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R E P O R T E R ' S R E C O R D

VOLUME \_\_\_\_ OF \_\_\_\_

CAUSE NO. 05CV0637

MIGUEL ARENAZAS AND . IN THE DISTRICT COURT OF  
ELIZABETH RAMON .  
VS. . GALVESTON COUNTY, TEXAS  
.  
BP AMOCO POLYMERS, INC . 212TH JUDICIAL DISTRICT

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On the 28th day of August 2006, the following  
proceedings came on to be heard in the above-entitled  
and numbered cause before the Honorable Susan E. Criss,  
Judge Presiding, held in Galveston, Galveston County,  
Texas:

Proceedings reported by Stenographic machine.



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1 MR. GONZALES: Without having any  
2 preambles from Mr. Galbraith I'm going to pass the  
3 court over to Mr. Buzbee on the Ponder issue, Judge.

4 MR. BUZBEE: Your Honor, we know we have  
5 a bunch of issues. I think I'm going to take the  
6 easiest one first. Dr. Ponder is the doctor that the  
7 Defendant hired. I've seen this guy on at least a  
8 hundred cases over the years, typically IME doctor.  
9 Sees the guy for 15 minutes and says he doesn't need  
10 surgery, wasn't hurt from the explosion. Ponder showed  
11 up at his deposition, Your Honor, with a cane holding  
12 his back because his back was hurting really bad.  
13 Turns out I heard from one of the lawyers beforehand  
14 that he was moving a piece of furniture or something  
15 and hurt his back. So, when he was questioned about  
16 that, it was kind of ironic I would think over the last  
17 five years seeing this guy testify against these  
18 injured workers so long it's kind of ironic that here  
19 he is sitting there hurting, with his back hurting.  
20 And I asked him about his back injury and he, quote,  
21 told me it's none of my Goddamn business. So, Your  
22 Honor, we have filed the paperwork and with the  
23 appropriate affidavit and the appropriate depositions  
24 asking you to compel him to answer these questions. We  
25 want another hour of deposition with him, to answer not



1     only, hey, Ponder, tell me how you hurt your back, tell  
2     me what your MRI says, tell me already you're going to  
3     have surgery, all these things as you may know from the  
4     pleadings.

5                     The two clients I have in the first  
6     trial group, both of them have had two level neck  
7     fusions and back fusions and various knees and  
8     shoulders operated on. Yet Mr. Ponder, or Dr. Ponder,  
9     says these guys weren't hurt in the explosion and did  
10    not need surgery. So, I would like you to order Ponder  
11    if you would to answer my questions about his injury,  
12    answer my questions about how many times he's been  
13    sued, answer the question about what his MRI said, and  
14    it's all in about five areas --

15                    THE COURT: How many times he's been  
16    sued?

17                    MR. BUZBEE: For malpractice which I  
18    think it's my view only. And with respect to that I  
19    think it's malpractice for him to see these guys for 15  
20    minutes, charge 20 thousand dollars and show up at  
21    trial and testify they didn't need surgery.

22                    MR. POOLE: I presented Dr. Ponder, Your  
23    Honor. First of all these questions are obviously  
24    irrelevant and we have cited the cases to say why but  
25    they were also answered. The question about how did



1 you hurt your back, he did it for two hours and someone  
2 else in his office tag-teamed him to get the  
3 deposition. I'm not sure who read it, but more than  
4 once he explained how he hurt his back, lifting  
5 furniture a few days before. There was no objection to  
6 the responsiveness of that answer.

7 THE COURT: Were all the questions  
8 answered?

9 MR. POOLE: Not all, and we can zero in  
10 on those. For example, he said have you been sued, he  
11 said yes. What is your opinion of Dr. Essison, there's  
12 three pages of discussion of that, how they go to the  
13 operative together, how they practice together at  
14 Baylor, how his office is just down the hall; how they  
15 were just professional colleagues and friendly;  
16 however, he believes that if they were a group of his  
17 peers they would side with him. And here's the article  
18 that says, about surgery for deteriorative conditions,  
19 as opposed to Dr. Essison, how else can he answer that  
20 question. I think three of the six questions they have  
21 had were answered. They were completely answered and  
22 there was no objection to the responsiveness.

23 How many times have you been sued, an  
24 objection was lodged and we stand on that objection.  
25 That it's just between 29 years in a PI case, not a



1 malpractice case, I have never seen that get into  
2 evidence. Don't see how that could be relevant. If  
3 we're going to do that then we would be wanting to do  
4 the same things to their doctors and you open up all  
5 that both ways.

6 THE COURT: Do you have a problem him  
7 asking that of your doctors?

8 MR. BUZBEE: They already asked it of  
9 one of the doctors who treated one of Mr. Coon's  
10 clients. They deposed my doctor and they didn't ask it  
11 at all, so --

12 MR. COON: They did go into all of those  
13 same questions, Your Honor. We didn't object. How  
14 many times you've been sued, ever treated any -- ever  
15 treated any family, all that stuff.

16 MR. POOLE: None of those questions were  
17 asked. The sole question asked was how many times have  
18 you been sued.

19 MR. BUZBEE: Your Honor, here's a guy  
20 that's sitting there. Obviously had his back MRI'd.  
21 Won't tell me what the MRI says. Talks in detail about  
22 the MRI of my clients' backs. He's sitting there. His  
23 MRI is probably not as bad as the MRIs of my guys.  
24 He's sitting there and he has to take a break because  
25 his back is hurt so bad. So, I think it's pretty





1 unfair for me not to explore with them. It's not my  
2 fault they put a doctor up that has a bad back. That's  
3 their fault and I'm entitled to ask my questions. And  
4 with regard to relevance, that's not the issue here.  
5 Discovery standard is a lot different than relevant.  
6 The court can decide what is and what's not relevant.  
7 At this point I'm entitled to ask those questions.

8                   Let me give you a little background. I  
9 could ask those questions simply because I deposed him,  
10 or I didn't, but one of my guys did before in another  
11 case. And this guy cursed again and just got up and  
12 just walked off, just left. And we had to call the  
13 judge in New Orleans, it was a New Orleans court, to  
14 order him to come back and continue to answer  
15 questions. This is the kind of guy this guy is. He  
16 thinks he runs the show and he doesn't want to follow  
17 the rules. Bottom line we're entitled to ask him  
18 questions, and we can argue later about whether any of  
19 this is relevant. I think it is but that's not the  
20 issue here.

21                   MR. POOLE: With respect, Your Honor,  
22 that is a complete mischaracterization of his  
23 deposition. He's very friendly. The only "none of  
24 your damn business" was once and it was almost as a  
25 joke. When he's asked about his opinion of Dr.



1     Essison, not really my type, it was a very friendly  
2     deposition.  Nobody raised their voice ever, and I  
3     think if you read the transcript you could see that.  
4     The question is how could possibly an answer about how  
5     many times have you been sued or what does your MRI of  
6     your back show, how could that lead to admissible  
7     evidence in this case?  I can't think of an answer that  
8     would lead to that.  And that's why in 29 years of  
9     doing this I have never seen it get in, some doctor's  
10    MRI who just happens to be testifying or the number of  
11    times he's been sued.

12                   THE COURT:  Motion is granted.

13                   MR. BUZBEE:  Thank you, Your Honor.

14                   MR. POOLE:  The other thing I need to  
15    raise, Your Honor, Dr. Ponder as they know is out of  
16    the country.  I think in China for something like six  
17    weeks.  This has to take place when they return.

18                   MR. BUZBEE:  After the trial, after the  
19    jury has already entered a verdict?

20                   MR. POOLE:  It will be in the middle.

21                   MR. BUZBEE:  Your Honor, may we do it by  
22    telephone.  Can I submit an order to you ordering him  
23    to present him by telephone for at least an hour so I  
24    can explore these issues in this motion.  Otherwise, if  
25    they don't, if they refuse to do so he will not be



1 allowed to testify in this courtroom trial?

2 THE COURT: I'm not -- Right now I'm  
3 signing the motion to compel and I'm putting the  
4 wording in there.

5 MR. COON: The next issue we have is the  
6 motion for protection on Manzoni. And because of the  
7 number of distinguished guests we have in the courtroom  
8 we're going to bypass that and request we go directly  
9 to the motion to compel disclosure of the settlement  
10 agreements in the Request for Disclosures.

11 THE COURT: Okay.

12 MR. HOLMAN: Your Honor, David Holman on  
13 behalf of the BP Plaintiffs' steering committee. We  
14 filed a motion to compel individual settlement  
15 agreements and I will tell you why we did it. Under  
16 the Ford Motor versus Legge case which is a Texas  
17 Supreme Court case, it says that settlement agreements  
18 are discoverable if they are relevant. In that case  
19 they held that they weren't relevant in that case  
20 because they were similar incidents and they had no  
21 relevance in the case. The settlement agreements here  
22 became relevant when BP provided an expert report by an  
23 expert named Dr. Gary Cadenhead. Dr. Gary Cadenhead  
24 was offered to speak on punitive damages. Dr.  
25 Cadenhead stated in his expert report on several



1 different occasions, it was a twelve page report, that  
2 the amount that BP has already paid in compensatory  
3 damages was deterrence enough, that they shouldn't have  
4 to pay punitive damages because of the amount that they  
5 paid in compensatory damages. And he stated in his  
6 report that they had paid one point two billion  
7 dollars, a, one point two billion in compensatory  
8 damages. And so -- Now, under Owens Corning versus  
9 Malone, the same "enough is enough" argument was used  
10 by the defendants, and the Texas Supreme Court said  
11 it's relevant. It's relevant on how much the defendant  
12 has paid in punitive damages, to settle punitive damage  
13 claims with regard to the amount of punitive damages  
14 that should be awarded against them. So, therefore,  
15 the amount that BP has paid has become relevant. Now,  
16 I didn't know this when I was writing the motion but  
17 Cadenhead's deposition was taken before, the day we  
18 filed the motion. It was taken by Keith Kebodeaux, and  
19 I had not talked with him about it. Apparently in  
20 Cadenhead's deposition he stated that what he really  
21 meant was, not that one point two billion had been  
22 paid, but one point two billion had been expensed. In  
23 other words, he doesn't know. We believe that the  
24 individual settlement agreements are still relevant  
25 because they are taking this position through their





1 expert that the amount of compensatory damages that  
2 have been paid should deter them from having -- It's a  
3 deterrence enough, so they shouldn't have to pay  
4 punitive damages. But what we suggested to BP this  
5 morning was, if BP could give us a grid that would show  
6 us without any names, without any terms of settlement,  
7 would give us a grid that would show us the amount of  
8 the individual settlements and the type of claimant he  
9 was who would identify with enough information, to  
10 provide us with that, then we would withdraw our motion  
11 to produce all of the settlement agreements, the  
12 individual settlement agreements. And we have said in  
13 our motion that we would maintain the confidentiality  
14 which is I'm sure why some of the distinguished guests  
15 are here today because they are concerned about the  
16 confidentiality of their settlement agreements. So, we  
17 would maintain the confidentiality. We would maintain  
18 the confidentiality even without, but if they continue  
19 to take the position that the amount that they have  
20 paid is relevant then it's relevant to us to find out,  
21 and have some way of testing the amount that they pay.

