

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

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In the matter of: *
*
MARINE BOARD OF INVESTIGATION *
INTO THE SINKING THE *EL FARO* *
ON OCTOBER 1, 2015 *
*
* * * * *

Prime F. Osborn III Convention Center
Jacksonville, Florida

Friday,
February 17, 2017

APPEARANCES:

Marine Board of Investigation

CAPT JASON NEUBAUER, Chairman
KEITH FAWCETT, Member
CDR MATTHEW J. DENNING, Member
LCDR DAMIAN YEMMA, Recorder
CDR JEFF R. BRAY, Legal Counsel

Technical Advisors

CDR MICHAEL ODOM
CDR MICHAEL VENTURELLA
LT MICHAEL COMERFORD
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PAUL WEBB

National Transportation Safety Board

BRIAN YOUNG, Investigator in Charge
MICHAEL J. KUCHARSKI, Marine Accident Investigator

Parties in Interest

LUKE M. REID, Esq.
JAMES KING, Esq.
TIM NOLAN
TOTE Services

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American Bureau of Shipping (ABS)

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Herbert Engineering Corporation

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On behalf of Mrs. Theresa Davidson
(Next of kin to Captain Michael Davidson)

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P R O C E E D I N G S

(9:00 a.m.)

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2
3 CAPT NEUBAUER: Good morning. This hearing will come to
4 order. Today is February 17th, and the time is 9:00 a.m. We are
5 continuing at the Prime F. Osborn Convention Center in
6 Jacksonville, Florida. I am Captain Jason Neubauer of the United
7 States Coast Guard, Chief of the Coast Guard Office of
8 Investigation Analysis in Washington, D.C. I am the chairman of
9 the Coast Guard Marine Board of Investigation, and the presiding
10 officer over these proceedings.

11 The Commandant of the Coast Guard has convened this Board
12 under the Authority of Title 46 United States Code Section 63.01
13 and Title 46 Code of Federal Regulations Part 4 to investigate the
14 circumstances surrounding the sinking of the SS *El Faro*, with the
15 loss of 33 lives, on October 1st, 2015, while transiting east of
16 the Bahamas. I'm conducting the investigation under the rules in
17 46 C.F.R. Part 4.

18 The investigation will determine as closely as possible the
19 factors that contributed to the incident, so the proper
20 recommendations for the prevention of similar casualties may be
21 made, whether there is evidence of any act of misconduct,
22 inattention to duty, negligence or willful violation of the law on
23 the part of any credentialed Merchant Mariners contributed to the
24 casualty, and whether there is evidence that any Coast Guard
25 personnel or any members or employee of any other government

1 agency, or any other person, caused or contributed to the
2 casualties.

3 I have previously determined that the following organizations
4 or individuals are parties in interest to this investigation:
5 TOTE Services, represented by Mr. Luke Reid; ABS, represented by
6 Mr. Gerard White; Herbert Engineering, Corporation, represented by
7 Mr. Spencer Schilling; and Mrs. Theresa Davidson, as next of kin
8 for Captain Michael Davidson, the Master of the SS *El Faro*,
9 represented by William Bennett. These parties have a direct
10 interest in the investigation, and have demonstrated the potential
11 for contributing significantly to the completeness of the
12 investigation or otherwise enhancing the safety of life and
13 property at sea through participation as a party in interest. All
14 parties in interest have a statutory right to employ counsel to
15 represent them, to cross-examine witnesses and to have witnesses
16 called on their behalf.

17 I will examine all witnesses in this formal hearing under
18 oath or affirmation, and witnesses will be subject to federal laws
19 and penalties covering false official statements. Witnesses who
20 are not parties in interest may be advised by their counsel
21 concerning their rights. However, such counsel may not examine or
22 cross-examine other witnesses or otherwise participate.

23 These proceedings are open to the public and to the media. I
24 ask for the cooperation of all persons present to minimize any
25 disruptive influence on the proceedings in general and on the

1 witnesses in particular. Please turn your cell phones or other
2 electronic devices off or to silent or vibrate mode. Photography
3 will be permitted during this opening statement, and during recess
4 periods. The members of the press are welcome and an area has
5 been set aside for your use during the proceedings. The news
6 media may question witnesses concerning the testimony they have
7 given after I have released them from these proceedings. I ask
8 that such interviews be conducted outside of this room.

9 Since the date of the casualty the National Transportation
10 Safety Board, NTSB, and Coast Guard have conducted substantial
11 evidence collection activities and some of that previously
12 collected evidence will be considered during these hearings.

13 Should any person have or believe he or she has information not
14 brought forward, but which might be of direct significance, that
15 person is urged to bring that information to my attention by
16 emailing elfaro@uscg.mil.

17 The Coast Guard relies on strong partnerships to execute its
18 missions. And this Marine Board of Investigation is no exception.
19 The National Transportation Safety Board is providing
20 representatives for this hearing. Mr. Brian Young, also seated to
21 my left, is the Investigator in Charge for the NTSB investigation.

22 Mr. Young, would you like to make a brief statement?

23 MR. YOUNG: Yes. Thank you, Captain. Good morning. Good
24 morning, all. I am Brian Young, Investigator in Charge of the
25 National Transportation Safety Board's investigation into this

1 accident. The NTSB has joined this hearing to avoid duplicating
2 the development of facts. Nevertheless, I do wish to point out
3 that this does not preclude the NTSB from developing additional
4 information separately from this proceeding if that becomes
5 necessary. At the conclusion of these hearings the NTSB will
6 analyze the facts of this accident, determine the probable cause
7 independently of the Coast Guard, issue a report on the NTSB's
8 findings and if appropriate issue recommendations to correct
9 safety problems discovered during this investigation. Thank you.

10 CAPT NEUBAUER: Thank you, Mr. Young.

11 Before we begin today, I'll like to announce that we're
12 introducing three new exhibits. Exhibit 402 is the TOTE Speak Up
13 anonymous reporting flyer. Exhibit 403 is the ABS letter to the
14 MBI, dated 23 January 2017. That letter is in regards to the
15 basis for proposed testimony of Louis O'Donnell. Exhibit No. 404
16 is an ABS survey report dated between 03 and 29 January 2011.

17 At this time, we will hear testimony from Mr. Don Matthews,
18 the Marine Operations Manager from TOTE Maritime, Puerto Rico.

19 LCDR YEMMA: Sir, would you please stand and raise your hand?

20 (Witness sworn.)

21 LCDR YEMMA: Please be seated, sir. Thank you.

22 Mr. Matthews, we got your background during your prior testimony.
23 So, we're going to move right into your interview, starting with
24 Mr. Fawcett.

25 MR. MATTHEWS: Okay.

1 (Whereupon,

2 DON MATTHEWS

3 was called as a witness and, after being first duly sworn, was
4 examined and testified as follows:)

5 EXAMINATION OF DON MATTHEWS

6 BY MR. FAWCETT:

7 Q. Good morning, Mr. Matthews.

8 A. Good morning.

9 Q. So, all of my questions will be related to the time frame
10 leading up to the accident, which occurred on the 1st of October
11 2015. I appreciate your flexibility. I know you were here
12 earlier, and we rescheduled you. And also, you appearing before
13 the Board a second time. So, thank you very much and if during
14 the course of testimony you'd like to take a break please let us
15 know. So, with that we'll begin.

16 A. Okay.

17 Q. So, looking at -- I want to focus on the period of about
18 2011. You were part of a marine operations group. Is that
19 correct?

20 A. Yes, sir.

21 Q. We've heard about the port engineers in the group. But,
22 could you tell me who in the group provided nautical expertise for
23 the ship operations -- to support the ship operations?

24 A. As far as nautical information, that I do not know.

25 Q. Okay. So, we've heard who the port engineers were. We heard

1 Mr. Weisenborn. We've heard Mr. Rogers. Who were the people in
2 the group that had deck officer background?

3 A. In the marine operations department, the only licensed deck
4 officer would have been Bill Weisenborn.

5 Q. Were there others that gone to professional maritime
6 colleges, like Kings Point, Fort Schuyler, or any of the other
7 maritime schools? That may have not had licenses.

8 A. In the marine operations department, no. In the marine
9 engineers, I believe there were.

10 Q. So, what was - the designated person, Harry Rogers, what was
11 his background?

12 A. Harry Rogers worked for Interocean Management. I'm not sure
13 of his background. I believe it was maritime. I'm speaking only
14 in terms of the marine operations department that worked at Blount
15 Island, the backgrounds of those -- what is not TOTE Services
16 personnel, or Interocean Management, I am not very knowledgeable
17 about.

18 Q. And just to put it on the record, was there a TOTE Services,
19 TOTE Maritime Puerto Rico or other corporate office in
20 Jacksonville in that time frame?

21 A. The corporate office of Sea Star Line is in Jacksonville.

22 Q. And were there anybody in that office that had a maritime
23 background related to deck operations?

24 A. 2011, if Steve Hastings was still there -- he was a naval
25 officer, I believe. I'm not quite sure of his educational

1 background.

2 Q. And then your title was?

3 A. Back in 2011, it may have been port captain. It could have
4 been marine operations supervisor. I don't exactly remember at
5 this time when the title changed.

6 Q. So, let's focus on that time frame -- say, the 2011 and 2012
7 time frame. And we've heard testimony about how the marine
8 operations group supported ship operations. So, I want to walk
9 you through a series of questions. In that time frame, while the
10 -- while one of the Ponce ships was loading cargo, and there was a
11 tropical system developing near the Atlantic route that may impact
12 the voyage directly from Jacksonville to San Juan, what would you
13 and your group do with -- in relation to interacting with the ship
14 as it's loading?

15 A. If the captain or chief mate informed us that there was --
16 they were expecting some heavy weather, in all likelihood they
17 would ask for heavy weather lashing for all of their Ro-Ro cargo
18 -- or additional lashing, whatever they would have wanted in
19 addition to what we normally did. They may have informed us of
20 what route they may or may not want to take. This is all coming
21 from the captain. And what their expected arrival time would be,
22 based on when they actually departed.

23 We would -- if the additional lashing was requested, or any,
24 any lashing compartments whatsoever, we would comply with that
25 request. If their estimated time of arrival in San Juan was going

1 to change, based upon what route or what speeds they decided to
2 take or he decided to take, we would inform San Juan terminal
3 operations personnel about that -- what that revised ETA would be,
4 so they could plan labor accordingly. We would adjust our
5 operations to comply with what the captain expected he would be
6 doing.

7 Q. All right. Let's take that in a series of steps. So, the
8 ship is in Jacksonville and loading the cargo. Was there at any
9 time any type of meeting, whether it's telephonic, in person,
10 conference call or anything else -- now, I'm talking a situation
11 where there was a developing weather system that would affect the
12 route. Was there a conference or discussion prior to the ship
13 leaving the dock?

14 A. Probably not formally arranged. But during the course of
15 operations, if anything was expected to happen they would normally
16 at least inform me of -- if they were expecting heavy weather and
17 wanted heavy weather lashing, they would inform me so we could get
18 that done. As previously testified, normally when I would -- the
19 ship would first arrive, I would go aboard the vessel, meet the
20 chief mate and meet with the captain and just ask him what was
21 going on, or if there was anything that I needed to know about or
22 if there was anything we were doing that they needed to know
23 about. That conversation would probably happen then. If things
24 developed during the day, they could always contact me if he had
25 -- that's what I was there for. Let me know what was going on. I

1 would relay that information to my bosses.

2 They may also have conversations with them that I wouldn't
3 know about, perhaps on marine -- Bill Weisenborn. I forget
4 exactly when he moved up to the corporate level. You know, they
5 could have side conversations that I would not be aware of
6 throughout the day. Anything that affected the stevedore
7 operations would, of course -- I would be informed of, so I could
8 let our -- the stevedore supervisors know what needed to be done.
9 And we would adjust and do what we had to do.

10 Q. All right. So, in that informal discussion a decision has
11 been made by the master to utilize the old Bahamas route. Would
12 know that before he sailed?

13 A. Possibly and possibly not.

14 Q. We heard testimony from Captain Villacampa that he would put
15 the route he was taking in the comments section of his departure
16 messages. Do you see those messages or did you see them at the
17 time?

18 A. Yes, I do read the departure messages. I usually receive
19 those several hours after the ship departs. So, actually knowing
20 the route they were taking immediately upon departure, I would not
21 know. But I would find out afterwards, though, for sure.

