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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

MOTIONS

On the 11th day of October 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 THE COURT: Are you ready?

2 MR. GALBRAITH: Yes, Your Honor. We
3 have the Lord Browne deposition and the motion to
4 compel. That's the agenda.

5 MR. GONZALEZ: Your Honor, one thing I
6 need to bring to the attention of the parties and the
7 court, yesterday morning I was subpoenaed by the United
8 States Attorney's office. I'm sorry, I was served on
9 behalf of the Eva Rowe case. And considering the
10 confidentiality agreement that we have in place I need
11 to bring this to the attention of the parties and the
12 Court, where the U.S. Attorney's office has requested
13 the documents addressing the, in the subpoena regarding
14 the November 20th issue. So, at some point in time I
15 think that's going to be the point of discussion.

16 MR. GALBRAITH: I certainly don't know
17 our position in response to -- I would like to look at
18 the subpoena and a chance to look at the law and the
19 interaction between that subpoena and the
20 confidentiality.

21 Mr. GONZALEZ: I'm just bringing it to
22 the attention of the court and the parties.

23 MR. GALBRAITH: If we're continuing our
24 response regarding the question of Lord Browne's
25 deposition I think I'm up because I had asked for the

1 opportunity to look at some things that they had filed
2 immediately before the last hearing. To recap or sum
3 up, if I may, we have now I think an understanding, an
4 agreement among the parties that the Rule 11 agreement
5 regarding Lord Browne's deposition is operative, is the
6 enforce law of the case, contractually enforceable here
7 in this court, by made and agreed to by the parties.

8 THE COURT: You just differ in how it
9 should be interpreted?

10 MR. GALBRAITH: Yes, Your Honor. The
11 focus as they pointed out last time was that first
12 sentence of paragraph four -- I don't know if you have
13 got another copy before you. I know it is in the
14 record, and that's my copy. So, I was going to read
15 that first sentence. Basically if I can paraphrase,
16 it's basically if new evidence is developed during the
17 deposition of John Manzoni, a person within BP, PLC who
18 is of charge of refining and marketing, that reflects
19 that John Browne has unique, superior, personal
20 knowledge of facts relevant to this case, then that is
21 the only way or pathway through which the Plaintiffs
22 can seek to depose John Browne pursuant to the terms of
23 that Rule 11.

24 So, the question then to me is not
25 whether he's made public statements, whether he has

1 insinuated himself, although I do want to address those
2 concerns. Before I step down, I will address those.
3 But to me I must point out that what we got agreed to
4 Monday was that the Rule 11 controls, and the Rule 11
5 says of its terms there will be no deposition of John
6 Browne unless, like they said a couple of hearings ago,
7 Manzoni fingers Browne as having some answers to some
8 relevant question. By that I mean unique, superior,
9 personal knowledge of facts relevant to the case.

10 So, the normal Apex inquiry is altered
11 by this Rule 11. And we don't look to what would
12 normally be considered an Apex requirement. We look to
13 the agreement of the parties which speaks to John
14 Manzoni's deposition. What they have said is that
15 their interpretation of Manzoni's deposition is that
16 there is no place they can point to, there is no page
17 and line in Manzoni's deposition which is part of this
18 record by the way, there's no place they can point to
19 wherein Manzoni says John Browne knows the answer to
20 this question. John Browne has this information. John
21 Browne has unique, personal knowledge, superior
22 personal knowledge of any fact relative to this
23 lawsuit. They conceded that. Their argument seems to
24 be because we asked Manzoni, the head of refining and
25 marketing, arguably what they call the number two man

1 in the company, because he didn't know some answers to
2 some questions we can infer that John Browne would have
3 that information. They attach an inference to Manzoni
4 not knowing answers. I don't think that that's a
5 reasonable inference. I don't think that is an
6 inference that can be made.

7 Indeed I think it's much more likely
8 that the opposite inference can be made. If the guy
9 who is the head of refining doesn't know an answer
10 about refining, the answer probably lies with some
11 subordinate of his rather than his superior. Because
12 as Manzoni said, most of what Lord John Browne knows
13 about refining passes through me, John Manzoni. So the
14 much more reasonable inference is that it's a
15 subordinate who has those answers. Keep in mind that
16 they have not requested a deposition of a corporate rep
17 for the particular things -- as I understand what they
18 are seeking, that they now cite as their questions that
19 they want to ask John Browne.

20 Okay. I want to make clear my
21 understanding of their proposed inference. Because
22 Manzoni didn't know the answer to a question, we should
23 then get to depose John Browne.

24 THE COURT: Not just any question.

25 MR. GALBRAITH: Absolutely, because of

1 relevance to the case. I liken this to if they said
2 John Browne what day is today and he says I don't know,
3 can they then say ah-ha, we surely get to ask Lord
4 Browne. Or, Mr. Manzoni, what did you have for lunch
5 six months ago? If he says I don't know, can they
6 infer certainly John Browne would know the answer.

7 Another example, if we go to, I'm going
8 to say arguably the number two person in this
9 courtroom, the docket coordinator of this court and
10 say, Ms. Simmons, what was the --

11 THE COURT: He's going to take issue
12 with that.

13 MR. GALBRAITH: What was that?

14 THE COURT: He's going to take issue
15 with that.

16 MR. GALBRAITH: Actually giving her
17 notice. I told her I'm going to keep finding a
18 question until she didn't know the answer. But she
19 didn't know the answer to the first one I asked. I
20 said, Ms. Simmons, what is the latest hour that the
21 door to the courtroom has ever been open in the last
22 six months, and she said, I don't know. And I said,
23 well, ah-hah, we may get to depose Judge Criss. The
24 point is, the inference doesn't follow. And the Rule
25 11 is clear and it should control. And if Manzoni

1 said, I don't know, that tells you nothing about what
2 John Browne does or doesn't know. If he had said --

3 THE COURT: Absent a deposition.

4 MR. GALBRAITH: Absent a deposition.

5 That's right. If he -- that's absolutely right.

6 But, okay. That's the whole point of
7 the Apex law which led to the Rule 11 which controls
8 the circumstances under which John Browne may or may
9 not be deposed.

10 THE COURT: Isn't the point of the Apex
11 is to not be free of nuisances for the heads of the
12 company to know about every little thing going on?

13 MR. GALBRAITH: I'm not sure. I don't
14 know the legislative history of the Apex requirements
15 of depositions in the State of Texas for CEO's. That
16 does seem reasonable that subordinates -- there are --
17 what are they called, less intrusive measures to get
18 that. And if there are less intrusive measures, such
19 as corporate representatives depositions being noticed,
20 then we will provide protection says the Supreme Court
21 of the State of Texas in their Apex law.

22 My point is this Rule 11 changes that
23 Apex law to say that unless -- keep in mind this was a
24 quid pro quo contract that was entered into knowingly
25 by the parties. They accepted some risk. Quite

1 frankly, I think they at the time would have told you
2 at the time we're not going to get Lord Browne but
3 we're going to get John Manzoni. That's our quid pro
4 quo.

5 THE COURT: They didn't think they had a
6 chance of getting John Browne?

7 MR. GALBRAITH: I can't speak to that.

8 THE COURT: Or they didn't want to?

9 MR. GALBRAITH: I don't know their
10 confidence in the record that existed at that time
11 about their rights to Manzoni. I don't know what gave
12 them their idea that this was a good bargain for them
13 to strike.

14 THE COURT: Maybe there was reliance on
15 representations that Lord Browne really didn't know
16 these things.

17 MR. GALBRAITH: Well, again, if there is
18 an attack on a contract, it should be made and what
19 they confirmed Monday is that the contract as far as
20 they are concerned still applies and still controls.
21 So there is no attack on the contract as we learned in
22 first year contracts in law school.

23 So, what we are stuck with, what we are
24 left with is that this is the bargain that the parties
25 struck. It's clear and it says we don't get Lord

1 Browne. We do get Manzoni. And the only way we can
2 revive any rights to get Lord Browne is if Manzoni in
3 his deposition, I believe what they said several weeks
4 ago, fingers John Browne.

5 THE COURT: That's not what the thing
6 says. The thing says evidence developed during. It
7 doesn't say whether Manzoni has to say one thing or
8 another. It says that evidence has developed. It
9 doesn't say how.

10 MR. GALBRAITH: Okay. I think that
11 the -- I personally don't think that is ambiguous. I
12 think that the plain reading of it means that it has to
13 come from Manzoni's deposition. But I suppose in some
14 manner, I really don't think anybody would say that
15 during the four hours that John Manzoni was being
16 deposed during that four-hour period of time --

17 THE COURT: Everybody assumes that was
18 the most likely way it was going to come out because
19 nobody assumed John Browne was going to go all over the
20 world telling everybody what he thinks and feels and
21 knows.

22 MR. GALBRAITH: Well, I don't know what
23 they assumed or what not. I think what they acted upon
24 was the state of the record that existed at the time.
25 And given the state of that record, whether it's

1 complete or incomplete, whether it's sufficient or
2 insufficient, they figured out that this was a good
3 deal for them. And they entered it. And it said that
4 there will be no John Browne unless during -- unless
5 during the deposition of John Manzoni new evidence is
6 developed which points to John Browne having Apex type
7 knowledge. They have admitted they don't have that
8 from Manzoni. I think the question is therefore --

9 THE COURT: I don't think they did.
10 That wasn't my interpretation of what they said.

11 MR. GALBRAITH: Well, what they said --
12 and they will have a chance to refute me if I'm wrong.
13 But what I understand what they said is we can't give
14 you a page and line from Manzoni's deposition wherein
15 he said John Browne knew anything of relevance to this
16 lawsuit. They can't point to a page and line where
17 Manzoni says John Browne has the answer to that
18 question relevant to this lawsuit.

19 What they say and what they said Monday
20 again was the fact that we asked the number two guy in
21 the company some questions of relevance to this lawsuit
22 and he said I don't know, where else are you going to
23 go except to number one? That's the inference that I'm
24 talking about that because one employee doesn't know
25 the answer to the question, surely his boss does.

1 THE COURT: That would depend on the
2 subject of the question, wouldn't it?

3 MR. GALBRAITH: Absolutely. And it
4 would depend on a lot of things, but the point is what
5 we have to have is evidence that John Browne had such
6 knowledge. And I say it's got to come from Manzoni's
7 deposition by virtue of the contract entered into by
8 the parties knowingly. We have acted to our detriment
9 in reliance upon that by presenting Manzoni when we
10 thought that the record was such that we had reasonable
11 grounds for mandamus appeal. We forewent those rights
12 in exchange for this Rule 11.

13 THE COURT: I was thinking that too.

14 MR. GALBRAITH: Well, we have been
15 right. We have been right on this one so far.

16 THE COURT: You have another one.

17 MR. GALBRAITH: Well, with respect to
18 the John Browne issue, we were right on ground one at
19 any rate.

20 Okay. Now, I do want to say what we have
21 learned about the things they cited. There's no --
22 there is nothing new, nothing since the date of this
23 Rule 11 in any of them except for the two town hall
24 meetings, which they said were a publicly -- were
25 gleaned from a publicly available website. So in other

1 words, what their inference again is that BP published
2 this to the world, these town hall meetings. And I
3 think what we have found and in our supplemental
4 record, I think what we have shown is that BP did not
5 call a press conference. BP did not publish the town
6 hall meetings to the world. BP's intended audience
7 were employees of BP.

8 THE COURT: Was it on the Internet?

9 MR. GALBRAITH: It was not on the
10 Internet. As I understand it, it was on BP intra-net.

11 THE COURT: How did he have access to
12 it?

13 MR. GALBRAITH: I think the court has a
14 very good question there. And I think that the answer
15 will reflect that you can't go into your office right
16 now and get there. You can't find it by any publicly
17 available search engine. You can't go to Google and
18 trace it down or to Dog Pile, I don't know a bunch of
19 publicly available search engines, but you can't go to
20 them and get there. The intended audience is for BP's
21 employees within BP's Intra-net such that you have to
22 have either a BP employee to get you there or to tell
23 you where it is because you can't find it on any
24 publicly available search engine, or to misrepresent
25 yourself as a BP employee or to get a password. I

1 don't know. But I think the court has a reasonable
2 basis for inquiring that and I would like to know that
3 answer. Because I think I know what it will reflect
4 and I think what it will reflect is that BP didn't call
5 a press conference. BP's intended audience was BP's
6 employees. And it's again doing what CEO's do.

7 And one other point about that is the In
8 re: Daisy Manufacturing lawsuit that is cited in our
9 materials. This is the Daisy BB gun CEO. And there
10 was a lawsuit. It went to the Texas Supreme Court in
11 2000. I don't know exactly when the lawsuit was filed.
12 The lawsuit alleged that a BB gun was defective because
13 its gravity feed mechanism didn't work right or
14 something. And the CEO went on 20/20 and he said, he
15 defended the safety of the gravity feed system, in
16 other words, talked about the safety philosophy for the
17 mechanism in question for the BB gun in question, for
18 the gravity feed system in question. He further stated
19 on 20/20 that any expert hired by the Plaintiff would
20 not be credible. Some may think that's much farther
21 than anything we have seen out of John Browne.

22 But the Texas Supreme Court In Re Daisy
23 Manufacturing said, and by the way the Plaintiff said,
24 there are 48 areas of questioning we would like to have
25 for the CEO --

1 THE COURT: In that case?

2 MR. GALBRAITH: In the Daisy
3 Manufacturing case. We would like to ask him about
4 safety standards, the net worth of the company,
5 warnings, company policies of all sorts. The Supreme
6 Court refused to allow the deposition stating he's
7 doing nothing but what CEO's do.

8 And Apex law in the State of Texas
9 absent a Rule 11 contract making it more onerous, but
10 the Apex law in the State of Texas absent a Rule 11
11 doesn't require CEO's not to be CEO's for going whole.
12 And they said it was error to order that deposition and
13 the Supreme Court refused to allow the deposition.

14 So I've got basically three things to
15 say. Going on an Intra-net simulcast to BP employees
16 doesn't put him on 20/20. Even if he had gone on
17 20/20, that's not the sort of thing that the Texas
18 Supreme Court says that the kind of CEO Apex evidence
19 that gives rise to an Apex deposition. And third, we
20 acted to our detriment on reliance on a Rule 11. We
21 presented Manzoni when arguably we didn't have to, when
22 the Plaintiffs arguably didn't think we had to, and
23 they altered the playing field by saying that unless
24 during Manzoni's deposition Plaintiffs can point to
25 specific knowledge of John Browne, they don't get John

1 Browne's deposition. They acknowledged that. They
2 agreed to that and they got something for it, Manzoni's
3 deposition. It should be enforced.

4 MR. GONZALEZ: I will address all of the
5 issues, Your Honor. First of all, the Rule 11
6 agreement, but I left it at my office, but it says the
7 Rule 11 agreement is a stipulation. It's agreed to by
8 the parties with reliance upon certain representations
9 between both of the parties. It must be signed. It
10 must be filed of record with the court, and it's
11 voidable if there was fraud inducement.

12 I'm not saying that there was, that they
13 specifically had the intent to defraud us, but we also
14 relied on that Rule 11. And what happened was that
15 immediately after that Rule 11 was signed, all of a
16 sudden John Browne was making all kinds of appearances.
17 And whether it's to BP employee or to BP employees or
18 simulcast, whatever, the bottom line is that that
19 simulcast got on the Internet, and it was pulled off by
20 one of my law clerks, and I got it on the Internet not
21 on the Intra-net.