22 Now, there's an additional issue with  
23 regard to settlement agreements that we need to discuss  
24 because it's separate and apart from this that we just  
25 talked about. And that's with regard to the claims by



1 the BP employees for defamation. And Mr. Buzbee is  
2 going to speak about that, Your Honor.

3 MR. BUZBEE: Your Honor, you may have  
4 read in the paper the -- several of these individuals  
5 who were operating on the board and management were  
6 fired as a result of this explosion. They filed claims  
7 for defamation. They filed in Judge Kent's court,  
8 Federal Court here in Galveston. They settled their  
9 cases and I think after they settled, three of them  
10 were deposed. I think BP did the deposition.  
11 Obviously, these people absolutely have knowledge about  
12 what happened. Absolutely have relevant information  
13 about why this explosion occurred. We're absolutely  
14 entitled to know whatever agreement they reached with  
15 BP when they settled their case, and how much money  
16 have you paid and what are the terms of your  
17 settlement. We don't know if there's some term that  
18 says you must cooperate with us in the defense of this  
19 case. We don't know if they were paid an inordinate  
20 amount of money and perhaps that would influence their  
21 testimony. We don't know any of that. So, this is a  
22 completely discrete and separate issue from the  
23 settlement agreements that have to do with the  
24 plaintiffs and plaintiffs' lawyers. BP employees who  
25 were terminated and then filed suit and then settled,



1 and we're absolutely entitled to get those settlement  
2 agreements, but that they will be under the protective  
3 order in this case. We're entitled to know that just  
4 for cross examination purposes.

5 MR. SALYER: You see different lawyers at  
6 this table arguing different motions, and I'm arguing  
7 this one because this one is personal to me as it's  
8 personal to a lot of lawyers in this room. We have  
9 settled over five hundred cases which you're aware of.  
10 Six hundred and fifty cases in which I have been  
11 involved in the majority of them as has Mr. Tekell and  
12 Mr. Denny. We made promises to the individuals  
13 involved. We made promises to the lawyers. We made  
14 promises to the claimants that we're going to keep  
15 those settlements and the amounts of those settlements  
16 confidential, and this is nothing more than a ploy, a  
17 bargaining tool to negotiate their own settlements.  
18 Now, they must show relevance. They mentioned it that  
19 they've got to show relevance, but they have to show  
20 the relevance of individual settlement agreements. Not  
21 settlement agreements -- They've got to show the  
22 relevance of individual settlement agreements and they  
23 cannot do it. The basis you may remember they stood up  
24 and said, you know, our basis was this Dr. Cadenhead  
25 who in his report -- This is important to understand.



1 In his report actually made two different statements.  
2 He took this amount that was reserved which has been in  
3 the press, one point two billion dollars and said that  
4 that is evidence of BP's resolution, attempt to resolve  
5 these matters, and is some evidence that we are doing a  
6 good thing. And then he said later on that that  
7 represents that we have paid that amount. Well, that  
8 was correct in his deposition. It become clear in his  
9 deposition as Mr. Holman pointed out that all that was  
10 was how much had been reserved, not necessarily paid  
11 and not paid, and that he had never read individual  
12 settlement agreements. He did not know the amount of  
13 any individual settlement agreement and he doesn't know  
14 the aggregate amount of settlement. So there's no  
15 issue any more, and he's not going to rely on that  
16 evidence at trial. I will tell you we are not going to  
17 introduce evidence of the amount of settlement at this  
18 trial. So there's no relevance to this. Their attempt  
19 to, a compromise of a settlement agreement is still not  
20 something that we can agree to and it's not something  
21 that you should order. First of all it requires the  
22 production of a document which is not permissible, a  
23 document that doesn't exist. They want some grid that  
24 shows obviously the nature of the injury and how much  
25 we paid. The intent is clear. They want to do it to





1 negotiate their own cases. That's still a violation of  
2 the terms of those agreements because you can identify  
3 those individuals based upon the type of injuries they  
4 have. Second of all, what does it matter. What does  
5 it matter what the type of injury would be and how much  
6 they got for the purposes of what they claim. Now,  
7 there are other people here that I think may want to  
8 address you that represent clients with whom we've made  
9 that agreement and who has made that agreement to us,  
10 they would not disclose. And I guarantee you a bunch  
11 of them don't want that amount disclosed. Some do  
12 because I know some have been going out and doing it  
13 anyway, but the overwhelming majority don't want it.

14 This other thing is this idea of  
15 apportioning punitives and actions. There is not a guy  
16 over here at this desk other than the guys from Glen  
17 Morgan's office that I haven't or we haven't negotiated  
18 a settlement with that hasn't seen the release template  
19 that we use. And they know we have settled 46 claims  
20 with Tony Buzbee. We've settled ten claims with Brent  
21 Coon which two I know have funded. 67 with Jimmy  
22 Nebout over there, and they all see the same release  
23 template, and it does not apportion punitives and  
24 actual damages which is one of the bases for their  
25 motion. It's no secret that that is not done and they



1 know it. Anyone else want to address it?

2 MR. WILLIAMS: I would refer to Mr.  
3 Jamail. I would like to speak but Joe can speak first  
4 obviously.

5 MR. JAMAIL: Judge, thank you for hearing  
6 me if you're going to hear me.

7 THE COURT: Yes, I will.

8 MR. JAMAIL: This creates a real  
9 conflict for me in that my clients advise me, every one  
10 of them. And I took the lead to handle the cases for  
11 Walter Umphrey and his firm, for David Perry and his  
12 firm. They trusted me. All these clients have asked  
13 that their settlement not be made public. Too many  
14 churches and too many relatives and people who want to  
15 know. It would be easy to ascertain listening to  
16 counsel for other plaintiffs who these plaintiffs were  
17 because of the amounts involved. I elicited a promise  
18 from Mr. Tekell that he would get British Petroleum not  
19 to divulge the amounts, the names or anything to do  
20 with any of these settlements. Some of these injuries  
21 were so unique that anybody whose IQ would reach the  
22 speed limit would be able to figure out who they were.  
23 So, we're opposed to that from my clients, from John  
24 Eddie's and from Ronnie Krist who have asked me to  
25 speak for them and I have.



1                   THE COURT: Are any of your clients ones  
2 who are in the defamation lawsuits that were mentioned?

3                   MR. JAMAIL: No. Not that I'm aware of,  
4 no.

5                   MR. WILLIAMS: If I may, I echo with  
6 what Mr. Jamail says, and as the court is well aware, I  
7 have been here as an advocate for the Plaintiff's  
8 committee on many occasions. And these are my dear  
9 friends, but now that I've settled I have a different  
10 interest. And I part with them in this respect. I  
11 agree that disclosing these amounts would be  
12 inappropriate. I agree that anybody could match  
13 categories with the IQ of the speed limit, and this  
14 could be achieved though, Your Honor, by simply somehow  
15 or another we look and make sure that I know what the  
16 total is for my firm and stuff. And if they were to  
17 give them the total breakdown by individual categories  
18 it seems to me it solves the problem. But to divulge  
19 individual amounts creates a huge problem. I tell you  
20 this, having been a defendant in Arce versus Burrow in  
21 the Phillips case. And when all these people start  
22 seeing what somebody else got we're going to have a  
23 whole -- And my defense lawyer is sitting right there  
24 and he can assure you that it spon litigation like you  
25 cannot believe. And we made an agreement, we want to



1 live by that agreement, and with all due respect to my  
2 good friends I part with them on this particular issue.  
3 This is one of the best cases I have ever seen. They  
4 have enough evidence to kick BP's rear end 20 times  
5 over, and they can do it. They ought to be focusing on  
6 that evidence and not on what Mr. Jamail got or  
7 Mr. Krist or an individual. That's not going to help  
8 them. They have got what they need. You are not  
9 hurting them one iota.

10 MR. JAMAIL: If I can add to that, it  
11 appears, and I'm not -- I don't know this, maybe, that  
12 they are trying to get us to evaluate their cases for  
13 them which is not -- They are capable lawyers. They  
14 should be able to do that. They are not referring John  
15 Eddie any money. They haven't come to me and asked me,  
16 hey, you're smart, tell me what this is worth. Now, if  
17 you want to talk to me, call. To do it this way is  
18 wrong, Judge. I'm in the middle right now of a huge  
19 Arce case and I know what happens when things even look  
20 like they are not proper, suddenly you're getting into  
21 another class action, hundreds of cases. Anyway I have  
22 this problem with the clients and my pledge to Umphrey  
23 and to Perry that I would keep their clients' names and  
24 set them aside. Thank you for hearing me, Judge.

25 THE COURT: Is there anyone else who has





1 any input?

2 MR. COON: I would like to respond too  
3 on behalf of the steering committee. First of all we  
4 have been trying to work out most of our discovery  
5 disputes with defense counsel all through this  
6 litigation. We're very sensitive to the issues  
7 associated with sharing the settlement agreements in  
8 light of the difference between the firms and the  
9 magnitude of all of this. That is why we tried to  
10 reach some other resolution other than full disclosure  
11 of the settlement agreements and specific terms of  
12 those agreements. Nonetheless, the defense in this  
13 case has also done something rather unprecedented that  
14 initiated all of this which is that they had an expert  
15 who is going to come in here and say this is a company  
16 that makes millions of dollars but we shouldn't be  
17 punished because we have paid a lot in actual damages.  
18 I've never heard of that before. It's untenable but  
19 they logged it, so they have opened up this can of  
20 worms that everybody on this side, these guys here, me  
21 and these guys back here would all prefer not to be  
22 open. But if they are going to insist on pushing  
23 forward with an expert that relies on that kind of  
24 testimony, that presents a problem to us. We have an  
25 obligation to our client to at least investigate



1 whether or not that expert has any factual basis with  
2 which to form that opinion. That's an issue for this  
3 court as well. We don't have those issues on an expert  
4 that allows that information without lack of  
5 foundation. If we can find a happy medium we're happy  
6 to do it. We're willing to still table the issue of  
7 that disclosure today with the exception of those  
8 persons who were in the defamation case, because their  
9 testimony is very critical to some issues in this case  
10 as to what happened.

11           One other thing I would like to caveat  
12 all of this with, with respect to the Rowe case which  
13 are two of the deceased represented by the daughter,  
14 she has a fiduciary obligation to the estate because  
15 she represents herself and her brother. And Mr. Tekell  
16 and I, I think, we have decided -- Certain issues that  
17 are germane to her case as to whether or not the  
18 brother did or did not retain some rights in the  
19 estate, and I think we reached a separate agreement  
20 there. I do know Mr. Morgan, he may have that same  
21 issue as well with respect to Rodriguez because there's  
22 two firms involved in that. They also bring some  
23 additional fruit to bear.

24           MR. BUZBEE: I personally don't want to  
25 get crosswise. These are people I looked up to and



1 still do. I think we can work something out with  
2 regard to those -- I mean, frankly like I said I  
3 settled forty something cases already. I have eighty  
4 left. I personally don't want all my clients knowing  
5 what each other got. We're very careful about that.  
6 We're trying to accomplish a task without doing that.  
7 I think that we can do that. If we can just table that  
8 issue, but with regard to the employees, I think that's  
9 -- They never have addressed it because I don't think  
10 they can respond to that. We're absolutely entitled to  
11 know what they pay their fired employees who turned  
12 around and sued them for defamation.