22 Q. So, now the ship is at sea. During that same time frame,
23 what would you expect the frequency of communications to shore
24 side would be if the storm developed into a storm near -- that was
25 coming towards the track line. Would you expect a -- only a noon

1 report, or would you expect during that time more communication?

2 A. I would definitely expect a noon report, and most likely we
3 would be informed of any changes in a route or projections of ETA
4 that the captain projected. It would probably be more frequent
5 than a noon report, but it would not be on an hourly basis or, you
6 know, every two hour basis. It would be sporadic, as the captain
7 thought that he needed to let -- keep us updated.

8 Q. For a hurricane like Sandy, were there conference calls
9 between shore and the ship to talk about what the ship was going
10 to do to avoid the storm, or prepare for the storm?

11 A. None that I was a party to.

12 Q. At any point did -- going back to that same time frame,
13 2011/2012, do you recall a ship communicating with you with what
14 specific precautions they had taken for the storm?

15 A. I don't recall.

16 Q. Were there any -- you have the operations manuals for vessels
17 and the emergency manuals for vessels. Was there any sort of
18 heavy weather plan or hurricane plan that you followed in that
19 time frame?

20 A. Relating to the voyage itself or relating to just the cargo
21 securing?

22 Q. Related to any operation of the vessel.

23 A. My role would have been cargo securing. As far as operation
24 of the vessel, I am not involved in that.

25 Q. Would there be a heavy weather plan for securing that

1 detailed the procedures for lashing, securing containers, Ro-Ro,
2 nonstandard cargo specifically related to heavy weather, that you
3 could follow? A checklist.

4 A. Yes. There was.

5 Q. And what was that?

6 A. Typically, for the -- well, not typically, but for the Lo-Lo
7 -- or, Ro-Ro lashing, containers that were lashed with the Roloc
8 box on a button would receive two chains in the aft end and two
9 chains forward. For containers that were -- or, trailers that
10 were lashed with the Roloc button -- Roloc box off button, an
11 additional two chains would be applied to the Roloc boxes itself.
12 That is -- that's for every container and every trailer on the
13 ship.

14 For other cargo, typically the cars would not receive any
15 additional lashing. Any other cargo would be inspected by the
16 chief mate and if they felt that additional lashing was required
17 that would be complied with.

18 Q. Well, what I'm talking about, is there a checklist, a
19 document or procedure specific to when the vessel was to
20 anticipate -- like, when the master or the chief mate said we want
21 additional lashing for heavy weather, is there a document that you
22 would follow to ensure those lashings were applied?

23 A. The only document we would have would be the heavy weather
24 lashing guide that I believe has been available to the Court.

25 Q. During a voyage where heavy weather was expected to be

1 encountered, was there someone that was assigned a position such
2 as duty officer that would be specifically responsible for
3 communicating with the ship and being on duty so that they can
4 respond immediately to any request for assistance for the ship?

5 A. If there was, that would be, at the TOTE Services or the
6 Interocean level, Harry Rogers or John Lawrence, the designated
7 person ashore -- that's my understanding.

8 Q. During that same time frame, did you ever send an e-mail to
9 the ship -- either ship -- with any weather-related information?

10 A. I may have brought up the weather in an email, but my -- I
11 never -- it was never my duty or responsibility to keep them
12 apprised of the weather conditions at sea. They had far better
13 weather programs to look at than I did.

14 Q. In that same time frame, did you ever communicate -- were you
15 the primary contact for the ship while it was at sea?

16 A. I was not the designated person ashore for non-engine related
17 issues and -- I was one of the prime contacts, but I was not the
18 only prime contact. It depended on what the situation would be.
19 I was definitely informed of a lot of things, just so we could
20 plan cargo operations at either port appropriately, based on when
21 the vessel would arrive. There were a large number of things that
22 I was not informed of, I'm sure.

23 Q. Did you ever communicate to the -- during the same time
24 frame, to either ship any type of instructions for adjusting the
25 speed of the vessel to arrive at a certain time for cargo

1 operations?

2 A. I would not tell them what speed to arrive at. Based on what
3 we knew was going on at the other terminals, I would quite often
4 send emails to the vessel to -- either upon departing San Juan or
5 departing Jacksonville, although a lot of times Jacksonville was
6 verbally -- to plan to arrive at the pilot station at a certain
7 time. The speed that the captain would take would be up to him.
8 Sometimes they would like to speed up and arrive at the pilot
9 station early and wait there, or circle around. And sometimes
10 they may decide just to slow the route. That would be based on
11 what the captain thought was best for the vessel and the safety of
12 his crew.

13 Q. Turning to the time frame leading up to the accident, which
14 would include 2011 and '12, did you ever communicate to the *El*
15 *Faro* instructions -- or the *El Yunque* -- instructions relating to
16 fuel burn or concerns about fuel burn in relation to a voyage?

17 A. I believe there were discussions ongoing that a slow or
18 steady speed would reduce fuel consumption, and that was certainly
19 a consideration to take into account. But there was actually no
20 directive that I have been aware of ordering a captain to go at a
21 certain speed for fuel consumption.

22 Q. Not speaking of a directive, but have you ever communicated
23 to the *El Faro* or the *El Yunque* any information related to
24 steaming and fuel burn? I'm talking about you, not a directive.

25 A. We -- it may have come up, but I don't recall. Q. Do you

1 know if you've ever communicated or the marine group has ever
2 communicated any instructions to either ship related to suggesting
3 storm avoidance measures?

4 A. Not that I can recall.

5 Q. Shifting back to the time frame leading up to the accident,
6 the *El Yunque* was coming out of San Juan in the morning of
7 September 29th. Did you receive -- there was a new captain on
8 there with the company. Did you receive any non-routine
9 communications with him? By that, I mean there was a departure
10 message, there was a noon report, and there was an arrival report.
11 Other than those reports, did you receive any communication with
12 that captain regarding storm avoidance measures or his detailed
13 plans on how he was going to handle that storm?

14 A. With the *El Yunque* coming north, I don't recall. Again, I
15 was on vacation that week. So if there was any communication it
16 may have been -- gone through other parties. They knew I was not
17 in the office, and I was out of state.

18 Q. When you got back in the office, did you review your emails?

19 A. I did, and I don't recall anything specific about the *El*
20 *Yunque's* northbound planning. I could actually -- if I had it
21 available, I could go back and review. But I don't recall at this
22 time.

23 Q. So, for your duties in particular, in August there was
24 Tropical Storm Erika and Danny, which affected tug and barge
25 operations. The *El Faro* took the alternate route going down to

1 San Juan. Was there any impact to your operations in the month of
2 September related to Tropical Storm Danny, Erika, tug and barge --
3 one of the tugs had a propulsion issue, a line issue. Was there
4 any impact to your typical operations by those events?

5 A. I don't recall specifics, but the only impact to our
6 operations was perhaps a change in arrival and departure times,
7 and, you know, the length of the sailing between the ports. We
8 would just adjust operations based on what the captains of either
9 the tugs or the ships told us when they would arrive. We would
10 just -- we have to respect that. We can't -- there's a lot of
11 things we can't control.

12 Q. Have you ever been in a meeting -- a corporate meeting of any
13 type -- where they talked about the cost of delays for port
14 arrival, in terms of how much it costs, for example, if a ship is
15 delayed more than six hours?

16 A. No formal meeting, no, sir.

17 Q. So, turning our attention to a different subject, do you meet
18 with the captain and chief mate on every port call?

19 A. Always with the chief mate. Maybe not always with the
20 captain. Normally on the Ponce class, I would meet with the
21 captain because their offices are on the same deck. And it's just
22 very easy to walk from one to the other.

23 Q. This is a critical question, and I'd like you to take a
24 moment to think about it. After Captain Davidson took the
25 alternate route, were you aware of any discussions with Captain

1 Davidson of any kind related to his decision to take the alternate
2 route? By that I mean that you overheard, that you witnessed or
3 that you heard about.

4 MR. KING: Mr. Fawcett, can you clarify exactly the time
5 frame -- exact voyage you're talking about?

6 MR. FAWCETT: Thank you, sir.

7 BY MR. FAWCETT:

8 Q. In August, the *El Faro* came down the Old Bahama Channel,
9 which added some time to the arrival in San Juan. Also, just for
10 clarity, the port had some port conditions related to when they
11 were going to resume operations and so forth. But my question is
12 were you aware of any conversations between anyone at TOTE and
13 Captain Davidson related to his decision to take that route?

14 A. I am unaware of any conversations relating to his decision to
15 make that route. If he made that decision, he would have
16 basically just informed me, as well as other people, that he was
17 taking the Old Bahama Channel and would give us a new ETA. That
18 would -- at my level, I would just know that was his decision.

19 Q. Okay. But after he took that decision and he arrived back in
20 Jacksonville, are you aware of anyone from TOTE that had a
21 conversation with him about his decision to use that rote?

22 A. No, I'm not.

23 Q. I'd like to turn your attention to the port mates. Is it
24 your understanding that the last port mate who came aboard the *El*
25 *Faro* in Jacksonville occurred on the 1st of September, and that

1 would be Mr. Siebert?

2 A. I don't recall exactly every operation whether there was a
3 port mate or there was not. If that's the last record there is,
4 I'm sure that is correct.

5 Q. Did anyone on the *El Faro* or the *El Yunque* communicate with
6 you about the importance of port mates to vessel safety
7 operations?

8 A. I do know that they preferred to have port mates most calls,
9 if they were available. I know the STCW is very important to
10 them. They -- the official request for port mates would not go
11 through me. That would go between the captain and the crewing
12 department. Sometimes I would be informed, just in conversations,
13 that perhaps they didn't -- they did not want a port mate because
14 maybe the chief mate -- or, the other mates were changing out, and
15 they had a fresh mate coming on. With -- but the official request
16 for -- I'd know that they liked to have them. That it was much
17 preferred, all things being equal.

18 Q. Turning your attention, please, to Coast Guard Exhibit 302.
19 It's a packet of INMARSAT emails, page 5.

20 A. Yes, sir.

21 Q. This was September 12th. "Chief Mate Bryan, PORTUS would not
22 be able to provide a mate. At best, and not lately, they have a
23 capability to provide a reefer tech. I have looked into the
24 possibility of getting a mate's license a few years ago, but at my
25 age, not a practical thing." And then it ends with "Don." But

1 going down the page a little bit, on September 12th, 2015, at 4:23
2 p.m. *El Faro* wrote:

3 "Good afternoon sir, as you can see below the vessel and the
4 company have been searching for a port mate who can assist
5 the mates loading the vessel in Jacksonville. It is safe to
6 say that having a port mate during loading of the vessel on
7 Tuesday is essential. At this time, TOTE is having
8 difficulties locating a port mate, and I am hoping that you
9 might be able to locate a person from PORTUS who can come on
10 and assist the vessel for approximately eight hours on
11 Tuesday, from 11 a.m. to 1900. Thank you very much for your
12 time and considerations. Very respectfully, Brian C. Vagts,
13 Chief Mate."

14 So, if I told you that I had searched my -- the records
15 provided by TOTE and there were no port mates after the 1st of
16 September 2015, up to and including the accident voyage, would you
17 assume that I was correct?

18 A. If you had all the records, yes, sir, I would.

19 Q. Did you ever elevate the lack of port mates to the
20 corporation, so that they could assist you in securing the port
21 mates that Chief Mate Vagts found essential?

22 A. The only conversation I would have had with that would be to
23 Melissa Clark, that I can recall. I may have mentioned it to
24 other people. The crewing came through TOTE Services, when
25 Melissa Clark was the crewing manager at the time. That's where I

1 would go with that.

2 Q. So, if we could turn our attention to Coast Guard Exhibit
3 178, pages 73 to 75. And Commander Yemma will pull that up for
4 you. This is a series of emails between Captain Davidson, Chief
5 Mate Vagts and yourself, and a host of others, including copying
6 some of them to Mr. Rodriguez. And the subject of all of this is
7 related to excessive list. So, on Friday -- you see it, sir?

8 A. Yes. Yes, sir.

9 Q. On Friday, September 18th, 2015, at 11:54 p.m., Captain
10 Davidson says, "Good morning, allow me to comment before this gets
11 blown out of proportion. The situation that occurred earlier
12 today is inherent to the operation and is not intended to be an
13 attack on anyone's professionalism, but rather to identify the
14 root cause(s) which in turn will reduce this frequency."