22 And they can't attack the authenticity
23 of the document, Exhibit G, and they can't attack the
24 authenticity of Lord Browne on that screen telling us
25 what we all heard on Monday. We think that now that

1 paragraph four of the Rule 11 is ambiguous as to its
2 terms. And the reason for that is because it didn't
3 say how we had to get the evidence from Mr. Manzoni.
4 And if the court looks at the response that I filed, I
5 gave a specific example with respect to the 25 percent
6 budget cuts, not whether or not Mr. Manzoni knew what
7 kind of toothpaste Lord Browne used. And the question
8 was, after the merger was there apparently a decision
9 made to advise the various business unit leaders at the
10 various refineries to cut their fixed operational
11 budgets another 25 percent. Do you know anything about
12 that? Mr. Manzoni responds no, not specifically. I
13 don't know that was, certainly not since I was in the
14 job.

15 Mr. Coon: Was it that you were first
16 made aware of the issues emanating from London to the
17 various refineries to cut the 25 percent post merger?

18 I don't think I was. I mean I certainly
19 been -- recently been made aware of that. I do recall
20 vaguely in the late '90's a conversation but it wasn't
21 anything to do with refineries. I wasn't in the job at
22 the time. So, if he doesn't know, then Lord Browne
23 knows.

24 And we now believe that there was fraud
25 inducement in the execution of Rule 11. And we are

1 asking the court to dissolve the Rule 11 agreement and
2 to allow us to proceed with the deposition of Lord
3 Browne. Not just for the one-hour telephonic
4 conference, but for the four to six hours individually
5 we were originally intending to take the deposition.

6 And I'll bring the point to the court,
7 is it the court's last ruling, the court found that the
8 25 percent budget cut was sufficient, but in the
9 transcript of the court from page 64, the court said it
10 wouldn't be enough in and of itself, but the fact that
11 he was interviewing the people that day, after what
12 would be the most persuasive, although I think the
13 budget cut issues and the decisions he made also, I'm
14 going to grant the Plaintiffs' motion. I think they
15 have met their burden.

16 He has injected himself in this case
17 continuously time and time and time again. And while
18 we were in court Monday morning here, at the exact same
19 time Lord Browne was doing another simulcast out of
20 Anaheim, California, and he was having a town hall
21 meeting with people in Texas City. And we have people
22 here in court who will testify, in open court, that
23 they were there and will testify as to what Lord Browne
24 told the people in Texas City on that morning simulcast
25 this past Monday.

1 And for that reason, Your Honor, I think
2 we are entitled to take the deposition of Lord Browne.
3 He has injected himself repeatedly into this case. And
4 we need to know what he knows about the budget cuts,
5 what he knows about the problems that they were having
6 in Texas City with respect to process safety management
7 and all of the other issues I brought before the court
8 on Monday.

9 I want to talk a little bit about the
10 e-mail that is attached as Exhibit G to the response.
11 At the bottom of that e-mail, there is a series of web
12 links. And yesterday I got an e-mail from Greg. And
13 we work very closely together. We talk back and forth.
14 He says I'm typing this into the browser but I can't
15 get into it. How do I do it? Did you get this from an
16 employee of BP? I said, no, I didn't get it from an
17 employee of BP. It was my law clerk that actually
18 pulled that off. And we were able to pull it off the
19 Internet. And we saved it to CD. And from CD we put
20 it on the computer. That's what y'all saw.

21 Somehow it ended up on the internet.
22 We've got it. There is no clandestine operation here.
23 It wasn't provided to us by a BP employee, and that's
24 how we got it. We think the court should allow us to
25 take the deposition of Lord John Browne under the

1 circumstances.

2 MR. COON: I have a few things to say.
3 Your Honor, by elaboration with respect to the Rule 11
4 agreement since we were the parties that entered into
5 it initially, it was based on as Mr. Galbraith said, a
6 quid pro quo. That was we would restrict the amount of
7 time we would depose Mr. Manzoni, although we were very
8 confident from the court's prior orders that we would
9 be able to take Mr. Manzoni. Time was of the essence.
10 As the court may recall, we were scheduled for trial in
11 September, and because of BP's prior appeals that
12 delayed the taking of him when I went to London to take
13 him in August. We were concerned we would not be able
14 to get a ruling from the Court of Appeals for the next
15 mandamus allowing us to take it promptly then. So that
16 was our concern and our willingness to restrict
17 Mr. Manzoni for four hours instead of the six or more
18 we may need to do a thorough job. And also to firmly
19 restrict the deposition of Lord Browne to one hour
20 which was unprecedented on our part. So we gave a lot
21 of concessions to them.

22 As Mr. Galbraith and also Mr. Alvarez --
23 I'm sorry. I'm not through you in the grease on this
24 one yet.

25 MR. ALVAREZ: Yet?

1 MR. COON: But part of what we had with
2 all this was the understanding that the information
3 that we developed to date may not be able to take Lord
4 Browne. We've taken Mr. Manzoni and see where that
5 led. And what we did get out of that is Mr. Manzoni
6 knew nothing about the 25 percent budget cuts. We know
7 those came from Lord Browne. Kathlyn Lucas and other
8 witnesses were shown deposition testimony. All
9 emanated from Lord Browne. We had the Texas City -- in
10 1999 that said that the budget cuts came from Lord
11 Browne. And that's instrumental in this case because
12 it directly impacts the operation of that unit and it
13 specifically reduced the manpower on that unit.

14 We want to know, why did you make this a
15 25 percent budget cut? What did you use to ascertain
16 whether or not you can safely reduce the fixed
17 operation of budget in all of your refineries and all
18 of your pipelines operating in America where it would
19 not compromise the infrastructure and integrity of your
20 pipelines, so you don't have busted pipelines, so you
21 don't have busted refineries? What did you do to
22 determine you could make that kind of a budget cut?
23 Where is the underlying documentation? Who did you get
24 that from? Who told you that? Mr. Manzoni knows none
25 of those answers and the very key to this case. And

1 that's why we feel we have a very good reason to take
2 Lord Browne.

3 In addition, not only did the orders
4 come from him, he has continued to inject himself
5 directly in this case over and over again. Via
6 website, via communication, with newspapers,
7 communication, with Fortune magazine and other articles
8 very recently. Negative pipeline, that he has had.
9 Negative publicity that BP's had. Nevertheless, he
10 personally interjects himself into this litigation
11 indirectly by this public relations campaign. Almost
12 all of this knowledge came in after this agreement was
13 entered into.

14 So we are saying we entered into this in
15 good faith. We had no reason to believe that Lord
16 Browne was going on a world-wide tour of magazines,
17 newspapers, web sites, et cetera to talk about his
18 personal position. And we know that even Monday when
19 we were here arguing over this issue whether he was or
20 was not interjecting himself into the case, that he was
21 interjecting himself again via this web cast of all of
22 these different employees, of all these different
23 refineries. And we also understand that he had also
24 done that recently with other web sites that we don't
25 even know the details of yet today that we would like

1 to also know about. We would also like to have the
2 transcripts of what he said. We have witnesses here
3 that were at that Monday meeting. We understand that
4 Lord Browne personally called responsibility and he was
5 personally responsible, that the buck stopped with him.
6 And he has all this personal information associated
7 with the explosions and his review of decisions of what
8 to do post-incident as well as what to do pre-incident.
9 We want to know about all of these things. He's
10 telling people he knows. He's telling people he's
11 personally responsible, but yet they don't want us to
12 depose him. And BP goes around with marking plans that
13 were transparent. We want everybody to know
14 everything, and yet they continue to defy our ability
15 and right to take a person who is very knowledgeable on
16 these issues.

17 MR. GALBRAITH: What a difference two
18 days makes, from Monday to today. First of all, they
19 said Monday they stand behind the Rule 11. They are
20 not alleging that it was fraudulently entered into.
21 Art's statement a moment ago was I'm not saying fraud,
22 but then he ended his remarks by saying we think there
23 was fraud inducement. I don't know if that is an
24 allegation of fraud. There is certainly no evidence of
25 fraud. And you can't just say it, you have to allege

1 it. You have to give us time to develop it, discover
2 it, and they have to provide some evidence which they
3 have not. There is no evidence of fraud. Indeed
4 Monday and the first statements today deny or refute
5 the existence of fraud.

6 And second of all, I don't think I heard
7 an answer to the court's question about where does one
8 have to go to get this? How does one come about it?
9 If you can't find it on any publicly available search
10 engine, and him saying my law clerk did it, not me,
11 doesn't answer the question. That's in-house if you
12 will. The point is the court's question is still a
13 good and valid question and it proves the point. Maybe
14 we will never get an answer but that proves the point
15 which is the intended audience for BP employees it was
16 Internet, and you have to have some, either
17 representation that you are a BP employee or know
18 something, having received some information from
19 password or whatnot from a BP employee to get it.
20 That's in our record and it's not refuted. And when
21 the court asked that question, I don't think the court
22 got an answer. And to me that proves our position that
23 it is not a public pronouncement. And again, if 20/20
24 doesn't throw you in the grease, certainly talking to
25 employees, your own employees shouldn't throw you in

1 the grease either at Sunberry or at Chicago or at
2 Anaheim.

3 What Mr. Coon finally said was, yes,
4 there was quid pro quo, yes, we got something for it,
5 and we decided to see where Manzoni led and let our
6 rights to Lord Browne hinge upon where Manzoni led.
7 That again comes back to paragraph four of the Rule 11
8 which says Manzoni has to be the basis now by virtue of
9 the contract for any argument to get to Lord Browne.

10 There has been no evidence of any way in
11 which Manzoni or anything that occurred during the
12 hours of Manzoni's deposition that points the finger to
13 Lord Browne. So I think the Rule 11 has not been
14 attacked formally, has not been attacked with any
15 evidence. It is the law of the case. It does control.
16 And there is no evidence of the operative triggers
17 spoken of in paragraph four of the Rule 11 agreement.
18 There's no evidence that Manzoni pointed to Lord Browne
19 having any particular knowledge of relevance. So the
20 motion should be denied.

21 MR. GONZALEZ: May I respond briefly,
22 Your Honor?

23 THE COURT: Yes.

24 MR. GONZALEZ: I did answer the court's
25 question. I directed the court to Exhibit G, the link

1 at the bottom of Exhibit G. We were able to get on it
2 and I gave Mr. Alvarez directions on how to get on it
3 yesterday afternoon.

4 Secondly, even if it wasn't a public
5 pronouncement, even if it was pronounced to BP people,
6 the video ended up on public domain. It ended up on
7 the Internet. We pulled it off the Internet and it's
8 available as I have shown the court.

9 I think it becomes an issue of intent.
10 With respect to the fraud inducement, that's why I said
11 I'm going to come out and say they intended to be bias.
12 But I think it becomes clear and the evidence is clear
13 that once that Rule 11 was signed, then Lord Browne
14 began to make all these appearances. Whether it was to
15 BP people or not, it gets out to the press. The press
16 reports it. It's out there. And he's injected himself
17 in the case.

18 The court has the discretion to resolve
19 the Rule 11 agreement. Based on the evidence
20 presented, I think we should go forth with the
21 deposition of John Browne.

22 MR. GALBRAITH: The press hasn't
23 reported on the town hall meetings. It's my
24 understanding the press hasn't reported on those at all
25 until they were shown in court on Monday, and then

1 solely determined on whether he went on 20/20. I think
2 it comes down to what that particular CEO said on
3 20/20. Did he say something other than the party line,
4 the company line, we're not guilty, we're not liable,
5 or did he say something that indicated it?

6 In that Daisy case, I'm assuming had
7 that CEO gone on and said I know this because I saw
8 this or I checked into this or I made this decision,
9 that could have been a completely different decision.
10 Publicly given the company line, that didn't get under
11 Apex.

12 We have a completely different situation
13 here. We have got statements that were way, way beyond
14 the company line, the PR. We shouldn't have to pay
15 punitive damages. That's basically what we are down
16 to. The whole reason for the PR thing because they
17 have done the unusual thing in accepting liability,
18 responsibility for the fact that this happened at all.

19 Now, I think if we were going to still
20 say that the Rule 11 is still in effect, I think the
21 things that Manzoni said about the things he didn't
22 know, not just that he didn't know, but there were
23 things that the guy at the top had to know. And if the
24 guy number two didn't know, that only leaves the guy at
25 the top. These weren't just the general, well, I don't

1 accept or agree with your assessment, it had to be
2 somebody below. The kind of questions that Manzoni
3 didn't know, the guy at the top had to know. The
4 question is, is the guy at the top the only one that
5 knew? The fact that Manzoni said he didn't know leaves
6 the guy at the top as being the only one that didn't
7 know.

8 If we were to go by just the deposition
9 of Manzoni, I would say they went. Now, if we're going
10 to put that out, I do agree that it should be for the
11 simple reason, I think they did rely on
12 misrepresentations. Now, I'm not suggesting that
13 anybody on your team did because I think you are all
14 very honorable people, but you are going to go with
15 what your client tells you.

16 I think they relied to their detriment
17 and they gave up a lot. They did not have to give up
18 by relying on representations that Lord Browne did not
19 know these things. And they were willing to act on
20 them assuming what they were going forward was going to
21 substantiate that, that Manzoni, the deposition of
22 Manzoni was going to indicate that. Nobody had any
23 idea, I'm assuming you were not happy either, to see
24 your client all over the board on this, making all
25 these public statements.

1 Now, the town hall meetings, which
2 really aren't town hall, but they are company meetings,
3 I'm assuming. Now, what's significant about those is
4 he's saying things in there that indicate, that give
5 them the evidence that there was misrepresentations.
6 Those things don't have to be publicly broadcast to
7 provide them with the evidence that those were
8 misrepresentations that they relied on to their
9 detriment.

10 Plus the fact that he also in other
11 forms went public, now whether they meant for that
12 video to go public or not, he gave other interviews
13 with the magazines, and the newspapers, and the press
14 conferences that also indicated that he personally knew
15 that he had that, that that knowledge came from him,
16 came from the guy at the top, not just the company
17 line, but he did inject himself all over the place.
18 And when you look at all of that combined, it indicates
19 that they relied on misrepresentations to their
20 detriment.

21 In addition to that, I do think it is
22 significant that these things become public after the
23 deal was signed, and it was safe or so Lord Browne
24 thought to go around and tell everybody in the world
25 literally that things to support his public relations

1 campaign, but also indicated that he had a personal
2 superior knowledge of these matters.

3 Now, I have also told y'all over and
4 over again that I was not going to tolerate certain
5 things being represented in court and a different set
6 of facts being represented to the outside world as a
7 part of the PR campaign, for the media and for the
8 potential jury pool which is still out there. If you
9 say it out in the real world, I'm going to hold you to
10 it. Lord Browne has said out there in the real world
11 to the public things indicating he has unique superior
12 knowledge of certain elements. And he's been very
13 clear about that. I'm not convinced he doesn't want to
14 come here and tell the whole world in court about it.

15 So, I am going to allow you to depose
16 him, and I'm going to allow you to do it outside the
17 confines of the Rule 11.

18 MR. GALBRAITH: Judge, I think I
19 understand most everything that you just said, except
20 for one thing. I'm not aware of anything that comes
21 from Lord Browne that constitutes in your mind a
22 misrepresentation that they relied upon in agreeing to
23 the Rule 11.