13 MR. SALYER: Same argument. They are  
14 not entitled to know that. They are not entitled to  
15 know the amounts of those settlements. It's the exact  
16 same argument, and it has no bearing on what it is they  
17 want to do and what they want to show. Judge, I would  
18 also add as we put in our motion in writing filed with  
19 the court we are not going to introduce evidence of the  
20 amount of settlement.

21 THE COURT: Let me ask you this: Are  
22 you planning on making a "we've already paid so much,  
23 so enough is enough" argument?

24 MR. SALYER: We would have to introduce  
25 the amount to do so, and --



1                   MR. TEKELL: We're not going to make  
2 that argument. This guy is not going to show up  
3 testifying to that. So that's out. As far as -- May I  
4 respond further to that?

5                   THE COURT: Sure.

6                   MR. TEKELL: This started out as a  
7 motion hearing by phone, and it was for the purpose of  
8 getting the amounts so the firms still in this case  
9 wouldn't do malpractice by not getting as much money as  
10 others had. Now, it went over into this business about  
11 accumulating the total amount by getting the individual  
12 settlements because of this expert testimony. It  
13 shifted from one of the individual amounts so they  
14 would know how much the others have gotten which they  
15 are not entitled to and they know it, over to, well,  
16 now, what about the total amount? We're entitled to  
17 that. We're not going to argue that. This whole thing  
18 is moot. It was suggested that it be tabled as to  
19 these individual settlements. We have lawyers here  
20 that are involved now and we don't want a table to come  
21 up again next week. We want a ruling on that issue  
22 now, because I don't want to call Mr. Jamail saying,  
23 they're trying again, Joe, would you come down. And  
24 Joe is a busy man and his wife is ill and we don't want  
25 to call him down here again.





1 THE COURT: Mr. Krist asked to speak.

2 MR. KRIST: I also defended a couple of  
3 defendants from the Arce case, and let me tell you what  
4 this is going to lead to from a policy standpoint. If  
5 you start categorizing these injuries and the amounts  
6 of money that was paid and compensation for those  
7 injuries, everybody had better keep their malpractice  
8 premiums fully paid because there's going to be an on  
9 rush of lawsuits, because John's going to hear that Joe  
10 got more. They don't know any of the detailed facts  
11 surrounding the cases. And I'm just telling you that  
12 there's going to be a ton of lawsuits, people suing  
13 their clients, and you didn't get as much as Mary got  
14 and all of that. And I think from a policy standpoint,  
15 it would be a slippery slope.

16 MR. HOLMAN: Your Honor, I wanted to let  
17 Mr. Krist finish because I have the utmost respect for  
18 him and the work that he's done throughout his career,  
19 but I think I can shortcut all of this. In light of  
20 Mr. Tekell's representation that they are not going to  
21 call Cadenhead at trial --

22 THE COURT: He didn't say they are not  
23 going to call him. He said they're not going to call  
24 him for that.

25 MR. HOLMAN: For that. Okay.



1                   MR. TEKELL: Here's the argument about,  
2 you know, we paid all this money. Don't punish us  
3 again because of that.

4                   MR. HOLMAN: Okay. But then you are  
5 going to have to amend his expert report because that's  
6 the gist of his whole report.

7                   MR. TEKELL: That's the gist of his  
8 whole report and all the depositions going on.  
9 Probably won't call him.

10                  MR. JAMAIL: I pay him to tell how much  
11 he's paid.

12                  MR. HOLMAN: We're entitled to his  
13 underlying opinions, you know, the facts underlying his  
14 opinions. If he is not going to take that opinion,  
15 then we can withdraw the motion with regard to that.

16                  With regard to the BP employees, that's  
17 a different issue, and it's a different issue because  
18 BP has listed those guys on their witness list.

19                  THE COURT: First of all, let's deal  
20 with the non-defamation plaintiffs. I will rule now to  
21 deny your motion to compel on that issue because we do  
22 need to resolve it. There's too many people out there  
23 who need the assurance that they don't have to worry  
24 about that again. And I understand that you are not  
25 proposing to introduce that sort of evidence at trial



1 that they were afraid of, but as I stated many times  
2 before, there has been a major PR campaign by your  
3 client to give that message out to all of those  
4 potential jurors. You've done it through press  
5 conferences. You've done it through, your client has  
6 done it through websites, and your whole campaign on PR  
7 is we've taken care of this, so we have done enough,  
8 and you have been, I believe your client has been,  
9 although on one hand I think it's a brilliant tactic,  
10 but I have a very big concern that your client is  
11 trying to taint that jury pool, and if I continue to  
12 see that there may be other consequences that we have  
13 to deal with.

14 MR. TEKELL: I take every step that I  
15 can, that you don't see this billion two or whatever  
16 that's been paid out, because it hasn't been paid out.

17 THE COURT: I understand that that  
18 number hasn't been paid out, but it has been set aside.  
19 But that message has been getting across and we may  
20 have to be pretty creative on how to deal with that if  
21 that continues, especially as we get closer to the  
22 actual jury selection and the actual trial.

23 Now, we'll talk about the defamation  
24 clients.

25 MR. HOLMAN: The defamation clients,



1 they are listed as witnesses with knowledge of relevant  
2 facts on BP's witness list. They were after they  
3 settled their claims with BP, they were deposed by BP.  
4 We are entitled to examine those witnesses about what  
5 their settlement agreements were with BP to determine  
6 whether there is any financial bias with regard to  
7 their testimony.

8 MR. SALYER: Your Honor, our suggestion  
9 would be that we tender the settlement agreements with  
10 those defamation claimants but redact the amounts so  
11 that they can see the language, see whether or not  
12 there's any agreement to testify, any agreement to  
13 cooperate or not to cooperate, anything like that, if  
14 any. I don't know. I haven't read those settlement  
15 agreements, but we would agree to produce those  
16 agreements with the amounts redacted.

17 MR. HOLMAN: That's agreeable to us,  
18 Your Honor.

19 THE COURT: All right. That's how we'll  
20 do that.

21 MR. HOLMAN: Thanks.

22 THE COURT: Okay. What do we have next?

23 MR. GONZALES: Your Honor, the next two  
24 motions deal with the motion -- their motion for  
25 protection regarding the deposition of John Manzoni and





1 Browne. However, since the Court of Appeals ruled that  
2 the affidavit was sufficient, then I think the burden  
3 then shifts to us to establish whether or not  
4 Mr. Manzoni has a unique and/or superior knowledge.  
5 And David will address that issue.

6 MR. HOLMAN: This is the APEX official  
7 test, and because their affidavit was sufficient, then  
8 the burden is on us to prove that the deponent has  
9 unique or superior knowledge. The case law talks about  
10 that is he the only one that has this knowledge? Is he  
11 someone that has knowledge in a greater qualitative  
12 sense than someone else? And so, therefore, we went  
13 through the evidence to determine with regard to  
14 Manzoni whether Manzoni was that sort of person.  
15 Manzoni is the chief executive of refining and  
16 marketing for BP. And so we went through and found  
17 out -- talked about whether he had unique or superior  
18 knowledge.

19 Now, as Your Honor knows, the concern  
20 with the Courts is like someone that has a slip and  
21 fall suing to try to get the deposition of the chairman  
22 of the board of Walmart, someone who has maybe  
23 knowledge of the general policies but doesn't have any  
24 specific knowledge relevant to the claims.

25 After reviewing the evidence with regard



1 to Manzoni, Manzoni has direct firsthand knowledge of  
2 an awful lot of things that are directly relevant to  
3 our claim. Let me go through them, if I may. First of  
4 all, on the day after the accident, Manzoni, who is the  
5 chief executive for refining and marketing, was there  
6 on the scene observing. There were others there on the  
7 scene that were observing, but his perspective as the  
8 chief executive of refining and marketing would be  
9 unique. He was able to talk to witnesses. He was able  
10 to talk to employees. He was able to observe the site.  
11 And we're entitled to examine him about that  
12 observation.

13 In July of 2005, four months after the  
14 accident, Manzoni returned to the Texas City refinery.  
15 Again, he observed the site and the remediation efforts  
16 that were being made. He has direct personal knowledge  
17 of what he observed. We're entitled to examine him  
18 about that. BP, as part of their public relations  
19 efforts, commissioned world television to produce a  
20 documentary. In that documentary, Manzoni was  
21 prominently featured in that he talked about the  
22 lessons learned from the tragedy, and he talked about  
23 the group response to the tragedy. The documentary  
24 concludes with Manzoni talking about the future of BP  
25 after the tragedy. Manzoni is the only person that can



1     testify as to what he meant and what his comments were  
2     with regard to BP and those comments that he made about  
3     the incident for which we're in court today. We're  
4     talking about public relations.

5                     Manzoni, also, was directly involved in  
6     the communications with the employees about what BP's  
7     response was with regard to the future of BP following  
8     this tragedy. We have evidence of that. One of the  
9     things that -- with regard to personal knowledge and  
10    personal input into this tragedy. Certainly, the  
11    person who directed the remediation efforts would be  
12    someone who we would want to depose. That person was  
13    Manzoni.

14                    We -- Lord Browne, the CEO of BP,  
15    announced on May 17, 2005, I asked John Manzoni to lead  
16    the next stage of implementation within the R and M  
17    segment. He will insure that all changes necessary are  
18    made. We're entitled to depose Mr. Manzoni to  
19    determine what remediation efforts he attempted and  
20    what changes were made.

21                    We also learned through going through  
22    the evidence that Mr. Manzoni personally reported to  
23    the investors on the company's safety performance and  
24    the scope of the safety statistics. He has unique and  
25    superior knowledge with regard to his own report. And



1 the Supreme Court recognized this in the Alcatel case  
2 and said, although someone who read the report may not  
3 have unique and superior knowledge, the author  
4 certainly does.

5 In addition, Manzoni was the author of  
6 the corporate code of conduct, the corporate code of  
7 conduct which Lord Browne asked to be instituted a few  
8 months after the accident. Manzoni was the one who  
9 emphasized, he wanted it revised to more strongly  
10 emphasize the need for safety and environmental  
11 compliance in light of recent events. In other words,  
12 Manzoni is stressing we need to put safety and  
13 environmental concerns in the corporate code of  
14 conduct. That is something we would like to examine  
15 him about.

16 There is a Texas City focus on a future  
17 program. Manzoni personally directed the creation of  
18 the program overview package for the broad discussions  
19 in that program. Probably the most blatant example of  
20 Manzoni's firsthand knowledge of this, the incidents in  
21 this case we just learned recently. We learned through  
22 the deposition of the corporate bigwigs that Manzoni  
23 was the guy who was directing an internal  
24 investigation, what was called "an accountability's  
25 investigation" of all the higher-ups in the company.





1 If you look at the corporate chain of command, it goes  
2 all the way up to the ladder up to Manzoni and Browne.  
3 Right below Manzoni is Haufman, and all the way up, all  
4 these people testified, I'm under investigation. Get  
5 up to Haufman and say, Are you under investigation too,  
6 Mr. Haufman?