15 Then I'll skip down to the next paragraph. The captain says
16 "I immediately stabilized the situation and requested that efforts
17 be made to correct the list. All my requests were honored, and
18 the list returned to within an acceptable degree."

19 Moving down to September 18th -- do you have it there,
20 Commander Yemma?

21 MR. REID: Sir, can I ask that the whole email be read, so
22 that there's context from the beginning?

23 MR. FAWCETT: Yes.

24 BY MR. FAWCETT:

25 Q. I will say that there's a paragraph after the first paragraph

1 that says:

2 It has been my observation/experience that we
3 are most susceptible to this scenario during the
4 early hours after commencing cargo discharge
5 operations. All parties are dialed in and
6 concentrating on the job at hand. The list comes
7 on quickly, especially when the Ro-Ro Lo-Lo are
8 discharged simultaneously from the same side of the
9 vessel. Today, I immediately stabilized the
10 situation and requested that efforts be made to
11 correct the list. All my requests were honored,
12 and the list returned to within an acceptable
13 degree. Two root causes have been identified.

14 1. The cargo discharge of Lo-Lo needs to be
15 staggered so that each crane is discharging
16 containers from opposite sides of the vessel.

17 A. The below deck Ro-Ro plays little into
18 this equation. It is discharged in the order at
19 which it has been previously been loaded.

20 2. All communications should be transmitted
21 by UHF handy talkies and not by portable
22 communication devices. A. I know the handy
23 talkies are intrinsically safe and cell phones are
24 not...

25 Should you have any questions or concerns,

1 kindly contact the vessel.

2 Best regards, Michael Davidson, Master.

3 Turning your attention to the next email, from Don Matthews,
4 Donald Matthews, sent Friday, September 18, 2015, to Ivan Burgos,
5 Paula Izquierdo, and copied to Ron Rodriguez. Subject forward:
6 Excessive List.

7 Good morning Ivan/Paula, I'm sure you're aware of
8 this incident this morning, but just in case you're
9 not, please note Chief Mate Brian's email below.

10 I'm sure you'll be able to coordinate with
11 Intership to ensure that they plan discharge
12 sequences to order prevent future incidents of a
13 similar nature. Best regards, Don Matthews.

14 So yes, the sequence of the email was not in the sequence
15 timestamp. But I -- the point I'm making is that this was an
16 incident that occurred in San Juan in September of 2015. Would
17 this be considered by TOTE's company policy a near miss?

18 A. Under the present circumstances, yes. At that time, as the
19 -- and that the near miss program has been significantly increased
20 in emphasis on it over the last year. At this time that -- I
21 can't say yes or no.

22 Q. There's a final email from *El Faro*, that it was sent to you
23 and it was September 18th, 2015. And what I would like to do is
24 put it into the context of the chief mate. The subject is -- and
25 I would say that this email started the chain of other related

1 emails. Subject is excessive list.

2 "Good morning again, this morning approximately an hour
3 and a half, 0730 local time, after the start of cargo
4 the vessel reached a maximum list of 3.5 degrees. The
5 captain and I attempted to call Sea Star personnel via
6 radio, but no one answered our calls. The captain made
7 the decision to stop cargo, and announced this intention
8 over the radio. For context, while the captain was
9 voicing this instruction I was able to get a hold of" --
10 someone, I won't use his name -- "on my cell phone and
11 instructed him to use the gantry crane to only discharge
12 the port side containers, and that if the crane drivers
13 and the swinging cranes working the bow and behind the
14 house were unable to discharge from the port side that I
15 wanted those cranes to stop until the list was back to
16 acceptable limits. Over the past few weeks, the captain
17 and I have routinely needed to revise the San Juan ops
18 team" -- that's an abbreviation for San Juan -- "of the
19 vessel's list and insist that the steps be taken to
20 remedy the situation. An excessive list creates many
21 large risks for the vessel and her equipment. I have
22 spoken with" -- an individual -- "about the need for the
23 operators to systematically control the discharge" --
24 and he says "the vessel" -- "and to coordinate the
25 offloading and loading of the vessel so three cranes are

1 not working on one side of the vessel at one time. I
2 hope that in voicing these concerns to" -- someone's
3 name -- "that during future port calls in San Juan that
4 the vessel will not be placed in a compromised position.

5 I just wanted to make you aware of the events and steps
6 taken by the captain and I to protect the vessel. Very
7 respectfully, Brian C. Vagts, Chief Mate, *El Faro*."

8 So, this event happened. You notified San Juan. The captain
9 made his assessment. He actually conducted a small investigation
10 to identify in his own mind root causes that caused it. And you
11 communicated to San Juan and you copied some people in
12 Jacksonville about the event that occurred. Is that correct?

13 A. Yes, sir. Yes, sir.

14 Q. I'm going to show you a photograph --

15 MR. KING: Sorry, Mr. Fawcett. Could you also read the
16 intervening email that was in response to Mr. Matthews? It's
17 timestamped on page 74, 6:15 p.m.

18 MR. FAWCETT: It's to Don Matthews, Ivan Burgos, Jose Negrón,
19 Ronald Rodríguez, Jim Wagstaff, Captain *El Faro*, Chief Mate *El*
20 *Faro*. It's says "Re excessive list. Hello Don, Thanks for the
21 information! I am adding Jose Negrón to the distribution so he
22 can be advised how we will prevent this from happening in the
23 future." What's that? Oh, I'm sorry. "So he can advise how we
24 will prevent this from happening in the future. Thanks Paula."

25 Is that good for you, sir?

1 MR. KING: Thank you.

2 BY MR. FAWCETT:

3 Q. So, I'd like to turn your attention to page 353 -- or,
4 Exhibit 353, page 21, which is an image contained in the MSC
5 preliminary stability report and Commander Yemma is going to put
6 it up on the screen. And if you'll take a look at it, sir. Do
7 you have that in front of you, Mr. Matthews?

8 A. Yes, sir.

9 Q. This image is an image of the *El Faro*, and you'll note on the
10 image the water line of the vessel. And along the ship's hull,
11 there are ventilation blisters and the main deck overhang. Do you
12 see that there, sir?

13 A. Yes, sir.

14 MR. FAWCETT: I'll wait a minute until it comes up on the
15 screen.

16 MR. KING: We have it.

17 MR. FAWCETT: I'm waiting for it to come up.

18 BY MR. FAWCETT:

19 Q. Do you see those -- how the blisters, the overhang and the
20 water line all form a relationship? Notice the height of the
21 blisters above the water line -- how the blisters extend off the
22 side of the hull of the *El Faro*.

23 A. Yes, sir. I see those.

24 Q. So, in Jacksonville -- you can take that down. In
25 Jacksonville, as the *El Faro* sits at her berth, is there -- the

1 nautical term is a camel. Is there a camel, a barge, a float or
2 fendering that holds the *El Faro* off the dock?

3 A. In Jacksonville, yes, sir.

4 Q. Can you estimate the width of that device, and what -- and
5 tell me what the purpose of it is?

6 A. The camel projects out about 2 feet, the fender another 12 to
7 15 feet, I believe. And that is simply to keep the ship's
8 overhang from overhanging the docks, so that the cranes can pass
9 by without hitting the ship.

10 Q. So, if you'll turn your attention to Coast Guard exhibit 395,
11 page 4. And do you have that on your screen, sir?

12 A. Yes, sir.

13 Q. These are the recently posted exhibit, which is Captain
14 Davidson's standing orders. Coast Guard Exhibit 395, page 4. The
15 watch officer at the top says -- and these are for the *El Faro*.
16 "The watch officer shall notify me immediately under any of the
17 following conditions."

18 If you look down the list, there's some bulleted points. And
19 you'll come to one that says if a list of 2 degrees is encountered
20 at the completion or during cargo which cannot be corrected with
21 ballasting alone."

22 Knowing the *El Faro's* operation, as they're loading are they
23 shipping ballast back and forth to correct the static loaded list,
24 and -- the dynamic list? In other words, as the gantries are
25 putting the boxes on and the vehicles are driving ashore, do you

1 know if the chief mate is shifting ballast back and forth to
2 correct the list?

3 A. Not on the *El Faro*, no, sir.

4 Q. Meaning, they don't do it to your knowledge or you don't know
5 that?

6 A. They would not do that automatically. It did not have an
7 automatic heeling system. On the *El Faro*, they kept the heeling
8 tanks, or what we call the ramp tanks, approximately 50 percent
9 full on fresh water. It was quite the exercise -- I wouldn't say
10 quite the exercise. I'm not that familiar with what it took for
11 them to shift water from one side to the other. During cargo
12 operations, we would typically do our best to keep the ship
13 relatively level with cargo, not with ballast water.

14 Q. So, in the September 18th San Juan incident the captain
15 stopped the cargo. Is that correct?

16 A. Yes, sir.

17 Q. Now, if you'll turn your attention to Coast Guard Exhibit 21.
18 There's a series of emails. There's a -- in one email, there's
19 an email with some pictures. And this is -- do you have that,
20 sir?

21 A. Yes, sir, I do now.

22 Q. It's from Ronald Rodriguez, sent Thursday, October 1st, 2015,
23 at 4:11 p.m. It was copied to Mr. Wagstaff and Mr. Fisker-
24 Anderson. Subject forward: need cargo portside immediately. And
25 then there was two attachments for images. And he says, "Guys,

1 only an observation. The *El Faro* had this list on Tuesday at 1509
2 hours. This is the first time that I see a list so much to the
3 starboard side." And then after that, on September 29th, Mr.
4 Rodriguez sent an email on Tuesday, September 29th, at 3:09 p.m.
5 to Mr. George Newkirk. And it says subject need cargo to the
6 portside immediately.

7 MR. REID: Sir, if I could, I think you have that backwards.
8 He sent the September 29th email first.

9 MR. FAWCETT: Yes. Thank you for the clarification.

10 BY MR. FAWCETT:

11 Q. So, Mr. -- just to clarify the record, Mr. Rodriguez sent the
12 -- Mr. Newkirk -- and what was Mr. Newkirk's position?

13 A. He was the PORTUS stevedore supervisor.

14 Q. And then on October 1st he sent an email that he had
15 witnessed this situation -- if you'll turn to image 2, which it --
16 we asked in previous testimony -- that's the image that Mr.
17 Rodriguez sent to Mr. Newkirk. And we asked Mr. Rodriguez what
18 his concerns were. And he said the ramp.

19 So, if you'll go to the next slide, please, on that same
20 exhibit, you'll see rainwater on the dock. I'm assuming it's
21 rainwater, from the dark clouds over the ship. The Polish
22 seafarer said that it was raining on the day of departure, in the
23 morning at approximately 1000. You see the ship listing to her
24 starboard side. We've calculated that when the photograph was
25 taken it may have been as much as 4.3 degrees.

1 So, what I'm asking is at any time you have a conversation
2 with Mr. Rodriguez about this incident right here?

3 A. In general, about this specific incident, we had one once I
4 returned from vacation and the proceedings had started.

5 Q. And what did you talk about?

6 A. The list wasn't so -- his concern about the list wasn't so
7 much in relation to the vessel as it was to the ramp. Depending
8 on the tide -- if it's a low tide, you have that much list and
9 where the wheels are and the ramp, they get -- if they start to
10 actually touch the dock we can damage the ramp. It would also
11 bring the ramp out of the blocks on the ship, and create quite the
12 -- we had -- definitely had to stop operations until the situation
13 was rectified. At least the Ro-Ro operations would have to stop,
14 because it would be dangerous to go on and off the ramp. That was
15 the concern. It wasn't the list of the ship itself. It was the
16 list of the ship in relation to the condition of the ramp.

17 Q. In those conversations, did Mr. Rodriguez ever say that
18 anyone on the ship stopped cargo?

19 A. I don't recall. I don't believe so.

20 Q. Did Mr. Rodriguez say that terminal personnel walked the dock
21 to see if there was any damage to the dock?

22 A. Not that I recall.

23 Q. Did he say anything about if vessel crew came off the ship
24 and visually inspected the hull of the ship? And the reason I ask
25 that question, in the previous slide from the stability report the

1 blisters extend from the side of the ship and a deck overhangs the
2 blisters. So, did Mr. Rodriguez have anyone from the ship walk
3 the ship and observe the condition of the ship?

4 A. No, I don't recall anything like that.

5 Q. Other than the photographs, is there any paperwork whatsoever
6 about the loading of the ship that day? Now, the reason I ask
7 that is you have a new terminal operating system. Can you first
8 talk about how that works in relation to cargo going aboard the
9 ship?