24 THE COURT: He had this unique -- There
25 is many times, and he had them highlighted, I believe,

1 I. There were numerous examples in the record

2 MR. COON: Your Honor, also, what we
3 would like to do in anticipation of a potential
4 mandamus again --

5 THE COURT: I think it's more than a
6 potential.

7 MR. COON: Ask for the right to have as
8 a supplementation to this hearing, whatever it was by
9 transcript what Lord Browne talked to this last time
10 around.

11 THE COURT: I will.

12 MR. COON: Mr. Ross, who is here at
13 that, we are prepared to offer him this morning to
14 testify as to his personal recollection as what was
15 demonstrated --

16 THE COURT: I know previously I didn't
17 allow them to supplement the record because they should
18 have had it before, but this is stuff as it comes on.
19 I mean, for all we know he could be giving an interview
20 to Oprah right now the way things are going. And if he
21 did, then that's going to get on the record too, so go
22 ahead.

23 MR. CANTLER: Judge, these are the
24 statements and recordings that we know about. We are
25 assuming there's others out there. We want those to be

1 part of this record also.

2 THE COURT: If he's giving an interview
3 right now, that's going to be on the record too.

4 MR. CANTLER: And if we can go back and
5 figure out from the time that we started until today,
6 what statements he's given, we will have a full and
7 complete record. They should have to produce those per
8 disclosures. So, we are asking you to order those.

9 MR. GALBRAITH: Does that mean from
10 August 31st on, the Manzoni deposition time to today
11 from the time we started?

12 THE COURT: If you know of any
13 interviews he's given, yes.

14 MR. GALBRAITH: Just so I'm clear about
15 what the status of the record is at this moment, they
16 have put into the record what was put into the record
17 Monday concerning the statements to employees at
18 Sunberry. That was one of the exhibits. And they have
19 put into the record the statements to BP employees that
20 was made out of Cantera, I think, in Chicago. And now,
21 they are asking to put into the record the transcript
22 of whatever statements were made in Anaheim,
23 California, Monday, I think.

24 THE COURT: If he gives one right now
25 and he gives one tomorrow, they get added.

1 MR. COON: And we also understand he
2 gave one to Whiting in Toledo refineries as well. We
3 don't have the exact date. We just found that out
4 today.

5 MR. GALBRAITH: Right now, as you made
6 your ruling, we don't know what he said to Whiting in
7 Toledo, whether he --

8 THE COURT: You may communicate with
9 your client and learn these things and maybe explain to
10 him the consequences of these statements.

11 MR. GALBRAITH: All right. I think I
12 understand the position of the court.

13 THE COURT: There was something else we
14 need to talk about, the motion to compel, the diagram.

15 MR. GALBRAITH: The flow diagram.
16 That's the same thing.

17 THE COURT: All right.

18 MR. GOURRIER: You had requested that
19 Mr. Danny White be present today.

20 THE COURT: Oh, yes. Danny White. Is
21 Mr. White here?

22 MR. GOURRIER: Your Honor, we
23 subsequently learned that --

24 MR. GALBRAITH: I think we were
25 responding and we were cut off in our response on

1 Monday on the history of the flow diagram. I think we
2 are up.

3 THE COURT: All right. Go ahead.

4 MR. GOURRIER: Your Honor, if I may, I'm
5 just trying to clarify a few things. We subsequently
6 learned there was another gentleman, Ruben Huerra,
7 that was involved in the search for the process flow
8 diagram. We subpoenaed him yesterday. We asked that
9 he be present and I'm trying to figure --

10 THE COURT: Is Ruben Huerra here?

11 MR. GALBRAITH: Yes, Your Honor. The
12 presentation made Monday was about the absence of a
13 document as an attachment to one transmittal in a
14 particular environmental permit application. What we
15 had said was that we have done a more than reasonable
16 diligent search and we don't see where we ever had any
17 such flow diagram. Unless they -- theoretically,
18 normally speaking, unless they can prove that we are
19 wrong about that or surreptitious about that, that ends
20 the discussion, because everybody agreed we don't have
21 a duty to present what we don't have. Pretty basic.

22 Our supplemental response has confirmed
23 that we don't have any such flow diagram. We have made
24 that known to the Plaintiffs. I think that might
25 change things a bit. If I can -- first of all, an

1 environmental permitting application process is just
2 that. It's a process. One of the things that we have
3 now submitted to the court is the original transmittal.
4 And I believe it's this, which is a stack of pages
5 less than a foot, but more than either nine or ten
6 inches thick.

7 One page of that Exhibit 1-A is that
8 document -- I'll hand it to the court -- does have a BP
9 isom production number 00077726. And if you will note,
10 this is February 23rd, this is one of the original
11 first application transmittals to get the time table
12 started, to get the ball rolling if you will. It says,
13 as the Plaintiffs have pointed out in number three in a
14 footnote, that relief valves are routed to a flare.
15 And it shows in the chart under pressure relief valves
16 100 percent as the reduction credit.

17 What we have learned is that that is but
18 the first of a long process that gets the ball rolling.
19 Then there are innumerable meet and confers with state
20 agency representatives. There are tours on occasion.
21 Sometimes they come down and we meet in BP's offices at
22 the plant. Most of the time those meet and confers to
23 get the needed supplemental information, to get the
24 state's questions answered occurred in the state agency
25 offices.

1 What we have learned, and I'll submit as
2 a part of Exhibit 6, is a subsequent transmittal to the
3 state TCEQ. That actually is a part of a submittal
4 that was -- not but about two inches, maybe three
5 inches thick. And that is one page labelled BP isom,
6 which was a reflection we produced here before, BP isom
7 0305222.

8 This is well before the March 23, 2005
9 event which gave rise to this lawsuit. It is also well
10 before the permit was issued by the state. In other
11 words, the state asks questions when it gets in a
12 permit application, and you have these innumerable meet
13 and confers. And you do component counts. That's one
14 thing that is the process. And you find out where
15 there are relief values, what service they are in,
16 whether they need ruptured disks. We talked about some
17 of that Monday.

18 But what we understand as a part of this
19 process is that the supplementation is considered an
20 amendment, but the application is considered a living
21 and breathing document that gets longer and longer in
22 terms of page length.

23 These -- it's also significant that
24 these applications are renewals. In other words, there
25 was already a file in existence for the original permit

1 it's been named TNRCC, Texas Air Control Board, and
2 Texas Water Commission through its history.

3 THE COURT: You are not saying the
4 Environmental Protection Agency office?

5 MR. GALBRAITH: Yes. I think there is
6 some EPA input. I'm not sure. I think the EPA does
7 come out and play some role. But the largest entity
8 with activity and response to these is the TCEQ.

9 THE COURT: That is the AG's office has
10 enforcement of those?

11 MR. GALBRAITH: I don't doubt that. I
12 bet the AG's office would have some enforcement.

13 So, what the state says is we will grant
14 you that flex permit. Then you don't have to be coming
15 back to us all the time with particular piece of
16 equipment amendments to change your permits.

17 THE COURT: Like in the past four years
18 or so?

19 MR. GALBRAITH: I think so. Actually
20 it's a little longer than that. The first one that was
21 applied for -- and I'm not even sure this was the first
22 on -- goes back to 2001. So about -- I will tell you
23 this. It's long enough that industries like RMT, which
24 is our contractor consultant on permanent applications
25 have sprung into existence. There are contractors out

1 there who work for Shell and Exxon and others, like BP,
2 who have expertise in filing for flex permits with
3 TCEQ. And we indeed contracted with RMT. And the
4 document that they seek production of would have been
5 an RMT generated flow diagram anyway in this case.

6 So what the state said is there is a
7 benefit to us but there is also a benefit to you
8 because you don't have to be coming back to the TCEQ
9 every time you want to put a scrubber in so that you
10 can de-bottle neck somewhere else as long as the bubble
11 doesn't change. So you have got flexibility. The
12 pound of flesh that we exact for that is that -- I said
13 this permit was issued July 2005, after the state's
14 questions had all been answered -- by 2010 you will be
15 cleaner, is the only way to shorthand that.

16 THE COURT: You will be cleaner? On
17 your own you will just --

18 MR. GALBRAITH: No. It's permitted.

19 THE COURT: Out of the goodness of your
20 heart you will just start doing a better job. We are
21 going to enforce you less, we are going to enforce you
22 less because we trust that out of the goodness of your
23 heart and by 2010 you are just going to be emitting
24 less pollution?

25 MR. GALBRAITH: I certainly didn't say

1 that. I didn't say that there would be less
2 enforcement at all. I didn't mean to insinuate there
3 would be less enforcement.

4 THE COURT: Being more flexible. Making
5 you tell us what you are doing --

6 MR. GALBRAITH: Not flexible enough.

7 THE COURT: If you promise us you will
8 be cleaner?

9 MR. GALBRAITH: The only flexibility is
10 inside the bubble, Your Honor. There is no flexibility
11 about what comes out of the bubble.

12 THE COURT: Was there a possibility in
13 letting them know what is in the bubble?

14 MR. GALBRAITH: I don't think so either.
15 I don't think that changes. I think the reporting
16 requirements are the same. But my point is, right now,
17 we have some pieces of equipment that are permitted at
18 a certain rate or at a certain level.

19 THE COURT: By pollution.

20 MR. GALBRAITH: Of affluence of one form
21 or another. Some hazardous, some toxic, some not,
22 okay? And obviously the sum total is deemed not or
23 else it wouldn't be permitted.

24 But when that permit for that particular
25 piece of equipment was issued that piece of equipment

1 may have been what was at the time B-A-C-T best
2 available control technology, and it's permitted. That
3 piece of equipment under the bubble is permitted at
4 that rate because it was then the standard.

5 But now or by 2010 we might have
6 different standards that are more stringent for that
7 piece of equipment. That piece of equipment is still
8 permitted at that rate. But if you're granted a flex
9 permit by 2010, you must be at best available control
10 technology for those pieces of equipment that are
11 within the bubble. So the --

12 THE COURT: How do you determine whether
13 they are or not? Do you check it or do you have to
14 tell them?

15 MR. GALBRAITH: Both, I think. Both is
16 my understanding. Enforcement does not change by this.
17 Their frequency or rights to enforce, I don't think are
18 lessened at all by this. But the point is by the 2010
19 point, the exact, the pound of flesh that they exact is
20 that you will be at best available control technology.

21 THE COURT: For what?

22 MR. GALBRAITH: For various pieces of
23 permitted equipment.

24 THE COURT: For what?

25 MR. GALBRAITH: Within the flex or else

1 you are out a permit and they will send you a notice of
2 violation and fine you and shut you down. And do all
3 kinds of things that they normally do.

4 THE COURT: I'm going to make a note in
5 2010 because I'm going to check and see if that
6 happens.

7 MR. GALBRAITH: I bet you it won't have
8 to happen.

9 THE COURT: I don't either.

10 MR. GALBRAITH: The point, Your Honor,
11 is by this exhibit 6 transmittal and amendment to the
12 application there is no representation that the RV's
13 are routed to a flare. So there is no
14 misrepresentation if you will. And more importantly,
15 if you will look at the chart -- and it's hard to read,
16 but where it speaks to pressure relief valves, PRV,
17 pressure relief valves, it reflects 97 percent. Now,
18 that certainly didn't mean anything to me when I first
19 became involved in this. I doubt it means anything to
20 Art Gonzalez' law clerk, for example. But to someone
21 who knows an environmental permit --

22 THE COURT: It probably does.

23 MR. GALBRAITH: It may well. But it
24 should and it does to anyone who is familiar with
25 environmental permitting applications. 97 percent is

1 inconsistent with routing to a flare. If you route to
2 a flare, you reflect 100 percent is my understanding.
3 That column is control efficiency and flares are deemed
4 100 percent legislatively regulatory. 97 percent is
5 considered B-A-C-T, best available control technology.
6 It is monitor and LDAR which is a regulatory system for
7 leak detection and repair.

8 So by reporting to the state that there
9 were no emissions routed to a flare and that the
10 control efficiency for relief valves was 97 percent,
11 the state's questions are answered and there's many
12 ways for the state's questions to be answered. By flow
13 diagrams, that would be one way, or by numerable meet
14 and confers or by tours or by whatever. Subsequent
15 transmittals like Exhibit 6. But by the date of
16 Exhibit 6, which is November 2004, which was well
17 before the March 23 event and well before the permit
18 was acted upon by the state, the state knew that there
19 were no relief valves routed to a flare here and that
20 the control efficiency claim was 97 percent, meaning --

21 THE COURT: They knew because they had
22 the math is what you're saying.

23 MR. GALBRAITH: I'm sorry?

24 THE COURT: They knew because they had
25 the math.

1 MR. GALBRAITH: They knew because they
2 had the report. 97 is a term of art.

3 THE COURT: Because of the math in the
4 report you are saying.

5 MR. GALBRAITH: I don't know if it's the
6 math. I think it's when you --

7 THE COURT: 97 is just the number.

8 MR. GALBRAITH: Right. It's just a
9 place for -- it's a place for representing. You don't
10 calculate it. It's just when you rely upon monitoring
11 an LDAR, the answer is 97. It's just like a legend or
12 an index. Flare equals a 100. Monitoring an LDAR
13 equals 97. So when --

14 THE COURT: How come on this first page
15 they don't just say 97?

16 MR. GALBRAITH: Well, I think -- I don't
17 know quite frankly. That was the RMT place holder.
18 They had a template for when they had done this before.
19 And this was to start the clock if you will because
20 these take time, and to get this foot high of initial
21 application going, recognizing that there would be
22 things like component counts that are required, that
23 are a part of the process.

24 THE COURT: Let me ask you something.
25 If that's your point, if you got this big stack over

1 there and one page had something fraudulent and on page
2 ten it has what the truth was, because it has the truth
3 on page ten you should forget that page one is
4 fraudulent?

5 MR. GALBRAITH: Not at all. All I'm
6 saying is that in the 2000 pages or so of the initial
7 application transmittal, there was a footnote that said
8 inadvertently and mistakenly PRV'S are routed to a
9 flare. We don't know what the foundation was for RMT
10 putting that in there. We think it's a template they
11 have for a pull-down menu on a computer or some such.
12 And they get the ball rolling knowing that there will
13 be supplementation, that there will be these questions
14 asked and the component counts have to be made.

15 When the component counts are made, then
16 you have exact information. Then you have a basis for
17 knowing with exactitude if you will whether RV's are
18 routed to a flare or whether RV's are subject to
19 monitoring an LDAR. That became clear to the state
20 well before they acted upon the permit. That became
21 clear to BP when component counts were made as a part
22 of this process, lengthy process.

23 Now, this doesn't address a flow
24 diagram. This addresses how did the state get answers,
25 valid and truthful answers to its questions well before

1 they needed to act upon the permit application. And I
2 think what we have shown is that the state did get
3 valid, truthful accurate answers to their questions
4 well before they acted upon the permit application.

5 Now, I would also like to address the
6 flow diagram which BP has never had, that they are
7 asking that we be compelled to produce.

8 First of all, as I understand it, they
9 admit that RMT would have been the drafter of any such
10 flow diagram. We have searched and searched and
11 re-searched and repeatedly maintained that we never
12 had, do not have now and never had such an attached RMT
13 flow diagram. We have gone to TCEQ as have the
14 Plaintiffs. They haven't found a flow diagram. Their
15 surmise is that it will be consistent with the first
16 application and that it will show on a flow diagram
17 routing to a flare.

