish in the Safety
7 Management System that the master has the
8 overriding authority and responsibility to
9 make decisions with respect to safety and
10 pollution prevention and to request the
11 company's assistance as may be necessary."

12 Q. Yes, sir. If you go back to Tab
13 No. 1, sir, and, again, that is the document
14 Bates No. TRN-USCG-MMS00043662 through 64.

15 A. Yes.

16 Q. The last page, observation No. 8,
17 would you read that, please?

18 A. Out loud?

19 Q. Yes.

20 A. "As previously observed, the
21 statement of master's authority is still not
22 clearly and completely stated in the
23 company's Safety Management System.
24 Although there are various statements of the
25 master's authority, there is no clear

1 indication of his overriding responsibility
2 and authority. The company is requested to
3 address this."

4 Q. Look at the date of the survey,
5 please. 2009, April 15. Is that correct?

6 A. Yes.

7 Q. And the ISM code for MODU was
8 implemented on July 1, 2002?

9 A. Sorry? Yes.

10 Q. Why has it been more than seven
11 years and Transocean still is not in
12 compliance with that item?

13 MR. JOHNSON:

14 Objection, Captain. That is a
15 misstatement of what is on the face of the
16 document you just referred to.

17 EXAMINATION BY CAPT. NGUYEN:

18 Q. All right. So the date of the
19 survey is 2009, April; the date of the
20 judicial implementation, July 1, 2002. The
21 item Mr. Canducci read says, "As previously
22 observed, the statement of the master's
23 authority is still not clearly and
24 completely stated within the company's
25 Safety Management System. Although there

1 are various statements of the master's
2 authority, there is no clear and absolute
3 indication of the master's overriding
4 responsibility and authority. The company
5 is requested to address this."

6 It is not just me, DNV is saying
7 it is not in compliance and the company
8 needs to address it. I am asking you why,
9 more than seven years later, it is still a
10 problem?

11 A. That is outside my knowledge, why
12 it took that long.

13 Q. Do you know if today, for the
14 Transocean North American division, is it in
15 compliance today?

16 A. That has been addressed.

17 Q. Satisfactory to the DNV?

18 A. I can assume because the second
19 audit doesn't stipulate that again; it
20 doesn't cite us again or make any
21 observation to that effect again.

22 Q. Yes. And we asked these questions
23 of flag state, and flag state has gone to
24 DNV twice, but we have not received a
25 response from flag state to our question

1 yet. So at this point, to me, I don't have
2 any evidence that this has been
3 satisfactorily resolved.

4 MR. LINSIN:

5 May I address your point, sir?

6 CAPT. NGUYEN:

7 Yes, sir.

8 MR. LINSIN:

9 First of all, I believe you have
10 characterized this as noncompliance. This
11 is an observation in this report. It is not
12 defined by DNV as noncompliance. The
13 auditor had that option and decided to
14 characterize this as an observation, which
15 as you know is different than noncompliance.

16 We are, as we have said to you,
17 working with DNV to clarify what has been
18 done and what the documentation was.

19 With regard to the document you
20 are asking this witness questions about, I
21 request that we be clear that DNV determined
22 this was an observation as distinguished
23 from a noncompliance with the code.

24 CAPT. NGUYEN:

25 Yes, sir.

1 EXAMINATION BY CAPT. NGUYEN:

2 Q. Based on what Mr. Linsin
3 indicated, this observation is still
4 outstanding.

5 MR. SCHONEKAS:

6 Objection, misstates evidence.

7 MR. KALIM:

8 On behalf of Transocean, Tab 2 in
9 your own exhibit is the April of 2010 audit
10 by the same entity that came out in April of
11 2009. They had the opportunity to make
12 observations. This particular issue was
13 rectified and is not included in the
14 subsequent audit. The witness testified to
15 that, your question is a gross
16 mischaracterization of the facts once again.

17 MR. GODFREY:

18 I think I should put on the record
19 what I raised at yesterday's pretrial
20 meeting off the record.

21 Speaking for myself, and I suspect
22 other parties, there is a disconnect between
23 the absence of evidence that parties don't
24 know the board is looking for and the
25 drawing of an affirmative negative inference

1 that has been suggested. And so, in
2 fairness to the parties and to the board, if
3 there is particular information that the
4 board feels the absence of which equals the
5 opposite, that the evidence is to the
6 contrary, I think that the Parties in
7 Interest should be entitled to know what
8 that specific request is so they have the
9 opportunity to provide the evidence.

10 Otherwise, unlike in a civil
11 proceeding or even a criminal proceeding,
12 you are drawing an affirmative conclusive
13 opinion based on evidence that the Parties
14 in Interest do not know that the board is
15 looking for.

16 I raised this yesterday in the
17 pretrial off the record, but I do it now
18 formally on the record because we have
19 another example of Mr. Linsin's client
20 saying -- I don't know what the facts are,
21 but I am saying that I would not, for my
22 client, want to be in the position that you
23 draw a conclusive presumption based upon a
24 negative inference on the absence of
25 evidence that was not specifically

1 requested, which, in all candor, I think, is
2 a problem both for the board and for the
3 Parties in Interest. That is my objection.
4 Thank you.

5 JUDGE ANDERSEN:

6 Sure.

7 Mr. Godfrey called that potential
8 to our attention yesterday, not with
9 reference to this. But I have been on the
10 board long enough now to know that there are
11 those who are concerned about lines of
12 authority on these vessels, and anything
13 that Transocean can provide to the board to
14 show us how it has clarified the master's
15 role to be in compliance with this provision
16 would be helpful.

17 You don't have to do it
18 necessarily right now. I mean, we are
19 going -- we know the board is going to exist
20 for a number of months into the future, and
21 the ambiguity between the OIM and the master
22 has been the subject of every set of
23 hearings we have had.

24 So I agree, rather than assuming
25 there is a noncompliance, or the observation

1 was not that, if you can provide us with the
2 information that may have satisfied the
3 auditors, that would be helpful.

4 MR. GODFREY:

5 This is one exemplar of many of
6 broader issues. Personally speaking for BP,
7 I do not have the ability to intuit what it
8 is the board is looking for and from which
9 it will draw presumptive conclusions, unless
10 it is a specifically asked question.

11 There have been a number of
12 instances where I have been left confused or
13 perplexed as to what the nature of the
14 information exchanges or requests have been,
15 at least in the oral proceedings.

16 So I won't defend or speak for
17 Transocean, I wouldn't presume that, but to
18 suggest to Transocean that they can provide
19 evidence, we -- at least the lawyers here --
20 will provide evidence that we are requested
21 to provide if the evidence exists, et
22 cetera.

23 But a generic request for evidence
24 to help the board leaves us in a bit of a
25 fog. There are a lot of things I think

1 might help the board. I offered them to the
2 board's counsel and they said they were not
3 interested in those things. That is fine,
4 but I don't want to guess, my client doesn't
5 want to guess and the other Parties in
6 Interest don't want to be guessing, I don't
7 think.

8 So if the board has specific
9 evidence or points it wants us to respond
10 to, we should be entitled to, in fairness to
11 us and to the board, to know that, and then
12 we will respond specifically.

13 Thank you.

14 CAPT. NGUYEN:

15 Yes, sir, and Mr. Godfrey, we
16 really appreciate your cooperation and
17 assistance in this investigation. The piece
18 of information I have here, I'm trying to be
19 transparent about all of this and say this
20 is what we have, this is what we go by and
21 see where the gaps are so that the Parties
22 in Interest can supplement or clarify the
23 record. That is what we are doing here. We
24 have not drawn any conclusions yet.

25 Specifically to this subject, ISM

1 compliance, as you know from the last
2 hearing, we have requested specific
3 documents from Transocean which we have not
4 received. We are going to be in court on
5 December 17 to get this information.

6 So we have asked, we have not
7 received. Therefore, I am trying to ask the
8 witness here, because of his position, for
9 some information that we have not received
10 and to clarify some information that we
11 have.

12 We're not making a conclusion
13 whether Transocean is in compliance or not
14 in compliance. I apologize if I make any
15 confusion.

16 MR. GODFREY:

17 There is no reason to apologize,
18 but I was making a broader point beyond
19 Transocean. Transocean happened to create
20 the illustrative example along with the
21 Republic of Marshall Islands. So there is
22 no issue about BP's position with respect to
23 making presumptions based upon a negative
24 inference from a lack of alleged evidence
25 that was never requested.

1 MR. HYMEL:

2 Judge, Richard Hymel for
3 Transocean as well. I know we have a rule
4 as far as how many attorneys may speak for a
5 party, but speaking for the corporation, we
6 join with Mr. Godfrey in that objection. We
7 had that discussion after the meeting
8 yesterday.

9 One additional thing, as Captain
10 Nguyen has stated that he has drawn no
11 conclusion, in fact, when he asked this
12 witness about whether or not there was a
13 violation of the CFR regarding the BOPs, he
14 has made the conclusion in his mind. He has
15 made the legal conclusion.

16 As he knows, the marine guide, the
17 Coast Guard guide that he is supposed to be
18 following should keep the investigation and
19 the analysis separate. This should be a
20 factual determination. You ask questions:
21 Where, what and when.

22 He is asking for hypotheticals, he
23 is trying to get the witness to say what he
24 wants him to say, to get him to concur with
25 his conclusions. There should be no

1 conclusions at this part of the proceeding,
2 it should be simply facts.

3 JUDGE ANDERSEN:

4 Thank you. Obviously, the report
5 is not going to be spit out overnight in one
6 bite. The members of the board are going to
7 be taking a look at everything.

8 Based on the comments we had
9 yesterday, I indicated to Mr. Godfrey all of
10 that and I talked with other board members
11 about it, that I personally will go through
12 the report before it issues and specifically
13 look for the potential that the board might
14 be drawing conclusions when there isn't
15 evidence and drawing what Mr. Godfrey calls
16 a negative inference.

17 If it appears we are about to do
18 that, I will call that to the attention of
19 not only myself but other board members and
20 the flag state so that additional
21 information can be forthcoming before the
22 board reaches its final conclusion.

23 So I think that was a good point
24 to raise. There will be a lot of findings
25 and recommendations, and now we are on the

1 alert to make sure that everybody has had a
2 chance to produce anything that might be
3 relevant to any conclusion that the board
4 reaches.

5 MR. LINSIN:

6 One final comment, Your Honor.

7 And it is just to underscore what I believe
8 the important point to be, that as we are
9 asking questions about these issues, and I
10 understand these issues are important, that
11 we not build into those questions inaccurate
12 assumptions such as characterizing this
13 observation as a deficiency.

14 And so I ask the board members to
15 be sensitive to that. That is an important
16 distinction that is made by the auditor in
17 the example I was just referencing. I
18 appreciate Your Honor's commitment to the
19 final report from the board, but the process
20 is important as well. I ask that
21 individuals be sensitive to that as we go
22 forward.

23 EXAMINATION BY CAPT. NGUYEN:

24 Q. Let's finish the section. The
25 observation based on the evidence we have is

1 still outstanding. Until we receive
2 something from the DNV, flag state or any
3 other party, this observation is still
4 outstanding.

5 MR. SCHONEKAS:

6 Objection. Mischaracterizes what
7 the document said.

8 MR. FANNING:

9 Mr. Linsin just addressed that.
10 It is not in the 2010 audit. It is gone, it
11 is not still outstanding.

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. Mr. Canducci, can you go through
14 Tab 3, please? This document is Bates Nos.
15 ABSDWH000061 through 68.

16 MR. GODFREY:

17 What is the reference?

18 CAPT. NGUYEN:

19 ABSDWH000061 through 68. This is
20 Section 2 of the operation manual on
21 organization and responsibilities.

22 MR. GODFREY:

23 Thank you.

24 CAPT. NGUYEN:

25 Yes, sir.

1 EXAMINATION BY CAPT. NGUYEN:

2 Q. Mr. Canducci, would you read out
3 loud the last paragraph on that page,
4 please.

5 A. "The company requires that should
6 a situation develop that could endanger the
7 vessel, personnel or environment, the
8 installation manager can request the master
9 to assume the role of PIC at any time and
10 the master must not refuse.

11 "Similarly, if the master feels
12 that a situation has developed that
13 endangers the personnel or the environment,
14 he can request the installation manager to
15 secure the well and disconnect from the
16 wellhead in a safe and timely manner and
17 that the role of the PIC be passed to him
18 and the installation manager must not
19 refuse."

20 Q. Yes, sir. Do you know what
21 situation the manual refers to?

22 A. What situation?

23 Q. It says, "should a situation
24 develop."

25 A. "That endangers the personnel or

1 environment."

2 Q. What situation would that be?

3 MR. JOHNSON:

4 Objection, that calls for
5 speculation, Captain. Are you asking him to
6 give you specific examples?

7 CAPT. NGUYEN:

8 Yes.

9 EXAMINATION BY CAPT. NGUYEN:

10 Q. Under this guidance here, the
11 master and OIM should know what those
12 situations are so they can execute --

13 A. I guarantee, or I would suggest
14 that if the vessel, personnel and
15 environment were endangered, those two
16 individuals would know.

17 It would take -- it is an infinite
18 list.

19 Q. So you don't know of any document
20 that offers a situation where this would
21 apply?

22 A. There is an emergency response
23 manual with guidance on explosions and
24 things like that.

25 Q. Read the first paragraph of that

1 page, please, sir.

2 A. "In accordance with the ISM code,
3 the master has overriding authority and
4 responsibility to make decisions with regard
5 to safety, pollution prevention, and to
6 request all company assistance as necessary.
7 Self-propelled rigs carry a marine crew
8 headed by the master in addition to the
9 normal industrial function of the vessel
10 headed by the installation manager."

11 Q. Yes, sir. If the master has the
12 overriding authority and responsibility, why
13 is it in that last paragraph on the page
14 that he has to ask that the role of PIC be
15 passed to him from the OIM?

16 A. This is an operations manual, and
17 the operations manual was developed to help
18 those on board run the machine. It
19 obviously has an industrial function, and
20 that is why the vessel exists in the first
21 place.

22 This is not part of how you -- nor
23 would you call it part of our company's
24 management system and Safety Management
25 System. Every document in the entire

1 company has some element that exposes it to
2 either of those two things.

3 This is not a Safety Management
4 System-specific manual. This is guidance to
5 the people on board the DEEPWATER HORIZON on
6 how they should run their rig. If what you
7 are posing here, that they would turn to
8 this manual for specific guidance on when to
9 hand off or not hand off, I think that is
10 misguided.