10 A. With the terminal operating system, that would -- stevedore
11 planners use that to sequence the order when the containers would
12 go to a crane, or how they would be loaded per crane. It does not
13 calculate the condition of the ship in any way whatsoever. Well,
14 while the ship is actually being loaded. It keeps -- merely keeps
15 the record of what has been planned to go aboard the vessel. And
16 then once the checker has confirmed that that container went into
17 the correct spot, or if it's in a different spot updates the
18 position of that container in the system. It will show what has
19 actually been loaded aboard the vessel.

20 In this case, strictly just the lift-on/lift-off cargo. It
21 will not do that for the roll-on/roll-off cargo. So, it's just a
22 record of what's on the ground, what's been planned to go aboard
23 the vessel and what has actually been finalized as stowed aboard
24 the vessel.

25 Q. So, you mentioned the checker. Is there a checker that

1 documents the loading of Ro-Ro cargo, of when it crosses the ramp
2 and boards the vessel?

3 A. Not for the exact time it comes aboard the vessel. No.

4 CAPT NEUBAUER: Mr. Fawcett, I'd like to ask a follow-up
5 question on this line, before you continue.

6 BY CAPT NEUBAUER:

7 Q. Good morning, Mr. Matthews. Sir, I think you mentioned that
8 this -- there is now a near miss reporting mechanism in place for
9 a heel during loading. Is that correct, sir?

10 A. There is a near miss program in place for any and all
11 potential dangerous safety concerns.

12 Q. Is there a certain angle of heel that would trigger a near
13 miss report for this type of situation?

14 A. Years ago, it would be 5 degrees or more.

15 Q. Is that the current level -- angle, 5 degrees or more?

16 A. Well, there's no, there's no specific requirement in the near
17 miss program for specific conditions, other than it could say
18 presents a safety hazard. Years ago, when questions came up about
19 the proper listing of the vessel -- of the ship at sea and at
20 port, I don't remember the exact time or the exact circumstances
21 when it was requested -- is that the ship should sail no more with
22 a 2-degree list port or starboard, and that while in port have no
23 more than a 5 degree list during cargo operations.

24 Q. So, under current operations a near miss would be triggered
25 if the angle exceeded 5 degrees in port. Is that correct?

1 A. It should be.

2 Q. Who from the shore side is ultimately responsible for
3 preventing the list during cargo operations?

4 A. Ultimately, it would be the -- in my reasoning, would the
5 PORTUS stevedores' supervisors to ensure that the crane sequence
6 and the cargo is going aboard, and to keep -- and have their
7 people keep an eye on the ship.

8 Ronald Rodriguez and I both met with the stevedores'
9 supervisor, as well as the stevedores, and at any time they see
10 what they may consider a significant list to stop operations until
11 we can -- and by significant list, it doesn't even have to be 5
12 degrees. If it just doesn't look level with the ships -- with the
13 current Marlin class ships we have, it has an automatic heeling
14 system and the ships are tender, and a list would be brought on
15 the ships very quickly if all the water shifted to one side or the
16 other during cargo operations.

17 So, it's really everybody's responsibility to keep an eye out
18 of what's going on. If you see something unsafe, they have all
19 been instructed to stop operations immediately, until the
20 situation can be reviewed and revised and that the plan to resolve
21 it has been met.

22 Q. Would you agree that one of the duties in your position, or
23 Mr. Rodriguez's, is to prevent this from occurring?

24 A. Yes, sir.

25 CAPT NEUBAUER: Mr. Fawcett.

1 BY MR. FAWCETT:

2 Q. Sir, is there a -- are there anemometers on the gantry
3 cranes?

4 A. I'm not familiar with all the equipment aboard the gantry
5 cranes. I don't know, sir.

6 Q. Is there a wind speed at -- in the -- is there an anemometer
7 in your terminal office that shows wind speed?

8 A. No, sir.

9 Q. Is there a wind speed where gantry crane Lo-Lo operations
10 stop?

11 A. Yes, sir.

12 Q. What is that wind speed?

13 A. I would have to speculate on that, but the crane techs --
14 there's a crane tech with every crane. And once they determine
15 that it's unsafe to -- and I don't know how they get the
16 information. I believe it's 35 miles an hour. But that -- again,
17 that's speculation. The crane techs would shut the crane down.

18 Q. So, after talking with Mr. Rodriguez, do you know if he
19 was -- if he left the terminal on the accident day?

20 A. I have no idea.

21 CAPT NEUBAUER: Mr. Fawcett, I need you to clarify that
22 question to the loading date, ahead of the accident.

23 MR. FAWCETT: Yes. Thank you, sir.

24 BY MR. FAWCETT:

25 Q. I'm speaking to September 29th, 2015.

1 A. I have no idea if he left during the operations. I'm sure he
2 left within an hour after the ship was done.

3 Q. Is there a TOTE policy that says that whoever is supervising
4 on behalf of TOTE must remain in the terminal for the entire
5 loading sequence of the vessel?

6 A. No, sir.

7 MR. REID: Sir, just to clarify, Mr. Matthews is not a TOTE
8 Services employee. Just for the record.

9 MR. FAWCETT: Okay. So -- thank you, sir.

10 BY MR. FAWCETT:

11 Q. Does TOTE Maritime Puerto Rico have a policy in place as to
12 the responsibilities of the terminal manager or the person
13 overseeing cargo loading at the time of the accident?

14 A. No written policy. No, sir.

15 Q. In a conversation after this accident day where the ship got
16 the list, is it conceivable that the list exceeded our estimation
17 of 4.3 degrees? In other words, it took about ten minutes to
18 stabilize the cargo situation, and we see potential weather in the
19 area. Is it potential that the list exceeded 4.3 degrees?

20 A. I have no way of knowing that, sir.

21 Q. Did Mr. Rodriguez mention to you, or did you ask him, if they
22 reassessed the integrity of the cargo lashings based on the list
23 of 4.3 degrees?

24 A. No, sir.

25 Q. If I could your attention to the VDR transcript, which is

1 266, page 259. We'll bring it up on the screen, and the timestamp
2 is 212828. Do you see that, sir? The line starts with AB3. Do
3 you have that, Mr. Matthews?

4 A. Yes, sir.

5 Q. This is a conversation between the AB and the third mate on
6 the evening before the accident day.

7 "Speaking of cargo lashings -- well, you don't have any
8 spares down there. I didn't -- I found two little screws
9 (stripped)."

10 Third mate says, "Those straps . . ."

11 AB, "Stripped out -- you know the binders in them."

12 Third mate says, "Oh, yeah, we're coming up short."

13 AB3 says, "We're looking around and I'm like -- what the" --
14 expletive -- "man? Are they using(/used on) every damn thing on
15 here? Had to work the whole damn length of the cargo hold to find
16 a spare."

17 Third mate says, "Yeah, sometimes they move around and there
18 is -- you know, they -- I -- I -- don't know why or how that
19 happens. Plus, they get" -- expletive -- "up you know. And then
20 those get -- they throw them in the corner and -- we come up short
21 a few times. And a -- we forget about it. It's like why the" --
22 expletive -- "am I the one addressing this" -- expletive.

23 Based on the comments -- pardon me -- of the crew, did the *El*
24 *Faro* on the day it sailed have a full inventory of serviceable
25 lashings and enough spares to accommodate the heavy weather that

1 they were bound down into?

2 A. Based on the required amounts of lashing gear, the *El Faro*
3 had in excessive of what was required for Ro-Ro, based on the last
4 inventory, I think, we reviewed. The cargo security manual
5 required 420 chains, 420 barrel binders. There were approximately
6 680 of each on board. Additionally, I had more ashore if they had
7 been requested. As to -- so, how -- what the AB is meaning by
8 spares, we had spares aboard.

9 Q. What was the month that the last full lashing inventory was
10 completed?

11 A. I believe the last record that was sent, that I recorded, was
12 spring of 2015. I don't recall the exact month.

13 Q. Turning your attention to U.S. Coast Guard Exhibit 40, page
14 11 -- Commander Yemma will bring it up -- part 5.3.1. Do you see
15 it there? It says inspection requirements for portable
16 container --

17 A. It's not on here yet.

18 Q. Stand by while we correct that on the monitor for you, sir.
19 Can you give -- I'll withdraw that question, and ask it in another
20 fashion, sir. Okay. That question was withdrawn.

21 Mr. Matthews, what is the required frequency for TOTE for
22 lashing inventories to be completed?

23 A. Our policy is every 2 months.

24 Q. And why would you complete a lashing inventory in the spring
25 of 2015? The reason I ask the question is the reality for the

1 crew -- those two crewpeople -- was that conversation. So, my
2 question is, if your frequency is every two months, why would you
3 conduct an inventory in the spring of 2015?

4 A. The chief mate actually conducted the inventory. That was
5 not shore side personnel. If he sent it to me, I may have
6 inadvertently misplaced the inventory. That could be my fault. I
7 recently went back this week and found the last three inventories
8 for the *El Faro*. They were approximately two months apart, and in
9 each case there were approximately 680 chains and barrel binders
10 on all three of those inventories aboard the *El Faro*.

11 Q. And just for the record, as clarity, was the latest inventory
12 sometime in the spring of 2015?

13 A. Spring or early summer. I would have to review the date on
14 that one.

15 Q. Okay. If we don't have that, could we request that? Those
16 inventories, please.

17 A. Yes, sir. I can provide them after the --

18 MR. REID: Sir, can we maybe take a break? And maybe we can
19 clear this up a moment?

20 CAPT NEUBAUER: Agreed. The hearing will recess and
21 reconvene at 10:20.

22 (Off the record at 10:10 a.m.)

23 (On the record at 10:27 a.m.)

24 CAPT NEUBAUER: The hearing is now back in session.

25 Mr. Matthews, during the break we received two new lashing

1 gear inventories -- sheets from you, one dated February 19th,
2 2015, and another dated December 17th, 2014. A lashing gear
3 inventory dated April 24th, 2015, was already in the -- was
4 already in our record as Exhibit 19. So I'm just going to add
5 those two new sheets to that exhibit, and update it. So, Exhibit
6 19 will include three lashing gear inventories.

7 Getting back to the TOTE question, that -- now, as I see it,
8 the last inventory was conducted on April 24th, 2015. That's the
9 last one we have a record for at this time. Would you agree, sir?

10 MR. MATTHEWS: Yes, sir.

11 CAPT NEUBAUER: And it does look like prior to that time that
12 they were being conducted on the schedule of about every two
13 months per TOTE policy. Do you know why that did not occur on
14 that frequency?

15 MR. MATTHEWS: I may have misplaced the records that the
16 chief mate provided me. As far as I know, the inventories were
17 being conducted.

18 CAPT NEUBAUER: Does he provide those to you by email or hard
19 copy?

20 MR. MATTHEWS: Either way.

21 CAPT NEUBAUER: Whose responsibility is it to keep those
22 records updated?

23 MR. MATTHEWS: The chief mate conducts the inventories,
24 provides them to me. And it would be my responsibility to
25 maintain the records shore side.

1 CAPT NEUBAUER: Is it possible that there were no lashing
2 gear inventories conducted after April 24th, 2015, for *El Faro*?

3 MR. MATTHEWS: Possible. But I would think not probable.

4 MR. REID: Sir, we have the turnover notes from Chief Mate
5 Torres to -- I'm sorry, Chief Mate Thompson to Chief Mate Torres
6 in June 2015. I'm not sure if that's an exhibit. I believe those
7 have been produced. But there is a notation in there from Chief
8 Mate Thompson that the lashing inventory was sent. I don't know
9 what that means, but it appears that the lashing inventory for at
10 least June was done due to -- as documented in that -- those
11 handover notes, although that inventory is not attached to it.

12 CAPT NEUBAUER: Commander Denning?

13 CDR DENNING: Just for the record, that -- we do have those
14 turnover notes as Exhibit 130. At a quick glance on the break,
15 the only lashing gear inventory I see in that exhibit is the one
16 dated April 24th. In the turnover notes -- the more recent
17 turnover notes, I don't see that mentioned. So if you can point
18 us to a page number that might indicate that it would be
19 appreciated.

20 MR. REID: It's on page 7 of the document, sir.

21 CAPT NEUBAUER: And which exhibit number was that?

22 CDR DENNING: Exhibit No. 130, on page 7 I see inventory
23 about master key lists, but I don't see anything about lashing
24 gear inventory on that page.