7 Mr. Haufman said, Yes, I am under  
8 investigation. He said, Who commissioned that  
9 investigation?

10 Manzoni.

11 So Manzoni is the only person because  
12 all the other people are under investigation. He is  
13 the only person that can testify as to that internal BP  
14 investigation, the accountability's investigation, with  
15 regard to who is accountable for the tragedy. So  
16 Manzoni certainly has direct firsthand knowledge. He  
17 is the only person that can testify about certain  
18 things, and he has the qualitative view about some  
19 other things and therefore we're entitled to take his  
20 deposition now.

21 There's one other aspect of this. This  
22 has to do with location of the deposition. On August  
23 3rd, Mr. Coon flew to London to take the deposition of  
24 Mr. Haufman, learned in that deposition that  
25 Mr. Haufman had been in Chicago the week before; and



1 that he and Manzoni had been in Chicago the week  
2 before; and that in a few weeks or maybe a week and a  
3 half, they were going to be down in Texas City. So,  
4 Mr. Coon had to go all the way over to London to take a  
5 deposition of some guy who was here within three weeks  
6 of each other, twice in the United States.

7 Now, if we are going to take the  
8 deposition of Manzoni, which I fully expect we are  
9 because of his personal knowledge, we ask that the  
10 Court order it to be taken here because, number one,  
11 it's just more economical sending one guy across from  
12 England versus sending all the lawyers over to England  
13 to take the deposition. But also because we're getting  
14 close to trial and we need the time to work here.

15 MR. WILLIAMS: Your Honor, may I  
16 interrupt?

17 THE COURT: Sure.

18 MR. WILLIAMS: Would it be appropriate  
19 that learned counsel plus Mr. Jamail be excused?

20 THE COURT: You certainly may be.

21 MR. WILLIAMS: Thank you, Judge.

22 THE COURT: Thank you.

23 MR. HOLMAN: That's all, Your Honor.

24 MR. SALYER: Your Honor, when the  
25 Supreme Court first addressed this issue back in 1995



1 in the Brown Central case, they expressly recognized  
2 the inherent problems with deposing upper management  
3 level people. And because of that, they created a very  
4 strict guideline to determine whether or not they were  
5 entitled to take these people's deposition. And the  
6 standard is whether or not they have any unique or  
7 superior personal knowledge regarding the topics that  
8 they want to discuss. And it's important to understand  
9 what that doesn't mean. It's not enough that they have  
10 some knowledge of the topics they want to discuss.  
11 That's the Alcatel case as we have cited in our brief.  
12 It's not enough that a CEO receives reports and acts on  
13 reports from underlings. That's the Alcatel case as  
14 well. It's not enough to show that they have ultimate  
15 responsibility regarding topics. That's the case  
16 that's out of Ft. Worth called AMR Corp. v. Fenlow.  
17 And it's also not enough to show that a CEO articulates  
18 the company's aims or goals, and these individuals -- I  
19 really kind of want to talk about Browne and Manzoni  
20 generally here. But everything that they have said  
21 kind of falls in with these categories, Your Honor.  
22 They have failed to show, and they must show, that  
23 Manzoni has some unique or personal knowledge --  
24 superior personal knowledge regarding all these  
25 incidences.



1                   He comes to Texas City. He was  
2 accompanied by other individuals when he did. It's not  
3 enough to say that he came and met with people, because  
4 there were other people, and they must choose a method  
5 that is less intrusive than taking his deposition. He  
6 doesn't have unique knowledge that's not shared by  
7 others. He doesn't have superior knowledge regarding  
8 any of that that's shared by others. The fact that he  
9 has a press conference or the fact that he does some  
10 documentary, which, Your Honor, is important to  
11 understand never aired --

12                   THE COURT: Tell me about that  
13 documentary. I never heard about that.

14                   MR. SALYER: Well, it's because it was  
15 never aired. It was never done.

16                   THE COURT: Wasn't done or wasn't  
17 published?

18                   MR. SALYER: It was -- My understanding  
19 is it was never aired, is that correct?

20                   MR. GONZALES: It was done.

21                   MR. SALYER: Yes. Art Gonzales was  
22 notified on August 18 from Greg Alvarez' email in  
23 response to his letter dated August 15 which is  
24 attached, BP Products confirms that neither the video  
25 nor the model discussed and some Bates numbers were





1 prepared.

2 Is that correct, Greg?

3 MR. ALVAREZ: That is correct, Your  
4 Honor.

5 MR. SALYER: They were never aired.

6 THE COURT: They never aired is not the  
7 same as never made.

8 MR. SALYER: Well, even if they did,  
9 there's a case on point about that. You have to  
10 understand, since 1995 no court has ordered -- Well,  
11 let me ask it this way: No court's order has ever been  
12 confirmed by any Court of Appeals or Supreme Court the  
13 taking of a CEO of a major corporation or an APEX  
14 deposition for a major corporation. The ones that have  
15 been have been lower level people, like general counsel  
16 who was directly involved in, I think, the Perry Homes  
17 case which they cite. You have a general counsel who  
18 had created and went to a seminar and taught them legal  
19 issues and said, Here are certain legal issues you must  
20 abide by, and they are importantly negotiating -- and  
21 also negotiating contracts. So it shows that these  
22 things are not normally granted.

23 THE COURT: Actually, there has been one  
24 order that was affirmed.

25 MR. SALYER: Of a major, of a major



1 corporation? There had been some of smaller --

2 THE COURT: Garth Brooks.

3 MR. SALYER: Garth Brooks?

4 THE COURT: Garth Brooks. And I know  
5 that because I'm the one that signed that order. The  
6 president of his company and one of his employees was  
7 hurt because the scaffolding broke, and he was  
8 seriously injured and that was --

9 MR. SALYER: Well, I -- You know, I  
10 don't know how a musician falls into --

11 THE COURT: He was the president of the  
12 company.

13 MR. SALYER: No, I don't disagree that  
14 there hasn't been --

15 THE COURT: But it wasn't -- I didn't  
16 order it because he was the president of the company.  
17 I ordered it because of a phone conversation that,  
18 indicating that he had personal knowledge.

19 MR. SALYER: I don't dispute that there  
20 have been some, but in larger corporations, it becomes  
21 more and more remote, the knowledge that they have and  
22 the information that they are provided, and Manzoni is  
23 an example and John Browne, we'll talk about him in a  
24 minute.

25 THE COURT: What about the report that



1 he offered?

2 MR. SALYER: I don't think, I can't  
3 confirm that he did not author any reports. That's not  
4 true. He did not author any reports.

5 MS. MACKILLOP: There's some statements  
6 made -- There's a comment about a safety report which  
7 really wasn't. He actually was going to talk to some  
8 investors or investment group, and he thought that a  
9 safety issue might come up, and just like any other,  
10 you know, high level corporate officials, he told these  
11 guys, well, go get the information on that. So if I  
12 have to talk to these guys and the investment community  
13 to ask any questions, I have the answer for them. It  
14 doesn't have to do with Texas City. It was before  
15 Texas City. But he didn't go out and print a report.  
16 He didn't go out and make up the code of conduct. He  
17 didn't go out and write --

18 THE COURT: My understanding -- maybe I  
19 misunderstood, because I understood that he did write  
20 the code of conduct.

21 MR. HOLMAN: He was the one that revised  
22 the code of conduct.

23 MS. MACKILLOP: No, ma'am. He -- I'm  
24 sorry. Your Honor, let's look at the documents that  
25 they provided you. That's not what happened. In fact,



1 the very document they provided you tells you who wrote  
2 the code of conduct. They have a compliance and ethics  
3 department. John Manzoni and John Browne do not sit  
4 down and tip-tap out reports and they don't tip-tap out  
5 the codes of conduct. They have people that do that  
6 for them. They are CEOs. We all know what those folks  
7 do. They decide big issues and they have other people  
8 go in and revise them. That's not what that evidence  
9 shows.

10 MR. HOLMAN: Your Honor, if I may, just  
11 so we're clear on this one issue, this is Exhibit H to  
12 our motion, or our response to their motion, and it is  
13 an email from John Barnes dated May 25th, 2005. It  
14 says, Please take some time to review the attachment.  
15 It's the latest version of the code. I was informed  
16 today that changes to the draft below have started at  
17 the recent review by John Manzoni. John has requested  
18 that the document more strongly emphasize the need for  
19 safety and environmental compliance in light of this  
20 event. He's taken a personal hand in revising the code  
21 of conduct.

22 MR. SALYER: That's still -- That's not  
23 enough because that's what company presidents -- That's  
24 what the CEOs -- That's what people, these APEX people  
25 do. Otherwise, what use is the company? They direct





1 policies, but if what they say is true that they direct  
2 some policies, they direct that something be done, then  
3 there's no need for this APEX analysis. It wouldn't  
4 even apply. Every CEO -- everyone is responsible in  
5 that. The mere fact, as I said there's a Supreme Court  
6 case on that. The fact that the buck stops with  
7 someone is not enough and that they direct these  
8 policies, and they direct the work to be done. That's  
9 to be done by underlings and reported to them for  
10 ultimate decisions. That alone is not enough.

11 MR. WERNER: If I may be heard, Your  
12 Honor.

13 THE COURT: Sure.

14 MR. WERNER: One of the things to keep  
15 in mind is that there are basically two levels of  
16 investigation. There was the Monford report which has  
17 already been released which focused on basically the  
18 plant level, and focused a lot on what the individual  
19 operators did, focused a lot on what the site  
20 supervision did, and got even a little bit up into  
21 plant leadership and it made a bunch of conclusions  
22 basically saying that while there are a lot of mistakes  
23 done, that Modford conclusion was, well, there wasn't  
24 any gross disregard and certainly didn't go up to the  
25 high levels. Whatever mistakes were made were all kept



1 down here.

2                   And those people have been deposed.  
3 There's been no argument about it. I think some of  
4 them have even been named as potential expert witnesses  
5 for them to talk about the investigation. Then later,  
6 so that it won't be finished until after the trial,  
7 comes the higher level of investigation where now  
8 Mr. Manzoni is looking at all these people all the way  
9 up at the international level, at the London level, and  
10 asking what did they know and what did they do. I  
11 mean, certainly when the report finally comes out when  
12 the investigation is completed, I don't think there is  
13 going to be any argument that that's going to be  
14 relevant. And so -- what they've basically done is  
15 they are just trying to delay it until after the trial  
16 is over. But there he does have superior knowledge  
17 because he is investigating what -- he is investigating  
18 this part of the triangle. Mr. Modford investigated  
19 down here at the base of the pyramid, but he has  
20 investigated the top of the pyramid. We are entitled  
21 to find out what he is finding out, what these  
22 conclusions are.

23                   THE COURT: Okay. All right. Go ahead.

24                   MR. SALYER: My understanding is Haufman  
25 testified that Manzoni is not going to do that portion



1 of the investigation, and that's my understanding  
2 regarding Haufman's testimony.