11 Let me add, this is a March 2001
12 document as well.

13 Q. Is there a newer version?

14 A. No, there is not.

15 Q. So the guidance still exists,
16 right? The guidance still applies to the --

17 A. I think you are trying to suggest
18 that this has more import than it really
19 does. It is guidance. It says right up
20 here, "In accordance with the ISM code, the
21 master has overriding authority" --

22 Q. Right.

23 A. -- "when it comes to the safety of
24 the vessel, the people and the environment."

25 Q. Right. And you have situation

1 that could endanger the vessel, why is it
2 that the master have to ask permission from
3 the OIM to pass the PIC role to him, if he
4 has the overriding authority?

5 This is what I'm trying to figure
6 out here. I got document here, two
7 documents where he talk about -- one says it
8 is outstanding observation, the other one
9 didn't have it listed, and I am looking at
10 the operations manual, and I'm still seeing
11 situations where the overriding authority of
12 the master is not clear and absolute.

13 That is what I am asking you. Am
14 I missing something here? And if I am,
15 please provide me with evidence that that
16 observation is no longer outstanding.

17 A. Since that observation was made,
18 the master's job description was changed,
19 and it states verbatim what is stated in the
20 code, that the captain has overriding
21 authority with regard to the vessel's safety
22 and protection of the personnel and
23 environment.

24 Q. Does that mean that this master is
25 in charge of the vessel at all times?

1 A. The master is in charge of those
2 issues at all times. The OIM runs the
3 industrial function of the vessel.

4 Q. So who answers to whom?

5 A. Depends on what we're talking
6 about. Who answers -- if we are talking
7 about the -- the mandate of the drilling rig
8 is to go out and serve its company's
9 drilling program. That is why they are out
10 there. The manager that is out there
11 manages that issue. At any moment in time,
12 if the vessel, the people or the environment
13 are in danger, that responsibility is
14 without question on the shoulders of the
15 master.

16 So I don't know that the answer
17 you are looking for really and truly exists,
18 but I am sure that no one is confused about
19 it.

20 Q. Suppose there is threat or danger
21 coming from the well operation?

22 MR. SCHONEKAS:

23 Argumentative.

24 JUDGE ANDERSEN:

25 Suppose the well poses a danger to

1 the people or the environment, which we know
2 it can --

3 THE WITNESS:

4 If that is the given, then the
5 master is in charge.

6 EXAMINATION BY CAPT. NGUYEN:

7 Q. Isn't there always a chance that
8 you have situation that can --

9 A. You just said -- the well isn't
10 dangerous when it is controlled. It is the
11 loss of control that makes it dangerous.

12 Q. And we will get to that issue when
13 you have uncontrollable leaks of
14 hydrocarbons scenario. We will go through
15 that point in a little while here.

16 MR. JOHNSON:

17 After the break, right?

18 CAPT. NGUYEN:

19 Yes, sir.

20 THE WITNESS:

21 Can I --

22 EXAMINATION BY CAPT. NGUYEN:

23 Q. Yes, sir.

24 A. In addition to the immediate
25 response to that citing and the change in

1 the master's job description -- we used to
2 have what we called a field operations
3 manual. In the field operations manual, it
4 had not quite vigorous enough comments, as
5 we were cited for, and the field operations
6 manual was changed into four specific
7 manuals.

8 In the marine compliance manual,
9 one of the four the field operations manual
10 was changed to, it has a clear, concise and
11 unequivocal statement of the master's
12 authority.

13 Q. Let's go to Tab 4, sir, with Bates
14 No. BP-HZN-MBI00002519.

15 MR. JOHNSON:

16 We have 2516. You want us to go
17 to page 2519?

18 EXAMINATION BY CAPT. NGUYEN:

19 Q. Yes, sir, please. There is some
20 confusion here. If you look at the previous
21 page, the definitions, if you go there --
22 and I want some clarification from you about
23 the person in charge.

24 It talks about "Person in charge
25 means the master or other individual

1 designated as such by the owner or operator
2 under 146.5 of this subchapter or 46 CFR
3 109.107."

4 You see that definition there?

5 MR. JOHNSON:

6 Captain, I object on the basis of
7 foundation. You have not asked the
8 question, it has not been established that
9 this witness has ever seen this document
10 before.

11 CAPT. NGUYEN:

12 This is the emergency evacuation
13 plan, and part of the ISM code has to do
14 with hazardous conditions to the vessel. We
15 talked about policies and procedures of the
16 company --

17 MR. JOHNSON:

18 This is a BP Exploration
19 Production, Inc., document. There is no
20 evidence before this board that Mr. Canducci
21 has ever seen this document before. And the
22 document states what the document states.

23 CAPT. NGUYEN:

24 Yes, sir. I am trying to see if
25 this is related to 6 and 5 of the ISM code

1 related to the responsibilities of the
2 master.

3 EXAMINATION BY CAPT. NGUYEN:

4 Q. This document was approved for the
5 vessel in terms of emergency evacuation. We
6 were looking at this document here in
7 guidance of the vessel personnel.

8 You see the person in charge has
9 drilling supervisor, and then you see on the
10 next page, it says, "Immediate evacuation,
11 person in charge," so I am trying to link
12 here the person in charge to the drilling
13 supervisor. So is the drilling supervisor,
14 the OIM or the wellsite leader in charge of
15 the evacuation instead of the master of the
16 vessel?

17 MR. JOHNSON:

18 Objection, that calls for
19 speculation.

20 EXAMINATION BY CAPT. NGUYEN:

21 Q. Who is in charge of the evacuation
22 of the vessel, sir?

23 A. The master.

24 Q. So here it says, "person in charge
25 or the drilling supervisor," so it doesn't

1 show that the master is in charge of the
2 evacuation.

3 MR. JOHNSON:

4 Captain, this is a document he has
5 never seen before; it is not authored by the
6 company he works for. You are asking him
7 questions from this document that anybody in
8 this room can read, that can be an exhibit
9 before this board and the board can do
10 anything it wants with it.

11 But it is patently unfair to ask
12 Mr. Canducci to make legal conclusions, and
13 jump from one page to the other based on a
14 document he has never seen and has had no
15 part in drafting in any way.

16 EXAMINATION BY CAPT. NGUYEN:

17 Q. So this document here is for the
18 DEEPWATER HORIZON, approved to use. What is
19 your understanding of who is in charge of
20 the evacuation of the vessel?

21 MR. JOHNSON:

22 Objection, asked and answered.

23 MR. KALIM:

24 Objection.

25 JUDGE ANDERSEN:

1 Okay. He said it was the master.

2 CAPT. NGUYEN:

3 Thank you.

4 EXAMINATION BY CAPT. NGUYEN:

5 Q. Based on this example, do you
6 think the Transocean North American division
7 is in compliance with ISM code Part A,
8 Section 5?

9 A. I do.

10 CAPT. NGUYEN:

11 Let's take a break and reconvene
12 at 9:55.

13 (Recess.)

14 EXAMINATION BY CAPT. NGUYEN:

15 Q. Mr. Canducci, you are still under
16 oath, sir.

17 A. I am still under oath.

18 Q. Yes, sir. Please read ISM Section
19 6.1 and its subsections.

20 A. "6. Resources and personnel:

21 ".1. The company should ensure
22 that the master is:

23 ".1.1. Properly qualified for
24 command.

25 ".2. Fully conversant with the

1 company's safety management system.

2 ".3. Given the necessary support
3 so that the master's duties can be safely
4 performed."

5 Q. Yes, sir. Referencing Tab 5, MBI
6 transcript for May 27, 2010, pages 213
7 through 14. Take a minute to review those
8 pages of the transcript.

9 MR. JOHNSON:

10 Can you tell us who the parties
11 are?

12 CAPT. NGUYEN:

13 Captain Kuchta and myself.

14 THE WITNESS:

15 I have read it.

16 EXAMINATION BY CAPT. NGUYEN:

17 Q. Based on that document, do you
18 believe that Captain Kuchta was fully
19 conversant with the Safety Management
20 System?

21 JUDGE ANDERSEN:

22 If he has an opinion, he can state
23 it. If his answer is "I don't know," then
24 it is "I don't know."

25 THE WITNESS:

1 Under these circumstances as
2 drawn?

3 Could you repeat your question?

4 EXAMINATION BY CAPT. NGUYEN:

5 Q. Yes, sir. Based on what you read,
6 do you believe that Captain Kuchta was fully
7 conversant with the company's Safety
8 Management System?

9 A. I can't make a judgment based on
10 what I read.

11 Q. Do you believe that he had
12 adequate knowledge of this vessel's Safety
13 Management System?

14 MR. SCHONEKAS:

15 Objection to the form of the
16 question, Judge. He is asking this witness
17 to comment upon the competency of another
18 Transocean personnel.

19 JUDGE ANDERSEN:

20 We recognize he doesn't have all
21 of the information that potentially could be
22 involved available to him. Nevertheless, if
23 the captain believes he might draw some
24 conclusions from what he read, that is fine.
25 If he hasn't drawn conclusions, then that is

1 the truth as well.

2 So do you feel you have enough of
3 an opinion to be able to answer his
4 question?

5 THE WITNESS:

6 No. I think these circumstances
7 are very challenging. I believe that the
8 good captain was under stress, and I don't
9 think that I can draw any conclusion or
10 inference of his competence from those few
11 pages.

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. It is not his competency but his
14 knowledge I am asking for.

15 MR. JOHNSON:

16 That calls for speculation.

17 JUDGE ANDERSEN:

18 He indicated he feels the same
19 answer applies to that question as well.

20 EXAMINATION BY CAPT. NGUYEN:

21 Q. Captain Kuchta in his testimony
22 mentioned a PowerPoint presentation.

23 A. I read that.

24 Q. Do you have knowledge of the
25 existence of such a PowerPoint presentation?

1 A. No, sir.

2 Q. Is there a standard --

3 A. There is not a Transocean tool,
4 but I could imagine a master, in the
5 execution of his duties, trying to get his
6 crew educated and using a PowerPoint program
7 tool to help educate his people. I don't
8 think that is outside the realm of
9 possibility.

10 Q. I appreciate that, and it is good
11 initiative, but what is the North American
12 division's training program for personnel?
13 Do you have a program for that?

14 A. We have a huge amount of training
15 in place. A lot of it is computer-based
16 on-the-job training, OJT, structured and
17 very visible to the entire crew. We have a
18 worldwide training matrix that each job
19 description has a set number of elements to
20 get through. We have a rig safety training
21 coordinator on every rig. They facilitate
22 the training all the time on board and that
23 is how we get the message out and the
24 training completed.

25 Q. Could you describe the specific

1 training program?

2 A. No, I can't.

3 Q. Yes, sir. Go back to Tab 3, which
4 is the Bates Nos. ABSDWH000061 through 68.

5 On the last page, sir, ABSDWH000068, do you
6 see the organizational guidelines, sir?

7 A. Yes, sir.

8 Q. Yes, sir. Up near the top on the
9 right-hand side, do you see who is in charge
10 of the vessel when it is in drill mode?

11 A. It says the installation manager.

12 Q. So in that scenario, where is the
13 location of the master, sir?

14 MR. SCHONEKAS:

15 Document speaks for itself.

16 THE WITNESS:

17 Above him?

18 EXAMINATION BY CAPT. NGUYEN:

19 Q. No, on the left-hand side, next
20 level down from installation manager, you
21 see the box with the label "Master" there?

22 A. Yes, I do.

23 Q. Yes, sir. Now, when a vessel is
24 in drill mode, from this diagram here, the
25 master is not in charge of the majority of

1 the crew here. Is that what it is showing,
2 sir?

3 I mean, he has got his people
4 underneath him, and then the chief engineer
5 is not shown as working for the master in
6 drill mode.

7 A. This is the same thing we went
8 through a little while ago.

9 Q. Yes, sir.

10 A. And it just graphically shows what
11 we discussed earlier. We have rectified
12 that in both the master's job description
13 and the marine compliance procedures manual.
14 This is just a different representation from
15 the same document you brought up in text a
16 couple of pages earlier. So I don't see why
17 we are doing this again.

18 Q. So you are saying it has been
19 corrected?

20 A. I don't know that this has been
21 corrected, I have never seen this before.

22 Q. But this is part of the
23 operational manual approved back in 2001 --

24 A. It would be redundant to correct
25 it right now.

1 Q. Redundant, sir?

2 A. It would be redundant for us to go
3 and correct an organizational chart for a
4 vessel that no longer exists.

5 Q. But that is not what I'm asking.

6 A. You asked me if we corrected it.
7 We went through this in text and I don't see
8 why we need to do it in a graph.

9 Q. While the vessel was drilling,
10 this diagram here shows that the master was
11 not in charge of many personnel on board the
12 vessel. So in terms of the item 6.1.3, it
13 says, "Given the necessary support so that
14 the master's duties can be safely
15 performed."

16 I'm looking at the diagram for
17 "Safety of Personnel, Vessel and Prevention
18 of Pollution," this diagram here with the
19 resources that the master has while the
20 vessel was still floating, does he have the
21 resources to meet .3 in your opinion?

22 A. Yes. Because at any moment in
23 time, he could invoke the "I'm in charge"
24 cry, and that puts him in charge. That is
25 how it has always been.

1 Q. That's what I'm getting at. You
2 say at any moment --

3 A. When it comes to the safety of the
4 vessel, the people and pollution prevention.
5 He has always had overriding authority even
6 when we did not say it well. We had been
7 cited for not saying it properly and we
8 rectified that.

9 Q. For well-control operations, if he
10 is not comfortable, he can take over. Is
11 that what you are saying?

12 A. If the vessel, the people or the
13 environment are under threat, he certainly
14 can.

15 Q. And how would the people on board
16 the vessel understand that without a
17 written --

18 A. They are aware of that. That has
19 always been the way it is. The way of the
20 world, for lack of a better way to say it.

21 Q. And you believe that Transocean
22 was in compliance based on that criteria
23 under Section A 6.2.1?

24 A. I certainly do, sir.

25 Q. Yes, sir. Please read out loud

1 Section 6.2.

2 A. "The company should ensure that
3 each ship is manned with qualified and
4 certified seafarers in accordance with the
5 national and international requirements."

6 Q. Yes, sir. Referencing Tab 6, the
7 document with Bates Nos.
8 TRN-USCG-MMS00043799 to 804.

9 Would you read Section 2.0, the
10 marine summary?

11 Are you familiar with this
12 document?

13 A. It is the Marine Summary of
14 Corrective and Improvement Opportunities
15 from what we call a PMAA audit -- PMAA
16 stands for Performance Monitoring Audit and
17 Assessment -- from January of 2009.