25 MR. REID: In the section on cargo gear, it says -- it talks

1 about cargo gear inspection being completed. It says the lashing
2 inventory was completed and sent.

3 CDR DENNING: You're looking at page 7, sir? Of Exhibit 130?
4 Because I don't see that on that page. How many pages do you have
5 in that document, do you see?

6 MR. REID: Eleven pages. These are chief mate turnover notes
7 from 19 June 2015.

8 CDR DENNING: Again, we're talking about Exhibit 130?
9 Because I see 99 pages in that document.

10 MR. REID: I'm not looking at the exhibit. I'm looking at
11 page 7 of those turnover notes, under the heading cargo gear.

12 CAPT NEUBAUER: I think we can -- we'll continue with the
13 data and correlate the two issues. But, at this time I'd like to
14 continue on with the questioning.

15 MR. KUCHARSKI: Yes, sir.

16 CAPT NEUBAUER: Mr. Kucharski.

17 MR. KUCHARSKI: Thank you, Captain.

18 BY MR. KUCHARSKI:

19 Q. Good morning, Mr. Matthews.

20 A. Good morning.

21 Q. Good morning, counselor. I'll keep along -- this line of
22 questions, I think, have another flow. But let me stay with the
23 cargo and stability related questions, so we don't, sort of, jump
24 back and forth. Was there a standard or non-heavy weather type
25 lashing profile for the Ro-Ro and containers? You mentioned heavy

1 weather. But this -- was there a standard?

2 A. The standard -- well, actually, for Ro-Ro would have been if
3 a container or trailer was on a Roloc box on a button and two
4 chains in the aft, I believe. And I may have misspoke earlier.
5 But in heavy weather lashing, there would be four chains in the
6 front in addition to the two chains in the aft. I believe
7 standard would have been just two chains in the aft. If the Roloc
8 box was not on a button, there would be two chains aft and two
9 chains forward on the container or trailer lashing it to the deck.

10 Q. And just to clarify that statement, so, if it was off button
11 standard would be four chains, two aft and two on the forward end?

12 A. Correct.

13 Q. You mentioned a heavy weather lashing guide. Is this a TOTE
14 Maritime Puerto Rico document or TOTE Services -- TSI document, or
15 ship document? Do you know?

16 A. That is a TOTE Maritime document.

17 Q. I've looked in the records, but I'd like to request that
18 document that -- is it part of another document?

19 MR. KING: Mr. Kucharski, yes, it's the EL Class lashing
20 document that we've seen discussed.

21 MR. KUCHARSKI: Okay. Understood. It was called heavy
22 weather lashing. It was just -- okay.

23 MR. KING: There's a portion in there where it discusses
24 heavy weather.

25 MR. KUCHARSKI: Thank you very much for that clarification.

1 BY MR. KUCHARSKI:

2 Q. You -- I believe you said years ago there was a list at port
3 or at sea that triggered the near miss report.

4 A. It did not trigger a near miss report. It -- my bosses
5 raised some questions and they reached out to the naval expert, I
6 don't remember exactly who or exactly when, but the reply back was
7 what I stated earlier. Don't sail more than a 2 degree list, and
8 don't have more than a 5 degree list in port.

9 Q. And that was just at port. I want to clarify that. Not at
10 sea also -- was there any mention of a list at sea?

11 A. Correct. The list at sea would be no more than 2 degrees.
12 In port would be no more than 5 degrees.

13 Q. Okay. And who were the bosses that you mentioned that you
14 discussed that with?

15 A. At that time, that would have been Bill Weisenborn and
16 Marshall Kaltenbach.

17 Q. Was the chief mate on the *El Faro*, was he a direct report to
18 you in any way?

19 A. No, sir.

20 Q. I'd like -- Commander Yemma, can you please pull up Exhibit
21 109? And please have a look at pages 27 through 31. It has the
22 car lashings again, automobile lashings. And this one is from *El*
23 *Yunque*. This is cargo lashing photos, Exhibit 109.

24 A. Yes, sir. I have the picture.

25 Q. Great. We'll just look at 27. Was this similar to the

1 lashing of automobiles on the *El Faro*?

2 A. I believe so.

3 Q. Okay. You've been with the operation, with Navieres -- you
4 worked for Navieres. You worked for Sea Star, and you worked for
5 TMPR now. Did that change any time while you were there, from a
6 different lashing system for the automobiles?

7 A. At Navieres, all the cars were loaded in containers. The
8 ships were true containers -- pure container ships. I was also
9 equipment control, and never on the vessels, for Navieres. For
10 TOTE Maritime, or Sea Star line at the time, when I started in
11 2008 I believe this was the practice. What happened before then I
12 have no idea.

13 Q. Was -- this is a little bit different, and I apologize before
14 I jump back and that -- off this page. Was there a security
15 service used to inspect baggage coming on and off the vessel?

16 A. There was. I don't remember exactly what year that started.
17 But, there was a PORTUS security person at the top of the
18 gangway, in addition to the gangway watch.

19 Q. Okay. Prior to this accident -- and let me call up Exhibit
20 25. 025, can that be up, please? And Mr. Matthews, when you get
21 a chance just -- I don't want you to glance at the whole thing. I
22 mean, it's hundreds of pages. But, just take a look at that
23 please, and tell me if this is titled the operations manual
24 vessel. Prior to the accident, did you use this manual?

25 A. No, sir. This is a TOTE Services SMS manual that I don't

1 use.

2 Q. And you -- I note Commander Yemma said, you know, that we've
3 talked about your experience before. But you've had quite a bit
4 of experience with the Army, I believe -- or Army transport, if
5 you will, and Navieres, Sea Star. As equipment control manager at
6 Navieres, what is it -- what kind of equipment did you control?

7 A. We kept records of the basic containers, chassis and gen sets
8 of equipment coming in and out of the terminal, whether it was
9 loaded or whether they were empty. And that's essentially it.

10 Q. And then when you switched over to the marine department at
11 Sea Star -- you just came to Sea Star in about 2008, is that
12 correct?

13 A. I came to Sea Star in 2002, when Sea Star bought Navieres. I
14 remained in the equipment control arena until 2008.

15 Q. And was equipment control -- the same type of things you were
16 doing there, as you did earlier?

17 A. Essentially, yes, sir.

18 Q. And, okay, so it was -- I believe it was 2008 you switched
19 over to the marine department at Sea Star. Is that correct?

20 A. Yes, sir.

21 Q. And what position was it that you first held when you
22 switched over to the marine department?

23 A. I believe the title was marine operations coordinator.

24 MR. KUCHARSKI: Commander Yemma, would you please pull up
25 Exhibit 372?

1 BY MR. KUCHARSKI:

2 Q. And Mr. Matthews, please look at just page 1. And when
3 you're ready to go, just let me know.

4 A. Oh, yes, sir. It's here.

5 Q. Was this your job at TOTE Maritime Puerto Rico? The upper
6 left-hand corner says job title, manager, marine operations. Was
7 that your job?

8 A. Oh, yes, sir. I was reading through the list there. Sorry.

9 Q. Oh, no, sir. I'd just like to go down to item number 2. It
10 says cover for the port engineer as needed. What did you cover --
11 did you cover for the port engineer as needed, and what did you
12 cover for?

13 A. I actually don't recall that sentence being in there. I'm
14 definitely not an engineer, and I can't do what an engineer does.

15 MR. KUCHARSKI: Commander Yemma, would you please pull up
16 Exhibit 40, and I'd like to look at page 101. It's appendix 7.

17 BY MR. KUCHARSKI:

18 Q. And -- you ready to go, Mr. Matthews?

19 A. It's on the screen. Yes, sir.

20 Q. Okay. Page 101 has pictures of conventional twist lock and
21 semi-automatic twist lock. Do you see those?

22 A. Yes, sir.

23 Q. And are you familiar with those particular items?

24 A. Yes, sir.

25 Q. Do you have any idea how a conventional twist lock is locked

1 and unlocked?

2 A. The conventional twist lock has a handle you manually slide
3 from left to right or right to left to lock or unlock.

4 Q. And how about a semi-automatic twist lock?

5 A. There's -- on the wire cord there, you either pull that up or
6 -- and so it latches into one of the -- there's a hook,
7 essentially, that will stop it from sliding back in. Or, if it's
8 hooked and you pull on the wire handle, and -- the wire handle,
9 there's a spring-load that will pull it back in.

10 Q. And that spring loaded mechanism, was that for putting it
11 into place for loading -- when you loaded it on -- into loading
12 position? Or was it to unlock at the discharge?

13 A. Either way.

14 Q. So, what does the semi-automatic -- what does that mean,
15 semi-automatic?

16 A. Well, the semi-automatic, when you pull it out and you have
17 it on top of the -- when you loading, you attach it to the bottom
18 of the container. And when you lift it up and place it onto the
19 container on the ship, so it is not two high or three high, it
20 will lock when -- it's supposed to lock when it's landed on that
21 container. Then you have to use a -- what they call an unlocking
22 pole or actuating rod to pull on that wire -- the wire handle,
23 lock it in place so that the cone is twisted so it pulls straight
24 out.

25 Q. Okay. Thank you for that explanation. Did you attend any of

1 the PORTUS safety meetings held with the longshoremen? The health
2 and safety meeting, there -- we have it on the PORTUS lock
3 timesheet. Did you attend any of those meetings?

4 A. Not in any depth, no, sir.

5 Q. Did the longshoremen go on top of the containers to lock or
6 unlock any of the containers?

7 A. Not as a general practice, no, sir.

8 Q. Did you ever see them do that?

9 A. On one occasion, there was a container that was -- got
10 basically cross-locked when they were landing the container. A
11 twist lock on a 45 foot box onto a 40 foot -- locked to the
12 container next to it. And they'll have to go up and -- wearing
13 proper safety gear, of course -- and manually unlock the
14 container. That is a very rare occasion.

15 Q. Great. Thank you for that clarification. Do the Marlin
16 class vessels also use semi-automatic and fixed based and
17 conventional twist locks to secure their containers?

18 A. We do not use the conventional twist locks. We use semi-
19 automatic, both on the deck -- a semi-automatic specifically
20 designed to be on the deck, and the same type of semi-automatic
21 twist locks as on the Ponce class ships.

22 Q. So, where would conventional twist locks be used, back to the
23 *El Faro*, as opposed to semi-automatic? Is there any particular
24 place that you would use those?

25 A. No, they're strictly for the deck socket on the bottom tier.

1 Q. When the chief mates submitted their lashing requirements to
2 you -- you talked about this inventory -- did this include the
3 containers with twist locks?

4 A. It did, as far as the chief made the count.

5 Q. Did you actually order these items or did you pass that on to
6 somebody else to order them?

7 A. That was my responsibility.

8 Q. Well, can you -- you mentioned left and right. Did you -- do
9 you know if you ordered left-hand or right-hand locking twist
10 locks?

11 A. I believe they were all left-hand, but they were all the
12 same. Whenever I would order any, I would ensure with our vendor
13 that we were ordering exactly the same type so there would be no
14 confusion as to which way the handle needed to be.

15 Q. Did any of the vessels have any lashing concerns or problems
16 with the longshoremen properly lashing cargo?

17 A. There were perhaps instances of where maybe a discrepancy was
18 noted, but it wasn't any real significant ongoing concern.

19 Q. Commander, do you have an Exhibit 374, please?

20 A. I have it, sir.

21 Q. Again, at page 1 -- this is the chief mate on the *El Yunque*.
22 Do you see that?

23 A. Yes, sir.

24 Q. And he mentions where bays -- where the twist locks were not
25 secured. Do you see that?

1 A. Yes, sir.

2 Q. Was that issue addressed?

3 A. Yes, sir. I would have addressed that directly with the
4 PORTUS stevedores supervisors, immediately, so that they would
5 incorporate that into their safety briefing, as well as just
6 keeping it -- for their headers to keep an eye out on the ship, as
7 they were lashing the vessel to make sure everything was secured
8 properly.

9 Q. Do you remember if that actually -- the result, or when you
10 talked to PORTUS on that particular incident do you remember what
11 the -- why they said, or what the -- was there any statement from
12 PORTUS of why that happened? Or did they say it didn't happen?

13 A. I don't recall the specifics of this. But as seriously as
14 the PORTUS stevedore supervisors take the cargo securing, I know
15 that they -- it would have been immediately -- it was immediately
16 addressed.

17 Q. Do you have any opinion -- these twist locks go into the
18 corner castings, correct? Of the container. Do you have any
19 opinion why they wouldn't have been locked, or there would have
20 been a problem?