18 THE COURT: 100 percent.

19 MR. GALBRAITH: No. If a flow diagram
20 shows 97 percent, it will show to atmosphere. If a
21 flow diagram shows 100 percent, it will show to a
22 flare. So they want to see the flow diagram to see
23 whether or not it is consistent with the initial
24 representation or whether it's consistent with the
25 supplemented amended representation. And their surmise

1 is that we misrepresented further by shipping to the
2 state a flow diagram showing a flare.

3 Okay. And two things about that. BP
4 doesn't have any flow diagram showing a flare or
5 otherwise. We don't have a document that they seek
6 from BP. End of discussion right there. It should be.
7 But it's significant to me that TCEQ has been checked
8 by the Plaintiffs and by us. They haven't found. We
9 haven't found. Apparently TCEQ never got a flow
10 diagram that says atmosphere or flare. So there was no
11 misrepresentation in a flow diagram to the TCEQ.

12 Now, what happened since Monday is that
13 we went back to RMT. Now, keep in mind when this first
14 came up, and really this is germane to the cause of
15 action we pled for the first time in August after we
16 produced six million pages of documents, and by the way
17 after we have a Rule 11 on document production that
18 says the Plaintiffs will not file any more motions for
19 sanctions.

20 THE COURT: We've been down that road.
21 Let's move on.

22 MR. GALBRAITH: This is a different Rule
23 11 about document production. We have a Rule 11 in the
24 record today that says that in exchange for our
25 concessions about document production, they won't file

1 any more motions for sanctions about document
2 production because they have already got six million
3 and they are satisfied and happy with the volume and
4 the responsiveness of the production of documents. And
5 if you will remember, we had discussions about --

6 THE COURT: Was the Rule 11 they weren't
7 going to file any sanctions on anything that happened
8 to date or in the future?

9 MR. GALBRAITH: It says they will not --
10 they will not file -- and I don't know the
11 particulars --

12 THE COURT: And you are uncertain
13 between the --

14 MR. GALBRAITH: They will not file
15 motions for sanctions regarding document production
16 because we were thought to be -- basically they were
17 satisfied with the over six million pages of documents
18 that they had gotten if you ask me. But remember this
19 was an issue about their ability to, quote, blow them
20 back, and remember by virtue of one of the first law
21 firms in the case requesting them in a format where we
22 produced them electronically on CD's and they could
23 look at them electronically and they didn't have to
24 blow them all back.

25 But the remaining Plaintiff's law firm

1 didn't chose to do it that way or have the capacity to
2 do it that way, who knows, and they were complaining
3 that we had produced them in the style agreed upon,
4 which was causing them vexious expense because they had
5 to blow them back. And so we said we will bear the
6 expense of blowing them back before we produce them.
7 We will produce them to you in your requested,
8 acceptable manner, and we have spent over \$70,000 of
9 our money blowing them back, producing them to them.
10 There is a Rule 11 that we have acted upon to our
11 detriment, and which they say, that makes us happy. We
12 won't file any more motions for sanctions regarding
13 document production which is what they are doing here
14 today.

15 But at any rate, the point is why are
16 they filing this motion to compel this flow diagram?
17 Because they think it will show a misrepresentation to
18 the state that RV's were routed to a flare. What we
19 have -- the record, as it stands, shows that BP didn't
20 have such a document. End of discussion. We can't
21 produce what we don't have. But to me it is
22 instructive that we have also confirmed that TCEQ
23 doesn't have any such misrepresentation or any such
24 flow diagram reflecting that RV's go to a flare.

25 Two things about that. They have gone

1 to look at TCEQ as well we have. It hasn't been found.
2 So there is no misrepresentation to the state at least.
3 Second of all, when this question first came up, we
4 went to RMT and asked them to do a search for, among
5 other things, for a flow diagram and they said we don't
6 have it. And they also said -- you remember Randy
7 Sorrels. I don't know. I shouldn't have said his name
8 perhaps. But a member of the Plaintiff's steering
9 committee some time ago sent a subpoena to a third
10 party, RMT, and said give me all your documents. And I
11 think there were 33 boxes of documents produced in
12 response to the Plaintiffs. By RMT, not by us. We
13 have filed affidavits from RMT stating that they talked
14 with Randy Sorrels, put a name in the mix again, and
15 said, look, we are a third party, we don't have an axe
16 to fight in this thing. We will search our hard copies
17 and that will take us a lot of resources and a lot of
18 time. Don't make us search every employee's electronic
19 draft files and the like. And Randy Sorrels said that
20 is fine. And he got 33 boxes from RMT, as I understand
21 it. And they went through those and there is no flow
22 diagram.

23 So, what we think is, and we think it
24 not because RMT and the affidavit says they didn't at
25 the time of that subpoena receive from Randy Sorrels

1 from the Plaintiffs steering team, they did not call BP
2 and say advise us on what we should produce. They
3 didn't call BP and say should we hold anything back.
4 They just responded on their own and they responded in
5 a manner that was checked out with the Plaintiff's
6 steering committee and approved by the Plaintiff's
7 steering committee. And so now we are looking for a
8 flow diagram. What we know is BP doesn't have it still
9 today. TCEQ doesn't have it still today. And what we
10 find from looking at the boxes from RMT is RMT doesn't
11 have it.

12 We have gone back Monday to RMT and we
13 said search again and we want to talk to the people,
14 not your custodians of records folks, who have to go
15 through different searches. We want to talk to the
16 people who would have been the ones who would work on
17 this application in 2005. And we got one who said that
18 in his, as I understand it and there is an affidavit to
19 support that in our response, in his draft electronic
20 file, which goes nowhere other than to him, he has a
21 draft floated diagram. And when we found that out we
22 said blow it back, produce it. And we got it from RMT.
23 Then as the affidavit reflects, RMT didn't forward it
24 to BP. They didn't forward it to the TCEQ. It was a
25 draft as we understand it. But by the way, it shows

1 vent to the atmosphere, not to a flare. So there's no
2 misrepresentation. It didn't go anywhere. It didn't
3 misrepresent anything to either BP or to the TCEQ. But
4 it reflected the 97.

5 THE COURT: You're saying it didn't
6 show --

7 MR. GALBRAITH: A flare.

8 THE COURT: Because of the 97, you're
9 saying there was a little drawing that shows --

10 MR. GALBRAITH: Shows atmosphere. I
11 don't know anything about how that draft flow diagram
12 came to be into existence or what was ultimately going
13 to be done with it. It's consistent with the 97.

14 THE COURT: That's not the question that
15 I'm asking you. Is it a diagram or a drawing diagram
16 that shows a flare or not a flare or is it something
17 that shows the 97 percent thing?

18 MR. GALBRAITH: This is an RMT document
19 attached to our response and that is the diagram that
20 was in draft --

21 THE COURT: I don't see the little thing
22 that looks like a --

23 MR. GALBRAITH: A flare?

24 THE COURT: That looks like a little --

25 MR. GOURRIER: You mean the blow-down

1 stack, Your Honor?

2 THE COURT: Yes, that.

3 MR. GALBRAITH: It doesn't have a flare.
4 Instead it reflects unit fugitives to the atmosphere.
5 ATM period.

6 THE COURT: There is a number.

7 MR. GALBRAITH: That's the equipment
8 number as I understand it. It's not a representation
9 of level of affluent or anything. But it does show ATM
10 period which as I understand it reflects atmosphere not
11 flare, which is consistent with the 97. So there is a
12 flow diagram. What we have ascertained is that it was
13 never within BP's custody. It was never within TCEQ's
14 custody. It stayed within RMT as a draft. I'm sorry?

15 THE COURT: Before this week.

16 MR. GALBRAITH: Yes. Yesterday actually.
17 I believe it was yesterday when we got them to perform
18 this search and finally get it found.

19 MR. FERNELIUS: I actually --

20 MR. GALBRAITH: And it does not
21 misrepresent the status of relief valves in the unit.

22 THE COURT: Okay. Are you done, Mr.
23 Galbraith?

24 MR. GALBRAITH: I think so, Your Honor.

25 MR. GOURRIER: Your Honor, Mr. Galbraith

1 has said a lot this morning and --

2 THE COURT: He gets a lot of words in.

3 MR. GOURRIER: I saw that, and along
4 with that, he mentions the fact that there was this
5 supplemental response they filed and I was just handed
6 that document this morning. I wasn't able to look at
7 Exhibit 6 with you because they put Exhibit 6 on a CD
8 so I can't sit here and look at that.

9 THE COURT: Show him.

10 MR. GOURRIER: Your Honor, I don't need
11 to see Exhibit 6. I don't need to see Exhibit 6
12 because I didn't hear him tell you that whatever he
13 showed you that there was a process flow diagram that
14 goes along with that that shows you how that 97 percent
15 was calculated. He sat here and told you, well, I
16 don't think it's a flare because I don't think you can
17 get 97 percent to a flare. I think that means it's
18 going to the atmosphere.

19 Your Honor, I assure you that if
20 something is going to the atmosphere, you are not
21 controlling it 97 percent.

22 So what we are faced with here are three
23 options. Either the relief valves are going to a
24 flare. Either the relief valves are going to a
25 blow-down stack. Or the relief valves are going

1 directly to the atmosphere. Either way BP is trying to
2 choose the lie of lesser evils here.

3 We know there wasn't a flare. We
4 know -- they tell them about the blow-down stack
5 because you just saw the diagram that didn't exist,
6 Your Honor, until Monday. You just saw that diagram
7 with your own eyes and it doesn't have a blow-down
8 stack on it. And we know that if they represented the
9 relief valves were going directly to the atmosphere,
10 that was a lie because we know relief valves are going
11 to the blow-down stack.

12 So, no matter where they looked, Your
13 Honor, they lied to the TCEQ. What they are trying to
14 do here today is they want you to believe that, well,
15 this was an honest mistake on our part. We don't know
16 what happened with this diagram. It miraculously
17 surfaced after I told them Monday to go look at RMT.
18 You see that's where they got it from. They got it
19 from RMT. This was a company that was hired by BP to
20 create the flexible permit application. This company
21 is also the company that made all the other process
22 flow diagrams that were attached to the flexible
23 permit. But out of all those diagrams, the only one
24 that's missing is the one diagram for the isom unit.
25 That doesn't even cover the raffinate splitter, Your

1 Honor. That's another issue that came up on Monday
2 with the permit renewal.

3 Mr. Galbraith tried to tell you that the
4 flex permit was the same thing as a renewable. It's
5 not, Your Honor. A flex permit is an entirely new
6 permit. What they are trying to do is get the old
7 permit wrapped under the flexible permit because they
8 used to have to permit each unit individually. So when
9 they filed those permit renewal applications at the
10 same time that they filed the flex permit application
11 they didn't know if the flex permit was going to get
12 renewed. So instead of running the risk of having the
13 permit expire and they would have to operate without a
14 permit, which they can't do, they would have had to
15 shut the plant down, to cover all the bases, they filed
16 this permit renewal. As we saw on Monday, the permit
17 renewal indicated that it had a process flow diagram
18 attached to it.

19 Mr. Galbraith spent a lot of time going
20 through the background information, talking to you
21 about a lot of different things. Really the only issue
22 here today is where is the process flow diagram for the
23 isom unit and the raffinate splitter? That was the
24 basis of our motion to compel. That's the basis of our
25 motion for sanctions.

1 BP initially filed a response saying
2 that that document did not exist. Your Honor, that
3 response was verified. There is an affidavit from
4 their attorney attached to it. They say at least five
5 or six times in that response that document does not
6 exist. And then they walk in here this morning, Your
7 Honor, and they've got that document in their hand.

8 So, Your Honor, if they lied about that
9 then who is to say that they are not lying about the
10 fact there's another diagram that has a raffinate
11 splitter on it that shows these relief valves are going
12 to a flare? That is the issue that still remains
13 unresolved and, Your Honor, I would like to call Danny
14 White to the stand at this time.

15 THE COURT: Call him.

16 DANNY WHITE,
17 having been called as a witness, being first duly sworn
18 then testified as follows:

19 EXAMINATION

20 QUESTIONS BY MR. GOURRIER:

21 Q Sir, would you please state your name for the
22 record?

23 A Danny White.

24 Q Mr. White, are you currently employed as a
25 senior environmental engineer for BP?

1 A I'm employed by BP. My title has since
2 changed.

3 Q Your title has since changed since the
4 affidavit that was filed on Monday that was attached to
5 BP's response?

6 A I believe in that affidavit the term senior
7 environmental engineer referred to my position when I
8 was working with flex permits at Texas City.

9 Q What is your current title?

10 A HSC coordinator.

11 Q How long have you been employed by BP?

12 A Almost six years, a little over six years.

13 Q It's your testimony that you have been
14 employed by BP for almost six years?

15 A There was a point where I left BP last year
16 for a few months and then I rehired back in March of
17 this year.

18 Q Sir, if you look at the document here that's
19 on the screen. This is document that's from you. You
20 are Danny White, correct?

21 A Yes, sir.

22 Q The document is dated 1-15-2003?

23 A Yes.

24 Q It indicates there is an attachment to this;
25 isn't that correct, sir?

1 A Yes.

2 Q That attachment is your resume; is that
3 correct?

4 A Yes.

5 Q Sir, do you see on here where you said under
6 your work history, this is from 1995 to the present,
7 that you were project manager for RMT?

8 A Yes.

9 Q Is that correct, sir? Is this a true and
10 correct copy of your resume?

11 A At the time I wrote that resume the term 1995
12 to present, RMT was correct. I don't know what the
13 status of the e-mail, where the attachment came from as
14 far as the resume being accurate.

15 Q Sir, when did you leave your employment with
16 RMT?

17 A It was around 2000, I believe.

18 Q And you went directly to BP following your
19 employment with RMT?

20 A Yes.

21 Q RMT is a consultant that was hired by BP to
22 prepare its environmental flexible permit applications;
23 is that correct, sir?

24 A Yes.

25 Q RMT also creates the documents that we're

1 discussing here today, the process flow diagrams; is
2 that correct?

3 A Yes.

4 Q And since BP hired RMT, BP would have the
5 ability to go ahead and ask RMT to reduce process flow
6 diagrams that were created as part of the flexible
7 permit process. Is that correct, sir?

8 A I didn't really understand the whole
9 question.

10 Q Let me see if I can simplify it. RMT is not
11 some wayward third party that has no relationship to
12 BP; is that correct, sir?

13 A That doesn't sound correct.

14 Q BP actually hired RMT and they are subject to
15 BP's control as far as these flexible permits are
16 concerned. Is that correct?

17 A Yeah. That's correct.

18 Q And the reason you are here today, sir,
19 you're here to discuss the process flow diagrams that
20 Plaintiffs allege that BP failed to produce to them; is
21 that correct?

22 A I guess so.

23 Q You submitted an affidavit that was attached
24 to BP's response in support of why the process flow
25 diagram wasn't attached to the revised flexible permit

1 application; is that correct?

2 A Yes.

3 Q I think Mr. Galbraith alluded to the fact
4 that in August of 2001 there was a document that was
5 produced to the TCEQ. Was that the original flexible
6 permit application, sir?

7 A I'm pretty sure but there were thousands of
8 pages of documents. This permit went on for four
9 years, so when you pull up one individual document, I'm
10 fairly sure this was one of the first ones.