18 Q. And this was on the North American
19 division?

20 A. That was on the NAM division
21 office.

22 Q. Can you describe that?

23 A. It is an acronym for the North
24 American division. It is in the Park
25 10 industrial space.

1 Q. I am in the military, I like
2 acronyms. Please read the marine summary at
3 the bottom.

4 A. The marine summary?

5 Q. Yes, sir, please.

6 A. "After interviews with the NAM
7 marine department, it was clear through
8 conversations that a concerted effort was
9 under way to improve the competency of the
10 marine people within the NAM fleet. It was
11 envisioned to take the form of an improved
12 training curriculum, drill scenarios and
13 mentoring. A forum of senior marine people
14 will be meeting soon to discuss what the
15 future improvement will look like."

16 Q. I know you did not assume your
17 position until November of 2009. Were you
18 aware of this situation, sir, this
19 particular document?

20 A. Yes, sir.

21 Q. Please explain why this
22 improvement was necessary?

23 A. To help educate the workforce.
24 Continuous improvement is something we
25 strive to do all the time.

1 Q. If you do that -- if it is
2 normal --

3 A. The normal progression of things,
4 yes.

5 Q. So then why would it be identified
6 specifically in this section?

7 A. Because we were bringing in marine
8 people specifically to work on the manuals I
9 told you about changing. We saw it as
10 easier to promulgate if we broke it into
11 manageable sections. The marine compliance
12 procedures manual came out of that.

13 And then, because the nature of
14 our vessels are so different, there is a big
15 spectrum of what the drilling rigs look like
16 around the world. We had one marine field
17 operations manual and it tried to address
18 all of these things for everybody under the
19 sun.

20 That was difficult to use,
21 difficult to push forward and train from.
22 So the initiative was to break it down into
23 a marine compliance procedures manual, a
24 manual that addresses deep DP vessels, a
25 manual that addresses midwater and harsh

1 environment semisubmersible vessels and a
2 manual that addresses jack-up MODUs. That
3 is what this is in reference to.

4 We were bringing in marine people
5 from those other divisions and the result
6 turned out to be those four manuals.

7 Q. That is not what this says in this
8 block. It talks about competency of marine
9 people within the NAM fleet.

10 A. We wanted to improve the
11 competency.

12 Q. What was wrong with the
13 competency?

14 A. We strive for continuous
15 improvements, Captain. There is nothing
16 wrong with it. It is in compliance, if that
17 is what you are making reference to. But
18 we, in all facets of our business, we strive
19 to make continuous improvements. That is
20 all it makes reference to. It is not
21 critiquing the competence of our people, it
22 is just saying we always want to make them
23 better at what they do.

24 Q. Let's go to Tab 7. MBI transcript
25 of August 23, 2010, pages 494 through 496.

1 MR. JOHNSON:

2 Could you identify the parties to
3 this transcript?

4 CAPT. NGUYEN:

5 Yes, sir. Mr. Daun Winslow and
6 myself.

7 THE WITNESS:

8 I'm finished reading the document.

9 EXAMINATION BY CAPT. NGUYEN:

10 Q. Yes, sir. The top of that line of
11 questions was relating to the experience of
12 Transocean masters working in the Gulf of
13 Mexico. Correct?

14 A. I assume that.

15 Q. My question to him was would it
16 surprise him that 7 out of 14 Transocean
17 masters have less than one year of
18 experience as master in operation of an
19 offshore drilling rig. He said it would not
20 surprise him, as you have read in the
21 transcript. Is that what you understand?

22 A. Yes.

23 Q. What reason did he give, sir?

24 MR. SCHONEKAS:

25 Objection, the document speaks for

1 itself, Judge. I mean, we are asking this
2 witness to confirm the explanation
3 Mr. Winslow gives for the experience that he
4 recites. That is not probative of anything.

5 JUDGE ANDERSEN:

6 I think the captain's purpose is
7 to have people know what Mr. Winslow's
8 opinion was so that when Mr. Canducci
9 expresses his view, that everybody has the
10 same information.

11 Everyone doesn't have the
12 transcript. So I think it was more a
13 courtesy to the audience to read it rather
14 than an endorsement of a statement.

15 MR. KALIM:

16 Transocean joins the objection.
17 It is unfair to break out 2 pages of a
18 500-page transcript with multiple hours of
19 testimony and try to get general opinions
20 from this witness.

21 JUDGE ANDERSEN:

22 If it is convenient for the
23 witness to read it, that is fine. I think
24 we will know how the question is framed in
25 the witness' mind if we know he has read it.

1 It doesn't mean he agrees with anybody's
2 conclusions.

3 So as a courtesy to everyone, read
4 it and we'll see --

5 MR. JOHNSON:

6 We just ask that you refer us to
7 the line you want us to start reading at.

8 CAPT. NGUYEN:

9 Yes. Line 16.

10 MR. JOHNSON:

11 Which page?

12 CAPT. NGUYEN:

13 On page 495.

14 THE WITNESS:

15 "I think over the last -- it is my
16 opinion over the last five years, there was
17 a lot of new-build drillships and vessels
18 that came out, so there is only so many
19 masters in the world in the deepwater
20 drilling industry. Some we have moved
21 purposely to another vessel and some have
22 departed and gone to work for other
23 companies."

24 EXAMINATION BY CAPT. NGUYEN:

25 Q. Is that also your opinion why 7

1 out of 14 masters for Transocean have less
2 than 14 years of experience?

3 A. I think that is a gross
4 mischaracterization of the facts. On 14
5 vessels, there are, in fact, 28 captains,
6 and 7 of 14 is 50 percent, and 7 of 28 is
7 25 percent.

8 So there is a magnitude of
9 difference. I don't deny that some of what
10 Mr. Winslow has said is true. I could never
11 give it any kind of -- other than
12 qualitative value to his comment, I can't
13 say there is any quantitative recognition as
14 to how many guys are gone, what the
15 attrition rate is and the extent of how
16 depleted, I guess is a way of looking at it,
17 how depleted is our fleet of captains. I
18 don't go there with that.

19 So to answer your question do I
20 agree with him, not a great degree, although
21 I could recognize we are challenged to keep
22 quality people on board our vessels.

23 Q. Do you know what the average
24 captain's experience is in deepwater
25 drilling?

1 A. No, sir, I don't.

2 Q. And do you think Transocean is
3 compliant with ISM code Section 6.1.2, which
4 is "The company shall ensure that the master
5 is fully conversant with the company's
6 Safety Management System"?

7 A. Yes, I think we are compliant with
8 that.

9 Q. Please read out loud ISM code Part
10 A, Section 6.3.

11 A. "The company should establish
12 procedures to ensure that new personnel and
13 personnel transferred to new assignments
14 related to safety and protection of the
15 environment are given proper familiarization
16 with their duties. Instructions which are
17 essential to be provided prior to sailing
18 should be identified, documented and given."

19 Q. Yes, sir, were you aware of the
20 situation on the HORIZON where Mr. Robert
21 Kaluza replaced Mr. Ronnie Sepulveda as one
22 of two BP wellsite leaders on board?

23 A. No, sir.

24 Q. Please read Section 7.

25 A. "Shipboard operations: The

1 company should establish procedures, plans
2 and instructions including checklists as
3 appropriate for key shipboard operations
4 concerning the safety of personnel, ship and
5 protection of the environment. The various
6 tasks should be defined and assigned to
7 qualified personnel."

8 Q. Yes, sir. Does that include a
9 Management of Change process to include all
10 marine activities on board a MODU? Do you
11 have a Management of Change process to
12 coordinate all activities on board a vessel?

13 A. I don't think I understand what
14 you are asking.

15 Q. If there is a change in the marine
16 activities on the vessel, replacing the
17 engine, for example, or taking an engine
18 down for repair, for example, if there is a
19 change in status of the vessel, the drilling
20 operation over here may need that engine,
21 that power, is there a Management of Change
22 so that these activities are coordinated so
23 that people --

24 A. Yes, sir, we have a very strict
25 Management of Change process in our company

1 and all of our vessels.

2 Q. Is that a Management of Change
3 document that --

4 A. It is more general than that,
5 dealing with all operations. I think we
6 highlight how we interact. We have a
7 Management of Change system used at all
8 times where that would be captured.

9 Q. Referencing various MBI testimony,
10 are you familiar with Transocean's rig
11 maintenance system, sir?

12 A. Familiar is not what I would call
13 myself. I am aware it exists, I know how it
14 is executed, but I couldn't log on and use
15 it.

16 Q. Can you describe what a Rig
17 Management System is?

18 A. The Rig Management System is a
19 database for tasks assigned to take care of
20 the equipment on the drilling rig. It is a
21 system that when a maintenance task is
22 required to be performed on any given piece
23 of equipment, that comes up along with the
24 procedure that that task requires. And then
25 the individuals that use the RMS system

1 execute the maintenance, and then report and
2 build history of that particular machine.

3 Q. Yes, sir. Referencing various MBI
4 testimony, there were ongoing issues with
5 the RMS. Did Transocean implement a
6 management change for the RMS on board the
7 DEEPWATER HORIZON?

8 MR. JOHNSON:

9 Can you be more specific?

10 EXAMINATION BY CAPT. NGUYEN:

11 Q. The RMS implemented on the
12 DEEPWATER HORIZON, was there a Management of
13 Change to implement that tool on board the
14 DEEPWATER HORIZON?

15 A. The implementation of RMS on board
16 the DEEPWATER HORIZON followed a process and
17 that is how the change was managed. There
18 was training, people came in to the office
19 and were trained by a group of -- a group
20 that was assembled to execute this change
21 from impact to RMS.

22 Q. Yes, sir. But was there a
23 Management of Change that was given to
24 implement this tool so that everybody not
25 only was trained about the data, the data

1 qualities and everything else --

2 A. I think we are getting beyond the
3 extent of my knowledge. I know how the
4 process was executed, and that is the limit
5 of what I know.

6 Q. Yes, sir, was there a Management
7 of Change implemented?

8 A. Yes. That process was -- they
9 managed that change very well. They
10 established a group that was specifically
11 brought together to do that process. It
12 didn't just happen in the North American
13 division, it was in all divisions.

14 Q. So if we ask for a Management of
15 Change document for implementing the RMS2 on
16 the DEEPWATER HORIZON, that would be
17 available to us?

18 A. That is beyond my field.

19 Q. Did you see the Management of
20 Change document for the RMS, sir?

21 A. I did not.

22 Q. Yes, sir. Let's go to Tab 8.
23 Referencing document with Bates Nos.
24 BP-HZN-MBI00012140 to 45. This is the
25 procedure for managing and controlling

1 escape of hydrocarbons. If you go to
2 page 10.28, specifically Bates No.
3 BP-HZN-MBI00012144.

4 Have you seen that document
5 before, sir?

6 A. No, sir. Well, as part of that
7 which you showed me earlier.

8 Q. Yes, sir. This is just a
9 different section on emergency procedure.

10 Now, when a vessel goes into Phase
11 2 in response to an uncontrolled release of
12 hydrocarbons, on that page 10.28, the fifth
13 bullet down, that bullet is --

14 A. I'm losing -- I don't understand
15 what bullet you mean.

16 MR. JOHNSON:

17 You referenced Phase 2, but the
18 bullet you sent us to is --

19 CAPT. NGUYEN:

20 Page 10.28.

21 MR. JOHNSON:

22 There are -- where on that page,
23 from the top?

24 CAPT. NGUYEN:

25 Yes.

1 EXAMINATION BY CAPT. NGUYEN:

2 Q. Phase 2, and look at the previous
3 page -- whose action is this? It says
4 IM/master, but --

5 MR. JOHNSON:

6 I'm sorry. The fifth one down
7 from the top doesn't have reference to
8 IM/master.

9 EXAMINATION BY CAPT. NGUYEN:

10 Q. Yes, sir, that is why I am saying
11 the previous page is showing that those
12 actions belong to the IM/master.

13 Do you know who that is referring
14 to, sir?

15 A. I don't know. I have never seen
16 this document before prior to this.

17 Q. That's fine. But you are aware
18 because you have worked offshore before. I
19 assume, on page 10.27, sir, I assume that
20 last bullet on the bottom of the page, it
21 says, "Advise master and make ready to move
22 rig off location should it become
23 necessary."

24 I assume this action belongs to
25 the OIM. Is that reasonable to assume?

1 A. It is not unreasonable. I assume
2 we are now talking about something that has
3 become a threat to the vessel?

4 Q. Yes, sir. Let's go back to
5 page 10.28 and talk about the fifth bullet
6 again.

7 So the OIM, after consulting with
8 the operator, drilling representative and
9 toolpusher, if it is decided to move off
10 location, can request the master to proceed
11 with procedures to move off location. Is
12 that right?

13 A. Yes, sir.

14 Q. So I'm just trying to find out,
15 the OIM consulting with well leader, I don't
16 understand?

17 MR. JOHNSON:

18 Objection. The document speaks
19 for itself. It is a document he has never
20 seen before. He can read it to you if that
21 is what you would like, but you are asking
22 him to draw conclusions from a document he
23 has never seen before with acronyms he is
24 not familiar with, and now you are also
25 asking him to assume that the wellsite

1 leader somehow is implicated in what --

2 CAPT. NGUYEN:

3 This is a Transocean document with
4 Transocean terminologies, drilling
5 representatives. I just wonder who is
6 drilling representative, and in situations
7 where we need to move off, what is the
8 reason for the OIM to consult with these
9 people before requesting master to proceed
10 with procedure to move off location?

11 EXAMINATION BY CAPT. NGUYEN:

12 Q. I'm just trying to see if you have
13 knowledge. If you don't, you don't.

14 A. When a vessel comes under threat
15 like this, the master, the offshore
16 installation manager and the drilling
17 representative from the exploration and
18 production company that has hired the rig
19 are the three most experienced people on
20 board that rig. Not consulting them or not
21 having alignment in thoughts and giving
22 someone the opportunity to critique what is
23 going on, if any one of those people were
24 not involved, it would be less than a
25 comprehensive way to go about it.

1 So my speculation is that if those
2 three guys got together and there was threat
3 to the vessel under this sort of Phase
4 2 circumstance, they would agree, and then
5 the master would be the appropriate guy to
6 get the vessel moved away. Because that is
7 his role.

8 Does that help?

9 Q. Yes, sir. That is what I am
10 trying to do here. I have two documents,
11 Tab 8 and Tab 9, and Tab 9 is the emergency
12 response manual, BH-HZN-MBI00014820 to 28.
13 And have you seen this document before? And
14 this is on well-control, shallow gas
15 blowout.

16 A. Yes.

17 Q. You have seen it before?

18 A. I have certainly seen the
19 emergency response manual from the HORIZON.

20 Q. Between the Tab 8 and Tab 9
21 document, I am trying to see where the shift
22 in authority takes place.

23 MR. KALIM:

24 I object. He testified he has not
25 seen these documents before, or at least one

1 of them.