21 A. I'm sort of -- I'm baffled by the semi-automatics. For the
22 full -- for the conventional twist locks on the deck, that would
23 just be carelessness, inattention to detail.

24 Q. Do you know, is Mr. Rivera working for -- does he work on any
25 of the TOTE vessels now?

1 A. I believe now he does not. But he was on the Marlin class
2 for a short time. I am not sure of the specifics to why he is no
3 longer sailing with us, or indeed if he is sailing.

4 Q. Was he a chief mate on the Marlin class vessels?

5 A. I don't recall.

6 Q. Was -- I don't think I've asked you this. Was -- and I
7 apologize if I have -- was there any program to test the
8 sufficiency of the buttons and d-rings, besides this visual
9 inspection?

10 A. Not that I'm aware of.

11 Q. Commander Yemma, could you pull up Exhibit 53, please? And
12 specifically, Mr. Matthews, please look at page 32, section 12.
13 And I believe the title is -- it's *El Faro* survey report. I
14 believe it was submitted by Mr. Matthias -- Chief Matthias. Have
15 you seen this report before?

16 A. No, sir, I have not.

17 Q. Take a look at 12.2, and just -- it's one sentence. 12.2 is
18 work scope, and it says remove and replace worn buttons and then
19 it -- and to conform to original scope plan. Do you have any idea
20 what that means, conform to original scope? Were there changes
21 from the original scope plan, and now change things back to the
22 original?

23 A. The only thing I can think this would mean was to maybe
24 replace some buttons that were removed from some places on the *El*
25 *Faro* when it was in Mideast service, taking heavy equipment from

1 the military back and forth. Other than that, I have no idea.

2 Q. I believe that under previous testimony you said you looked
3 at the cargo securing manual of the vessel. Is that correct?

4 A. A very long time ago, yes, sir.

5 Q. Okay. Then I won't ask you questions around that. Captain
6 Villacampa mentioned -- you mentioned earlier as one of the people
7 that would, from time to time, send emails of weather out to the
8 vessel. Did you send weather from time to time out to the master
9 of the vessel?

10 A. I did not send any specific weather reports. I may have
11 mentioned that there may be some weather out there. But it was
12 certainly just as general information, nothing specific.

13 Q. Did, at any time during the *El Faro's* -- I know you went on
14 vacation, but you -- prior to the vessel leaving, I don't know
15 when you went on vacation exactly, but was there any email that
16 you would send out to the vessel about weather?

17 A. None that I sent out. No, sir.

18 Q. Would you please look at -- back to the VDR transcript, and
19 I'd like to start off on page 256.

20 A. Yes, sir. 266 or 256?

21 Q. Commander Yemma is a little bit faster than I am. But, at
22 timestamp 2120 -- I don't have the exact timestamp, but it's at
23 2120, where the third mate says -- and it's at the -- I have a
24 timestamp. 212001.6. Could you read that at -- by the way, have
25 you looked at the whole VDR transcript? Have you looked at this

1 previously?

2 A. Yes, sir. I've read it.

3 Q. So, have you seen this -- do you recollect seeing this, the
4 third mate -- the transcript here, in that particular section?

5 A. Could you repeat the question?

6 Q. So, do you recollect this particular -- with the third mate
7 speaking there, or talking?

8 A. I do, now that I've reread it. Yes.

9 Q. Okay. Great. And where it says -- because it's already
10 twice now, we -- you know, "We left port without expecting any
11 weather. That's why we didn't ask the longshoremen for storm
12 lashing."

13 So, would that be your interpretation that they didn't on
14 this particular trip?

15 A. I would take that as they did not ask for any additional
16 lashings.

17 Q. And sorry to sort of make you jump backward, but it's at page
18 59, timestamp 072451.6. And could you let me know when you're
19 ready?

20 A. Yes, sir.

21 Q. And I believe this is the chief mate talking to the captain,
22 says it's -- "They don't do the lashing the way it ought to be
23 done."

24 A. I see that sentence. Yes.

25 Q. Did Chief Mate Shultz talk to you about this, not doing the

1 lashings the way it -- lashing the way it ought to be done?

2 A. No, sir.

3 Q. And the same exhibit, page 400. And it's -- this is the 1st
4 of October, and it's 051133.2.

5 A. Yes, sir. I see that.

6 Q. What do you, what -- when the statement is made about it's
7 more than a -- it says "Talking more than a container stack."
8 Have you reviewed that? What is your take on that?

9 A. I saw that, and I had absolutely no idea what he meant by
10 that.

11 Q. And you -- not to beat up on this, but, I mean, you did the
12 stability on the vessels. That's part of your job. You looked at
13 stability and everything. So, you still don't -- you have no idea
14 what he means by that?

15 A. Correct, sir. I have absolutely no idea what he meant by
16 that statement.

17 Q. Thanks. I've reviewed that many times, and I thought you'd
18 help me out on that. And 398, timestamp 051039.4. Said to see if
19 any buttons failed. Do you have an opinion about that?

20 A. I would think they were talking about seeing if any Roloc
21 boxes had torn a Roloc button from the deck.

22 Q. Did you ever see any of the buttons tore from the deck in
23 your time -- all your years with the service?

24 A. I personally never saw one.

25 Q. Your email address -- I've seen a number of emails --

1 dmatthews@seastarline.com. Is that your address?

2 A. Yes, sir.

3 Q. Do you also have a TMPR or TOTE email address, or is it still
4 Sea Star?

5 A. The Sea Star address changed to TOTE address after the
6 company name change.

7 Q. So, if you were to send an email or I was to send an email to
8 -- would you receive one at dmatthews@seastarline.com?

9 A. I would have for a while. I don't know if I still would.

10 Q. Commander Yemma, would you please pull up Exhibit 385? And
11 we'll start just at page number 1. This is called TOTE Services,
12 Inc., emergency response team emergency response manual. Have you
13 ever seen this document before?

14 A. I may have. I don't recall specifically.

15 Q. Can you tell me if you were part of the emergency response
16 team?

17 A. No, sir.

18 Q. Captain, Mr. Matthews, that concludes my questioning. Thank
19 you. Thank you very much.

20 CAPT NEUBAUER: Mr. Young.

21 BY MR. YOUNG:

22 Q. Good morning, Mr. Matthews. Just two follow-up questions,
23 please. While on board the *El Faro* in port, how would you
24 accurately assess the angle of the heel for the vessel while it
25 was loading?

1 A. Generally, there would be -- well, we -- it could be that
2 it's slightly port or slight starboard at no calculation of
3 degrees, obviously. But a little port or a little starboard
4 depending on how the cargo is going on and coming off. Sometimes
5 it would be level. It would just depend where we were in the
6 middle of the operation.

7 Q. And I guess what I was getting at, was there an inclinometer
8 for -- that you used to determine the angle of the heel.

9 A. There was not one that I used. There was one on the bridge.

10 Q. Are you aware of any specific cargo loaded aboard the *El Faro*
11 on the accident voyage that required expedited delivery, above and
12 beyond the normal delivery schedule?

13 A. No, sir.

14 MR. YOUNG: Thank you, Captain.

15 CAPT NEUBAUER: Mr. Matthews, I have a couple of follow-up
16 questions. Do you think the *El Faro* had an effective method in
17 place to isolate and track unserviceable lashing gear?

18 MR. MATTHEWS: Yes, sir.

19 CAPT NEUBAUER: Did you ever hear complaints from *El Faro*
20 crew members or PORTUS personnel discussing the intermingling of
21 unserviceable lashing gear with intact gear?

22 MR. MATTHEWS: No, sir. Normally the chief mate would
23 segregate the broken gear from the good gear.

24 CAPT NEUBAUER: Did he dispose of the broken gear through
25 your office? Did he -- did that get transferred to you?

1 MR. MATTHEWS: Yes, sir. I'd personally take it off the
2 ship.

3 CAPT NEUBAUER: Commander Denning?

4 CDR DENNING: Thank you, sir.

5 BY CDR DENNING:

6 Q. Just a few follow-ups. We've heard a lot about the process
7 at the end of cargo operations, when the vessels were preparing to
8 depart for sea. And either yourself or Mr. Rodriguez would bring
9 the final stability information to the vessel, along with the
10 final paperwork, and receive the final paperwork from the vessel.

11 Is that correct?

12 A. Yes, sir.

13 Q. So, during that process, have you ever received any paperwork
14 indicating problems with longshoremen or lashing? Does that --
15 has any paperwork such as that come through that process, to your
16 awareness?

17 A. No, sir.

18 Q. Okay. I'd like to read an exhibit -- read a portion of the
19 VDR audio transcript. It's going to be on page 57 of the
20 transcript. We'll give everybody a minute to go there. So,
21 actually, we'll start at the bottom of page 56. Now, this is page
22 56 of the transcript, which would be page 57 of the PDF document.

23 At the very bottom, timestamp 072347, there's an asterisk
24 indicating an unintelligible word. And then it says "The
25 Foreman."

1 The captain says in response, "Yeah, no, no. That's right."

2 The chief mate says, "Second deck, that's right."

3 A little bit further down, the chief mate says, "He was doing
4 it wrong. I was trying to help."

5 The captain says, "Go right to the foreman. Cut out the
6 middleman. I do it all the time. That guy right there."

7 And then the captain says, at 7:24, "Just document
8 everything. I send it in with all the paperwork." Import -- and
9 then parenthetically, import/important, and then a few more
10 asterisks.

11 So, he references here sending it in with the paperwork.
12 What do you think the -- what paperwork do you think the captain
13 is referring to here?

14 A. That may be -- sorry. That may be paperwork that goes
15 directly to TOTE Services. They would normally land a -- not
16 normally, but very often land a pouch with information, documents,
17 timesheets, other things I don't know what all, in that pouch. It
18 could perhaps be something in that. It was nothing that was
19 addressed to me.

20 Q. So, that paperwork to TOTE Services -- would that be
21 something that you would -- you or Mr. Rodriguez would deliver?
22 I'm trying to understand how this paperwork reaches its -- who it
23 reaches, and how.

24 A. If it's addressed to TOTE Services, we have a runner, but --
25 that picks up the interoffice correspondence a couple of times a

1 day from the terminal and takes it to the corporate headquarters.

2 And it's distributed from there.

3 Q. Okay. We'll follow up on that separately, and try to obtain
4 whatever the captain might be speaking of here. Captain Kucharski
5 asked you if you had ever seen a button torn from the deck on *El*
6 *Faro*. You said no, I've never seen anything like that personally.

7 Did you hear of any buttons being torn off on *El Faro*? Your
8 answer was I never saw it personally. I just wondered if you ever
9 heard of an example of that.

10 A. Not specifically on the *El Faro*. We had one of the other
11 ships -- a truck had hooked up to a Roloc box with it still
12 secured to the button, and tried to drive off with it. And tore
13 -- actually tore the deck, which was properly repaired. That's
14 the only instance I know of a button -- of an issue with the Roloc
15 button itself.

16 Q. During previous testimony this week, we heard testimony from
17 National Cargo Bureau. Were you here, by any chance, for that
18 testimony, sir?

19 A. No, sir. I was not.

20 Q. One of the things that they mentioned was -- you know, we
21 talked a fair amount about the advance calculation method for
22 determining the proper lashing for cargo, specifically those which
23 are not able to land on a button. Appendix 17 of the
24 Security manual talks about that. It speaks to annex 13 of the
25 CSS code. One of the things that the National Cargo Bureau

1 witnesses mentioned was that it's very difficult for the ship's
2 crew to conduct that because of the time it takes. And we've all
3 heard about how busy they are during cargo operations, trying to
4 get everything straight. They suggested that it might be better
5 for those calculations to be done shore side. Has there ever been
6 any discussion of conducting those calculations shore side, to
7 your knowledge?

8 A. Not that I know of.

9 Q. Do you -- can you speak to whether that is a feasible thing
10 to accomplish shore side? I know it's challenging because of, you
11 know, what securing points are available. But, if you can discuss
12 how this process of performing these kind of calculations -- it's
13 difficult for the crew to complete because of the timing. How
14 could that process be changed to be more effective or efficient?

15 A. At this time, I have no idea. I would have to -- we would
16 have to have a lot more information.

17 Q. Thank you. Just one final question. We haven't talked about
18 this with you this hearing. I -- correct me if I'm wrong, but I
19 believe in prior testimony we understand that -- did you have some
20 role in procurement of the BVS system for the ships? Is that my
21 understanding?