11 Q Sir, is that not your official engineer stamp
12 and signature under that?

13 A Yes.

14 Q Sir, are you a licensed engineer in the State
15 of Texas?

16 A Yes.

17 Q Do you believe you're qualified to discuss
18 environmental permitting issues?

19 A Yes.

20 Q Sir, looking here at this particular
21 document, this document appears to be a transmittal
22 letter sending the application for the flexible permit
23 to a gentleman named Ruben Huerra in the air permits
24 division at the TNRCC. Is that correct, sir?

25 A Yes.

1 Q And that document is dated August 31st,
2 2001?

3 A Yes.

4 Q That's consistent with the date that's on the
5 actual application. Is that correct, sir?

6 A I believe so.

7 Q Looking at that document, sir, is there a
8 number on here that has any significance to you?

9 A I don't know what you mean.

10 Q Is 47256 the number that was assigned by the
11 TCEQ for BP's flexible permit?

12 A I really don't remember.

13 Q Okay.

14 A I remember it started with 4. I think 47.

15 Q Sir, this document here, is this an e-mail
16 from you to Mr. Ruben Huerra dated 11-12 of 2002?

17 A That's what it looks like. I'm reading it.

18 Q Can you see that clearly from over there?

19 A Yes.

20 Q Sir, I want you to kind of read some of this
21 here. If you could read, this first paragraph right
22 there.

23 A Which first? The very top?

24 Q No, sir, right here.

25 A Where? You want me to read that?

1 Q Yes, sir. This appears to be an e-mail
2 chain; is that correct?

3 A That's what it looks like, yes.

4 Q This is an e-mail chain from Mr. Ruben Huerra
5 at the TCEQ to you, Mr. Danny White; is that correct?

6 A Yes.

7 Q And it's regarding flex permit number 47256.
8 Do you see that, sir?

9 A Yes.

10 Q Does that refresh your memory as to the
11 permit number for the flexible permit?

12 A Yes, it does.

13 Q Sir, can you read this first paragraph there
14 for me?

15 A "Danny just wanted to give you a status
16 report on the flex permit. I have done most of the
17 technical review, but I want to go back and make sure
18 that I have covered everything. I'm in the process of
19 creating a draft permit. Should have something to you
20 by week's end. I have a couple of discussion items".

21 Q Sir, according to that document, Mr. Ruben
22 Huerra has almost completed his review of the flexible
23 permit 47256; is that correct?

24 A Can you repeat that question? I'm still
25 reading.

1 Q According to that document there, Mr. Ruben
2 Huerra with the TCEQ had called or was sending you an
3 e-mail to give you a status on the flexible permit; is
4 that correct?

5 A Yes.

6 Q He indicated that he was almost done with the
7 technical review; is that correct?

8 A That's what it says.

9 Q Continuing to number two down here, take a
10 second to read that, Mr. White.

11 A Is that the paragraph that starts out with
12 the number one?

13 Q Right here.

14 A Or the third paragraph that starts out with
15 the number two?

16 Q Yes. Take a second to read that.

17 A Okay. I have read it.

18 Q Sir, it appears there that Mr. Huerra is
19 requesting that BP administratively void the flexible
20 permit; is that correct?

21 A Yes.

22 Q It also references the fact that BP already
23 agreed to one administrative void; is that correct?

24 A I don't really remember that. It was a long
25 process.

1 Q Sir, isn't that what it says right there? It
2 says administrative void?

3 A Where? There is a cursor that is moving
4 around on the screen as you talk.

5 Q I'm sorry.

6 A When you are saying where, that's confusing
7 me greatly.

8 Q I'll point to you where we're talking about.

9 A I don't see a red dot on my screen.

10 Q Right there, sir.

11 A I still don't see a red dot. I can see the
12 cursor. I don't know what you're talking about on the
13 dot. Sorry.

14 Q And do you see right where he is referring to
15 there was a first administrative void?

16 A Yes, I see that.

17 Q And that Ruben was grateful for that because
18 it gave him some time to get some other projects
19 completed; is that correct?

20 A Ye.

21 Q Down here at the bottom, you had a concern
22 about administratively voiding the flexible permit a
23 second time. You were concerned that BP was going to
24 lose its \$75,000 application fee; is that correct?

25 A I recall that, yes.

1 Q And Ruben assured you that BP was not going
2 to lose its application fee, that you guys would just
3 be able to re-start it up again at a later date; is
4 that correct?

5 A That's my recollection. I haven't read the
6 whole --

7 Q Sure. And in agreement with that, you said
8 we will fax you the void letter today. Did you in fact
9 do that, sir?

10 A I don't remember.

11 Q Sir, we have here a letter dated February 17,
12 of 2003, again to Mr. Ruben Huerra at the Texas Natural
13 Resource Conservation Commission. Did that letter
14 change to TCEQ?

15 A Did the letter what?

16 Q Did the Texas Natural Resource Conversation
17 Commission later change to TCEQ?

18 A Yes. I don't remember when.

19 Q That's fine, sir.

20 A But it did.

21 Q This is again referencing the flexible permit
22 47256; is that correct?

23 A Yes.

24 Q It says you have attached the revised
25 application; is that correct?

1 A Yes.

2 Q Included with that is a reference to permit
3 number 3170, which includes the fractionator splitter;
4 is that correct?

5 A Yes.

6 Q Is that the unit that we commonly refer to as
7 the raffinate splitter?

8 A Yes.

9 Q Is that the unit that overflowed on March
10 23rd, 2005 and caused the explosion that we are all
11 here about today?

12 A Yes.

13 Q Also, included in that, sir, is another
14 permit number 16167. Do you see that for the isom
15 unit?

16 A Yes.

17 Q The raffinate splitter is a part of the isom
18 unit. Is that correct, sir?

19 A It's in the same piece of territory. Yes,
20 it's considered part of the isom.

21 Q Sir, do you see in this document where it
22 says that the TCEQ formed PI-1Rs have been submitted
23 under a separate cover to the clerk's office?

24 A Yes.

25 Q Past tense?

1 A Yes.

2 Q Sir, the PI-1R, that is the permit renewal
3 application. Is that correct, sir?

4 A Yes.

5 Q And according to this document dated February
6 17 of 2003, it states that you had already submitted
7 those renewal applications to the TCEQ; is that
8 correct?

9 A Yes.

10 Q Sir, is that your signature there on that
11 document dated February 17, 2003?

12 A Yes.

13 Q All right. Sir, does this document appear to
14 be the revised flexible permit application that was
15 submitted in February of 2003?

16 A Yes.

17 Q Is that your stamp over there again,
18 Mr. White, along with your signature?

19 A Yes.

20 Q And you have a date on there. Says February
21 the 14th. Is that consistent with the date on the
22 letter to Mr. Ruben Huerra that was dated February
23 17th?

24 A I'm getting a little confused on dates.

25 Q It was a letter that we were just looking at

1 that was transmitting the revised application to
2 Mr. Huerra at the TCEQ. Is that date on that document
3 consistent with the date of the letter to Mr. Huerra?

4 A I honestly can't remember. There is a lot of
5 stuff. I'm a little nervous. I can't remember every
6 date of every document you are putting in front of me
7 right now.

8 Q That's okay, Mr. White. There's no need to
9 be nervous. We are just in here to ask you a few
10 questions. All right?

11 A Yes.

12 Q Sir, looking at that document here, does this
13 appear to be a page from the table of contents for the
14 revised flexible permit application that references a
15 process flow diagram for the isom unit figure two dash
16 twelve?

17 A Yes.

18 Q Sir, did you at some point learn that the
19 process flow diagram for the isom unit was not attached
20 to the revised flexible permit application?

21 A Yes.

22 Q And that's actually why we are here today,
23 sir, because that process flow diagram should have been
24 attached to the revised flexible permit application;
25 isn't that correct?

1 A What do you mean by attached to the permit
2 application? Can I explain?

3 Q Sir, if the table of contents references
4 that the process flow diagram for the isom unit was
5 attached to that figure two dash twelve, shouldn't that
6 have been a part of the revised flexible permit
7 application?

8 A Yes.

9 Q In fact, based on your experience with permit
10 applications, process flow diagrams are important so
11 the folks at the TCEQ reviewing the permits will know
12 the emissions points so they can determine whether or
13 not a best available control technology should be
14 applied to that emission point; is that correct?

15 A For a renewal, there is no change. The
16 process flow diagram is not as important as a new grass
17 roots change.

18 Q Exactly, sir, if there's no change; is that
19 correct?

20 A Yes.

21 Q Sir, this was a document that was showed to
22 the court earlier and she saw it on Monday also. This
23 is a document that refers to the fact that the relief
24 valves for the isom unit are routed to a flare. Have
25 you seen that document before?

1 A Yes.

2 Q Sir, do you see where it says this project
3 will not result in the construction of a new
4 facilities?

5 A Yes.

6 Q And that was a true statement. The revised
7 permit was not going to result in the construction of
8 new facilities; is that correct?

9 A Yes.

10 Q In fact, that is further supported by this
11 verification sheet here that the TCEQ requires people
12 to sign if they are going to have capital costs
13 involved in construction; correct? Is that correct,
14 sir?

15 A Yes.

16 Q And you have seen that document before,
17 right?

18 A Yes.

19 Q And it's been signed by a Guy Hagan; is that
20 correct?

21 A Yes. I see it now.

22 Q Mr. Hagan was an employee of BP at the time?

23 A Yes.

24 Q Do you know if Mr. Hagan is still employed by
25 BP?

1 A I don't think he is.

2 Q Sir, the TCEQ puts out a guidance document to
3 help companies and refineries that are creating
4 flexible permits, kind of explains the process and
5 tells them how to put them together; is that correct?

6 A Yes.

7 Q A company like RMT, this would be something
8 that would be useful to them since they are in the
9 business of preparing flexible permit applications, is
10 that correct?

11 A Yes.

12 Q Sir, in that document, doesn't the TCEQ tell
13 folks that all representation with regard to
14 construction plans and operation procedures and the
15 applications for flexible permit become conditions upon
16 which the subsequent flexible permit is issued?

17 A Yes.

18 Q They also say that it shall be unlawful for
19 any person to vary from such representation or flexible
20 permit condition if the change will cause a change in
21 the method of control of emissions; is that correct,
22 sir?

23 A Yes.

24 Q Sir, if the flexible permit application had a
25 representation that the relief valves for the isom unit

1 were routed to a flare, when in fact the relief valves
2 in the isom unit were routed to the blow-down stack,
3 that would be a change in the method of control of
4 emissions, wouldn't it, sir?

5 A The term representation means the final
6 representation before the permit is issued. That
7 representation was updated prior to the issuance of the
8 permit.

9 Q Thank you, sir, but that wasn't my question.
10 My question was, if the flexible permit application
11 indicated that the relief valves for the isom unit were
12 routed to a flare when in fact the relief valves in the
13 isom unit were routed to a blow-down stack, would that
14 result in a change in the method of control of
15 emissions?

16 A I really don't understand that question
17 because the paperwork doesn't change anything
18 physically in the plan. I'm confused by the question.

19 Q And that's kind of my point. If the
20 paperwork makes a representation that the relief valves
21 are routed to a flare and we know that actually out at
22 the plant the relief valves are routed to a blow-down
23 stack, that would not be a true representation, would
24 it, sir?

25 A That would not be a true representation.

1 Q That representation on the paper would not be
2 consistent with the actual conditions out at the plant,
3 sir; is that correct?

4 A Yes.

5 Q Sir, here we have a document that's dated
6 March the 6th that was attached --

7 THE COURT: I have a jury that is
8 waiting. How much longer are you going to take?

9 MR. GALBRAITH: Your Honor, these guys
10 are set for deposition. I think this is the merits of
11 the case, the merits of the environmental permit --

12 THE COURT: The question is how much
13 longer is this going to take?

14 MR. GOURRIER: If I can have five more
15 minutes. We ought to be able to rap this up.

16 THE COURT: Total, and then you've got
17 the other guy and you don't think he's going to take as
18 long because he's going to be duplicating what he said.

19 MR. GOURRIER: I'm sorry, Your Honor.
20 He kind of already was able to rattle on a little bit
21 in the beginning. I think if we hadn't gotten into
22 this initially --

23 THE COURT: I'm not asking who's to
24 blame. I need to know what to tell these people
25 sitting in the next room.

1 MR. GOURRIER: I'll take five minutes.

2 THE COURT: Five total or five per?

3 MR. GOURRIER: Five per, Your Honor.

4 THE COURT: Have you got anything?

5 MR. GALBRAITH: I've got some things --

6 THE COURT: I'm not trying to cut you
7 short. I'm just trying to find out.

8 MR. GALBRAITH: I don't think I can
9 respond to all of this in five minutes. I don't think
10 there's a way.

11 THE COURT: I'm didn't ask you to do it
12 in five minutes. I asked you how long you're going to
13 need.

14 MR. GALBRAITH: Less than half an hour.

15 THE COURT: I'm going to tell my jury to
16 come back this afternoon. Tell them to be back at
17 1:30. Now, you finish him and we'll take a short
18 break.

19 MR. GALBRAITH: We have an objection.
20 This doesn't have anything to do with the motion
21 presented to the court today. This is the underlying
22 merits. He's taking his deposition. It's a discovery
23 deposition.

24 MR. GOURRIER: Your Honor, it actually
25 is relevant to the question of what happened with the

1 document and why it was missing. Your Honor, what I
2 would suggest --

3 THE COURT: Let's just move on.

4 MR. GOURRIER: Sure. What I would
5 suggest is we take the break now, and maybe I can kind
6 of cut down on what I would do.

7 THE COURT: Let's take a five minute
8 break and we'll come back.

9 (Recess)

10 MR. GALBRAITH: This doesn't have
11 anything to do with the motion presented to the court
12 today. This is the underlying. He is taking his
13 deposition today. I do have as a objection. This
14 doesn't have anything to do with the motion. It's a
15 discovery deposition.

16 MR. GOURRIER: Your Honor, it's relevant
17 to the question what happened with the documents and
18 why it was missing. Your Honor, what I would
19 suggest --

20 THE COURT: Let's just move on.

21 MR. GOURRIER: Your Honor, what I would
22 suggest is that we take a break now and cut down on the
23 --

24 THE COURT: Let's take a five-minute
25 break and we'll come back.

1 (A short recess was taken.)

2 MR. GOURRIER: Can I continue?

3 THE COURT: Yes.

4 Q Mr. White, in the affidavit that you
5 submitted in support of BP's response, you indicated
6 that the permit renewal applications for permit number
7 3170 and 16167 where it indicated that the process for
8 the diagram was attached, you indicated that was a
9 reference to the application for the flexible permit;
10 is that correct?

11 A Yes.

12 Q Sir, if you will look at -- what is that
13 document, sir?

14 A Looks like a permitting application document.

15 Q Is this a renewal for permit 3170 that you
16 indicated that had been transmitted to TCEQ?

17 A I can't tell from this screen.

18 Q Does that help you, sir?

19 A Yes.

20 Q Is that the permit renewal application for
21 permit 3170?

22 A Yes.

23 Q Sir, looking right here are administrative
24 completeness and completeness checklist attached to
25 this application and yes is checked, is that correct?

1 A I'm sorry. I was looking at the screen and
2 then I started trying to follow your laser pointer.

3 Q Right here, that sentence right here, says
4 administrative completeness and complete checklist
5 attached to this application. And you have marked yes.
6 Is that correct?

7 A Yes.

8 Q Sir, you and I know what an administrative
9 completeness checklist is. Would you explain what that
10 is to the court?