2 MR. JOHNSON:

3 In addition, Captain, your
4 question suggests that the entire universe
5 of documents that might reflect on that
6 subject are before him and/or available to
7 Mr. Canducci at this time and I suggest
8 that, in fact, they are not.

9 JUDGE ANDERSEN:

10 If he knows of any document that
11 does that, fine. As he sits here, he has
12 testified as to what has to happen for that
13 authority to shift. Do you know of any
14 document that defines that?

15 THE WITNESS:

16 No.

17 EXAMINATION BY CAPT. NGUYEN:

18 Q. No, sir?

19 A. No.

20 Q. Let's go to Tab No. 10, sir. Tab
21 10 is a document with Bates Nos.

22 TRN-USCG-MMS00024204 to 4206.

23 MR. JOHNSON:

24 Captain --

25 CAPT. NGUYEN:

1 What do you have there?

2 MR. JOHNSON:

3 We have a couple less numbers than
4 you. You start at 42606, ending in 42609.
5 Is that what you are referring to?

6 We have it.

7 EXAMINATION BY CAPT. NGUYEN:

8 Q. If you look on top, sir, what kind
9 of drill was this, in the middle of the
10 page?

11 A. It is an abandon ship drill.

12 Q. And if you look a little higher
13 up, what is the number of persons on board?

14 A. 144.

15 Q. Number attending?

16 A. Number attending is 144.

17 Q. This is abandon ship drill. Why
18 is the number of people attending the same
19 as those persons on board?

20 MR. JOHNSON:

21 I object to the extent it calls
22 for speculation. You have not established a
23 proven foundation.

24 EXAMINATION BY CAPT. NGUYEN:

25 Q. Would there be people on board

1 operating the dynamic positioning system?

2 A. Yes.

3 Q. People engaging in well operation?

4 A. There would be.

5 Q. Why would the number of
6 attendance, 144, be the same? I am trying
7 to get clarification.

8 MR. JOHNSON:

9 Objection, calling for
10 speculation. You are asking a person who
11 wasn't there and who has had no activity or
12 actions in compiling this report to testify
13 about events that occurred back in
14 April 2010.

15 JUDGE ANDERSEN:

16 What's the question then? If he
17 can answer, fine, if he can't, I repeat for
18 the 11th time, you don't have to guess or
19 speculate.

20 EXAMINATION BY CAPT. NGUYEN:

21 Q. Is this standard procedure within
22 the Safety Management System to list the
23 number of people attending as the people on
24 board for the abandon ship drill, if you
25 know?

1 A. When we conduct an abandon ship
2 drill, anybody who is assigned a role they
3 cannot walk away from is spoken to and it is
4 highlighted before the drill occurs. We
5 know who they are. And we have a remaining
6 list of those that we expect to attend at
7 muster point and whose names are, in fact,
8 checked off. That gives us the full roll of
9 those we expect to participate.

10 Those that do not participate,
11 that may be running the BOP system and those
12 up on the drill floor, which once again I
13 reiterate is a reduced number because
14 everybody that can attend, does attend. And
15 this can be affected by the current
16 operations on board, of course.

17 It is discussed with them what is
18 going to happen, so we give them credit for
19 attendance. We know that they are where
20 they are, it has been discussed and is part
21 of the plan, if you will. And it is not
22 always the same group who remain behind. So
23 they get their opportunity to be trained as
24 well.

25 Q. Yes, sir. I'm just trying to

1 understand the reliability of these safety
2 drill reports here. This is Tab 10 and the
3 next tab is 11, TRN-USCG-MMS00024208 to
4 4211.

5 MR. JOHNSON:

6 Captain, we don't have that. At
7 Tab 11, 0042610 is where our Bates number
8 begins. As in the last one, you gave us a
9 couple more digits there and I want to be
10 sure we are literally on the same page.

11 EXAMINATION BY CAPT. NGUYEN:

12 Q. We are looking at Emergency
13 Management System, and I am looking at these
14 two reports which are the two or three days
15 before the casualty here.

16 I am looking at the one that is
17 Tab 10. I see 144 for attendees and the
18 next drill is POB is 144 and the number of
19 attendance is 143. So I don't know whether
20 the people on watch, you accounted for them
21 and you include them in the people
22 attending, how those numbers are come up
23 with. That's what I'll try understanding,
24 if you know.

25 A. I don't know.

1 Q. If you go down to OIM and master
2 of vessel, onboard supervisor, those persons
3 are not specified.

4 MR. JOHNSON:

5 We are not seeing that, Captain.

6 CAPT. NGUYEN:

7 First page of both reports, sir,
8 look in the middle, and you see OIM and
9 master.

10 EXAMINATION BY CAPT. NGUYEN:

11 Q. You see that, sir? And the other
12 report is not specified for OIM and master.
13 Is it the Transocean policy not to list
14 actual names of individuals on board at that
15 time, sir?

16 A. No, there is no policy that drives
17 that.

18 Q. When I look at drill duration near
19 the top left side on each page, the first
20 page of each report, and it show 15 minutes
21 for drill duration. Is that in accordance
22 with Transocean policy that it only takes 15
23 minutes to do this drill, sir?

24 A. I can't answer that.

25 MR. JOHNSON:

1 Captain, I want to point out that
2 the document, as you stated correctly, does
3 say "Not specified" for OIM and master, but
4 the column below that for attendance, it
5 does list the OIM and the master.

6 CAPT. NGUYEN:

7 Yes, sir, I recognize that.

8 MR. JOHNSON:

9 Thank you.

10 EXAMINATION BY CAPT. NGUYEN:

11 Q. Now, if you go to Tab 11, sir,
12 TRN-USCG-MMS-00024208 to 4211, in the
13 description on that page they talk about a
14 ruptured fire hose. You see that, sir? You
15 see some mentioning of ruptured pipe?

16 A. I see a leak.

17 Q. In the "Comments" section, it
18 says, "Ruptured fire hose."

19 A. Right.

20 Q. Is maintenance of firefighting
21 equipment such as fire hose part of
22 Transocean's condition-based maintenance and
23 inspection system?

24 I know that sometimes when you
25 turn on a fire hose, things happen, but I

1 just wonder whether firefighting equipment
2 such as fire hose is part of your
3 condition-based maintenance inspection
4 system.

5 A. We maintain them. I don't think
6 we fix them very often, we replace them.
7 They are a consumable item that gets
8 replaced periodically.

9 There is a hose register -- and it
10 is in the history of the RMS -- there is a
11 hose register that is maintained as the
12 history in the RMS system. So that is as
13 much as I know about it.

14 Q. Yes, sir. In Coast Guard
15 regulation, there is specific requirement
16 for how often the fire hose is supposed to
17 be tested and to what pressure. Now, is
18 that what you use to inspect and maintain
19 your fire hose, or do you go with your
20 condition-based maintenance and inspection
21 system?

22 A. No, I am sure we are in keeping
23 with that regulation. We get audited.

24 Q. Could you read the comments under
25 "Future action"?

1 A. "Future action: Development
2 required. More focus on the proper donning
3 of gear to include all of the equipment.
4 All are hesitant to properly use the flash
5 hoods as they are hot and uncomfortable.
6 All fire team members were reminded to
7 ensure they utilize all of the proper
8 equipment and have other team members
9 inspect them before they enter a fire."

10 Q. Page 4 of 4, TRN-USCG-MMS00024211.
11 Please read fourth item down in "General
12 Comments" section.

13 A. "Approved/OIM."

14 Q. Next item.

15 A. "Drills need to be treated as the
16 real deal and all lifesaving equipment needs
17 to be utilized."

18 Q. What is the date of that?

19 A. April 18.

20 Q. Yes, sir. And this kind of drill,
21 what was this?

22 A. What kind of what?

23 Q. What kind of drill was this? It
24 is right in the middle there. Was it a fire
25 drill we're talking about here?

1 A. I think it was an abandon ship
2 drill. They generally are conducted
3 simultaneously. Fire drill.

4 Q. Yes, sir. So two days before
5 casualty, the date of this report filed by
6 Transocean personnel with these comments, do
7 you think they were ready to respond to fire
8 incident aboard a vessel, sir?

9 A. Oh, absolutely.

10 Q. Now, in previous hearing, the
11 board was told that the general alarm was
12 inhibited from the fire and gas system
13 because of safety; people don't want the
14 alarm going off and waking up people. Were
15 you aware of all that?

16 MR. JOHNSON:

17 I object. That is a clear
18 mischaracterization of prior testimony
19 before this board.

20 EXAMINATION BY CAPT. NGUYEN:

21 Q. Were you aware of the inhibition
22 of the general alarm, sir, in the automatic
23 mode?

24 MR. SCHONEKAS:

25 Per Coast Guard regulations,

1 Captain?

2 CAPT. NGUYEN:

3 No, just inhibiting the --

4 MR. SCHONEKAS:

5 To be operated in a manual manner

6 as was provided by the Coast Guard

7 regulation that I submitted to this board?

8 CAPT. NGUYEN:

9 I understand.

10 MR. SCHONEKAS:

11 Then let's give him a complete

12 question then.

13 EXAMINATION BY CAPT. NGUYEN:

14 Q. The practice on board the vessel

15 was to inhibit --

16 MR. SCHONEKAS:

17 No, sir. To operate them in a

18 manual mode.

19 EXAMINATION BY CAPT. NGUYEN:

20 Q. In a manual mode?

21 MR. SCHONEKAS:

22 Thank you.

23 THE WITNESS:

24 We know how they operate.

25 EXAMINATION BY CAPT. NGUYEN:

1 Q. Yes, sir. And the system is
2 capable of operating in manual mode?

3 A. Yes. It is computer-based and you
4 can get it to do that.

5 Q. And the reason given it was placed
6 in manual mode was for safety, you don't
7 want to wake up people in the middle of the
8 night --

9 A. I don't think we are
10 over-sensitized to people waking up in the
11 middle of the night. I don't think that is
12 the point. I don't think that is the point
13 at all. The way we operate our alarm system
14 is to alert somebody so that they can pass
15 judgment on the efficacy of the system, and
16 when it is deemed to be a proper alarm, then
17 the alarm is sounded to all.

18 Q. Yes, sir.

19 A. If the alarm perpetuates to the
20 point where people who reside on a 24-hour
21 basis are able to look into the issue and
22 deem whether it is an emergency or not.

23 Q. Yes, sir. As you understand it,
24 what was the reason for holding emergency
25 drill on Sunday at 12? Only on Sunday at

1 12? What was the reason for that? Was that
2 for Sunday, or why you have it on specific
3 date or specific time?

4 A. So that it becomes sort of rote.

5 Q. Sort of what, sir?

6 A. So that people react by rote
7 memory. That they respond in an equal and
8 equivalent time each time something happens.
9 We train them to respond in such a manner
10 that when the alarm sounds, they know what
11 to do. We do it the same time, all the
12 same, so that we feel when an alarm is
13 sounded, they will respond by rote.

14 Q. Right. But if it is only on
15 Sunday at 12, and if it is something that is
16 now outside of that, I mean, they only
17 expect on that day and during the -- I don't
18 understand the reason. Can you explain a
19 little bit more, please?

20 MR. SCHONEKAS:

21 Asked and answered.

22 MR. JOHNSON:

23 Same objection, Captain.

24 CAPT. NGUYEN:

25 I am just not clear and I need to

1 be clear so I can make recommendation on.

2 How can I do that if I am not clear?

3 THE WITNESS:

4 You seem to have a predetermined
5 idea that that is not correct, that
6 something alternative to that is what we
7 should be doing.

8 EXAMINATION BY CAPT. NGUYEN:

9 Q. No. I understand you need to do
10 the drill over and over so people know what
11 to do in emergency. What is the reason for
12 doing it on the same day, at the same time,
13 over and over?

14 MR. SCHONEKAS:

15 Objection.

16 JUDGE ANDERSEN:

17 My understanding of your answer is
18 so that you can evaluate from time to time
19 how they can respond each time. And I guess
20 the follow-up on the captain's question is
21 on any of the rigs, do you give any thought
22 to doing the drills at different times and
23 do you think there is an advantage to that?

24 THE WITNESS:

25 We had tried that in my career a

1 long time ago and deemed that it was an
2 added risk and was not very effective. It
3 agitated more issues than any advantage we
4 saw from that.

5 This is just personal experience.
6 This is not a Transocean position.

7 We went away from that and I have
8 never questioned it since.

9 JUDGE ANDERSEN:

10 So based on your experience doing
11 it both ways, you feel a set time of the
12 week is more effective?

13 THE WITNESS:

14 Much superior.

15 EXAMINATION BY CAPT. NGUYEN:

16 Q. There could be an impression that
17 if you take these three data points
18 together, No. 1, the general alarm was in
19 manual mode; emergency drill done on same
20 day at same time; and then comments on drill
21 report on 18 of April that people was not
22 comfortable with the firefighting equipment
23 and that the drill needed to be taken
24 seriously, what would you say about the
25 comment there was a culture of complacency

1 in terms of preparedness?

2 MR. SCHONEKAS:

3 Because of the Coast Guard
4 requirement that the alarm be operated in
5 manual?

6 CAPT. NGUYEN:

7 All three.

8 MR. SCHONEKAS:

9 So you are suggesting that by
10 virtue of the Coast Guard regulation, that
11 added to complacency on the ship?

12 JUDGE ANDERSEN:

13 He is asking the witness, if you
14 take all of that, was there a culture of
15 complacency. Frankly, I would be shocked if
16 he said that.

17 MR. JOHNSON:

18 Just to be sure I understand,
19 those three factors taken in a vacuum,
20 notwithstanding any other factors that might
21 be out there?

22 CAPT. NGUYEN:

23 Yes, sir. We have a catastrophe
24 out here. We are not here to identify
25 people's personalities, we are here to

1 identify gaps. I have three data points and
2 those three data points may give the
3 impression there was a culture of
4 complacency in terms of safety awareness on
5 that vessel, and if there was, how was that
6 handled in response. That is why I am
7 trying to get additional information.

8 THE WITNESS:

9 I think it is a huge leap to go
10 from those three data points to go to a
11 culture of complacency. So I disagree with
12 your assertion. If you look at the entire
13 body of every emergency response and
14 exercise conducted on board, you would have
15 a different picture and you would be
16 pointing out how exemplary the DEEPWATER
17 HORIZON acted in their safety culture.