22 A. Yes, sir. Yes, sir. Yes, sir.

23 Q. On the VDR audio transcript -- we won't go to it right now.
24 But on page 78, at 0931, there's a comment that says they're doing
25 some maintenance on BVS on October 7th. Which would have occurred

1 after this casualty. Did you have any -- do you have any
2 knowledge of what maintenance was planned for the BVS system, by
3 any chance?

4 A. No, sir. Once the BVS system was in service on the ship, I
5 was out of the picture on that.

6 Q. And it might be something from AWT directly.

7 CDR DENNING: So, thank you, sir. No further questions.

8 CAPT NEUBAUER: Mr. Kucharski?

9 MR. KUCHARSKI: Yes, sir.

10 BY MR. KUCHARSKI:

11 Q. Mr. Matthews, one more question relating to the fuel leaving
12 Jacksonville. Was there something you looked for, generally an
13 amount of fuel to have on board the vessel when it left
14 Jacksonville?

15 A. There was nothing specific, other than what we talked about
16 in the previous testimony of about 8,900 barrels, which was
17 optimum for a variety of reasons. It could be more, it could be
18 less. That was just a number at that time we were using. It was a
19 -- it was no real concern.

20 Q. And from when you first started working the vessels, was
21 there a higher number that they had on board?

22 A. There were times -- the *El Faro* only had four fuel tanks.
23 The *El Morro* and the *El Yunque* had six. So, those two vessels
24 could carry a lot more fuel at one time. We were -- based on
25 cargo numbers, we would try every other week bunkering. So, one

1 week they would sail with about 11,500 barrels. Skip the
2 bunkering in Jacksonville, arrive, and then we'd bunker again.
3 Bunker every other week.

4 Q. Do you recollect any time while you were there where the
5 extra fuel was taken due to some weather?

6 A. In all sailings, the vessels had a minimum of three days
7 extra fuel for weather conditions or whatever, in addition to what
8 -- the time it would take between sailing and when it would bunker
9 next.

10 Q. Okay. So, my question is what -- was there any time -- you
11 said three days. Was there any time they asked for extra fuel
12 because of weather?

13 A. No, sir.

14 MR. KUCHARSKI: Okay. Thank you, again.

15 CAPT NEUBAUER: At this time, I'd like to go to the parties
16 in interest for any questions. This -- we're only doing one round
17 of questioning of Mr. Matthews, so this will be the final round.

18 MR. REID: Sir, could we take a quick break?

19 MR. YOUNG: Yes, sir. The hearing will recess and reconvene
20 at 11:20.

21 (Off the record at 11:12 a.m.)

22 (On the record at 11:25 a.m.)

23 CAPT NEUBAUER: The hearing is now back in session. Before
24 we go to the parties in interest, Dr. Stettler has a couple
25 follow-up questions.

1 DR. STETTLER: Thank you, Captain.

2 BY DR. STETTLER:

3 Q. Good morning, Mr. Matthews.

4 A. Good morning.

5 Q. Thank you. Thank you for coming back. I guess it's been
6 just about a year since your initial testimony, last February. I
7 had a couple of questions. I had been reviewing your previous
8 testimony, and -- concerning the routine. You talked about the
9 loading of the vessels, the *El Faro*, the *El Yunque*, the routine of
10 the process that you went through in doing that on the day prior
11 and the day of the departure from Jacksonville. And I just had a
12 couple of follow-up questions, and a new exhibit that was entered
13 the other day. I wanted to ask you a few questions about that
14 exhibit.

15 A. All right.

16 Q. So, I would like to draw your attention to Exhibit 392. This
17 is an email exchange that was identified -- I don't know how long
18 we've actually had the information available, but it was
19 identified, I believe, on Monday and entered as an exhibit. And
20 I'd like you, if you would, just to read through the first four
21 pages of this, and then I'll ask follow-up questions when you're
22 done. You don't have to read every -- there are a couple of
23 spreadsheets in there, if you could just kind of scan through
24 those.

25 LCDR YEMMA: Please let me know when you're ready.

1 THE WITNESS: Okay. You can roll it. Roll. You can just
2 roll it on down. Okay.

3 DR. STETTLER: Thank you.

4 BY MR. STETTLER:

5 Q. I believe in your previous testimony you spoke about being
6 provided from the chief engineer and chief mate details about the
7 tank loading -- ballast tanks, fuel tanks, et cetera. We did not
8 have this at the time. Could you describe what we're looking at
9 here on these four pages, please?

10 A. Okay. Could you scroll that up to the actual chart there?
11 Okay. What you're looking here is -- in the left-hand column, SFW
12 for freshwater, that would be -- in the CargoMax, that would be
13 all the tankages listed under the fresh water button. Although
14 they may not all be freshwater actually in the tank. And then you
15 would have the long tons of water that was in those -- so, under,
16 say, the 4P has 273 long tons of water. The 1B starboard has 150
17 tons. Highlight, that's one of the working tanks that we have.
18 And so on down the list.

19 Those are the different tanks. The SWB, those are the tanks
20 that are listed under the saltwater ballast tank button in
21 CargoMax. The MT is miscellaneous tanks. The FO is the fuel oil.
22 And again, that's all in long tons of what's in those tanks that
23 are projected to be in those tanks on departure.

24 Q. Thank you. Could you put this in context? It was attached
25 to an email. Basically, I'd like to ask is this a normal

1 occurrence for a departure from Jacksonville. And if you could
2 describe when this email was sent and received, and what's done
3 with it.

4 A. This appears to be the email that the chief mate sent prior
5 to arrival, giving the projected departure figures. The working
6 ballast tank numbers could be changed during operation, based on
7 the actual cargo load. That would be the 1B starboard tank and
8 the 1A -- the deep tank number 1A. Actually, on this I'm looking
9 at those are his arrival numbers. He had 150 tons in the 1B
10 starboard and then he had 550 tons in the 1A. Normally, then, we
11 would expect that the 1A tank would be brought down to about 150
12 tons, once it was loaded with cargo. The arrival and departure
13 numbers for the other tanks are self-explanatory. Actually, the
14 arrival -- he's actually giving the arrival on the fuel oil, for
15 departure, on both of those.

16 Q. Just while we're on this one sheet -- so, we're looking at
17 page 3. There are -- under the miscellaneous tanks are listed the
18 lube oil numbers for the lube oil tanks. And, could you just
19 confirm how -- in what units or what -- are those long tons?

20 A. Everything is in long tons.

21 Q. Looking specifically at the lube oil sump levels, is that
22 updated from voyage to voyage or is that typically kept constant?
23 Or how often do you update those values in CargoMax?

24 A. I would put in the numbers that were on this report. I don't
25 know what they're doing on the ship. Normally, those numbers

1 remain the same. I am not unaware of what procedures they had to
2 basically keep those numbers the same on the ship. As far as --
3 going as far as replenishing the supply in there, that happened
4 without my knowledge.

5 Q. Okay. Thank you. And now I would like you to look at pages
6 5 and 6 of this exhibit. And please explain what we're looking
7 at. So, first, there is an email on page 5, and then I believe
8 that's the attachment to that email on page 6. Could you explain
9 what that is, please?

10 A. Okay. You can go down a little bit now. I think basically
11 what we're looking at is what they projected fuel to burn from San
12 Juan to Jacksonville.

13 Q. What is the -- the subject of this subsequent email is Jax
14 actual arrival figures. It's an Excel spreadsheet, which it
15 appears that's what is attached on page 6. So, what does that
16 mean to you? Do you normally get this type of email as a follow-
17 up during a Jacksonville departure? Or do you work only off of
18 the estimate or projected arrival and departure values?

19 A. Initially, we start with the projected and then either by
20 email or hard copy or conversation with the chief mate we would
21 update those during the day, as to what the actual departure
22 figures would be.

23 Q. Okay. So, looking at the spreadsheet -- it's not labeled as
24 such, but I'm assuming this is the attachment email. Does that
25 match your experience at the time, prior to the incident voyage,

1 that that attached spreadsheet titled Jax actual arrival
2 figures.xlsx would be -- would look like that?

3 A. Yes, sir.

4 Q. I would just like to draw your attention to the actual
5 arrival figures for -- it shows the two alpha port tanks -- port
6 and starboard tanks, 296, the 3 port and starboard tanks, 267 and
7 272, respectively. The center tanks are at 191 and the 1B port,
8 which I think is a slop tank, is 48 tons. Is that correct, sir?
9 That -- would that be your understanding that those would be the
10 actual arrival values?

11 A. Based on this email, yes, sir.

12 Q. Okay. Thank you. I'd like to also -- Lieutenant Commander
13 Yemma, if you would open up Exhibit 59. So, it's -- Exhibit 59
14 was the final CargoMax printout for the accident voyage, provided
15 to the board. It's got a printout date of 11:48 on 1 October
16 2015. And I just -- this is really just for the record. Because
17 of the way I interpret that email is that the actual fuel oil tank
18 levels, slop tank levels should, in fact, have been updated based
19 on the actual arrival condition. And it appears that what is in
20 the CargoMax printout was the pre-arrival or the estimated arrival
21 or departure values. Do you concur with that, looking at the top
22 of page 2?

23 A. Yes, sir. Actually, I believe what happened is, as Ron
24 Rodriguez testified, we made a typo when he was typing those
25 numbers in.

1 Q. Without recalling Mr. Rodriguez's actual testimony, that --
2 the typo that he was discussing -- that we were discussing in his
3 testimony was actually under DB#3, under port/starboard were
4 originally 346, was the typo for each of those. So, I think what
5 -- all I wanted to show in this is the total difference is 24 long
6 tons. And actually, just from a practical matter, that's -- it
7 was actually 24 long tons more fuel, or there was 24 long tons
8 more fuel aboard, which would actually improve the stability of
9 the vessel.

10 So, I just -- just simply for the record, I wanted to
11 highlight that. Because all of the Marine Safety Center analyses
12 and other assessments that were completed were based off of this
13 departure condition. So, I just wanted to note for the record
14 that there was actually what appears to be an additional 24 long
15 tons of fuel on board for the departure conditions.

16 A. I would say -- on the -- yes, sir.

17 Q. Okay. Thank you. Again, it's just really just for the
18 record, to confirm that.

19 I'd also like now to ask you -- it's been a year since your
20 previous testimony. I'd like to ask you, has anything in your
21 process for loading the vessel changed? I know that there are no
22 longer any Ponce class vessels with TOTE. And you're sailing now
23 the Marlin class. Is your process for loading a vessel still
24 pretty much the same?

25 A. The actual process is essentially the same. One thing I have

1 noticed over the radios is the mates verify over the radio that
2 they have checked all the lashing before the stevedores are off
3 the ship. That -- I hear that on the radio. I used to not hear
4 that. I am confident that it was being done, but they're just now
5 verbally talking amongst each other. Which bays have actually
6 been completed and which pins have been placed on the hatch covers
7 to ensure the hatch covers are secured properly to the ship.
8 Which, of course, the Ponce class didn't have.

9 Q. I know during your testimony you talked about some documents,
10 some -- the stow plans, the preliminary stow plans, the final stow
11 plans. You used a spreadsheet. I think you called it a pink
12 sheet -- or, it used to be pink sheets, so. I guess it's a
13 worksheet -- so spreadsheet. Is all that part of the process the
14 same? Do you still use those same tools in loading the Marlin
15 class vessels?

16 A. Yes, sir.

17 Q. Thank you. And finally, for the new Marlin Class vessels,
18 have you been -- have those vessels been loaded to the load line
19 for the departure voyages from Jacksonville to San Juan?

20 A. No, sir.

21 Q. How close does that -- does a typical sailing come to the
22 load line in the Marlin class?

23 A. On the Tuesday vessel, which is actually fairly light,
24 there's -- it's quite a bit of margin to the load line. On the
25 Friday vessel, not as much. But there's still several inches,

1 even on the heaviest ship, between the water level and the load
2 line.

3 Q. And for those Friday voyages, where you're perhaps within a
4 few inches or several inches of the load line, what is your
5 typical margin of stability for those departures?

6 A. .3 meters or greater.

7 Q. .3 meters of what?

8 A. .3 meters of GM. The margin is .3 or greater. Meters.

9 Q. Okay. And how do you assess that?

10 A. The CargoMax, it provides information right in a column of
11 the screen. It will add the actual GM, and then what the GM
12 margin, which can vary based on the actual draft of the vessel.
13 It computes all that and just prints and shows it right there.