11 A Administrative checklist is where an
12 administrative clerk can go through the checklist and
13 check whether or not certain documents are attached.

14 Q It is a checklist that the applicant fills
15 out to help the folks at the TCEQ; is that correct?

16 A Yes.

17 Q One of the boxes on the administrative
18 completeness checklist has a space for process flow
19 diagrams; is that correct?

20 A Yes.

21 Q You have indicated that checklist was
22 attached to this renewal application; is that
23 correct?

24 A Yes.

25 Q Sir, do you know if you checked on off that

1 checklist whether or not the process flow diagrams were
2 attached?

3 A I believe I did.

4 Q Sir, do you know where the administrative
5 completeness checklist is that accompanied this renewal
6 application?

7 A The original?

8 Q The checklist, yes, sir.

9 A I'm confused. I don't know what you mean.

10 Q I'm looking for the checklist. Do you know
11 where it is?

12 A Now?

13 Q Yes?

14 A At the TCEQ.

15 Q Sir, do you know if BP retained a copy of
16 this document?

17 A I would assume so.

18 Q You would assume so because that's where we
19 got it from; is that correct?

20 A I don't know where you got yours.

21 Q Do you know if the checklist is in the same
22 place that the process flow diagram is that you had
23 indicated that was attached there. Was that missing
24 too?

25 A I didn't understand the question.

1 Q The administrative checklist, we don't have
2 it. You indicated that, what, do you know where it
3 is?

4 A The administrative checklist -- I'm not
5 understanding the question. I'm sorry.

6 Q The administrative checklist would have been
7 attached to this application; is that correct, sir?

8 A Usually.

9 Q Just like you have attached here for the
10 process flow diagram. That would have been attached in
11 this application also, is that correct, sir?

12 A Sometimes.

13 THE COURT: Is it supposed to be always?

14 A It can mean it's attached to the application
15 and the application is a living document. You send
16 multiple copies of applications. It could have been in
17 the original flex application or be attached to this
18 document.

19 THE COURT: It should be one or the
20 other, shouldn't it?

21 A Yes.

22 Q And I want to go back to something that you
23 said earlier. You said that generally you only attach
24 a process flow diagram if there's changes that have
25 been made to the unit; is that correct?

1 A Yes.

2 Q In fact, that's what this says right here on
3 the application, if the following information is not
4 currently on file, that's when you attach a process
5 flow diagram; is that correct, sir?

6 A Yes.

7 Q And you have here that a process flow
8 diagram, which contains the air pollution abatement
9 equipment, is supposed to be attached to this. Is that
10 correct?

11 A Yes.

12 Q So you would only have attached that process
13 flow diagram if there had been a change made to the
14 isom unit or the raffinate splitter; is that correct,
15 sir?

16 A No.

17 Q Under what circumstances would you have
18 attached a new process flow diagram to the raffinate
19 splitter?

20 A When you just had some new ones that you had
21 revised the format of or you had more accurate diagrams
22 or just newer information. That didn't necessarily
23 mean you had a change. Just meant you had a more
24 clearer or better eligible diagram in some cases.

25 Q Sir, doesn't your affidavit also indicate

1 that the process flow diagram that should have been
2 attached to this renewal and to the application for
3 flexible permit are substantially similar or identical
4 to the ones that have previously been filed with the
5 TCEQ?

6 A Sorry. I lost you on that question.

7 Q I'm reading directly from your affidavit,
8 sir. Do you remember what you stated in your
9 affidavit?

10 A I remember the gist of it, yes.

11 THE COURT: Can he look at it?

12 MR. GOURRIER: Yes.

13 A That would be helpful.

14 THE COURT: Show it to him.

15 Q Sir, does this appear to be your affidavit?

16 A Yes.

17 Q I want you to look at paragraph four.

18 A (Witness complies).

19 Q Sir, paragraph four states that the process
20 diagram for the isom unit and the raffinate splitter
21 that should have been attached to the application for
22 the flexible permit would have been substantially
23 similar or identical to the ones that have previously
24 been filed with the TCEQ; is that correct?

25 A Yes.

1 Q When you say substantially similar or
2 identical in terms of the pollution control equipment,
3 in terms of where the relief valves are going to, what
4 does that mean in reference to your statement here?

5 A It means that there hadn't been any major
6 capital projects in that unit. So the character and
7 type of the emission points hadn't changed since
8 previously filing. So it should have been a very
9 similar looking process flow diagram.

10 Q Are you aware of what the previous filings
11 indicated was the source of where the relief valves for
12 the isom unit vented to?

13 A Right now, I am not recalling what that was.

14 Q BP did us a favor of attaching the
15 application for the original permit for 3170 to their
16 response that was filed on Monday. It was attached as
17 Exhibit K. Attached to Exhibit K was the process flow
18 diagram. Can you see that, sir?

19 A Not very legible but I can see it.

20 Q Looking down in the bottom right-hand corner,
21 does that appear to be a process flow diagram for the
22 isom unit?

23 A I can't read it.

24 Q Would you like to get out of your seat if
25 that will help you?

1 THE COURT: You can get closer to it.

2 A I still can't read it. It says isomerization
3 unit raffinate splitter expansion.

4 Q Sir, can you find on that diagram where the
5 relief valves for the isom unit and raffinate splitter
6 are going to?

7 A It's very difficult to read. There is a lot
8 of information here, so I'm going to need some time to
9 look at it.

10 Q Let me help you here, sir. Do you see an F-20
11 blow-down stack on that diagram?

12 A Again, it's very difficult to read, but I
13 don't see the F-20 blow-down stack.

14 Q Exactly, sir, that's the point. BP in that
15 application didn't tell the TCEQ that they were sending
16 the relief valves for the isom unit to the F-20
17 blow-down stack, did they, sir?

18 A I don't know what BP said in this
19 application.

20 Q Based on that diagram, sir, do you see a
21 picture of a blow-down stack?

22 A I do not.

23 Q Which kind of takes us to the point that we
24 are here about today. You can return to the box, sir.
25 A blow-down stack is not best available control

1 technology, is it, sir?

2 A Not today.

3 Q Not today. Not at the time BP filed their
4 application for flexible permit in 2003, was it?

5 A No.

6 Q So, if BP didn't tell the TCEQ about the
7 blow-down stack it's because it wasn't best available
8 control technology, correct?

9 A I don't agree with that, no.

10 Q If BP represented that the relief valves for
11 the isom unit were going to a flare, would a flare be
12 best available control technology?

13 A Yes.

14 Q In fact, a flexible permit requires the use
15 of best available control technology; is that correct?

16 A On the aggregate, not on an individual basis.

17 Q For a particular emissions point, are you
18 saying that the TCEQ doesn't require the use of best
19 available control technology?

20 A Under a flexible permit, an individual unit
21 does not have to be BACT. Only aggregate, the total
22 emissions added up must meet BACT.

23 Q In order to meet the aggregate total, isn't
24 it correct, sir, that the TCEQ doesn't allow you to
25 have one source that would come close to violating the

1 aggregate cap for the flexible permit without the use
2 of best available control technology?

3 A The source must meet the total aggregate
4 number, one number for multiple sources, hence the term
5 flexibility.

6 Q The flexible permit doesn't allow BP to go
7 back in time and use a less effective control
8 technology, does it?

9 A I'm not sure I understand what you mean going
10 back in time.

11 Q If a particular unit was designated as a new
12 source that had to meet best available control
13 technology in 2003 or prior to that, in order to go
14 under the flexible permit, BP couldn't then change the
15 control method for the emissions to something that's
16 less than best available control technology, could
17 they?

18 A I'm trying to frame up your question.
19 Under -- are you saying these sources are all in a
20 flexible permit? It is a complex question. I'm trying
21 to understand it.

22 Q I'm saying BP, in order to comply with the
23 cap for flexible permit, they cannot change from a
24 source that's already supposed to be at best available
25 control technology in order to fit under the cap; is

1 that correct?

2 MR. GALBRAITH: I must object. We are
3 over 15 minutes in our five minutes. He is taking his
4 deposition. He is not talking about the existence or
5 nonexistence within BP of a purported flow diagram. He
6 is taking his deposition.

7 THE COURT: Okay. Let's get back to the
8 diagram.

9 Q Sir, does that document appear to be the
10 process flow diagram for the isom unit?

11 A Yes.

12 Q Do you know where that document came from?

13 A RMT.

14 Q Do you know when that document came from
15 RMT?

16 A When first -- I saw it yesterday.

17 Q Sir, isn't it true that BP filed a verified
18 response in this case where several times they
19 mentioned that that particular document that we are
20 looking at did not exist?

21 A I don't know what a verified response is.

22 Q I'm sure the court understands what a
23 verified response is.

24 THE COURT: Let's move on.

25 Q We are looking at that document here today,

1 is that correct?

2 A Yes.

3 Q Sir, do you know where the process flow
4 diagram for the raffinate splitter is?

5 A No.

6 Q Do you know if that document exists?

7 A No.

8 Q Do you know who would know if that document
9 that you referenced as being attached to the permit
10 renewal for 3170 would be?

11 A When you say this document, are you talking
12 about the original or you mentioned where. I'm not
13 understanding.

14 Q I'm talking about an original, a copy. I'm
15 talking about whatever would have a copy of the process
16 flow diagram for the raffinate splitter attached to it
17 since you indicated in the permit renewal for 3170
18 that that document was attached.

19 A And the document should have been attached.
20 I can't explain why it wasn't attached.

21 Q Let me see if I can't wrap things up here.
22 Just because something was not attached to the permit,
23 even though you said it was, that's not the same thing
24 as saying that that document doesn't exist; is that
25 correct?

1 A I missed that question. Can you ask me,
2 again?

3 Q It's BP's position that it was a mistake in
4 not attaching these diagrams to the application; is
5 that correct?

6 A Yes.

7 Q Saying that that was a mistake is not the
8 same thing as saying that the diagram does not exist;
9 is that correct?

10 A Well, if it didn't exist, it would be a
11 mistake that didn't show up in the application.

12 Q And you certainly, sir, as a licensed
13 engineer, would not refer to a document that doesn't
14 exist, would you?

15 A No.

16 MR. GOURRIER: I think we have
17 established that there is in fact a process flow
18 diagram for the raffinate splitter. We don't have it.
19 They were required by law to attach it to this. We
20 know that it's an important document. As I indicated
21 to you on Monday, we believe that that document is
22 going to be consistent with BP's representation that
23 the relief valves for the raffinate splitter and isom
24 unit went to a flare. Everything that you heard here
25 today --

1 THE COURT: Do you want to put that
2 other guy on or not?

3 Do you have any questions of this guy?

4 MR. GALBRAITH, Yes, Your Honor.

5 THE COURT: Because I tell you something
6 if we don't finish by noon, we're coming back another
7 day.

8 EXAMINATION

9 QUESTIONS BY MR. GALBRAITH:

10 Q Mr. White, I want to ask you about a few
11 things, and if I can I'm going to ask you find some of
12 those pages that you put up so I can ask you some
13 questions about that. I made need some lead time. Can
14 you put those pages back. Will you do that?

15 MR. GOURRIER: Are you looking at me?

16 MR. GALBRAITH: Mr. Elmo, I thought you
17 were the guy. Can we flash some of those pages you
18 asked him about, I would like to ask him about, when we
19 get to them. I'm just letting you know now, to do
20 whatever technical needs to be done.

21 MR. GOURRIER: We need to know exactly
22 what document?

23 Q What is the meaning of 90 percent credit?

24 A 90?

25 Q 97 percent. I'm sorry.

1 A 97 percent credit?

2 Q To an environmental agency permit application
3 recipient?

4 A There is a guidance document at TCEQ that
5 uses 97 percent for relief valves to indicate that
6 you're monitoring the valves under a leak detection
7 program where you are checking for leaks. And they
8 give you a 97 percent credit as opposed to relief
9 valves that you would never monitor or never look at.

10 Q What do you report in your application if
11 you're telling the agency that the relief valves are
12 routed to a flare?

13 A 100 percent is the control efficiency
14 assigned to relief valves that are routed to a flare.

15 Q So, when you put 97 percent on an
16 application, what does that tell the agency about
17 whether you are routing relief valves to a flare?

18 A It indicates you're routing them to the
19 atmosphere and monitoring them for leaks with the leak
20 detection program.

21 Q Well, does it tell you anything about whether
22 you're routing those relief valves to a flare or not
23 that you claim 97 percent?

24 A The 97 percent would indicate you are not
25 routing them to a flare.

1 Q So that's a representation to the state that
2 you are not routing the relief valves to a flare?

3 A Yes.

4 Q Did prior to enactment or action on these
5 flex permits, did agency representatives know of the
6 presence of blow-down safety drums on the BP
7 facility?

8 A Yes. BP voluntarily notified US EPA and the
9 Texas agencies about the presence of blow-down stacks
10 and all the regulatory use around them.

11 Q Did they know about the existence of the F-20
12 blow-down drum or stack in the isom unit?

13 A Yes. We gave the US EPA a tour of the
14 facility and showed them the blow-down stacks. They
15 met at the refinery for a day. TCEQ was -- a lot of
16 documentation on blow-down stacks.

17 Q Furnished to TCEQ?

18 A TCEQ, voluntarily by BP. Yes.

19 Q Are blow-down drums such as -- let me back
20 up. We have talked about how there are relief valves
21 that are the subject of environmental permit
22 applications?

23 A Yes.

24 Q Are relief valves considered emission sources
25 for environmental applications?

1 A Yes.

2 Q Are blow-down drums permitted such as the
3 F-20 blow-down drum of the isom unit?

4 A Not in the isom unit. Sometimes blow-down
5 stacks are assigned permit numbers.

6 Q I want to explore that difference just
7 momentarily. There was at least one blow-down device,
8 pressure relief safety device, in the coker unit that
9 was the subject of environmental permit for the coker
10 unit; is that right?

11 A There's a blow-down stack at the coker that's
12 in an environmental permit, yes, and it was several
13 years ago.

14 Q How come that blow-down stack in that one
15 location, at the coker unit, is considered an emission
16 source for permit application purposes and yet other
17 blow-down stacks, such as the F-20 in the isom unit, is
18 not of interest to an environmental permit application?

19 A The agency historically has not wanted to or
20 allowed to permit sources that are from emergency
21 events or malfunctions or start-ups or shut-downs.
22 They only would let you permit things that are routine,
23 daily, weekly, monthly that were predictable. Relief
24 valves only open during an emergency and there is
25 really no way to permit those relief valves.

1 Q The blow-down that is permitted in the coker
2 unit, is it used as a part of the process regularly,
3 routinely?

4 A The blow-down at the coker, yes, routinely,
5 every day.

6 Q With respect to the other blow-downs, they
7 are not; is that correct?

8 A Only maintenance start-up, shut-down
9 activities which are not considered routine by the
10 agency.

11 Q But a blow-down, as I understand it, is just
12 a gathering point for what might come out of relief
13 valves?

14 A Correct.

15 Q And are the relief valves that are the
16 emission sources related to or up stream of the F-20,
17 are they considered in the environmental permit
18 applications?

19 A Yes.

20 Q Was there ever any thought that the F-20
21 blow-down drum would be in the permit?

22 A Wasn't in the permit that we were renewing.

23 Q And that's because the relief valves that fed
24 it potentially in emergency situations were accounted
25 for in the environmental applications?