3 MS. MACKALLOP: I'll just clear it up.  
4 Haufman testified -- Just to kind of give you a  
5 picture. You have, in refining and marketing, you go  
6 to Texas City, to regional people, then you get to  
7 Haufman who reports to Manzoni. Haufman testified, in  
8 fact several people testified that there was an  
9 investigation of people going on, not the cause of the  
10 accident. That's already been investigated, about  
11 people. But Mr. Manzoni is not calling up people and  
12 talking to them. They all testified that they have  
13 been contacted by various people. They put another  
14 executive in charge, Mr. -- I'll probably mispronounce  
15 his name. Mr. Bonzer, he's Italian. He is the one who  
16 is actually doing the investigation. Mr. Manzoni,  
17 again, is not doing these things. He is a high level  
18 corporate official who does general things, and people  
19 do it for him. So, the people with unique and superior  
20 knowledge are going to be the people doing the  
21 investigation are frankly the people who have already  
22 been investigated, who have already actually testified  
23 in their deposition about what happened.

24 And if I can clear up one other thing,  
25 and I apologize to Mr. Salyer because he and I -- There



1 were a lot of facts we had to gather to respond to the  
2 thing. He was doing part and I was doing part. The  
3 video document was never made, not aired.

4 THE COURT: Not filmed at all?

5 MS. MACKILLOP: Not filmed at all.

6 THE COURT: It seems to have some quotes  
7 from interviews?

8 MR. GONZALES: The script was written.

9 THE COURT: Was the script written?

10 MS. MACKALLOP: Not that I know of. All  
11 we had was an email talking about somebody had an idea  
12 to do it. It never happened.

13 THE COURT: Who had this idea?

14 MS. MACKALLOP: It's in the email.

15 People I've not personally heard of.

16 THE COURT: Was it BP?

17 MR. HOLMAN: The video outlines in  
18 Exhibit C. That's where we got the -- where he talks  
19 about what Manzoni is testifying, what he's talking  
20 about in there. We cut to Manzoni. We also talked  
21 about lessons learned in there, outlined in the  
22 response. Ends with Manzoni.

23 MS. MACKILLOP: It's an outline of what  
24 somebody thinks they might want to do a documentary  
25 about, or a film about. It never happened. We





1 confirmed that. It never happened.

2 MR. COON: Your Honor, here's our issue.  
3 One is we think that Manzoni is going to inject himself  
4 a hundred different ways. This was a catastrophic  
5 explosion that occurred. It's important from their  
6 standpoint to show the care and concern and importance,  
7 recommend -- The importance of what happened in Texas  
8 City by making somebody that's CEO or somebody that  
9 works under the CEO, make that person available,  
10 particularly when they are a part of this case. But  
11 more than that, early on it is important that he's very  
12 cognizant of all the PR associated, very early on in  
13 this case. They initiated, Mr. Monford, the people  
14 that London picked to come down here to document the  
15 investigation, and they made a press statement through  
16 Mr. Pelary, the President of BP of North America,  
17 saying that they made mistakes, that there were six  
18 employees that were all low level people, worked on the  
19 isom units, that they were the screw ups and  
20 disciplinary action has been taken against them. They  
21 have all been terminated. And to flavor all of this is  
22 that this was something that happened because operators  
23 at low level made a mistake, made multiple mistakes,  
24 that management could not even foresee.

25 And what we have found out through the



1 investigation of this case as we go back through and I  
2 personally deposed I think every one of these persons,  
3 we have deposed the plant manager, Mr. Paris. He is  
4 under this new accountability investigation that  
5 apparently has been initiated this year. This is the  
6 accountability investigation of the people in upper  
7 management, their roles and involvement and what led or  
8 precipitated this explosion, from this facility, from  
9 the staffing reduction. For all these reasons, the cut  
10 budget, when management knew this was going on and they  
11 participated in these budget cuts and was fully aware  
12 of it. And while they tried to whitewash this and say  
13 this is low level operator error, we now know that  
14 Kathleen Lucas was under this accountability  
15 investigation. We know that Bob Paris is a plant  
16 manager, and has been, basically sat at home for the  
17 last year and a half under paid leave of absence while  
18 he represents to the public that he's been involved in  
19 the investigation and participated in the  
20 investigation. We know that his boss, Pat Gower, who  
21 had been removed from authority to keep an eye on Paris  
22 who is still sitting at home because Pat Gower is under  
23 this investigation. And Pat Gower told us he was under  
24 this investigation. He told us that Paris was under  
25 the investigation. We asked Paris about being under



1 this accountability investigation. He said nobody even  
2 told him that he was under this accountability  
3 investigation. He's sitting here six months after and  
4 still was not even aware of it. We go to London to  
5 talk to Mr. Gower's boss, Mike Haufman, what's this  
6 accountability investigation? What's this  
7 accountability investigation? What role was that  
8 technology that they had and advance notice.

9                   Mr. Haufman said, I don't know. I'm  
10 being investigated too.

11                   So we go to Mr. Haufman's boss who Mr.  
12 Manzoni knows and Mr. Manzoni can at least say why  
13 Mr. Haufman and Mr. Paris and Ms. Lucas are all under  
14 investigation. And then the accountability  
15 investigation directly attributable to this explosion.  
16 So, it makes it very, very relevant to this particular  
17 case.

18                   MR. SALYER: I think he practicing his  
19 opening statement, but listen to what he's saying.  
20 He's saying Manzoni knew this stuff, but that's not  
21 enough. That's the Alcatel case. He has to have  
22 unique or superior personal knowledge. They deposed  
23 all these other people. And it's not enough just  
24 simply to say that he wanted to make himself aware of  
25 what's going on. That's what CEOs, that's what company



1 bigwigs do. And there's one other thing, and I forget.

2 MR. HOLMAN: Because it's been raised,  
3 the Haufman deposition is exhibit k. On page 68 of the  
4 Haufman deposition they are talking about the  
5 investigation and they asked Haufman who was it  
6 commissioned by and he said Mr. Manzoni.

7 Question: Mr. Manzoni has not told you  
8 anything about why he has commissioned this  
9 investigation?

10 Answer: Well, he told me that, you  
11 know, it's a broader look at whether disciplinary  
12 action was required.

13 Question: So, your understanding is  
14 that your boss commissioned the study to determine  
15 whether or not other people high in management should  
16 be punished in some manner as a result of what occurred  
17 or transpired on March 23rd, 2005?

18 Answer: He didn't say punished, but,  
19 yes. I mean it's an investigation that he commissioned  
20 as I understand it.

21 It goes on like that. There is more  
22 about his accountability, the investigation that  
23 Manzoni commissioned. Everybody else below him is  
24 under investigation and doesn't have any knowledge  
25 about the investigation itself or why it was





1 commissioned. Only Manzoni does.

2 MR. SALYER: Just real quick. He's not  
3 conducting the investigation. He's commissioning it.  
4 That's what company bigwigs do. That the Supreme Court  
5 has told us is not enough. Even testified as to why he  
6 thinks he did it. That's what you're supposed to do,  
7 go take these depositions of the other people below  
8 them to find out this information because as the  
9 Supreme Court has mandated we don't, we want to make it  
10 more difficult to get to the CEOs of these companies  
11 and the upper level management people to be deposed.

12 The other thing is Brent Coon talked  
13 about press conferences and coming in and making these  
14 statements, and this is going to apply to John Browne  
15 as well, but it's not enough that they go and  
16 articulate aims and goals and go on TV or do anything.  
17 There's a Supreme Court case in 2000 called In Re:  
18 Daisy Manufacturing. Remember Daisy made the little BB  
19 guns when we were kids, and I don't know if they still  
20 do. But the CEO of that company went on 20/20, on  
21 20/20 to defend their product and talk about why they  
22 weren't responsible for someone's injury. And the  
23 Texas Supreme Court in 2000 says that still is not  
24 enough to require the production of that individual for  
25 deposition. And there's nothing that they have shown



1 you, nothing they talked about, knowing that's attached  
2 as evidence and that's what counts is what they  
3 attached, in our response that shows that he has any  
4 unique or superior knowledge regarding any topic they  
5 want to talk about.

6 THE COURT: Anything else?

7 MR. HOLMAN: Because he mentioned  
8 Browne, do, should we move to Browne?

9 THE COURT: No. I'll go ahead and rule  
10 on this one. I believe the Plaintiff has met their  
11 burden on Manzoni.

12 Now, we need to talk about the location.  
13 That is an issue. You heard what he said about the  
14 travel issue.

15 MR. SALYER: Your Honor, first off a  
16 little background, my understanding is when Mr. Coon  
17 went to London to take Manzoni's deposition, that issue  
18 regarding Manzoni was still in the air with the Court  
19 of Appeals. We are not agreeable to bringing him to  
20 Houston.

21 THE COURT: Let me ask you this though:  
22 I understand you don't want to bring him for a  
23 deposition, but if there is a situation where he is  
24 coming here to this country anyway then that is  
25 ridiculous for them to fly over there. So, I do want



1 you to do this: I do want you to inquire and find out  
2 what his schedule is and if there's any -- I want his  
3 entire schedule of when he's coming to this country.

4 MR. SALYER: All right.

5 THE COURT: And then after I know that,  
6 and if he is then that can be worked around that. No  
7 sense in occurring unnecessary expense or cost for any  
8 of you. You probably don't have time to fly over there  
9 yourself.

10 MR. DENNY: I spent a little while over  
11 there myself. But I think when we went over both of  
12 them were scheduled and we had the stay entered and  
13 since the stay was entered that's why we didn't go  
14 forward with the Manzoni deposition.

15 MR. COON: The time I worked that about  
16 a month's advanced notice for Haufman and Manzoni. The  
17 Court of Appeals had not ruled on that at the time we  
18 were all departing for London. We went ahead and took  
19 Haufman and there was an emergency stay filed by BP.  
20 It was granted well before the deposition. We did not  
21 know when they would rule, so we said since we're here  
22 we'll take Haufman. Manzoni was scheduled the next  
23 day. I think Haufman was on a Wednesday. And the stay  
24 was not lifted or there was no ruling one way or the  
25 other by the time of the deposition, and so we agreed



1 to just come home.

2 MR. DENNY: One of the things to put it  
3 a little bit out of context, when we were arranging  
4 this we were dealing with Mr. Williams' office because  
5 they were the front people on this thing. What they  
6 wanted to do was do both of them in two days. In other  
7 words have to make two different trips. So that's how  
8 we ended up with those two different days.

9 THE COURT: Now, we'll talk about Lord  
10 Browne.

11 MR. HOLMAN: Same argument has been made  
12 that he has no knowledge of relevant facts. In this  
13 case if he were just the guy up in the ivory tower that  
14 had nothing to do with the company other than general  
15 policy, we wouldn't be here. The reason that we are  
16 here is because Lord Browne has injected himself  
17 personally into this tragedy. On the day after the  
18 accident he came down and he interviewed personally,  
19 spent an hour interviewing all of the employees on the  
20 scene. It says in the evidence that we presented that  
21 he personally interviewed each employee on the scene.  
22 He was there the day after the accident happened.  
23 After that he met with the mayor, talked with him.  
24 After that he talked with the press, gave them a press  
25 conference. The press conference appears on the BP





1 website. We gave the court the link to that. That  
2 alone should give us an opportunity to examine him  
3 because we can examine him about what his personal  
4 observations were, about his discussions with the  
5 employees were, about what he saw on the day after the  
6 accident and what remediation efforts were being done.  
7 In addition to that we cited some other information  
8 that gives him firsthand knowledge of things that are  
9 relevant to this accident. We talked about the  
10 personal oversight that he had done prior to this  
11 indictment of the Texas City refinery. There's one  
12 very intriguing memo in the file that where it says  
13 with regard to safety performance, that he looked at --  
14 BP had 18 refineries throughout the world, and it says  
15 that he looked at all of those 17 together, but he  
16 looks at TCR individually each month. And we think we  
17 should be entitled to examine him about why he  
18 separated TCR in his safety performance review. We  
19 presented information that there's budget -- The  
20 statement was made in the affidavit. Lord Browne has  
21 no day-to-day control of the operation at the Texas  
22 City refinery. Turns out that there's information that  
23 we submitted that shows that London does have budgetary  
24 control, direct budgetary control in the Texas City  
25 refinery.