18 EXAMINATION BY CAPT. NGUYEN:

19 Q. Yes, sir. Referencing Tab 12,
20 Bates Nos. TRN-USCG-MMS00043659 to 661. Do
21 you have that, sir?

22 MR. JOHNSON:

23 All of our numbers are cut off at
24 the right edge of the page. We have ISM
25 code certification for TODI, report

1 preparation date of April 10, 2008, and it
2 appears to consist of three pages.

3 CAPT. NGUYEN:

4 That's correct.

5 EXAMINATION BY CAPT. NGUYEN:

6 Q. On the last page,
7 TRN-USCG-MMS3661, if you could read item
8 No. 1, sir?

9 A. Out loud?

10 Q. Yes. Just the first sentence
11 there.

12 A. "It was noticed that following the
13 merger between Transocean and GlobalSantaFe,
14 many policies and procedures within the
15 combined organization were in the process of
16 being reviewed, evaluated and combined."

17 Q. My understanding is that you came
18 from GlobalSantaFe. Is that correct?

19 A. Yes.

20 Q. How did that merger affect the
21 effectiveness of the emergency response?

22 A. It was a challenge, but both
23 companies had a robust safety culture and a
24 Safety Management System that was functional
25 and working well.

1 When the companies merged, the
2 decision was made to adopt Transocean's
3 management system. That meant that the GSF
4 rigs had to make adjustments. There were
5 short-term and long-term goals to get a
6 gradual shift, and the systems in place when
7 the merger occurred were allowed to play out
8 until something specifically changed it.

9 For example, a GSF rig would have
10 operated with its GSF emergency response
11 manual until it was updated to a Transocean
12 manual, and that would have -- when that did
13 occur, there was a training process,
14 education and getting it out to everybody on
15 board. It didn't happen overnight. There
16 was a lot of work to do, and the work
17 continues, quite frankly.

18 Q. Yes, sir. Go back to Tab 1, sir.
19 This is the audit started April 15, 2009.
20 If you go back to observation No. 1, I'm not
21 sure if you read that item, but it is
22 referencing the merger again.

23 A. Am I to read it?

24 Q. You can read it to yourself and I
25 will ask a follow-up question.

1 A. Okay. I have read it.

2 Q. My question to you, is the effect
3 of the merger, was that still being dealt
4 with in April of 2009, sir?

5 A. I suppose so.

6 Q. Are there still outstanding issues
7 with respect to the Safety Management
8 System?

9 A. The DEEPWATER HORIZON was a
10 Transocean rig and we maintained the
11 Transocean management system. I don't think
12 there was a challenge to -- that was a moot
13 point. They didn't have a whole lot to
14 change other than assuming a smaller
15 proportional role in a company that was just
16 a tad larger.

17 But their management system would
18 not have changed. They had to adopt a
19 change in their maintenance system, and they
20 did that without any undue issues. There
21 are challenges every day, but they did it
22 and they were through it.

23 So I don't think the DEEPWATER
24 HORIZON had lingering issues that were
25 insurmountable or that played out in this

1 event.

2 Q. With a merger, considerable
3 resources had to be devoted to complete that
4 merger. So I wonder if the resources
5 available to the Transocean --

6 A. Were diverted?

7 Q. Right. That is what I'm trying to
8 get to, not just the manual that they used,
9 but the resources available to the vessel in
10 terms of emergency preparedness.

11 A. If I could point out,
12 GlobalSantaFe had an equally robust
13 management system and as many professionals
14 to execute it as did Transocean. So when
15 the merger occurred, there was an aligning
16 of people's roles and responsibilities and
17 what they had to do. But we didn't
18 necessarily have to divert resources, we had
19 to educate the people in some of the nuances
20 of what a merger entails. But there was no
21 diverting of resources.

22 Q. Yes, sir, I understand.

23 Let's go to Tab 13, Bates Nos.

24 TRN-USCG-MMS3694 to 97.

25 MR. JOHNSON:

1 Again, our pages have been cut off
2 so far as the Bates numbers involved. This
3 is an interoffice correspondence dated 15
4 March 2010 from Jimmy Moore to A. Rose and
5 J. Harrington consisting of four pages; is
6 that correct?

7 CAPT. NGUYEN:

8 Yes, sir, that is correct. I
9 apologize for the quality of those
10 documents. Why don't you take my book and
11 let me have the other book.

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. On TRN-USCG-MMS000-4369 --

14 MR. JOHNSON:

15 Well, now, we have the reverse
16 problem.

17 CAPT. NGUYEN:

18 That's fine.

19 EXAMINATION BY CAPT. NGUYEN:

20 Q. Can you read the item in the 4.0
21 section, "Observation and opportunities for
22 improvement," items 2 and 3, please, out
23 loud.

24 A. "An audit of records demonstrated
25 that the corporate emergency response team

1 contact list on the QHSE intranet Web site
2 has not been updated in a timely manner to
3 ensure the contact information is correct.
4 Last revision date October 1, 2009."

5 And No. 3, "In review of the roles
6 of the emergency response team, it was
7 identified that personnel assigned a role
8 within the team have not been provided with
9 training regarding their duties."

10 Q. Yes, sir. And these two
11 observations were made on March 15, 2010.
12 Is that correct, sir? An internal ISM audit
13 of the corporate office in Houston, listed
14 on the first page of the document.

15 A. Yes.

16 MR. KALIM:

17 Again, Your Honor, I object to the
18 extent this is a corporate ISM issue dealing
19 with the home office and not the NAM office
20 that this witness has testified he has
21 responsibility and authority over. We would
22 object to that extent to the question.

23 EXAMINATION BY CAPT. NGUYEN:

24 Q. Yes, sir. And in determining the
25 gaps in the system not only for the

1 vessel -- we need to look at that, and if it
2 is the entire corporation we need to look at
3 that if it contributed to the casualty. I
4 understand your point, but I think there is
5 some relevance here.

6 Now, this is about ten days before
7 the casualty, and this document was an audit
8 done internally by Transocean, documented by
9 Transocean to show that the emergency
10 response team may not be as ready as it
11 could be. Is that correct, sir, from
12 reading those two bullet items?

13 MR. JOHNSON:

14 I object. That is a
15 mischaracterization of what the document
16 says.

17 EXAMINATION BY CAPT. NGUYEN:

18 Q. So "Contact list not updated,"
19 bullet No. 2. Bullet 3 says, "In reviewing
20 the roles of the emergency response team, it
21 was identified that personnel assigned a
22 role within the team have not been provided
23 with training regarding their duties."

24 If they are not trained, how can
25 they perform?

1 MR. JOHNSON:

2 Objection, calls for speculation,
3 particularly since you are asking him about
4 a division he has no responsibility over.

5 JUDGE ANDERSEN:

6 Well, that's where we were before.
7 If you don't have enough information to
8 fairly evaluate this, you can let the board
9 know. If you do, based upon your
10 experience, and you think you can shed some
11 light on this, feel free to express that
12 view. The witness obviously has frequently
13 said he doesn't have enough information to
14 answer it and the captain has moved on.

15 THE WITNESS:

16 I don't know about the corporate
17 office's preparedness in this issue.

18 EXAMINATION BY CAPT. NGUYEN:

19 Q. We talked about the vessel's
20 organizational structure and the competence
21 of the emergency team, these items here, and
22 I asked for more information from Transocean
23 to supplement the record, but based on this
24 information, was Transocean ready to respond
25 to a casualty of this severity, in your

1 opinion, and the DEEPWATER HORIZON in
2 particular?

3 A. Well, the emergency response team
4 that was in the North American division
5 responded impeccably well. Those offshore
6 responded impeccably well and executed the
7 emergency response function under the
8 conditions they could, which were
9 horrendous. Picking out individual line
10 items and suggesting they have an overriding
11 impact doesn't seem like the right way to go
12 about it.

13 I think we ought to look at it all
14 and decide is it doing well or not doing
15 well, or pick out an equivalent amount of
16 exemplary comments and talk about those in
17 addition to these brief comments on a report
18 that some individual wrote not trying to
19 satisfy any code or regulation, but just
20 trying to recognize that maybe we could do a
21 little better, and pointing that out to us.

22 But a telephone list not being
23 kept up, it certainly isn't a wonderful
24 thing, but I don't think it had any impact
25 on the event. I recognize that we are all

1 human and we all have to strive to improve.

2 Q. Yes, sir. I don't have to respond
3 to that.

4 But what I am looking at is when
5 there are threats to both the marine
6 environment and personnel activities, what
7 assistance can you give us to close those
8 gaps? I apologize by saying we are not here
9 to document for a safety award here. We are
10 here to identify gaps, and oftentimes it is
11 hard to look at these things and face them,
12 but that is why we are here. We have spent
13 eight months now and it is not an easy thing
14 that we are doing and I appreciate you being
15 here.

16 Now, with all of these items, do
17 you think Transocean's North American
18 division was satisfactory in compliance with
19 Section 8 of Part A of the code on emergency
20 preparedness? If you look at the items I
21 cited, which is what we have -- and again,
22 Transocean or any other interested party can
23 supplement the record. I am trying to be as
24 transparent as I can with this. We are not
25 holding anything back. This is what we have

1 and the gaps that we see.

2 A. The way I respond to that,
3 Captain, is we have documents of compliance
4 and safety management certificates that
5 Section 8 has to be in place and complied
6 with for us to hold.

7 Taking individual items and
8 suggesting that should not be the case is
9 not the right way to go about it.

10 Q. Yes, sir.

11 A. So I don't have much more to say
12 on this interoffice document.

13 Q. Do you need to take a break?

14 A. I am fine.

15 Q. Section 9 is on "Reports and
16 Analysis of Nonconformities, Accidents and
17 Hazardous Occurrences."

18 Go to Tab 14. There is the Bates
19 Nos. RMI00184 to 194.

20 MR. JOHNSON:

21 We have through 195, Captain.

22 CAPT. NGUYEN:

23 You are right. It is
24 double-sided.

25 EXAMINATION BY CAPT. NGUYEN:

1 Q. This document is relating to a
2 flooding casualty on the DEEPWATER HORIZON
3 on 26 May 2008 of the starboard forward
4 column.

5 If you go to the last couple of
6 pages, sir, I think that is the report to
7 the Republic of Marshall Islands. You can
8 see that is describing the flooding. Were
9 you aware of that?

10 A. Yes, I am.

11 Q. The estimated loss to the vessel
12 is \$928,000. You see that? RMI00192, sir.

13 A. I don't know what makes up that
14 actual number.

15 Q. Do you know the actual damage
16 costs? If you don't know, you don't know.

17 A. What the damage was as a result of
18 the flooding incident?

19 Q. The cost to repair.

20 A. No, I don't. That seems rather
21 high to me.

22 Q. Did Transocean investigate this
23 casualty?

24 A. Yes.

25 Q. Did it evaluate whether this

1 casualty was as a result of the failure of
2 the DEEPWATER HORIZON's Safety Management
3 System?

4 A. What I recall -- and I had no
5 specific involvement in the investigation --
6 I vaguely remember seeing the report when it
7 came out, and I don't remember seeing a
8 preliminary report. I certainly had some
9 discussions about its occurrence, they
10 certainly were not in-depth, looking for the
11 root cause. I think the mechanical
12 supervisor chose to take the T piece out of
13 a ballast system, and I am not sure what
14 instigated the flood there, but I think
15 somebody opened a valve while the T piece
16 was removed.

17 This issue was a failing on the
18 individual's part, because he was mandated
19 to -- in our Safety Management System, he
20 would have been mandated to take a Permit to
21 Work prior to doing that. He took it upon
22 himself to execute that task unannounced and
23 unknown to anybody. That is what the
24 failing was.

25 His employment was severed as a

1 result of the investigation and so on. If
2 he had done it properly, there would have
3 been a Permit to Work taken out and those
4 who needed to work the valve would have
5 known about it. The permit would have been
6 pinned on the ballast control board in the
7 room where the people executed that
8 function.

9 In addition, he was required to
10 put a blind flange to the ocean side and he
11 never did that either. So his blatant
12 disregard for the rules is what resulted in
13 his termination.

14 The system -- it depends on the
15 people working -- but the system would have
16 captured all of that had he not chosen to
17 disregard it.

18 Q. Yes, sir. And that would be an
19 example relating to the Permit for Work
20 system that I will refer to later on.

21 Now, you say there was an
22 investigation and you saw that report?

23 A. I think I saw a preliminary
24 report.

25 Q. So if that exists, we can subpoena

1 that. But to your knowledge, that document
2 does exist?

3 A. Yes.

4 Q. Now, this particular casualty was
5 on a foreign vessel, and the nature of this
6 casualty was not reportable to the Coast
7 Guard but it was reportable to the flag
8 state. Are you aware of whether flag state
9 investigated this casualty?

10 A. I am not aware of that. I am not
11 aware if the flag state investigated.

12 Q. Even though it was not reportable
13 to the Coast Guard, the Coast Guard did look
14 into it. Were you aware of that, sir?

15 A. No, I was not.

16 Q. Let's go to Tab No. 15, sir. This
17 document has Bates Nos. ABSDWH003904 to
18 ABSDWH003916.

19 MR. JOHNSON:

20 We have it, Captain.

21 EXAMINATION BY CAPT. NGUYEN:

22 Q. Have you seen this document
23 before, sir?

24 A. No, sir.

25 Q. Have you seen a similar document

1 from the American Bureau of Shipping?

2 A. Yes, I know what a class survey
3 report looks like.

4 Q. Yes, sir. Now, if you flip to
5 page 2 of 13, which is Bates No.
6 ABSDWH003905.

7 A. I am on that page.

8 Q. Yes, sir. This survey here was
9 related to that flooding incident. Do you
10 agree, sir?

11 A. I don't know how that is
12 established here.

13 MR. JOHNSON:

14 Give us a moment, please.

15 CAPT. NGUYEN:

16 Yes, sir.

17 MR. JOHNSON:

18 All right.

19 EXAMINATION BY CAPT. NGUYEN:

20 Q. Yes, sir.

21 You can see "flooding" and the
22 water level.

23 A. Okay.

24 Q. Yes, sir. So this was a class
25 report relating to the flooding and

1 casualty.

2 On the first page in the middle of
3 the page, you see there is a statement about
4 a Safety Management System. Could you read
5 the sentence below that?

6 A. "No deficiencies were observed
7 during this survey relating to possible
8 Safety Management System failures."

9 Q. Did you ask ABS to look into and
10 evaluate the Safety Management System of the
11 vessel as related to this casualty?

12 MR. JOHNSON:

13 Captain, I object. This is a
14 report from December 8, 2008, 11 months
15 before Mr. Canducci became QHSE --

16 CAPT. NGUYEN:

17 Let me rephrase my question.

18 EXAMINATION BY CAPT. NGUYEN:

19 Q. Were you aware if Transocean did
20 ask ABS to evaluate the Safety Management
21 System as related to this incident?