1 A Yes.

2 Q The original application that was flashed on
3 the screen, I think it was pages four, five and six,
4 page 12, page 16, 17, and 18, were some earlier
5 versions of what was termed a flex permit application;
6 correct?

7 A Yes.

8 Q Was there a time when -- Well, was there an
9 early time when the flex permit application did not
10 envision the isom unit or the raf splitter being
11 included in that flex permit?

12 A I'm not pretty sure.

13 Q Was there a time when that flex permit was,
14 with notice and knowledge to the state of course, the
15 bubble was enlarged to enclose more area of the plant
16 and it was enlarged to include the isom and the raf
17 splitter?

18 A Yes.

19 Q Was that -- I don't know if you can recall
20 this or not, you may have to pull it up -- was that
21 after the time of all those documents they showed you
22 from February of '03 on pages four, five, six, 12, 16,
23 17 and 18 of their presentation?

24 A Yes. The original flex application was
25 voluntary for grandfathered sources. BP was going to

1 voluntarily put their grandfathered sources in a
2 permit. We put them in the flex permit. Later on, we
3 added the renewals.

4 Q Okay. Let me ask you about that. The flex
5 permit application was a voluntary effort on BP to do
6 what?

7 A To make their sources that had previously
8 been grandfathered, the term that is used in Texas,
9 that predated the Clean Air Act, to voluntarily get
10 those in permits and make them more regulated and
11 reduce the emissions.

12 Q He asked you if a flare constituted BACT, or
13 best available control technology. Do you call that?

14 A Yes.

15 Q Is a flare the only thing that is within the
16 definition of BACT, best available control
17 technology?

18 A No.

19 Q Is the 97 percent credit namely monitoring an
20 LDAR, as we heard it defined, leak detection and
21 repair, the agency system for LDAR, is that considered
22 within the definition of the BACT or best available
23 control technology?

24 A I'm not quite sure.

25 Q Is the idea of this voluntary permit that by

1 the time that it is ended all these grandfathered
2 pieces of equipment will be subject to the aggregate
3 limits within the flex?

4 A Yes.

5 Q In other words, under the bubble?

6 A Yes.

7 Q Is the idea of a grant of a flex permit such
8 that will take older grandfathered pieces of equipment,
9 put them under a cap, and that by the end of the permit
10 application period, in this case 2010, all those
11 grandfathered and permitted pieces of equipment will
12 now be required to be at BACT, best available control
13 technology?

14 A As an aggregate.

15 Q As an aggregate?

16 A Yes. The emissions will go down.

17 Q In other words, the emissions from all those
18 sources in the aggregate under the bubble will
19 decrease?

20 A Yes.

21 Q World will be a better place?

22 A Yes.

23 Q Agency has done its job?

24 A Yes.

25 Q By virtue of BP voluntarily applying for a

1 flex permit?

2 A Yes.

3 Q The drawing that is right now on this scene,
4 come on down and look at it if you need to.

5 A I can see this one, okay.

6 Q That, as we understand it, is an electronic
7 draft from RMT, RMT a contractor, who has expertise on
8 applications for flex permits; is that right?

9 A Yes.

10 Q That's your understanding as well?

11 A Yes.

12 Q Is it your understanding this document never
13 went to BP?

14 A Yes.

15 Q To your knowledge did BP ever have this type
16 of flow diagram for purposes of environmental permit
17 applications?

18 A It never showed up in any of the copies that
19 we looked at. Looks like it never made it to the
20 application.

21 Q In other words, never made it to BP or to
22 TCEQ?

23 A Right.

24 Q By the way, does it -- I don't know if it's
25 complete or what they were going to add to it, but

1 first of all, it doesn't show our relief valves routed
2 to a flare; correct?

3 A Correct.

4 Q And so at least to that extent it's no
5 misrepresentation; correct?

6 A Correct.

7 Q Does it show what would be notice to an
8 agency environmental permit application recipient --
9 how about that for a mouthful -- that rather than the
10 relief valves being routed to a flare, what does it
11 show about where those relief valves are routed?

12 A Relief values are referred to as fugitive
13 emissions and that they don't emit directly. They sort
14 of seep throughout the whole process unit. So you put
15 them in a group in the box called unit fugitives is
16 where the relief valves would reside.

17 Q So, that is in a box represented on this flow
18 diagram?

19 A Correct.

20 Q And if this flow diagram had gone to BP or to
21 TCEQ, what would it have told us about unit fugitives
22 being routed to a flare?

23 A That they were routed directly to the
24 atmosphere, via, in this case via the blow-down,
25 because the blow-down is simply an empty pipe between

1 the valve and the atmosphere. So it really has no
2 effect on the emissions. So a lot of times it wasn't
3 really relevant to the emission rate. It's just a
4 pathway.

5 Q Because the blow-down is not the source of
6 the emissions. The relief valves would be the source?

7 A That's correct.

8 Q And the relief valves were accounted for in
9 the application?

10 A Yes.

11 Q And the relief valves here are shown to be
12 routed to the ATM period. What does that mean?

13 A To the what? Oh, the atmosphere.

14 Q To the ATM period.

15 A Yeah. That's an abbreviation for atmosphere.

16 Q So, that would tell the agency that they were
17 not routed to a flare but were indeed routed to an
18 atmosphere?

19 A Right. Usually an arrow going up that says
20 ATM means atmosphere.

21 Q Okay. There is two things that I understand
22 we are here for today. Number one, because there is an
23 allegation that we hood winked the state and received a
24 permit on false grounds. And so I want to ask you, by
25 the time this permit was acted upon, did the state know

1 that relief valves in the flex permit were routed to a
2 blow-down or to atmosphere through a blow-down?

3 A That's correct. The permit was issued with
4 the application representation that relief valves were
5 emitted to the atmosphere, not a flare.

6 Q So, there was no misrepresentation of that
7 any way around that to the TCEQ by the time any action
8 was taken?

9 A Right. Yes.

10 Q Second of all, even before action was taken,
11 did they know of the existence of the blow-down drum?

12 A Yes. We voluntarily submitted all that
13 information, federal and state agencies on blow-down
14 stacks.

15 Q So what you have cleared up is that there was
16 no misrepresentation to the state and that there was no
17 flow diagram that could ever be located within BP's
18 documentation or that ever made out of some draft, some
19 environmental file from some drafter at RMT?

20 A Yes.

21 MR. GALBRAITH: Thank you very much.

22 MR. COON: I have a couple of questions.

23 EXAMINATION

24 QUESTIONS BY MR. COON:

25 Q To make sure we understand, you were the

1 person at BP that filled out the flex permit and
2 represented to the TCEQ that as to the raffinate
3 splitter it vented to a flare in the 2003 permit.
4 That's the document you saw earlier. Do you recall
5 that?

6 A I wasn't the person that filled it out.

7 Q You stamped the form and signed it?

8 A Yes.

9 Q As an engineer?

10 A Yes.

11 Q And you would not have done that had you
12 known it routed elsewhere?

13 A Had it what?

14 Q You would not have stamped that as approved
15 and reviewed by you if it didn't do what the permit
16 said it did? You are not intentionally misrepresenting
17 --

18 A No. I'm not a liar. I would never do that.

19 Q That brings up the issue, so we understand
20 that, in the permit there is an attachment, remember
21 the X on the box --

22 A Yes.

23 Q -- saying diagram was attached. Now, there
24 was a diagram attached for the flow, for all the other
25 units out there on the flex permit, weren't there,

1 sir?

2 A Yes.

3 Q Don't you find it strange that the only one
4 missing out of all of them out there is the one
5 involving this explosion? Isn't that strange to you?

6 A Strange I guess. It's ironic.

7 Q And then when we go back and try to find it,
8 when you stamp on there that it was there, you believed
9 it to be there, correct?

10 A Yes.

11 Q And we do know it's missing today, correct?

12 A Yes.

13 Q And so then we say okay, but if you said it
14 was there again and you can't find, where could it be?
15 It could be at BP. You looked there, correct?

16 A Yes. I didn't personally look there but
17 other people at BP have.

18 Q You understand that y'all have done a fine
19 tooth comb review and you can't find it, correct?

20 A That's what I am hearing, yes.

21 Q And then we say, well, it should also be in
22 the archives of TCEQ, correct, because they received
23 the forms and applications, correct?

24 A I misunderstood you.

25 Q TCEQ should have a copy as well, correct?

1 They keep copies of all this, don't they?

2 A Yes.

3 Q In looking there, we understand they are
4 missing there as well?

5 A Yes.

6 Q And then RMT did all the paperwork for BP and
7 should have kept a copy as well, correct?

8 A Correct.

9 Q And we know going to BP, we have copies of
10 all the other diagrams, correct?

11 A I know we had most of them. I don't know
12 about all of them.

13 Q And when we looked at RMT, they had copies of
14 all the other diagrams. Do you understand that one?

15 A I don't know if every single one of them are
16 there, but, yes, most of them are there, if not all of
17 the other ones.

18 Q And also at TCEQ, they are there. The one
19 missing is the raffinate splitter, the one at issue
20 here, correct?

21 A Yes.

22 Q Now, you used to work at RMT before you went
23 to BP, didn't you, sir?

24 A Yes.

25 Q Did you keep good relationship with people at

1 RMT after you left there?

2 A Yes.

3 Q Did you ever ask any of them to do something
4 with that particular document after this explosion?

5 A Which document?

6 Q The diagram, the flow diagram?

7 A No.

8 Q Do you know of anyone that did that?

9 A No.

10 Q But with respect to TCEQ, did you have a
11 relationship with people that worked at TCEQ?

12 A Yes.

13 Q Did Mr. Huerra have a relationship with
14 people at TCEQ?

15 A Yes.

16 Q To your knowledge, did any one, either you or
17 Mr. Huerra or anyone else at BP ask people at TCEQ to
18 do anything with that diagram?

19 A To do anything with the isom diagram?

20 Q Yes. With the raffinate splitter diagram
21 that was attached to the original --

22 A I don't remember doing anything or asking
23 anything or ever hearing about anything specifically.

24 Q Did anyone to your knowledge that would have
25 a better understanding as to what happened to that flow

1 diagram as we sit here today?

2 A I think we've covered it. I wouldn't know
3 who else to ask.

4 Q Mr. Huerra was the person you were working
5 with at the TCEQ on the flex permit including the
6 raffinate splitter, correct?

7 A In the early phases of the permit, yes.

8 Q And Mr. Huerra left there, came to work at
9 BP, working with you, did he not?

10 A Yes.

11 Q And that was during all the process with
12 respect to permit applications, correct?

13 A Yes.

14 Q Did you know anything about the law with
15 respect to hiring people that worked at TCEQ to come to
16 work for you and for BP after they were working on the
17 same project for the state agency with regard to
18 regulating that report?

19 A I personally didn't know anything about that.

20 Q Do you know about any regulation that
21 restricted the ability for people that worked at TCEQ
22 that are involved in flex permit applications to come
23 to work for an employer --

24 MR. GALBRAITH: Your Honor, object. Not
25 reasonably relevant to anything that involves --

1 THE COURT: Let's stick to the document.

2 MR. COON: We have no further questions
3 for this witness.

4 THE COURT: Do you have anything
5 further?

6 MR. GALBRAITH: I do have a few.

7 EXAMINATION

8 QUESTIONS BY MR. GALBRAITH:

9 Q Just to make clear, you said that the
10 agencies were aware of the existence of blow-downs,
11 including isom blow-down well before the flex permit
12 was acted upon by the agencies. Did they also know of
13 the existence of the blow-downs prior to March 23,
14 2005?

15 A Yes.

16 Q You said that the -- you said most of the
17 drawings were attached?

18 A I don't remember if they all were or most of
19 them.

20 Q Okay.

21 A So the one's missing, I can't really be sure
22 about any of it.

23 Q You know that some were missing. Isom was
24 apparently one of those that were missing. Whether it
25 was UU3 or ultra-cracker, you are not going to say?

1 Others were missing as well?

2 A I don't know.

3 Q Do you know that others were missing?

4 A I think there was at least maybe one more
5 missing, but I'm not quite sure.

6 Q I believe ultra-cracker and UU3 were also
7 missing. Can you take a look at that, that's in the
8 record, and confirm that or deny that?

9 A So, I'm looking at the table of contents that
10 shows ultra-cracker and UU3?

11 Q Yes. And it shows them as exhibit what?

12 A Figure 2-17 and 2-19.

13 Q Okay. Can you go to 2-17 and 2-19 and see if
14 that's the ultra cracker and ultra forming unit number
15 three respectively?

16 A I'm finding 2-17, figure 2-17.

17 Q And what is it of?

18 A It says power station three.

19 Q And the table of contents says it's --

20 A Ultra cracker unit.

21 Q See if you can find 2-19. See if it's the
22 ultra forming unit.

23 A 2-19 says, reads hydro-treating unit.

24 Q As to opposed to what the table of contents
25 says?

1 A Table of contents says ultra forming unit
2 number three.

3 Q Just to indicate that there were some other
4 things in this initial presentation that got cleared up
5 later; is that correct?

6 A Yes.

7 Q Certainly by the time -- again, does anything
8 here dissuade you from your testimony that there's no
9 indication that BP ever had the flow diagram figure
10 2-12 which is on the screen today, correct?

11 A Correct.

12 Q We have traced its residence and genesis to
13 have an understanding that TCEQ didn't get it as well
14 and that it never left a draftman's personal files
15 within RMT?

16 A Yes.

17 Q And that the agency knew well before acting
18 on this permit and well before March 23rd of 2005 that
19 those relief valves of the isom unit were routed to the
20 atmosphere through F-20 blow-down drum?

21 A Yes.

22 MR. GALBRAITH: That's all I have.

23 MR. COON: No further questions of this
24 witness. We would like to call Mr. Huerra.

25 THE COURT: Come up and sit down,

1 Mr. Huerra.

2 THE CLERK: Please raise your right
3 hand. Do you swear to tell the truth, the whole truth,
4 and nothing by the truth so help you God?

5 THE WITNESS: I do.

6 RUBEN HUERRA
7 having been produced and first duly sworn then
8 testified as follows:

9 EXAMINATION

10 QUESTIONS BY MR. COON:

11 Q We will try to be brief.

12 Good morning, Mr. Huerra. I have not
13 had the opportunity to meet you before. I'm Brent
14 Coon, the liaison for the steering committee on behalf
15 of the Plaintiffs in the In Re: Texas City explosion.
16 Do you understand that?

17 A Yes, sir.

18 Q You have seen all the testimony this morning,
19 you were present here in the courtroom to hear
20 Mr. White and the various --

21 A Yes.

22 Q Mr. Huerra, you were employed at TCEQ back in
23 2003, were you not, sir?

24 A 2003, yes.

25 Q And you have seen all these documents that

1 were passed on to the TCEQ regarding the flex permit
2 associated to the isom unit, raffinate splitter and
3 various other units in operation at the BP Texas City
4 facility, correct?

5 A I did not see the February 2003 submittal. I
6 did not.

7 Q But you saw those today?

8 A I saw those today.

9 Q And you were working with the TCEQ as a
10 responsible party to represent our state in the review
11 and oversight of the flex permit being requested by BP
12 during that time frame, is that correct, sir?

13 A Correct.

14 Q And you worked at TCEQ for some years by that
15 time, correct?

16 A Total aggregate I had almost 13 years and six
17 months.

18 Q Now, at some point during the process
19 involving these flex permit applications 2003 and 2004,
20 you were asked to come to work for BP, were you not,
21 sir?