1           The company released a health safety and  
2 environmental performance policy in 2001 directly  
3 relevant to our liability allegation.

4           THE COURT: Document reveals that Browne  
5 personally directed the revisions to that document and  
6 he would not sign it until the wording was changed.  
7 It's much more than just their general policy. It's  
8 why they had this policy and why he wouldn't sign it  
9 and why he wanted to revise it. He's the author in  
10 that sense, and in In Re: Alcatel, we should be  
11 entitled to examine him about that.

12           And there is a case, the JHC Ventures,  
13 LP versus Fast Trucking case out of San Antonio, and in  
14 that case they were arguing he shouldn't be deposed  
15 because he's an APEX official, the CEO of the  
16 corporation. And somebody testified he's the only guy  
17 that knows about design changes, about why we made  
18 those design changes. And so therefore you can get his  
19 deposition. In this case he's the only one who knows  
20 about why he made those revisions in the health, safety  
21 and environmental performance policy.

22           And also there's evidence that we  
23 presented in addition to his direct personal  
24 involvement with the tragedy, that he was the creator a  
25 few months afterwards, two months after the accident,



1 he determined that BP was going to create a corporate  
2 code of conduct, and that corporate code of conduct may  
3 fall into that general policy deal. The timing of it  
4 is not coincidental. The fact that two months later  
5 they had to create a corporate code of conduct that's  
6 going to address not only ethical issues that are  
7 directly relevant here but also the safety and  
8 environmental issues. And so that is the kind of thing  
9 we would like to examine him on as well.

10 THE COURT: All right.

11 MR. SALYER: Your Honor, again the same  
12 standards we talked about apply to Browne and he is  
13 even far more removed than Manzoni. If you look at the  
14 evidence they submitted there's nothing in the evidence  
15 to show in the documents that they provided that he has  
16 any unique or superior knowledge.

17 THE COURT: What about their statement  
18 about him personally interviewing these people?

19 MR. SALYER: Let's read it. The CEO  
20 comes down here and he's not conducting an  
21 investigation. That's being done by other people. He  
22 does not stick his nose into it. He comes down as  
23 representative of the company and what does he do.  
24 This is what it says: For the better part of an hour,  
25 barely an hour, Browne spoke individually with each



1 employee present. This employee happened to be  
2 present. Didn't go out and pick and chose and go out  
3 and interview. It was whoever was present he wanted to  
4 talk to those employees at BP. Asking about their  
5 welfare and their experiences during the incident and  
6 thanking them for their excellent professional response  
7 to an overwhelming situation. That sounds exactly what  
8 a CEO would do. Then he meets with the mayor. I don't  
9 remember if it was Doyle, Matt Doyle last year. The  
10 next day, holds this press conference they talk about,  
11 but again they go back to that Daisy gun case that the  
12 Supreme Court said that even a CEO going on 20/20  
13 national television to defend their product, to talk  
14 about their product in light of litigation is not  
15 enough to justify granting their request to take his  
16 deposition. He went there as a CEO of the company to  
17 show goodwill and to show that BP cares and we're going  
18 to get this right and we're going to do this right and  
19 that type of thing. That's what CEOs do. And there's  
20 nothing about that that shows any unique or superior  
21 knowledge regarding any investigation, any facts that  
22 would be of any interest that they can't get from other  
23 sources.

24 THE COURT: Don't you think the facts  
25 that were related to him when's he asked these





1 employees about their experience, don't you think those  
2 facts --

3 MR. SALYER: Then they can ask the  
4 employees. That's the whole idea behind the APEX  
5 thing. They have to show up and they have got other  
6 ways to get this. There's less onerous, less  
7 burdensome ways for the CEO to get this information  
8 than going and taking his deposition. And I doubt they  
9 would be interested in taking these depositions to find  
10 that out.

11 MS. MACKILLOP: Just to add on, it's not  
12 like Lord Browne was standing by himself with people.  
13 Haufman testified that he was standing with Lord Browne  
14 at that time. So, if they wanted to know about that  
15 all they had to do was ask Browne, who else was there?  
16 Harris, all of the guys they deposed. They were there.  
17 They weren't going off individually in a room some  
18 place. They were meeting with a group of people, a  
19 group of BP executives were meeting with a group of  
20 employees to talk about what happened, and as David  
21 just read to you to say thank you for doing what they  
22 did.

23 MR. SALYER: Those people were deposed  
24 and they weren't asked about this. They had that  
25 chance and that's the whole idea behind this standard.



1 They had that chance and they chose not to do it. You  
2 can't now go take Browne and find out.

3 MR. COON: If I can respond to a couple  
4 of things that weren't brought up yet that are very  
5 germane to Lord Browne. What is the liability of this  
6 case? Are they liable to admit negligence or not,  
7 gross negligence. Lord Browne said early on in this  
8 case they accepted responsibility, BP accepted  
9 responsibility for what happened in Texas City. We  
10 presume that to mean that they accepted legal  
11 responsibility. When I deposed Mr. Haufman in London  
12 last month to clarify that issue he would not confirm  
13 that that's what BP meant, that they would accept legal  
14 responsibility. Since this is something Lord Browne  
15 has embraced himself with and is the CEO and person who  
16 can obligate and bind the company, we think it's very  
17 relevant now to depose him of the very key issue in  
18 this case since he's the one that said it, what did he  
19 mean by it. Is he on behalf of BP accepting legal  
20 responsibility for what happened.

21 Two, we know from this case that the  
22 Plaintiff's contention at least in this case that much  
23 of what lead to what happened on March 23, 2005 was a  
24 result of decisions made by Lord Browne when BP merged  
25 with Amoco. We have established in this case, well



1       into the case that Lord Browne initiated a 25 percent  
2       budget cut at BP Texas City and all other business  
3       worldwide. We have followed through depositions to see  
4       how many budget cuts were implemented and some of those  
5       had direct bearing on the operations of the isom unit  
6       on March 23 including the production and stats, again  
7       very germane to this case, and we do note that those  
8       budget mandates pursuant to the documents we received  
9       in this case did come from Lord Browne. Therefore,  
10      it's very germane in this case about what if anything  
11      he did to see what kind of collateral impact would be  
12      associated with the condition of the units as a result  
13      of those budget cuts, conditions of operation,  
14      conditions of safety. What did he know and what did he  
15      do in response to them. Those are all very, very  
16      relevant.

17                               MR. HOLMAN: One more thing, Your Honor,  
18      and this goes to the heart of the Apex question,  
19      imagine if you will an automobile accident, certainly  
20      the injured victims of the automobile accident couldn't  
21      go to the chairman or CEO of Ford Motor Company and say  
22      let me examine you about your policies regarding seat  
23      belts. But if the CEO showed up on the scene of the  
24      auto accident, observed the auto accident, talked to  
25      the victims, talked to the people on the scene and gave



1 press, a press release about it and talked about what  
2 the reaction of Ford was going to be to this auto  
3 accident, certainly that CEO who had first hand  
4 knowledge could be deposed.

5 MR. BUZBEE: Your Honor, if I may add  
6 one other thing, just following that analogy, if that  
7 CEO made some decision because of budgetary reasons  
8 that they weren't going to put seatbelts in their cars,  
9 we're entitled to explore with him what his conscious  
10 awareness is of the risks, because we have to prove  
11 that they were subjectively aware of a risk and who  
12 else to ask. This fellow says, look, as soon as they  
13 merged with Amoco, they called it a 25 percent  
14 challenge. It's just a budget cut, 25 percent across  
15 the board, this thing's made a hundred million dollars  
16 net profit in one month, January prior to the  
17 explosion. Certainly with all the information he's  
18 receiving he's got to know in his head that, hey, my  
19 decision I made may have created incredible risk of  
20 harm to people that work out there. We're entitled to  
21 explore that as well.

22 MR. COON: Two things, we have  
23 underlying documents intimating that he's made directly  
24 aware of this information, what's going on. We also  
25 have seen documents I think one of which is attached to





1 our motion where apparently Lord Browne personally and  
2 separately tracked Texas city, and he distinguished it  
3 from all the other refineries internationally that were  
4 noted, 15 or 20 other refineries, and Texas City was  
5 separate.

6 MR. SALYER: Let's talk about the budget  
7 cuts and all of that. There's no evidence -- They were  
8 required to come to you and present evidence. There is  
9 no evidence of anything they just talked about other  
10 than the documents they specifically referred to and  
11 we're going to talk about those in a second regarding  
12 what happened in 2003. They chose not to attach that.  
13 This was their burden to come forward and they didn't  
14 do it. Regardless, this thing about the budget, this  
15 is I think exhibit C in here. It talks about budgetary  
16 controls. I don't know if that's what he's talking  
17 about, but exhibit C is a series of emails and charts  
18 and everything about budgetary controls. Lord Browne's  
19 name is not only not a recipient or a sender, his name  
20 doesn't appear anywhere in here. These are just  
21 reports. Same thing with the other thing he was  
22 talking about. This 17 of 18 refineries that he  
23 reviewed. Let me read this. Interesting point from  
24 Rick Hale, this is Rick Hale relating this. We have 18  
25 BP refineries in the world. Lord Browne looks at



1 monthly data for 17 of 18 refineries all together. He  
2 looks at TCR. That's not Texas City refinery -- the  
3 Texas City refinery -- dated separately each and every  
4 month. He looks at reports and he reviews reports.  
5 That doesn't mean that he has unique or superior  
6 knowledge. The Supreme Court and the other courts have  
7 addressed this issue. The mere fact that you review  
8 and act on reports does not mean that they are entitled  
9 to take that man's deposition. There's nothing in here  
10 to suggest he has any unique or superior knowledge. It  
11 doesn't matter that he looked at the reports. And I  
12 think -- There's other things he's addressed in here,  
13 HSE report, health, safety, environmental report. They  
14 claim that he authored the report. He didn't author  
15 this report. There are people who have been deposed on  
16 this and even talked about it and he didn't author the  
17 report. In fact I think the guy who really authored  
18 the report hasn't even been deposed. Here's what the  
19 exhibit says: The current policy that John Browne  
20 signed in January of 1999 does not meet ISO 14001  
21 standard. The past seven months personnel within BP,  
22 HSE and law and other departments have been tweaking  
23 the policy and trying to get Sir John to approve or  
24 revise the version. As you can imagine with each  
25 review more language was added and Sir John did not



1 agree to sign it. Other people were doing the work at  
2 his direction. They come and they report to him. He  
3 reviews it, either signs off or he doesn't. That's  
4 what CEOs do. And if that exposes a company president  
5 or CEO to the deposition then there's no need for these  
6 type of hearings. There's no need for the standard.  
7 The Supreme Court clearly indicated from 1995 on there  
8 is a great need for this kind of review.