22 A. No, but I think as -- no, sir, I
23 am not. I don't know if they did or did
24 not.

25 Q. Yes, sir. As the ISM designated

1 person, do you look to this kind of report
2 for evaluation of your Safety Management
3 System?

4 A. The class survey report would be
5 more looked at by the asset rig manager and
6 the performance rig manager. It is not
7 likely, unless they were looking for some
8 sort of resource help or guidance or an
9 opinion, that I would necessarily read it.

10 I can't say that it might not per
11 chance come across my desk for some other
12 reason, but that is not the normal
13 progression of things.

14 Q. I have seen many reports that have
15 this statement on there. Have you seen this
16 statement before, sir, in terms of the "No
17 deficiencies observed during survey related
18 to Safety Management System"? Is that the
19 standard verbiage you see on these reports?

20 A. No. I think it is if we are
21 scrutinizing the Safety Management System
22 and we see line items for improvement, as I
23 tried to convey earlier. As we look several
24 pages on, the system would have captured
25 that had our individual not decided to

1 circumvent the system.

2 So I guess you are asking me if
3 this is sort of an off-the-cuff comment, and
4 I don't think that is true.

5 Q. No. I am asking if you rely on
6 such statement as to your investigation. If
7 you see that, you would not look into it
8 within your own investigation?

9 A. No. Captain, honestly, we strive
10 to improve all the time. I wouldn't put
11 anymore stock in that than what it is. It
12 is not a "from here on out, we will be
13 good." It is just what it is.

14 Q. You don't know how the ABS made
15 that determination?

16 A. I do not, sir.

17 Q. Let's go to Tab 16, sir. That is
18 a document Bates Nos. RMI00180 through 183.
19 Do you have that?

20 A. Yes.

21 Q. This is relating to the loss, the
22 casualty of loss of electrical power and
23 propulsion power for about two minutes on
24 August 7, 2008. Were you aware of this
25 particular incident, sir?

1 A. No, sir.

2 Q. Would that be an incident that
3 your Safety Management System would
4 investigate and try to identify if there was
5 any gap in your Safety Management System?

6 A. That wouldn't come under the
7 Safety Management System, unless someone
8 were to be injured and an investigation
9 report was necessary. This would more
10 likely come under the technical field
11 support. If they had a blackout or there
12 was an issue with machinery that
13 precipitated that event, that would be
14 looked at by people who know about that
15 stuff, meaning our technical people. So it
16 doesn't feed into the Safety Management
17 System as a matter of course.

18 If someone happened to be injured
19 during that event, it would be investigated
20 from a different perspective.

21 I assume, though I haven't read
22 the document or read anything about the
23 event, if it is simply a blackout and we
24 don't know why the rig went black, it would
25 be investigated by people who could

1 determine what the problem was and what the
2 appropriate fix should be.

3 Q. Right. But what criteria do you
4 use on when to investigate a casualty?

5 A. I don't think that is a casualty.

6 Q. It is not a casualty?

7 A. Well, by the official definition
8 of casualty, it may be. But we didn't
9 suffer a loss other than the power loss, and
10 nobody was injured. Our Safety Management
11 System focuses on loss when it pertains to
12 the environment or personnel. Property
13 damage doesn't really come up that line of
14 progression. It goes to people in technical
15 field support, in our engineering department
16 and the asset management group that deal
17 with mechanical, technical issues.

18 Q. But that is not consistent with
19 the previous casualty.

20 A. I think you misunderstood. I am
21 sure this blackout was investigated. I am
22 sure the flooding event was investigated.
23 Neither of them was investigated by me or
24 our Safety Management System.

25 Well, the technical issue of the

1 rig blacking out has to be investigated by
2 people who know what to look for, what they
3 find and how to put a mechanism in place to
4 keep it from happening again. Not the
5 Safety Management System. The technical
6 management system, if we can call it that,
7 is what manages that.

8 There was no threat to life and
9 limb with that blackout, other than perhaps
10 someone tripping as they tried to go down
11 the ladder.

12 You see what I am saying? There
13 are systems and people in place to manage
14 that.

15 Q. What happened is you have two
16 minutes total loss of electrical and
17 propulsion power. If this vessel was on
18 location drilling and you lost total power
19 for two minutes, what would the consequences
20 of that be?

21 A. Depending on the prevailing
22 circumstances. It could be a pollution
23 event, could be damaged equipment.

24 When did it occur? Some days,
25 there are no prevailing winds, waves or seas

1 and the riser itself will hold it on
2 location if it happens to be connected to a
3 wellhead.

4 Q. I mean, you have casualty here
5 significant enough to report to flag state.
6 You talk about casualty to vessel dependent
7 on dynamic positioning to hold on station.
8 You depend on power when it could be in the
9 middle of a well-control event.

10 MR. JOHNSON:

11 Captain, he was not in his current
12 position when that happened, and in
13 fairness, he is not here to agree with you,
14 he is here to give you his opinion.

15 EXAMINATION BY CAPT. NGUYEN:

16 Q. Did you ever see an internal
17 investigation report on this accident?

18 A. No.

19 Q. Do you know if the flag state
20 investigated this casualty, sir?

21 A. No, sir, I do not.

22 MR. JOHNSON:

23 We have been in the box for an
24 hour and 40 minutes. Is this a good time to
25 break?

1 CAPT. NGUYEN:

2 Absolutely, take a break until
3 11:45.

4 (Recess.)

5 EXAMINATION BY CAPT. NGUYEN:

6 Q. You are still under oath, Mr.
7 Canducci.

8 If you could go to -- we are on
9 the issue of major nonconformity. Under
10 "Observation," if you could read that.

11 A. "Observation means a statement of
12 fact made during a safety management audit
13 and substantiated by objective evidence.

14 "Nonconformity means an observed
15 situation where objective evidence indicates
16 that nonfulfillment of a specified
17 requirement."

18 Shall I carry on?

19 Q. Yes, under "Major Nonconformity."

20 A. "Major nonconformity means an
21 identifiable deviation that poses a serious
22 threat to the safety of personnel or the
23 ship or a serious risk to the environment
24 that requires immediate corrective action
25 and includes the lack of effective and

1 systematic implementation of a requirement
2 of this code."

3 Q. I will ask you a number of
4 questions relating to Tab No. 17, which is
5 the BP DEEPWATER HORIZON follow-up audit.
6 We included the whole document there for
7 you. There was a spreadsheet that showed
8 the item. Have you seen this document
9 before, sir?

10 A. No, sir.

11 Q. Would you just take your time and
12 scan through it real quick?

13 My understanding is that BP, as
14 the lessee operator, would do these rig
15 audits to assess the condition of the vessel
16 and then communicate those discrepancies and
17 then work with you on those discrepancies.
18 Is that what this report is about?

19 A. I think so. I don't know yet. It
20 is not uncommon for a customer to work with
21 us.

22 Q. And if you want, if you could just
23 take a look at the items on pages 2 and 3 --

24 A. "Findings"?

25 Q. Yes, sir, "of particular note."

1 Now, I think this document
2 everybody have access to, but Bates No. is
3 BP-HZN-MBI00136211. The pages I provided to
4 Mr. Canducci is up to 6227.

5 A. Agreed.

6 Q. If you can just scan through pages
7 2 and 3, sir, the findings of particular
8 note. If you would look at those items.

9 A. Yes, sir.

10 Q. The reason I asked you to read
11 that, Section item 1.19, which is on
12 definition of nonconformity, and item 1.10,
13 definition of major nonconformity, based on
14 your knowledge of the ISM code, is this
15 clear as to whether an item would be an
16 observation, nonconformity or major
17 nonconformity. Is that correct?

18 MR. JOHNSON:

19 I want to object before we start
20 if it is your intention to start reading the
21 bullet points that appear in this document
22 and have him issue you an instanter
23 scorecard of what these events would be
24 called with nothing more to go on other than
25 this document. It is calling for total

1 speculation and is a waste of time.

2 MR. KALIM:

3 Same objection on behalf of
4 Transocean.

5 CAPT. NGUYEN:

6 I understand. Mr. Canducci is
7 Transocean's designated ISM person who have
8 knowledge and skills and experience in this
9 area. I am just saying if that's the
10 definitions, can he answer --

11 MR. JOHNSON:

12 It is terribly unfair to ask a
13 person just looking at these documents to
14 give you a snap answer to how they might be
15 classified without having the ability to
16 look behind the statements in here and the
17 documents, I'm sure, that exist with respect
18 to each one.

19 We are not here to take a test, he
20 is here to give you his best testimony. If
21 you want to go through that, as the Judge
22 has admonished him, if the answer is "I
23 don't know," we will get on with this
24 process.

25 MR. KALIM:

1 I will object as there is
2 testimony in this record established earlier
3 today as to those who have responsibility
4 for following up on this specific audit that
5 several witness have been questioned about.
6 Not once has Mr. Canducci's department or
7 Mr. Canducci by extension been advised of
8 these issues at the time they were ongoing.
9 By the time these issues arrive to this
10 point, they have been corrected and dealt
11 with. So to ask him to go back through a
12 system he is not a part of and to comment on
13 these issues is patently unfair and I ask
14 that this question be prohibited.

15 JUDGE ANDERSEN:

16 It is not going to be prohibited,
17 but there is also a chance -- we don't
18 know -- there is a chance that through his
19 experience and knowledge, he knows something
20 about these things that even the Coast Guard
21 people don't know in terms of how important
22 they are, whether or not they should be
23 addressed. And so his views on that,
24 understanding he doesn't have the background
25 on all this, might be instructive to the

1 board or the individuals on the board.

2 With that in mind, and
3 understanding you are not supposed to guess
4 or speculate, go ahead.

5 EXAMINATION BY CAPT. NGUYEN:

6 Q. The issue is not whether these
7 items are corrected, the issue is whether or
8 not these items in this report existed and
9 were identified in the Safety Management
10 System on board the DEEPWATER HORIZON and
11 the Safety Management System on the
12 DEEPWATER HORIZON did not caught these
13 things. I am trying to evaluate the
14 effectiveness of your Safety Management
15 System.

16 Why does it take a third party
17 like BP to identify these items? Why didn't
18 your system identify these items? You don't
19 know how they are supposed to be fixed, but
20 you should know if they are severe enough to
21 be a nonconformity, major nonconformity or
22 observation. I think with your experience,
23 you should be able to testify to that.

24 MR. SCHONEKAS:

25 I object to Captain Nguyen

1 instructing the witness as to what he should
2 or shouldn't know.

3 JUDGE ANDERSEN:

4 Let's just go.

5 EXAMINATION BY CAPT. NGUYEN:

6 Q. "Blowout preventer out-of-date for
7 inspection."

8 MR. LONDON:

9 What page are you on?

10 CAPT. NGUYEN:

11 It is not a page. These are items
12 that came out of the report, and I am asking
13 in his opinion, in his judgment as
14 designated ISM person for North American
15 division, he should have the knowledge,
16 skills and experience to make judgments on
17 these items, whether he --

18 MR. LONDON:

19 I understood that you were reading
20 from a document. And this is from the
21 September 2009 audit?

22 MR. DYKES:

23 The statement "Out-of-date for
24 inspection" is not entirely correct. It is
25 not that it is required to be inspected by

1 the original equipment manufacturer, it just
2 requires that every five years of service,
3 the BOP stack, choke manifold and diverter
4 components should be disassembled and
5 inspected in accordance with the
6 manufacturer's guidelines.

7 I just wanted to be sure that is
8 entered right. It is not requiring that the
9 BOP be inspected by the manufacturer.

10 MR. SCHONEKAS:

11 Than you, Mr. Dykes.

12 MR. GODFREY:

13 I understand the point you make,
14 but the document says something different,
15 and that is the document that BP prepared.
16 So while your point is very well said, BP
17 said it quite differently to Transocean. I
18 don't think you should suggest that BP was
19 saying something different than what is
20 written on the report.

21 MR. JOHNSON:

22 Captain, can you repeat the
23 question?

24 EXAMINATION BY CAPT. NGUYEN:

25 Q. My understanding of Title 30 CFR

1 250.146, points to API 53. Anybody dispute
2 with that?

3 You go to API 53, and it is saying
4 that the maintenance and the inspection of
5 the BOP should be to OEM specification every
6 three to five years.

7 Anybody dispute that?

8 That's what I am saying. Here it
9 says the BOP certification inspection was
10 not every three to five years in accordance
11 with CFR --

12 MR. SCHONEKAS:

13 Is Captain Nguyen going to take an
14 oath and testify here? This is clearly not
15 proper. He is not seeking information. He
16 is giving his spin of what he believes the
17 facts to be and trying to get this witness,
18 by virtue of a cumulative question, to say
19 "isn't that right," and that is improper.

20 CAPT. HIGGINS:

21 Captain Nguyen is trying to
22 clarify what is the level of these
23 nonconformities if they exist. And if the
24 BOP was out of certification, would that --
25 what level of nonconformity under the code?

1 MR. KALIM:

2 With all due respect, there are
3 other parties who have come out and
4 inspected this rig, including the Coast
5 Guard, including MMS, other entities,
6 including DNV, who did not note any
7 observations, nonconformities, et cetera.
8 So this witness' testimony on that point is
9 totally irrelevant. Those are the governing
10 authorities. To go through this exercise is
11 a total waste of time, objectionable and
12 prejudicial.

13 JUDGE ANDERSEN:

14 We have set a personal group
15 record for length of time for talking
16 without any question being asked or
17 answered. Everyone has a point to make, and
18 we know there is a lot of serious debate to
19 take place.

20 The witness has been kind enough
21 to appear. If he knows, fine; he doesn't
22 have to guess or speculate. The captain has
23 not badgered him if he says he doesn't know
24 the answer to a question.

25 Let's get through this phase and

1 maybe in our final hearings, maybe in July
2 or something --

3 EXAMINATION BY CAPT. NGUYEN:

4 Q. If the BOP preventer was not
5 maintained and inspected as per CFR 250,
6 what category would you put that in?

7 A. Observation.

8 Q. If there was an issue with the
9 Permit to Work on power systems, what would
10 that be?

11 A. I didn't understand the question.

12 Q. Power system.

13 A. Power generation?

14 Q. Yes. If there was an issue with
15 the Permit to Work.

16 A. Observation.

17 Q. "Failure to complete annual
18 maintenance for choke and kill, mud lines"?

19 A. Failure to -- could you repeat
20 that?

21 Q. "Failure to complete annual
22 maintenance for choke and kill, mud lines."

23 A. I don't know the answer.

24 Q. "Isolation certificate,
25 lockout/tagout incomplete."

1 A. An individual event of an
2 isolation certificate not being closed out?
3 I guess I don't understand the
4 circumstances.