22 A I was not asked by BP to come to work. I
23 sought employment at various refineries and chemical
24 companies.

25 Q And BP retained you for employment; is that

1 correct, sir?

2 A Correct.

3 Q What was the date, sir?

4 A March 17, 2003.

5 Q And you worked continuously for TCEQ up until
6 that date?

7 A I did not.

8 Q When did you leave TCEQ?

9 A February 28, 2003.

10 Q You have a gap of a few weeks there?

11 A A couple of weeks.

12 Q Now, after you went to work for BP, you
13 continued to work with Mr. White and others in
14 assisting them in facilitating the flex permit process
15 for TCEQ, did you not, sir?

16 A Yes.

17 Q And so you understand that we are missing a
18 diagram that was attached to the flex permit with
19 association to the raffinate splitter that was in
20 operation in Texas City, the one involved in this
21 explosion. Do you remember that, sir?

22 A Yes.

23 Q Have you personally undertaken an effort to
24 locate that document, sir?

25 A I asked RMT for assistance in locating the

1 document.

2 Q And in sitting here today, have you had any
3 information given back to you from your investigation
4 to this matter as to what happened to that diagram,
5 sir?

6 A I don't know what happened to that diagram.

7 Q Do you recall reviewing that diagram while
8 you were at TCEQ?

9 A No.

10 Q Do you recall seeing any specific diagrams
11 involved with the flex permits?

12 A No.

13 Q Have you ever received any of the flex permit
14 diagrams when you were at the TCEQ as part of your
15 oversight and review of the flex application process?

16 A Not as part of the February 2003 submittal. I
17 did not look at that.

18 Q Did you look at any of them?

19 A I looked at the prior applications.

20 Q Which would have been when, sir?

21 A First one I believe was submitted August
22 2001, and then the second one was submitted in -- I'm
23 sorry. The first one was submitted in February 2001.
24 The second one was submitted in August 2001.

25 Q And that would include the ones that you

1 looked at up here earlier that Mr. White was asked
2 about, permit number 47256?

3 A Dated February or August 2001, correct.

4 Q Yes, sir. Now, Mr. Huerra, did you maintain
5 a good personal relationship with anyone at TCEQ after
6 you left there?

7 A With the majority of the people that still
8 work there.

9 Q Did you have access to TCEQ files after you
10 left there?

11 A Public files.

12 Q Do you have any family members that work
13 there, sir?

14 A No.

15 Q Were you aware of a restriction from our
16 state that would prohibit you and others in similar
17 situations from working for a refinery employer on
18 matters that involved your oversight while working at
19 TCEQ?

20 A No.

21 Q BP did not advise you not to get involved in
22 reviewing and oversight of any of the applications or
23 forms that you had responsibility for while you were at
24 TCEQ?

25 A While at TCEQ?

1 Q Yes. Did they not advise you when you went
2 to work at BP not to get involved in handling,
3 reviewing, or assisting on flex permits or other
4 applications for TCEQ?

5 A No.

6 Q Were you aware that that subjects you to
7 felony criminal violation if you work for an employer
8 on the same matters that were being reviewed?

9 MR. GALBRAITH: I have the same
10 objection, Your Honor. I have the same objection that
11 it is not relevant to any matter set here today. It
12 may be something that -- he's scheduled to be deposed
13 here today, actually in our offices, after this
14 hearing. I'm not saying he can't be asked about it in
15 that context. He may or may not be able to. But it is
16 certainly not germane to what is put in issue by virtue
17 of their motion here today.

18 THE COURT: Overruled.

19 MR. COON: You can answer the question,
20 sir.

21 A Repeat the question.

22 Q Were you aware that you are subject to a
23 felony charge if you go to work for an employer and
24 assist them in reviewing applications and permits that
25 you have a responsibility for while in the employ of

1 TCEQ?

2 A No.

3 Q Did anyone at BP ever address with you or
4 restrict you in your employment as related to the
5 oversight, review or assistance of applications or
6 permits, flexible or otherwise in dealing with TCEQ
7 after your employment with TCEQ?

8 A No.

9 Q Are you aware of the restrictions associated
10 to that facility code, those restrictions last
11 forever?

12 A No.

13 Q Sir, were you making more than \$30,588 a year
14 at the time you were discharged from TCEQ?

15 A Yes.

16 Q How much were you making, sir?

17 A Approximately \$61,000.

18 Q And when you went to work for BP, how much
19 were you paid, sir?

20 A 84.

21 Q Any other bonuses or other considerations?

22 A As part of BP'S normal policies and
23 practices.

24 Q Any other retention bonuses, sir?

25 A There was a sign-on bonus.

1 Q How much, sir?

2 A I don't recall.

3 Q Were you ever asked --

4 THE COURT: Roughly, what was it?

5 A \$2,000, \$3,000.

6 Q Were you ever asked by other officers of BP
7 to assist them in using your influence with TCEQ to
8 facilitate the approval of flex permits or other
9 permits?

10 A Absolutely not.

11 MR. COON: No further questions of this
12 witness at this time.

13 MR. GALBRAITH: I do have a few
14 questions.

15 EXAMINATION

16 QUESTIONS BY MR. GALBRAITH:

17 Q Mr. Huerra, first of all, you talked about,
18 and we have seen about how there were a number of
19 things included within various flex permit
20 applications, correct?

21 A Correct.

22 Q And the February 2001 and the August 2001, I
23 think we have seen and I forget what the pages were,
24 what did they say, administratively voided?

25 A Administratively voided, correct.

1 Q What does that mean? Do you start over?

2 A That means when an application is
3 administratively voided, there is -- it's like
4 information that the agency has requested. Companies
5 typically will come back and say we need additional
6 time to obtain this information. And the agency, all
7 projects issued by the agency are worked on by the
8 agency have processing guidelines or timelines
9 associated with this.

10 Administrative avoidance is one way the
11 agency deals with project schedules. And it's
12 typically companies will be asked by the commission on
13 time frame, if they cannot provide the information
14 because it's going to entail additional review or
15 analysis, either the company may initiate or the agency
16 may say, maybe we ought to go ahead and do an
17 administrative avoidance on this application, to allow
18 additional time to obtain the information that is
19 required.

20 Q To answer additional questions?

21 A Right.

22 Q The permit application of February 2001 and
23 the permit application of August 2001, did they include
24 the isom unit or the raf splitter?

25 A I don't recall.

1 Q Are you aware that the isom and raf splitter
2 were added along with some other areas to what
3 ultimately became the flex permit application?

4 A After I left the agency and started working
5 for BP, I became aware of that, yes.

6 Q As I understand it, you were involved in the
7 search for the flow diagram which is the subject of
8 this motion?

9 A Correct.

10 Q Your search was fruitless until this week?

11 A Correct.

12 Q When you went to RMT?

13 A Correct.

14 Q In other words, your search within BP was
15 fruitless through today?

16 A Correct.

17 Q Your search --

18 THE COURT: Tell us what you mean by
19 fruitless.

20 MR. GALBRAITH: Pardon?

21 THE COURT: When you say fruitless, you
22 mean unproductive?

23 Q Unproductive. Didn't find anything, correct?

24 A Correct.

25 Q You looked and found nothing?

1 A Correct.

2 Q And to this day you confirmed that based on
3 your understanding BP never had this flow diagram which
4 is figure 2-12 shown on the screen right now?

5 A Correct.

6 Q And we now as a result of your efforts know
7 the origin of that, correct?

8 A Correct.

9 Q Is it our understanding that within the RMT
10 offices a personal engineer's electronic file
11 considered a draft within RMT.

12 A Within RMT.

13 Q And it never apparently made it out of RMT in
14 either direction, back to BP or forward to TCEQ?

15 A Correct.

16 Q So, the document which they are asking the
17 court to compel us to produce, that being a flow
18 diagram from BP, doesn't exist still?

19 A Correct.

20 Q Back in August, did you make a request to RMT
21 as a part of your search to see if RMT couldn't track
22 down a flow diagram?

23 A Yes.

24 Q And what was the response from RMT back in
25 August?

1 A RMT indicated that they could not find the
2 document. Had looked in their hard copies and other
3 places, and could not locate it.

4 Q The permit which included the isom and the
5 raf splitter, did you work on it at all while still at
6 TCEQ?

7 A I did not.

8 MR. GALBRAITH: No further questions.

9 THE COURT: Any more questions?

10 MR. COON: No further questions of this
11 witness. It's my understanding --

12 THE COURT: You may sit down.

13 MR. COON: It's my understanding he's
14 still subject to a subpoena for appearance at a
15 deposition.

16 THE COURT: Do you have any other
17 witnesses?

18 MR. COON: We have no other witnesses.

19 MR. GALBRAITH: No, Your Honor.

20 THE COURT: Arguments.

21 MR. COON: At this time Plaintiffs
22 maintain with respect to the issue of the TCEQ
23 documents that we have established a prima facie case
24 that BP was the one required to have diagrams, flow
25 diagrams referencing the raffinate splitter, that they

1 represented to the regulatory authorities that they had
2 such diagrams, that the certified engineers represented
3 and testified to the fact that to the best of their
4 knowledge that the information that they provided was
5 in fact accurate and would have been provided which
6 would have included a diagram and a flow diagram for
7 the raffinate splitter.

8 We have established that for whatever
9 reason that is now missing, even though by all
10 circumstantial evidence would have been drawn as it was
11 for all the other units, part of the application
12 process and in fact something mandated as part of the
13 application process.

14 We have established that their cozy
15 relationship between BP, TCEQ, and RMT, the company
16 that they retained to do this.

17 We have also ascertained, I believe
18 today, the person charged with assisting in the follow
19 through of this flex permit was an officer of the State
20 of Texas, who we believe violated the Texas Ethics
21 Commission guide with respect to the State of Texas and
22 specifically violated the Texas Governmental Code, with
23 respect to his employment with BP for substantial more
24 than f he made for the state during the flex permit
25 process.

1 And while I'm not an authority on the
2 subject matter, a little reading of the standards of
3 conduct and conflict of interest would indicate that
4 all personnel making over \$30,000 expressly be
5 precluded from engaging in employment in a private
6 sector, in oversight and review of the same permitting
7 processes of other regulatory processes that they were
8 involved in while working on behalf of the state. We
9 think that all of these compel for further inquiry, on
10 all these issues, refer it over to the state, to TCEQ
11 with respect to whether or not -- what the extent of
12 Mr. Huerra's impropriety was and that of BP as well.
13 Specifically comments within the Texas Ethics
14 Commission that these are considered bribes.

15 We understand that there has been
16 allegations of similar conduct by BP in this case by
17 other lawyers previous in similar cases. We do not
18 know if those circumstances exist here but it certainly
19 should engage an inquiry on behalf of some agency.

20 For all those reasons, Your Honor, we
21 would ask for a spoliation instruction on this matter
22 and our costs.

23 THE COURT: Number one you're asking me
24 to order to compel and number two you're asking me for
25 a spoliation charge and you are asking for costs.

1 Let's go on the issue.

2 MR. GALBRAITH: What was the third?

3 THE COURT: You are asking me to, number
4 one, order them to produce.

5 MR. COON: Which we understand they are
6 unable or unwilling to do.

7 THE COURT: You are asking me for a
8 spoliation charge?

9 MR. COON: Yes, ma'am.

10 THE COURT: And a cost. Your cost of
11 exploring this issue?

12 MR. COON: Yes, ma'am.

13 MR. GALBRAITH: Cost of this hearing?
14 Cost of what?

15 MR. COON: The cost involved with our
16 whole TCEQ issue which is flex permits, the diagrams,
17 the procurement by fraud.

18 MR. GALBRAITH: Your Honor, this record
19 supports nothing. It doesn't support an order
20 compelling. It doesn't support any sanctions. It
21 doesn't support any spoliation evidence. To have
22 spoliation evidence, you have to have a record of
23 evidence that it existed one time in your possession.

24 This record establishes that BP never
25 had it. We have confirmed what did come into

1 existence, where it came into existence, where it was
2 maintained, how it was maintained by somebody other
3 than BP, and unusually we can on this record even
4 define how it never got to BP or TCEQ.

5 They have attempted to argue, in my
6 mind, we have misled the state agency. We have not.
7 And this record supports that. There was no hood
8 winking of the state into believing that relief valves
9 from isom went to a flare. That's clear now if you ask
10 me on the strength of this record. But we cannot be
11 ordered to compel something or be held accountable and
12 sanctions for not producing something if there's no
13 evidence that we ever had it.

14 This record proves not only is their an
15 absence of evidence that we had it, there is evidence
16 that we never had it because now we can trace it to
17 RMT's draftman's personal electronic draft file. This
18 motion should be denied.

19 MR. GOURRIER: Your Honor, the discovery
20 rules are clear. Documents that are within a party's
21 custody and control are subject to discovery. RMT was
22 an agent of BP. We have established that they were the
23 ones that prepared the flexible permit applications.
24 They were the ones that prepared the process flow
25 diagrams They are the ones that had the missing

1 process flow diagram. We submit to the court that if
2 it's missing, it was within BP's custody and control,
3 and if it's missing now, we should be entitled to an
4 instruction.

5 MR. GALBRAITH: My response is, Your
6 Honor, we needed to refute that. The evidence,
7 contrary to what they say, the evidence here is that it
8 remained in RMT. The Plaintiffs subpoenaed records
9 from RMT, in other words, the Plaintiffs in a legal
10 means with notice to all parties requested production
11 of this document from RMT. RMT did a defined and
12 agreed-upon search and produced nothing by way of this
13 flow diagram apparently to the satisfaction of the
14 Plaintiffs at the time of the production by RMT.

15 But second of all, when the
16 environmental permitting issue arose, what this record
17 just established was that BP representative contacted
18 RMT to say, we can't find it. We don't have it. We
19 don't have any indication we have ever had it. Can you
20 come up with it? RMT did a second search and
21 responded, no, we can't produce any such document.

22 That is not a record that supports an
23 order compelling or an order of sanctions.

24 THE COURT: I believe it did exist. And
25 I'm convinced from the evidence it did exist. I'm

1 granting all the relief that they have requested. Now,
2 there is an uncertainty of what their cost is. You are
3 going to have to show them some documentation and if
4 y'all can agree on what the cost is, fine. I'm sure we
5 can come back and talk about that further, but we don't
6 have time to talk about it today.

7 MR. GONZALEZ: Your Honor, about the
8 deposition real quick. When the court previously
9 ordered the deposition of Mr. Browne, it ordered it in
10 the United States, taking into consideration we have
11 gone to London previously.

12 THE COURT: Actually what I did is I
13 ordered y'all to find out at the time, ordered you to
14 find out if he was coming here and if y'all could work
15 that out, fine. Y'all then came back with your Rule 11
16 which took out the need for that to be any further
17 decided. If y'all go to London y'all are going to pay
18 for it now. If you bring him here or take him there,
19 but based on prior foolishness with them going to
20 London unnecessarily when people were coming here,
21 that's how it's going to be.

22 MR. TEKELL: Your Honor, I represent to
23 the court that Lord Browne will not be on the Oprah
24 show this afternoon.

25 THE COURT: Does that mean he is going

1 to be on Dr. Phil?

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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 15th day of
16 October of 2006.

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Joni F. Bono, Texas CSR #1204
Expiration Date: 12-31-06
Official Court Reporter
212th Judicial Court
Galveston County Courthouse
Galveston, Texas 77550