9 MR. WERNER: Judge, it's not merely that  
10 he looked at the report. It was our office that was  
11 lucky enough to blunder into that email. It's that he  
12 looked at it separately. And so if you have an email  
13 from the CEO of Merck saying I'm looking at all the  
14 other drugs but I'm looking at Vioxx separately, the  
15 question is why, why would Lord Browne of Mattingly be  
16 looking at the safety record of Texas City separately  
17 of anybody else. He wouldn't have done it on a whim  
18 and that's the question that needs to be asked. Not  
19 just did he look at it, why did he look at it  
20 separately. He made that choice.

21 MR. SALYER: Well, here's how important  
22 that issue is to them. Rick Hale is the one who said  
23 this. They deposed Rick Hale and he never asked what  
24 he meant by that.

25 MR. WERNER: That document came in the



1 92nd production of six hundred boxes of documents. It  
2 was after we took Mr. Hale's deposition I feel almost  
3 certain because we did a lot of depositions. Well, you  
4 found it too late so now you don't get to ask why.

5 MR. SALYER: There are other ways to  
6 handle that. You can redepose him now that you have  
7 the document. More importantly, so what that he looked  
8 at the report separately. That is not enough to rise  
9 to the standard requiring that we produce Lord Browne  
10 for deposition.

11 THE COURT: It wouldn't be enough in and  
12 of itself, but the fact that he was interviewing the  
13 people the day after is what would be the most  
14 persuasive, although, I think the budget cut issues and  
15 the decisions he made are also.

16 I'm going to grant the plaintiff's  
17 motion. I think they met their burden.

18 Now, schedulewise I want you to do the  
19 same thing with his schedule and find out if he has got  
20 anything in this country that's going on.

21 MR. COON: Your Honor, we would like the  
22 opportunity to supplement with the additional documents  
23 we talked about, specifically one was the Texas City  
24 business strategy for 1999 and the time Sir Lord  
25 Browne -- The budget cuts.





1 MS. MACKILLOP: Your Honor, wait a  
2 minute. They are supplementing after you already made  
3 your ruling? What's wrong here? They have the burden  
4 to come forward to you with evidence that you then rule  
5 on. Not that they start thinking up as they're  
6 standing here on and we're calling it on them and  
7 telling them, oh, yeah, now we need some more evidence.  
8 That's not the way it's supposed to work.

9 MR. COON: Would you like all the  
10 evidence in the record or not or are you going to  
11 appeal? If we can ask the court, we would like  
12 consideration of the court before entering the order to  
13 allow us to supplement the record based on the  
14 zealousness of their argument.

15 THE COURT: When did you get that  
16 report?

17 MR. COON: We have had that report for  
18 several months. We would also like to supplement with  
19 the underlying documents from Mr. -- These are all the  
20 exhibits that they have, the records that they produced  
21 to us, with the documents from George Carter that  
22 specifically broke down where the budget cuts were made  
23 which shows the isom unit budget cuts that were  
24 produced as a result of that mandate.

25 MR. GALBRAITH: I just think the record



1 ought to reflect that you ruled that they met their  
2 burden without all this supplemental stuff that they --

3 THE COURT: All right. You are not  
4 going to supplement. I'm not going to let you  
5 supplement it.

6 Anything else you need to do today?

7 MR. GONZALEZ: The next is the issue of  
8 the withheld black box documents.

9 MR. HOLMAN: This is really confusing to  
10 us and it may be confusing because we are now the  
11 attorneys left standing after Coleen Peddie and John  
12 Eddie Williams have left the case, but I don't think  
13 so. Because we went on the email tracks that we got in  
14 the documents that we saw. This is on the black box  
15 documents. And as Your Honor will recall as I learned  
16 from talking to Ms. Peddie, what happened was there had  
17 to be some way of determining whether they were  
18 properly making their exempt determination, and so Your  
19 Honor ordered them to be disclosed to the master. The  
20 reason that the master was put in there is because it  
21 was stated, at least according to Ms. Peddie and I  
22 wasn't there in open court, but it was stated in open  
23 court that there was a room full of such documents, a  
24 room full of exempt documents and that we needed a  
25 master because it would take a master to review them.



1 The information that we have seen reveals that some two  
2 thousand documents were submitted originally in a box  
3 to the master. Those were retracted, and it says in  
4 the email that they were retracted in order that the  
5 attachments could be stapled onto the documents. And  
6 then subsequently a new box was given to the master.  
7 We got the master's report. As Your Honor remembers  
8 you told the master to go ahead and review the  
9 documents. We got the master's report. The master  
10 reports on her review of 297 documents. And our  
11 question is why -- It's a motion to disclose the  
12 withheld black box documents. And really our interest  
13 is finding out what happened to that room full of  
14 documents.

15 MR. ALVAREZ: Your Honor, with regard to  
16 the first, on the email track, I ask that Ms. Mackillop  
17 address the Court on that specific issue and maybe  
18 clear up some questions that counsel has in their mind  
19 about where do we go, why is there one box. It didn't  
20 go exactly like counsel explained and that's because it  
21 was being handled by Ms. Peddie and new counsel has  
22 come in. That needs to be cleared up. I ask  
23 Ms. Mackillop to address that point.

24 But with regard to where is this room  
25 full of documents, what happened is Mr. Coon and myself



1 and we discussed this a couple of weeks back in front  
2 of this court that we had come to an agreement that we  
3 were going to give that -- This box that was within the  
4 special master's possession, she was going to look at  
5 that box and all Mr. Coon asked of us was to confirm  
6 this was some random sample of documents that we said  
7 were exempt under the rules. So, that's what we agreed  
8 we'd do. And I made that statement to Mr. Coon and  
9 they seemed satisfied with that. So based upon that we  
10 asked the special master to please review this box of  
11 documents which she did. She returned the report on  
12 August 15th. And that's where we stand today, except  
13 after we get the report back I again spoke with Mr.  
14 Coon about what were the results of the special  
15 master's report and how are we going to take this issue  
16 to its conclusion so we wouldn't have to worry about it  
17 any more. What we discussed and what we agreed to last  
18 week was that, okay, here's the special master's  
19 report. 82 percent of the documents that we submitted  
20 she found were truly exempt under the rules. The other  
21 18 percent for one reason or another she found were not  
22 exempt under the rule and should at least be put on the  
23 privilege log.

24 Now, Mr. Coon and myself discussed where  
25 did we in our analysis of what the privilege was, where





1 did we go wrong if in fact we did. Where the issue  
2 really came to light was in our interpretation of the  
3 rule regarding who is the attorney's representative.  
4 What we had done is we had concluded that if counsel  
5 for BP or outside counsel for BP had spoken with an  
6 employee of BP and said employee of BP, we ask that you  
7 go gather this information or answer this question for  
8 us, that we consider that person a representative of  
9 the attorney. The rule is that that representative has  
10 to be an employee of the attorney. Obviously if we  
11 asked somebody like Bill Ralph who is an employee of  
12 BP, he's not an employee of the attorney, that's where  
13 we're wrong on the 18 percent. The agreement that we  
14 came to last week, okay, we understand, we understand  
15 where we're over inclusive on the exempt documents.  
16 What we agreed to do in going back over our documents,  
17 that black box, is we will apply the standard as put  
18 forth in the special master's order and go back and  
19 make those corrections, update our log accordingly and  
20 that will be the end of the day, and they can challenge  
21 that log as necessary and we wouldn't have to worry  
22 about it anymore.

23 Finally, his question is where are all  
24 these documents. There's a reason the special master  
25 hasn't seen those documents because Mr. Coon and I



1 agree we would give this first set as an exemplar set  
2 of just whatever that box was to see what the results  
3 were so we can take it forward from there. That's  
4 where we're at. I think we have an agreement on how to  
5 carry this forward.

6 THE COURT: What's your time frame for  
7 getting that completed?

8 MR. ALVAREZ: I think we can get that  
9 completed within the next two weeks, Your Honor, and  
10 have the log updated accordingly.

11 MR. COON: I was afraid my name would be  
12 drug into this one. You will recall from the prior  
13 hearings the issue of the black box came up months and  
14 months ago. I try to stay away from all of those heady  
15 discovery issues and defer those to other people. I  
16 just started asking more recently what happened to that  
17 process and understood, as I was told, this is all  
18 third hand hearsay, that there had been some level of  
19 frustration, disagreeing about what was produced, how  
20 much was actually out there that Judge Mirabal was  
21 frustrated about her understanding of the totality of  
22 the documents versus what she received. So, I was out  
23 of all of that other than what I was hearing until very  
24 recently. Mr. Alvarez and I, we get to sit across  
25 counsel table at all these depositions. He brought the



1 issue up to me relatively recently and had this  
2 proposal to help resolve some of what the ongoing  
3 discovery issues were that I was not personally  
4 involved in. That proposal was how about whatever the  
5 judge looked at. And now we can understand what is or  
6 isn't black box versus privilege. We go back and  
7 segregate those issues. What it was, I don't know, I  
8 don't care, go ask someone else, because it's not my  
9 issue. I tried to come to some resolution. I said if  
10 in fact the judge looked at the documents and what  
11 exists in the universe, we don't need her looking at  
12 every single one of them, if in fact she's looked at  
13 enough to be comfortable with and they are random  
14 samplings and that in her determination all of them  
15 were proper black box documents with the exception of  
16 about 20 percent which were all still privileged, not  
17 black box but just privileged. Because that way if  
18 it's just improperly categorizing privilege versus  
19 black box we don't get it anyway. We don't really  
20 care. We don't need them wasting their time and money  
21 and anybody else wasting time and money.

22 By the same token we have always been  
23 very paranoid that BP has consciously or subconsciously  
24 or inadvertently hidden documents that we would like to  
25 have, and as a result of that personal history -- I'm



1 not saying they have. I've been made to feel that way  
2 from time to time. I want to make sure that they are  
3 documents that have been stashed away in there that we  
4 would like to have that are very relevant to the case.  
5 We have had very tenacious discovery in this case.  
6 Even recently I think we received another two million  
7 documents in the last month or two, and then again at  
8 some point we realize we have a trial coming up. We  
9 have to get prepared for the trial. We remain  
10 frustrated that documents that were I thought around a  
11 year ago we're just now seeing, but I don't know how  
12 they determine what we get when we get it. That's  
13 another issue, we just want it to make a decision  
14 whether or not we want to utilize it. We want to get  
15 it in enough time to go to trial with. That's all we  
16 really care about.

17 MR. ALVAREZ: That is exactly what our  
18 proposal is. We have a rule 11 agreement already  
19 drafted. Basically attaches the special master's order  
20 and says, counsel, what we're going to do is we're  
21 going to comply with the special master's  
22 interpretation of the law, period, end of story. We  
23 will update our log at the end of the day.