5 Q. When you work on a system, for
6 example, go back to flooding incident back
7 in 2008, when somebody work on the system,
8 whether it is electrical system or fluid
9 piping need to be tagged out and locked out,
10 and it should be, like you say, permit
11 issued and all that?

12 A. Right.

13 Q. So if there is issue with some
14 isolation certificate being incomplete, what
15 category?

16 A. Observation.

17 Q. "Contractors not knowledgeable
18 with drilling and well operation practice or
19 engineering technical practices."

20 A. Observation.

21 Q. "No competency assurance program
22 implemented."

23 A. I don't know.

24 Q. "Mechanical isolation inadequate
25 prior to repair/maintenance."

1 A. Observation.

2 Q. "No calibration reports for
3 analogue digital instruments."

4 A. Observation.

5 Q. "No annual health and safety plan
6 implemented."

7 A. I don't know.

8 Q. "No management system for alarm
9 inhibit, defeat and bypasses."

10 A. An observation.

11 Q. "Inadequate maintenance history
12 reports."

13 A. Observation.

14 Q. "Overdue maintenance for 390
15 jobs."

16 A. Observation.

17 Q. "Incomplete maintenance records
18 for Rig Maintenance System 2."

19 A. Observation.

20 Q. "Health, safety and environmental
21 training not provided for third-party
22 personnel."

23 A. Observation.

24 Q. "BP not involved/informed of
25 revocation of previous audit findings."

1 A. Observation.

2 Q. And finally, "No program to report
3 critical maintenance check to BP wellsite
4 leaders."

5 A. I don't know.

6 Q. Let's go to Tab 18. This is the
7 rig condition assessment on the DEEPWATER
8 HORIZON conducted by MODUSpec USA on April 1
9 and 14, 2010, Bates Nos. TRN-USCG-MMS38609
10 through 95. Your have up to page 69. Is
11 that correct?

12 MR. JOHNSON:

13 We have random pages.

14 CAPT. NGUYEN:

15 I'm sorry about that. These are
16 just pages that reference the items we
17 talked about.

18 EXAMINATION BY CAPT. NGUYEN:

19 Q. Now, again, the same questions for
20 you in terms of which category you put them
21 in. Again, if you don't know, you can
22 indicate you don't know.

23 MR. JOHNSON:

24 I object, lack of foundation.

25 JUDGE ANDERSEN:

1 We will log for the record all of
2 the same objections so that if it comes up
3 again, all of the attorneys will have their
4 objections noted again.

5 MR. KALIM:

6 Thank you, Your Honor.

7 JUDGE ANDERSEN:

8 You're welcome.

9 EXAMINATION BY CAPT. NGUYEN:

10 Q. "Saltwater and freshwater pipes
11 corroded and damaged and inoperable valves."

12 A. Observation.

13 Q. "Two hydraulic watertight doors
14 inoperable."

15 A. Observation.

16 Q. "Escape routes in four columns --
17 escape routes in columns in bad condition
18 and in need of repair/replacement."

19 A. Observation.

20 Q. "General alarm light needs to be
21 repaired."

22 A. I don't know.

23 Q. "Additional third-party mud
24 processing equipment added to the main deck
25 moon port area."

1 Do you know whether those areas
2 are classified locations?

3 A. No. Under normal circumstances,
4 there is no ability to vent well fluids in
5 that area.

6 Q. On the main deck and the moon port
7 area?

8 A. That is correct.

9 Q. "There were no ABS-approved
10 hazardous area drawings on the rig at the
11 time of this assessment."

12 A. That is an observation.

13 Q. Let's go to Tab 19, sir. This is
14 the report on Safety Management and Safety
15 Culture Climate Review of the North American
16 division and several vessels that division
17 managed.

18 March 9 through the 26th, 2010, is
19 when this survey was conducted. Have you
20 seen this document before? I have only
21 included a few pages for you there.

22 A. Yes.

23 Q. You have seen this document?

24 A. Yes.

25 Q. I will ask you about five items

1 and you let me know whether observation,
2 nonconformity, major nonconformity, or you
3 don't know.

4 "Crew not always aware of exposed
5 hazards."

6 A. Observation.

7 Q. "Risk of identified hazards was
8 not always understood and control measures
9 were not always appropriate."

10 A. That's an observation.

11 Q. "Many resented the one-a-day rule
12 of START."

13 Do you know what START is?

14 A. Yes.

15 Q. "And invented -- in order to
16 achieve compliance."

17 A. I don't know.

18 Q. "Some apparently felt that the
19 risk management processes were repetitive
20 and over-complex, that complexity and stated
21 vagueness of the HSE manual led to confusion
22 and various interpretations of requirements
23 even" --

24 That is the health and safety
25 manual, and from what I understand, it was

1 complex?

2 A. I think that is an observation,
3 "somewhat vague."

4 Q. "Corporate and divisional
5 leadership was not perceived in particularly
6 positive light, particularly in relation to
7 disciplinary action and blame."

8 A. Observation.

9 Q. Let's go to Tab 20 and Tab 21.
10 TRN-USCG-MMS00042595 to 2596 for Tab 20.

11 Have you seen this document
12 before, sir?

13 A. No, I have not.

14 Q. Yes, sir. What is the subject of
15 this?

16 MR. SCHONEKAS:

17 Objection, foundation.

18 MR. KALIM:

19 The document speaks for itself, if
20 you just want him to read the heading.

21 THE WITNESS:

22 "Monitoring well-control Integrity
23 of" --

24 EXAMINATION BY CAPT. NGUYEN:

25 Q. Yes, sir. This is an operational

1 group advisory?

2 A. Apparently so.

3 Q. April 5, 2001, is the issue date?

4 A. Yes.

5 Q. And if you can read advisory
6 paragraph, sir.

7 A. "The following will be added to
8 the next revision of the well-control
9 handbook to clarify requirements for
10 monitoring and managing at least two
11 barriers when displacing to an unbalanced
12 fluid during complex operations. This
13 clarification is as a result of the recent
14 well-control event on a Transocean rig which
15 occurred due to a failure of a tested
16 mechanical barrier."

17 Q. Yes, sir. Now, go to Tab No. 21,
18 sir. This is an operational advisory; is
19 that correct?

20 A. That's what it says.

21 Q. And it is on loss of well-control
22 during upward completion, correct?

23 A. Yes.

24 Q. April 14, 2010, is the issue date?

25 A. That is what it says.

1 Q. Can you read the advisory note?

2 A. "This advisory is issued as
3 follow-up to telephone conference calls
4 conducted on 4 and 18 March 2010, which
5 describe an incident on one of our rigs when
6 gas entered the riser, evacuating 95 barrels
7 of oil-based mud on to the rig floor and
8 resulting in a loss of 3 barrels of
9 oil-based mud to the sea."

10 Q. To your knowledge, how were these
11 problems communicated to the DEEPWATER
12 HORIZON?

13 A. I'm not exactly sure.

14 Q. You are not aware of any
15 evidence -- do you have any evidence that
16 the DEEPWATER HORIZON received these two
17 advisories, sir?

18 A. No.

19 Q. Do you have any evidence that the
20 DEEPWATER HORIZON has incorporated these
21 advisories into the vessel through
22 investigation of the casualty?

23 A. I do not.

24 Q. Based on these various examples,
25 do you think that the Transocean North

1 American division was in compliance with the
2 ISM code at the time of the casualty?

3 A. I do.

4 Q. Yes, sir. Let's go to Tab 22.

5 This is a fairly lengthy document, but let
6 me give you the Bates number. It is
7 TRN-USCG-MMS00043611 to 3642.

8 A. Yes, sir, I have that document.

9 Q. If you look at that document, I
10 have highlighted some items on that page and
11 some after that.

12 A. Yes.

13 Q. If you could just look at those
14 items I have highlighted, and I believe it
15 is the columns "Action Plan" and "Date
16 Complete."

17 The question I have for you is why
18 is it that items are listed as complete, and
19 then under "Plan of Action" items, some of
20 them still show that waiting for parts,
21 waiting for availability of training,
22 waiting for assistance of OEM rep. I just
23 want to know what I am seeing, if you know.

24 MR. LINSIN:

25 Could you identify which

1 references you have highlighted on your
2 copy? I can't read which particular
3 references you are talking about.

4 CAPT. NGUYEN:

5 I didn't highlight my document,
6 but I did highlight that one.

7 JUDGE ANDERSEN:

8 The witness can tell you which
9 ones are highlighted.

10 MR. LINSIN:

11 I will take it from anybody.

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. Can you look at those items and
14 tell me why it says "complete," but under
15 "Action Plan," it still shows that parts are
16 still on order, and waiting for training and
17 availability of OEM?

18 MR. JOHNSON:

19 Again, I object to the foundation.
20 There has been no foundation that the
21 witness has ever seen this document, and you
22 are asking him to comment cold on a document
23 he has no knowledge of. As a prefatory
24 question --

25 EXAMINATION BY CAPT. NGUYEN:

1 Q. I don't know if this was generated
2 out of your RMS system or not. I just want
3 to know the status of these items.

4 The items here are the status of
5 the items that were identified in the BP
6 September 2009 audit. I want to understand
7 the status of those items using this
8 document here.

9 I want to understand what is your
10 system; how should I interpret these two
11 columns so I have a clear understanding?

12 A. I can't answer that. I don't know
13 where that document came from.

14 Q. Yes, sir. Because again, I am
15 trying to be transparent. This document
16 shows outstanding items and then we have DNV
17 document to show these items were corrected,
18 and actually they were not.

19 I just want know what is going on
20 with tracking discrepancies, how your Safety
21 Management System tracks discrepancies and
22 how you resolve them.

23 MR. JOHNSON:

24 That's assuming facts not in
25 evidence. He is not familiar with the

1 actions taken in this document. You are
2 asking him to do the impossible.

3 EXAMINATION BY CAPT. NGUYEN:

4 Q. Do you see the discrepancies on
5 top there, sir?

6 A. I am having a hard time thinking
7 it is a discrepancy because the action plan
8 says we are waiting on parts, and in the
9 date completed, it has a date which says
10 "100 percent."

11 So it seems to be flowing in the
12 right sort of direction to me.

13 Q. Let me take a look at your book,
14 if you don't mind.

15 If it is completed, why does it
16 still say "waiting on parts"?

17 MR. MATHEWS:

18 I am in agreement with the
19 witness. I don't think the document says it
20 is not completed. If you look at the rest
21 of them, it looks like they visited this
22 spreadsheet on October 5, indicating they
23 were waiting on parts, and came back on
24 December 28 and completed it.

25 I'm agreeing with the witness. I

1 don't want there to be any confusion.

2 MR. SCHONEKAS:

3 Thank you, Mr. Mathews.

4 MR. LINSIN:

5 Can I just renew my request that
6 the captain identify which reference?

7 CAPT. NGUYEN:

8 On the first page, item 1.4.2;
9 item 2.4.16; item 1.4.19; item 3.4.13; item
10 3.4.24; item 3.4.34; item 3.4.36.

11 I think that is it.

12 MR. LINSIN:

13 Thank you, Captain.

14 EXAMINATION BY CAPT. NGUYEN:

15 Q. I'm just trying to understand your
16 system. Have you seen this kind of document
17 before?

18 A. No. You are talking about an
19 audit that was conducted by our client who
20 came up with an Excel spreadsheet. They
21 are, I'm sure, asking our people to respond
22 to their concerns. So we created a
23 reciprocal spreadsheet to do what we can do
24 to satisfy our requirement to them. It is
25 not within our management system.

1 Q. It is not with your --

2 A. This is not a focus document; it
3 is not an RMS document. I don't know where
4 this document comes from. I can assume it
5 is some individual with no protocol on how
6 he makes his comments, which allows them to
7 be interpreted in any way you feel at the
8 moment, and it is not controlled.

9 So I don't know that this document
10 provides any great insight other than to the
11 person who is managing it day-to-day and
12 trying to keep up with the tasks that were
13 to be executed.

14 For us to look at it here and try
15 to interpret it, as I say, there is no
16 protocol for the entry of the commentary, so
17 it is an assumption right from the get-go
18 for everybody who looks at it.

19 If I answer anything, it is based
20 on, well, it looks like such and such to me
21 and I don't see any value in that.

22 CAPT. HIGGINS:

23 This is not a Transocean document?

24 THE WITNESS:

25 I can only assume it is generated

1 by someone who cares about these line items,
2 given to them by their customer, and they
3 say, yes, sir, we will get on this and start
4 working on it. If this is their management
5 system for their own intellectual content,
6 well, that is how they choose to do it.

7 That is what I see.

8 EXAMINATION BY CAPT. NGUYEN:

9 Q. This is what I see. There are
10 issues with RMS in terms of the data from
11 some of the witnesses who have testified.
12 You have the BP safety management audit
13 report on this particular vessel saying
14 these are corrected when they were not. You
15 see there are references within BP reporting
16 to say that items noted are still not acted
17 upon or followed up.

18 So I am trying to follow up on
19 safety items identified as major
20 nonconformities, and should the system track
21 it and get it fixed, and this document here
22 should be -- looking at this, I would think
23 this is how you track the discrepancies and
24 bring it to conclusion.

25 MR. JOHNSON:

1 Asking him for his help is asking
2 him to do nothing more than speculate based
3 on what he has already told you.

4 JUDGE ANDERSEN:

5 So you need the guy who created
6 the document --

7 MR. JOHNSON:

8 More correctly, the board would
9 need that guy.

10 JUDGE ANDERSEN:

11 Does it appear that Mr. Mathews is
12 right, that the column on the right was an
13 update, so that it wasn't -- which might
14 explain the discrepancies between things
15 being in progress and things being
16 completed? Is it clear enough from that?

17 MR. JOHNSON:

18 He can't tell from this document
19 what the chronology of the entries were.
20 Unless he can.

21 EXAMINATION BY CAPT. NGUYEN:

22 Q. We can move on, Mr. Canducci.

23 Let's go to Tab 23. This doesn't
24 have a Bates number on it, and it is
25 available on the Web site of the Petroleum

1 Safety Authority Norway (PSA). The title of
2 this article or report is "Audit of
3 Maintenance Management in Transocean
4 Offshore, LTD."

5 You see that, sir?

6 A. Yes.

7 Q. Read the top paragraph, and to the
8 PIIs out there, this will be posted on our
9 home port.

10 MR. SCHONEKAS:

11 Judge, I have to object because we
12 do not have a copy of the document. It was
13 not loaded on to the home port.

14 CAPT. NGUYEN:

15 All right, you can get it
16 tomorrow.

17 MR. SCHONEKAS:

18 That doesn't moot my objection,
19 Captain. Please. We do not have this, and
20 to permit an examination to occur and not
21 allow witnesses who may be affected by the
22 examination the right or the courtesy to see
23 the document is inherently unfair.

24 CAPT. NGUYEN:

25 You don't know what my question is

1 going to be.

2 MR. SCHONEKAS:

3 I don't need to know your
4 question. I have a right to see the
5 document.

6 JUDGE ANDERSEN:

7 We have done a pretty good
8 percentage -- if you would like a copy of
9 it, we have another copy here. If we break
10 for lunch, or dinner, we can distribute
11 copies for everyone.

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. Mr. Canducci, can you read the top
14 paragraph in bold?

15 MR. SCHONEKAS:

16 Same objection. I don't have the
17 document.

18 JUDGE ANDERSEN:

19 Okay. It is noted.

20 Even though Mr. Schonekas has it
21 now, his objection is still standing, but
22 for everybody who doesn't have it.

23 EXAMINATION BY CAPT. NGUYEN:

24 Q. Can you read that out loud?

25 A. "May 16, 2007. During the period

1 20 to 23 March 2007, the Petroleum Safety
2 Authority Norway (PSA) conducted an audit of
3 maintenance management in Transocean
4 Offshore, LTD (TO). TO does not meet the
5 regulatory requirements for maintenance
6 management nor does the company meet the
7 requirements for handling of
8 nonconformities. We found the conditions to
9 be so serious that we issued a Notification
10 of Order in a letter dated March 23, 2007,
11 followed by an Order dated in April 2007."

12 MR. SCHONEKAS:

13 I want to renew my objection.
14 There is no authentication of this. This
15 purports to be a news release from the
16 Internet.

17 MR. KALIM:

18 We agree. The questioning of this
19 witness on this document is out of bounds
20 for this hearing.

21 MR. SCHONEKAS:

22 It is not even a document
23 sponsored by NEPI nor the Coast Guard.

24 JUDGE ANDERSEN:

25 We are going to ask him if he is

1 familiar with this and anything that
2 transpired from it. It is a point of
3 reference.

4 EXAMINATION BY CAPT. NGUYEN:

5 Q. Were you aware of that situation,
6 sir?

7 A. No.

8 Q. Now, sir, would you read Section
9 10 of the code, please. The ISM code.

10 A. "10. Maintenance of the ship and
11 equipment.

12 "10.1. The company should
13 establish procedures to ensure that the ship
14 is maintained in conformity with the
15 provisions of the relevant rules and
16 regulations and with any additional
17 requirements which may be established by the
18 company."

19 Q. Continue, sir.

20 A. "10.2. In meeting these
21 requirements, the company should ensure
22 that:

23 "10.2.1. Inspections are held at
24 appropriate intervals.

25 ".2. Any nonconformity is

1 reported with its possible cause, if known.

2 ".3. Appropriate corrective
3 action is taken.

4 ".4. Records of these activities
5 of maintained."

6 Carry on?

7 Q. Yes, sir, please.

8 A. "10.3. The company should
9 identify equipment in technical operations
10 that the sudden operational failure of which
11 could result in hazardous operations. The
12 Safety Management System should provide for
13 consistent measures aimed at promoting the
14 reliability of such equipment. These
15 measures should include the regular testing
16 of standby arrangements and equipment for
17 technical systems that are not in continuous
18 use.

19 "10.4. The inspections mentioned
20 in 10.2, as well as the measures referred to
21 in 10.3 should be integrated into the ship's
22 routine."

23 Q. Based on what you just read, in
24 your opinion, was Transocean's North
25 American division in compliance with this at

1 the time of the casualty?

2 A. In my opinion?

3 Q. Yes, sir, based on the various
4 examples we have gone through.

5 A. It is my opinion that the North
6 American division was in compliance with the
7 ISM code at all times.

8 Q. Yes, sir. If you would kindly
9 read out loud Section 11 and the subitems.

10 A. "11. Documentation.

11 "11.1. The company shall establish
12 and maintain procedures to control all
13 documents and data which are relevant to the
14 Safety Management System.

15 "11.2. The company should ensure
16 that:

17 ".1. Valid documents are
18 available at all relevant locations.

19 ".2. Changes to documents are
20 reviewed and approved by authorized
21 personnel.

22 ".3. Obsolete documents are
23 promptly removed.

24 "11.3. Documents used to describe
25 and implement the Safety Management System

1 are referred to as the Safety Management
2 manual. Documentation should be kept in a
3 form that the company considers most
4 effective. Each ship should carry on board
5 all documentation relevant to the ship."

6 Q. Yes, sir. Do you know if the
7 report of the last external audit for all
8 Transocean vessels operated in the Gulf of
9 Mexico and the reports of all external
10 audits of the Transocean North American
11 division are readily available for
12 examination and review?

13 MR. KALIM:

14 Objection. We lodge an objection
15 to this. The board is well aware of our
16 objection.

17 CAPT. NGUYEN:

18 The question is whether they are
19 readily available, not whether Transocean
20 wants to release them to the board or not.

21 MR. KALIM:

22 Same objection.

23 JUDGE ANDERSEN:

24 Overruled. You can answer the
25 question if you know the answer.

1 THE WITNESS:

2 Would you repeat the documents you
3 are making reference to?

4 EXAMINATION BY CAPT. NGUYEN:

5 Q. Yes, sir. My understanding is
6 there were 14 or 15 vessels operating in the
7 Gulf of Mexico at the time of the casualty,
8 correct?

9 A. Yes.

10 Q. So the report of the last external
11 audit of the Safety Management System for
12 those vessels, I am assuming there are 14 or
13 15 of these reports, and we asked for the
14 reports of the external audits of the
15 Transocean North American division. So if
16 the code was implemented in 2002, we are
17 talking about several reports. So these
18 reports, are they readily available --

19 A. On board?

20 Q. No, in your office.

21 MR. KALIM:

22 Same objection.

23 THE WITNESS:

24 They are available at any computer
25 you sit down at that has access to our

1 internal intranet. So every rig, every
2 office, every workstation.

3 EXAMINATION BY CAPT. NGUYEN:

4 Q. So it would not be burdensome for
5 company personnel to retrieve those reports?

6 A. No, sir.

7 Q. Thank you, sir.

8 Yes, sir. If you would be kind
9 enough to read Section 12, sir.

10 A. "12. Company verification, review
11 and evaluation.

12 "12.1. The company should carry
13 out internal safety audits on board and
14 ashore at intervals not exceeding 12 months
15 to verify whether safety and pollution
16 activities comply with the Safety Management
17 System. In exceptional circumstances, this
18 interval may be exceeded by not more than
19 three months.

20 "12.2. The company should
21 periodically evaluate the effectiveness of
22 the Safety Management System in accordance
23 with procedures established by the company.

24 "12.3. The audit and possible
25 corrective actions should be carried out in

1 accordance with documented procedures.

2 "12.4. Personnel carrying out
3 audits should be independent of the areas
4 being audited unless this is impracticable
5 due to the size and nature of the company.

6 "12.5. The results of the audits
7 and reviews should be brought to the
8 attention of all personnel having
9 responsibility in the area involved.

10 "12.6. The management personnel
11 responsible for the area involved should
12 take timely corrective actions on
13 deficiencies found."

14 Q. Thank you.

15 Go back to Tab 13, document
16 TRN-USCG-MMS00043694 through 97. You see
17 that, sir? We have gone over that document
18 before.

19 A. We have.

20 Q. This is an internal ISM audit,
21 correct, March 15, 2010?

22 A. I don't know if this is a
23 commentary or a letter that talks about it
24 or if this is the audit report. This is an
25 interoffice correspondence. So I'm not

1 sure.

2 Q. The subject line is "Internal ISM
3 Audit."

4 A. Correct.

5 Q. And it is to Jimmy Moore.

6 A. It is to Jimmy Moore.

7 Q. Would you remind me what position
8 Mr. Jimmy Moore was holding?

9 A. He was the director of QHSE and
10 the designated ISM person.

11 Q. For?

12 A. Corporate office.

13 Q. Now, so this corporate item here
14 is above your North American division; is
15 that right, sir?

16 A. That's correct.

17 Q. All right. Let's go to Tab 24,
18 sir. This is Bates Nos.

19 TRN-USCG-MMS00039100 to 910304. You see
20 that?

21 A. Yes.

22 Q. What is this document?

23 A. Minutes of a safety steering
24 committee meeting.

25 Q. And the date?

1 A. October 19, 2009.

2 Q. Yes, sir. Could you identify some
3 of the individuals in the left-hand column
4 in attendance?

5 A. Robert Long, CEO; Steven Newman,
6 president and chief operating officer;
7 Adrian Rose, vice president of QHSE
8 services; Sherry Richards, senior vice
9 president of HR and IT; Rob Saltiel,
10 executive vice president of performance.

11 Shall I carry on?

12 Q. No.

13 I don't see Mr. Jimmy Moore in
14 that block of attendees. Did he depart the
15 company before this meeting, sir, do you
16 know?

17 A. His contemporaries are on this
18 list, but I don't know why he is not.

19 Q. Next page, TRN-USCG-MMS00039101.
20 Could you read the comment in topic 3, item
21 3.B, please?

22 A. "ISM, ISPS audits,
23 annual/external/internal audit, final. J.
24 Harrington reported to the meeting flag
25 state minimum safe manning requirements

1 continue to be an issue. Records management
2 of required ISM/ISPS documents and
3 certificates remain to be a challenge. An
4 overall understanding of the ISM and ISPS
5 requirements beginning to improve as a
6 result of audit, but improvements still
7 needed."

8 Q. Yes, sir. This is an item in
9 October of 2009.

10 Now, if you go to the next page,
11 up on top for "Action Items," it says
12 "None." Correct?

13 A. Yes.

14 Q. Do you know why there are no
15 action items to address the comments in 3B?

16 A. No.

17 Q. Now, Mr. Steven Newman, what is
18 his current position?

19 A. Chief executive officer.

20 Q. And from this document, and
21 according to this document, he should be
22 aware of item 3B, correct?

23 MR. JOHNSON:

24 Objection, calls for speculation
25 on at least two grounds.

1 JUDGE ANDERSEN:

2 He may or may not know. So if you
3 know, fine.

4 MR. JOHNSON:

5 "Do you know that he was at the
6 meeting" would be the appropriate
7 foundational question.

8 JUDGE ANDERSEN:

9 Well, if you want to add that
10 question. Do you know whether or not he was
11 at the meeting?

12 EXAMINATION BY CAPT. NGUYEN:

13 Q. He is listed as attending. Do you
14 know whether he was physically there?

15 A. I do not.

16 Q. Before the casualty, do you know
17 if Mr. Newman directed any corrective
18 actions relating to Section 3B of this
19 report?

20 A. I don't know.

21 Q. Go to page 18 of the ISM code,
22 sir. Read section 13.1.

23 A. "The ship should be operated by a
24 company which has been issued with a
25 Document of Compliance or with an interim

1 Document of Compliance in accordance with
2 paragraph 14.1 relevant to that ship."

3 Q. Yes, sir. Did BP assume
4 responsibilities from Transocean for the
5 DEEPWATER HORIZON's compliance with the ISM
6 code?

7 MR. GODFREY:

8 Objection, lack of foundation.

9 EXAMINATION BY CAPT. NGUYEN:

10 Q. Did BP assume the responsibilities
11 from Transocean, if you know, for the
12 DEEPWATER HORIZON's compliance with the ISM
13 code or did it remain with Transocean?

14 MR. SCHONEKAS:

15 Also calls for a legal conclusion.

16 MR. GODFREY:

17 Same objection.

18 JUDGE ANDERSEN:

19 But the witness might well know
20 the process by which the company dealt with
21 items observed in an audit, so you can
22 advise us whether or not you assumed the
23 responsibility for addressing those items or
24 whether or not you might have passed them
25 along to BP, or in other situations in other

1 times to people who are leasing the vessels.

2 THE WITNESS:

3 I don't know how to answer that
4 question.

5 MR. JOHNSON:

6 Can you repeat the question,
7 please, Captain?

8 CAPT. NGUYEN:

9 Yes. The question is did
10 Mr. Canducci know if BP assumed the
11 responsibility from Transocean for the
12 DEEPWATER HORIZON's compliance with the ISM
13 code?

14 MR. GODFREY:

15 Objection, lack of foundation.

16 EXAMINATION BY CAPT. NGUYEN:

17 Q. Do you see any document to
18 indicate that was the case? If you don't
19 know, you don't know.

20 A. I don't know.

21 Q. All right, sir.

22 Based on your knowledge, was the
23 DEEPWATER HORIZON Safety Management System
24 in compliance with the ISM code, sir?

25 A. Based on what we have discussed

1 here?

2 Q. Yes, sir.

3 A. This has not changed my opinion,
4 and I have stated it a number of times. I
5 think we were always compliant.

6 Q. Yes, sir. Did its potential
7 noncompliance with the ISM code contribute
8 to this casualty?

9 MR. JOHNSON:

10 Objection.

11 MR. SCHONEKAS:

12 Assumes facts not in evidence. He
13 just answered that.

14 JUDGE ANDERSEN:

15 In this case, I will sustain in
16 the sense that I don't think we can ask a
17 witness to contradict his own opinion and
18 then draw conclusions from it.

19 EXAMINATION BY CAPT. NGUYEN:

20 Q. Based on information discussed
21 here this morning, prior to the casualty,
22 based on your opinion, was Transocean's
23 Safety Management System for the North
24 American division in compliance with the ISM
25 code?

1 A. I believe our Safety Management
2 System is compliant with the code.

3 Q. Based on your knowledge of the
4 casualty, sir, and the ISM code, have you
5 identified any system failures that
6 contributed to this casualty, sir?

7 A. I do not believe it was a system
8 failure, nor I have identified any elements
9 of the system that are in failure.

10 CAPT. NGUYEN:

11 I know we have been here all
12 morning. Thank you very much for your
13 cooperation, sir.

14 (Off the record discussion.)

15 (Recess for lunch.)

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1 REPORTER'S CERTIFICATE

2

3 I, CATHY RENEE' POWELL, Certified
4 Court Reporter, do hereby certify that the
5 foregoing testimony/transcript was reported
6 by me in shorthand and transcribed under my
7 personal direction and supervision, and is a
8 true and correct transcript, to the best of
9 my ability and understanding;

10 That I am not of counsel, not related
11 to counsel or parties hereto, and not in any
12 way interested in the outcome of this
13 matter.

14

15

16 CATHY RENEE' POWELL
17 Certified Court Reporter

18

19

20

21

22

23

24

25

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