24 MR. CANSLER: And Your Honor, this kind  
25 of dove tails into the plaintiff's motion to compel.





1 I'm unfortunately the one that's trying to determine if  
2 there is a grudge. Based on the untimely filed  
3 affidavit I'm going to stick that under here and we'll  
4 worry about that another day, but what I would really  
5 request that the court order BP to do is one simple  
6 thing, should not be any harder than what they have  
7 already kind of agreed to, but what we need  
8 specifically in their privilege log that talks about BP  
9 employees just kind of globally, and there's also some  
10 places where there is no to and from on the document.  
11 Things like that, we're concerned about who these  
12 people are. They are making waves there. We're also  
13 concerned about if there is no to and from I don't see  
14 how the attorney-client privilege --

15 THE COURT: Can you fix that?

16 MR. ALVAREZ: Yes, absolutely. I  
17 believe we submitted an affidavit as evidence in  
18 response to their motion on the privilege log that  
19 identified, hey, these particular entries, there's a BP  
20 attorney listed on here or outside counsel for BP where  
21 these documents were made at the direction of the  
22 counsel for BP.

23 MR. CANSLER: I understand and I'm not  
24 fighting about the affidavit right now. There's plenty  
25 to say it's pretty conclusory. My bigger problem and



1 this is what I need them to do, is to identify the  
2 particular employee and who that person is or what  
3 their job title is so I can figure out if they are  
4 within that.

5 MR. ALVAREZ: Absolutely no problem. I  
6 think we actually did submit such a list to the special  
7 master when somebody is an attorney, this is BP  
8 counsel, he would be happy to do the same thing.

9 THE COURT: What do we have next?

10 MR. GONZALES: Motion to compel was next.  
11 And I think we had one other issue.

12 MR. COON: Plaintiffs have one other  
13 issue regarding certified questions involving two  
14 witnesses, Mr. Paris and -- I think we have been here a  
15 long time today. I think we have covered a lot of  
16 ground. We will be back here next Tuesday. I want to  
17 see if I can resolve a couple of issues regarding  
18 discovery.

19 THE COURT: You're saying you want to  
20 see if you can work it out with them?

21 MR. COON: We worked out a lot today. I  
22 would like to see. This is going to have to do with  
23 indemnity agreements between parties, just like we  
24 talked about other ones. Mr. Paris, plant manager, was  
25 asked a number of questions about retaining personal



1 counsel.

2 THE COURT: You want to see if you can  
3 work those out on both of the issues, certification  
4 question and the other motion to compel that you have?

5 MR. CANSLER: If we can just have that.  
6 When are we supposed to get back? Mr. Alvarez, I'm  
7 trying to figure out when you will have that  
8 information to us, no later than when?

9 MR. ALVAREZ: As far as the name of who  
10 is who?

11 MR. CANSLER: Basically a full privilege  
12 log as we discussed.

13 MR. ALVAREZ: A full privilege log with  
14 also the black box issues, be a couple of weeks. With  
15 respect to the names, identifying the names of who is  
16 who I can probably get that to you this afternoon I'll  
17 probably get you the names, if this is a lawyer, who is  
18 who on the privilege log, should be able to give you a  
19 list of those names and what their position is today.

20 MR. CANSLER: From the fourth privilege  
21 log also?

22 MR. ALVAREZ: Yes, that correct.

23 MR. GONZALES: I want to remind  
24 distinguished counsel the trial will be starting in  
25 about three weeks so I would like to have it before



1 then.

2 MR. ALVAREZ: Opening statements are  
3 September 25th, correct? That will give you at least  
4 three weeks -- I think we can get it done in three  
5 weeks.

6 MR. GONZALEZ: September 11 is pretrial.

7 THE COURT: Now, did we discuss how many  
8 jurors we need for that day.

9 MR. GALBRAITH: One hundred.

10 MR. BUZBEE: We said a hundred. I'm  
11 thinking might want to get a little more.

12 THE COURT: I was kind of wondering  
13 that.

14 MR. BUZBEE: A hundred and fifty.

15 (Off the record.)

16 MR. GALBRAITH: I have some special  
17 exceptions set. The docket control order calls for  
18 discovery to be cut off on July 24th. On August 9th we  
19 got an amended petition that I say brought in one whale  
20 of a new claim and new cause of action. I don't think  
21 the amend your pleadings deadline basically a month or  
22 two before trial was designed to allow wholesale new  
23 causes of action, and I think that is exactly what is  
24 being attempted. We filed, which is not set for today,  
25 but it's hard for me to argue my special exceptions and





1 not refer to the fact that we have asked in a separate  
2 motion to be set next time, but since time is of the  
3 essence I can't mention one without the other, a motion  
4 to strike that new cause of action. They basically  
5 added a cause of action that's alleged to be a cap  
6 buster for punitive damages. What they argue is that  
7 BP secured an execution of a document by deception.  
8 That is really the sum total of all of the fair notice  
9 if you will of the new claim. We think that's  
10 specially acceptable. We think that doesn't mean a lot  
11 to anybody. So, I got a special exception. I would  
12 like it set out with specificity posthaste on short  
13 notice, I think because it's a new cause of action, and  
14 I will tell you why I think it's a new cause of action,  
15 and I think it's going to create a motion to strike or  
16 lead to other things, heaven forbid, if it's what we  
17 think. We have deposed one of their experts now who  
18 has answered questions about securing a document by  
19 deception and what he says it means, not the  
20 plaintiffs, but their expert. So, we've got to get it  
21 from the plaintiff before we really know what securing  
22 execution of a document by deception means if at all.  
23 If it's what he says he thinks it means, and it's just  
24 their expert talking, then we're going to have real  
25 problems in my mind because what he thinks it means is



1 that over the course of the last 20 some odd years  
2 there have been many permit applications not having to  
3 do with isom, not having to do with this March 23  
4 explosion at all, but there have been quite a large  
5 number of permit applications for environmental permits  
6 and I think that there was deception on some of those  
7 permit applications, and you secured those permits by  
8 deception because not all the statements you made in  
9 those permits are factual; therefore, I think you  
10 secured them by deception. And I'm talking about over  
11 the last 20 years, and I don't know how many permits  
12 there are or I don't how many engineers we're going to  
13 have to go interview to refute something like that.  
14 So, all I am saying right now is I would like special  
15 exceptions and I would like the court to be aware that  
16 we do have a motion to strike. It's not set for today  
17 but I would like to see what they intend by adding that  
18 to their petition at the last minute after the  
19 deadline. I might say, and if it is a new cause of  
20 action then we're going to address it next Tuesday  
21 because it will be set.

22 THE COURT: I think he's just bringing  
23 the issue to light so you can think about it.

24 MR. COON: Your Honor, in response very  
25 briefly, I understand that the court will fully



1 entertain all the arguments of each party next week.  
2 There are claims made of fraud. We have provided a  
3 timely supplement report that very specifically  
4 identified all of the documents that we have obtained  
5 that we believe which represent a number of important  
6 issues with respect to the operation of that unit. I  
7 think they are all specifically identified in the  
8 bibliography, supplemental report. I think that  
9 witness will be deposed and during the course of six  
10 hour deposition I don't personally recall the witness  
11 ever being asked any opinions about anything contained  
12 in either report, instead of six hours of who are you,  
13 where did you go to school, where did you go to work.  
14 So we'll take up with the court whether they get  
15 another bite of the apple next week but we do believe  
16 that we have all the information already provided to  
17 them well in advance. We can attach a copy of the full  
18 report as the additional specific reasons that we  
19 allege this so they know what they are. It's their  
20 document, their witnesses, their filings, and so I  
21 don't think there's any surprise.

22 MR. GALBRAITH: Basically what he said  
23 is they know what they are talking about, can easily be  
24 done, they can easily replead. I accept that and I  
25 appreciate that. I would like that by, if not by this



1 afternoon say by Wednesday.

2 MR. GONZALEZ: That's reasonable.

3 MR. GALBRAITH: If it is this litany of  
4 20 years of permitting applications then we are going  
5 to have great problems and we'll bring those next  
6 Tuesday. There was a report dated July 24 that was  
7 given to us 17 days later on August 9th. When you're  
8 about a month from trial that 17 days is conscious.

9 MR. GONZALES: We'll address that next  
10 week.

11 The last issue, the last time we were in  
12 court, Ms. Mackillop, you told us that you lost those.

13 THE COURT: I read them. I have  
14 reviewed what she provided to me. That included a lot  
15 of email correspondence and press release drafts and  
16 says all these documents that she provided to me are  
17 privileged. They were attorney advice about how to  
18 proceed with the public relations campaign. So,  
19 everything that was provided to me last week or the  
20 week before last by Ms. Mackillop I believe is  
21 privileged.

22 MR. GONZALEZ: Was this a public  
23 relations campaign the court has been talking about?

24 THE COURT: This was a draft of press  
25 releases for the lawyers basically giving their advice





1 on how to proceed with that.

2 MR. GALBRAITH: There's one other thing  
3 that was set for today and I believe it's been worked  
4 out. I would just like to announce the agreement.

5 MR. MORRIS: Judge, there was a motion  
6 to compel the deposition of Wanda Heichman, and Mr.  
7 Werner and I spoke about that earlier. There are a  
8 couple of depositions that were taken of Ms. Heichman  
9 and Ms. Coutack in the probate matter, and John has  
10 graciously agreed to produce those with exhibits  
11 tomorrow and we agreed to take a look at that and see  
12 if that's everything we're going to need and we'll  
13 revisit the issue compelling her next week if  
14 necessary.

15 MS. MACKILLOP: On the record, Mr.  
16 Holman wasn't standing here with me the last time, I  
17 asked you for a stay to hear what you told us and so  
18 I'm going to ask you one more time. If we decide to  
19 take an appeal on the Manzoni --

20 THE COURT: My response is not unique to  
21 this case. In any case where somebody wants to -- I'm  
22 not going to stay the proceedings. If you get to the  
23 Court of Appeals that's how it's going to be, but  
24 especially when we're on such a schedule such as this.  
25 Like Mr. Galbraith said, the loss of 17 days, that's a



1 long time.

2 MS. MACKILLOP: I knew that because you  
3 told me several times but Mr. Holman didn't know that.

4 MR. HOLMAN: I appreciate that. I just  
5 want to let you know about the timing. We're going to  
6 have a proposed written order down to you. I will get  
7 Ms. Mackillop to review it first. I don't think it's  
8 going to be anything other than boiler plate, denying  
9 our motion.

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1 THE STATE OF TEXAS :

2 COUNTY OF GALVESTON :

3 I, Joni Bono, Official Court Reporter in and for  
4 the 212th District Court of Galveston County, State of  
5 Texas, do hereby certify that the above and foregoing  
6 contains a true and correct transcription of all  
7 portions of evidence and other proceedings requested in  
8 writing by counsel for the parties to be included in  
9 this volume of the Reporter's Record, in the  
10 above-styled and numbered cause, all of which occurred  
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of  
13 the proceedings truly and correctly reflects the  
14 exhibits, if any, admitted by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 1st day of  
16 September 2006.

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Joni F. Bono, Texas CSR #1204  
Expiration Date: 12-31-06  
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212th Judicial Court  
Galveston County Courthouse  
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