14 Q. Do you know if there are any other stability criteria, other
15 than GM, for that -- for those vessels?

16 A. We look at the shear. We look at the torsion, and we look at
17 the bending moments and look at the overall available dead weight.

18 Q. Are you aware of any righting criteria for those vessels?

19 A. No, sir.

20 DR. STETTLER: Okay. Thank you.

21 Captain, I have no further questions.

22 CAPT NEUBAUER: At this time, we'll go to the parties in
23 interest. TOTE?

24 MR. KING: Thank you, Captain.

25 BY MR. KING:

1 Q. First, for clarification on the record, when we were talking
2 about Exhibit 130 earlier, which is the collection of turnover
3 notes, there is a turnover note dated 19 June 2015 that starts on
4 page 55. On page 61 in the cargo gear section, it reads, "The
5 lashing inventory was completed and sent." Also, in the 28 July
6 turnover notes on page 71, there is a reference to cargo gear
7 inspections.

8 Mr. Matthews, you were asked a question about some VDR
9 testimony where the third mate, I believe it was, commented that
10 they did not ask for storm lashings in port. Do you remember
11 that?

12 A. Yes, sir.

13 Q. Would the EL Class lashings guidance -- that is, the guidance
14 that requires the extra-heavy lashing in certain locations -- have
15 been followed?

16 A. Yes, sir.

17 Q. And so, the reference to extra storm lashings is referring to
18 additional lashings above and beyond what is contained in the EL
19 Class lashing profile. Correct?

20 A. I believe so. Yes, sir.

21 Q. Who is responsible for operation of the cranes at the
22 terminal?

23 A. That would be PORTUS.

24 Q. Who is responsible for confirming appropriate lashings on the
25 vessel?

1 A. The chief mate.

2 Q. Who is responsible for the stability of the vessel?

3 A. The chief mate and the captain.

4 Q. Who is responsible for inspecting and performing lashing
5 inventories?

6 A. The chief mate.

7 Q. Who provides lashing inventories to you?

8 A. The chief mate.

9 Q. And who asks if the vessel needs additional lashings?

10 A. The chief mate would ask me.

11 Q. Do you have any responsibilities regarding the vessel's
12 safety management system?

13 A. No, sir.

14 Q. You were asked some questions regarding camels and fenders
15 when the *El Faro* was tied up in Jacksonville. Do you recall that?

16 A. Yes, sir.

17 Q. And I believe you stated the purpose for the distance there
18 was to keep the vessel away from the dock to -- really to allow
19 additional clearance for the cranes to go back and forth. Is that
20 correct?

21 A. Yes, sir.

22 Q. So, with those camels and fenders in place, if the vessel
23 were to have a significant list inboard, towards the dock, what
24 would the vessel hit first? The dock or something else?

25 A. It would hit the cranes.

1 Q. If the vessel had hit the crane at any time during the
2 loading operation on the final voyage, what would have happened?

3 A. The operations would have stopped immediately.

4 Q. Would inspections have been performed?

5 A. Yes, sir.

6 Q. All right. Would the vessel have been inspected before it
7 would be released from the port?

8 A. I believe so, sir.

9 Q. Okay. How long have you been working on the Ponce class
10 ships in the Jacksonville run?

11 A. It would have been from July 2008 until the *El Yunque* sailed
12 May of 2016.

13 Q. Was there ever a situation -- let's -- where the *El Faro* lost
14 propulsion and/or power and drifted for days?

15 A. No, sir.

16 Q. If that had occurred, would there be a record of it?

17 A. Yes, sir. A 2692A memo would have been submitted.

18 MR. KING: Nothing further, Captain. Thank you.

19 CAPT NEUBAUER: Mr. Matthews, did you personally receive the
20 2692 reports?

21 MR. MATTHEWS: Not all the time. No, sir.

22 CAPT NEUBAUER: So, would you have knowledge if they were
23 submitted or not?

24 MR. MATTHEWS: I would have knowledge if I actually saw it.

25 I -- they were, they were submitted -- in any instance that I know

1 of where one was required to be submitted, they were submitted.

2 CAPT NEUBAUER: But who ultimately received the 2692?

3 MR. MATTHEWS: The Coast Guard, and they would copy in the
4 TOTE Services.

5 CAPT NEUBAUER: But would they copy TOTE Maritime Puerto Rico
6 personnel?

7 MR. MATTHEWS: Not necessarily.

8 CAPT NEUBAUER: Mrs. Davidson?

9 BY MR. BENNETT:

10 Q. Mr. Matthews, you were asked about some transcript entries.
11 It's on page 58 of Exhibit 266 of the VDR, which is page 57 of the
12 transcript and 58 of the exhibit. It's about the chief mate and
13 the captain talking about the lashing. And specifically, at
14 072359.8, the captain says, "Go right to the foreman -- cut out
15 the middleman -- I do it all the time." The foreman that he's
16 speaking about is the stevedoring foreman. And that gentleman --
17 correct me if I'm wrong -- that gentleman is on the deck of the
18 ship or onshore walking up and down. Correct?

19 A. Yes, sir. Yes, sir.

20 Q. And the captain says, "I go to him all the time when there's
21 a problem." That's what that VDR transcript is saying. Correct?

22 A. Yes, sir.

23 MR. BENNETT: Thank you. No further questions.

24 CAPT NEUBAUER: ABS?

25 MR. WHITE: Thank you. No questions.

1 CAPT NEUBAUER: Mr. Kucharski?

2 MR. KUCHARSKI: Yes, sir.

3 BY MR. KUCHARSKI:

4 Q. Could we look at Exhibit 132? It's called cargo lashing gear
5 maintenance. And Commander Yemma, could you pull that up? And
6 this is on page 4 -- the top of page 4. It says to Michael C.
7 Davidson, Master, *El Faro*. And it's from Jamie F. Torres, chief
8 mate. And I believe it's -- well, it's dated June 30th, 2015.
9 Have you seen this before, Mr. Matthews?

10 A. No, sir.

11 Q. Could we look, please, at page 6 of this document? And this
12 is from chief mate Torres. It says a lashing inventory was
13 completed on 4/24/15, was submitted to Don Matthews for review.
14 And this is on June 30th. So, you've never seen this document
15 before?

16 A. I've seen the inventory. I haven't seen this document.

17 Q. No further questions. Thank you.

18 CAPT NEUBAUER: Are there any final questions for
19 Mr. Matthews at this time?

20 Mr. Matthews, you are now released as a witness at this
21 Marine Board investigation. Thank you for your testimony and
22 cooperation over two sessions. If I later determine that this
23 board needs additional information from you, I will contact you
24 through your counsel. If you have any questions about this
25 investigation, you may contact the Marine Board recorder,

1 Lieutenant Commander Damian Yemma.

2 At this time, do any of the parties at interest have any
3 issues with the testimony that we just received?

4 MR. REID: No, sir.

5 MR. BENNETT: No, sir.

6 M. WHITE: No, sir.

7 CAPT NEUBAUER: The hearing will now recess, and reconvene at
8 12:00 for final clarifications and final comments.

9 (Off the record at 11:49 a.m.)

10 (On the record at 12:04 p.m.)

11 CAPT NEUBAUER: The hearing is now back in session. To close
12 out the hearing today, I'd like to first do a round of any final
13 clarifications to clean up any loose ends that may be still in
14 place from the proceedings themselves.

15 I think that from a -- I do have one clarification to make
16 from yesterday's testimony. The chief mate that was mentioned
17 that received a letter of warning and had been found sleeping on
18 the bridge of the *El Faro* at times was not on the accident voyage.

19 At this time I'll go to TOTE for any final clarification
20 needed.

21 MR. REID: Thank you, sir. Just two issues. The first is
22 Dr. Stettler was referring to Exhibit 392, and that is essentially
23 a tank arrival report which has various tank information,
24 including the lube oil sump levels. And we would ask that either
25 new exhibits or an extension of 392 to include all of the arrival

1 reports from September 1st through September 29th that were sent
2 ashore from the chief mate -- and those have previously been
3 produced to the board, but I would be happy to assemble those and
4 send you those in one package.

5 CAPT NEUBAUER: I think -- I concur. If you can give them to
6 me in one package, we'll ensure that that exhibit is expanded.

7 MR. REID: Thank you, sir. The second issue is during the
8 testimony of the National Cargo Bureau witness and discussion of
9 their reports, at some point in the proceedings we had requested
10 that the assumptions and communications between NTSB and the Cargo
11 Bureau be requested from the NTSB. And we just want to reissue
12 that request and find out if there's a status.

13 CAPT NEUBAUER: Yes, sir. I have a status on that. TOTE did
14 request that the board ask for statements of work or other
15 parameters provided to the NCB by the NTSB. The NTSB has
16 indicated that the report as issued is the reducible documents.
17 There were no other formal documents created during the process.

18 MR. REID: Sir, we would reiterate the request for the
19 communications -- any communications from the NTSB to the National
20 Cargo Bureau for the work to be done and any assumptions that were
21 provided, either formally in a letter or through email. Thank
22 you.

23 CAPT NEUBAUER: Understand that I think at this point that
24 the board recommends going directly to the NTSB for that
25 information.

1 MR. REID: Thank you, sir.

2 CAPT NEUBAUER: Mrs. Davidson?

3 MR. BENNETT: Captain, throughout the proceedings ABS, Herman
4 Engineering and TOTE have been open and forthcoming with all
5 documents. I understand that there's an email that was sent from
6 NTSB to the National Cargo Bureau. It was the focus of our
7 request. In the spirit of the openness of these proceedings, we
8 would request that email be demanded. If the Coast Guard is
9 telling us that they've requested it and the NTSB has refused to
10 hand it over, that's one thing. But that document was created for
11 the sole purpose of these proceedings, and it should be an
12 exhibit.

13 CAPT NEUBAUER: Sir, you did hear the statement I read about
14 the NTSB document. If you're pursuing any other avenues, they
15 have an independent investigation. And I do recommend that you go
16 directly to the NTSB also.

17 MR. BENNETT: Thank you, sir.

18 CAPT NEUBAUER: ABS?

19 MR. WHITE: Yes, good afternoon. As a matter of some
20 housekeeping, I'd like to just inform the board as to some of the
21 exhibits that were submitted last evening, and the reasons for
22 their submission. The exhibits are No. 403. It's a letter from
23 ABS to the MBI. It's addressed to Commander Bray, and was also
24 directed to Captain Neubauer's attention. During the course of
25 the proceedings and the first set of hearings, Captains Mauger and

1 McAvoy had particular criticisms of the ACP program. There was a
2 statistical analysis that was presented by Captain Mauger that ABS
3 feels was exaggerated and inaccurate. There were other issues in
4 the testimony that ABS disagreed with, and we placed the basis for
5 our disagreements in the letter dated January 23rd, 2017.

6 On a positive note, I think all parties agree that the ACP
7 program is not perfect, and it surely can be improved.
8 Communications can be enhanced. Notifications can be more timely,
9 and the supplement can be updated. ABS has and will continue to
10 implement changes to improve ACP. Our letter dated January 23rd,
11 2017, Exhibit 403, incorporates what we've done already to improve
12 the notifications, what we've done already to improve the
13 supplement and in those efforts, and the increased communications
14 are being taken very seriously by ABS.

15 During the course of the week, there have been some other,
16 you know, issues or testimony where ABS was mentioned or other
17 involvement was suggested. I would represent to the board, the
18 NTSB and the family members here today there are over 40 years of
19 records, plans, approvals, design considerations, repairs,
20 renewals, gauging reports and strength assessments that would be
21 related to *El Faro*. These records, to the extent they were
22 recovered in ABS's system were produced, but not every single
23 document has been made an exhibit in these proceedings.

24 During the course of the last week, there was some
25 discussions about the fire pump. And in looking at some of the

1 surveys, I wanted to bring it to the board's attention that the
2 Mobil survey in 2011, the special survey, on page 11 discusses
3 repairs and renewals and inspections related to the fire pump in
4 the number 3 hole, and the sea suction located therein. There
5 have been other -- we presented other ABS surveyors, you know,
6 during the course of the proceedings, you know, earlier on in the
7 proceedings concerning one inspections they made in either
8 Jacksonville or Puerto Rico.

9 During the course of this week, there was some discussion by
10 a former crew member about some interaction with ABS on -- in
11 connection with the gangway. And in addition, there was some
12 suggestion that there might have been a repair in the lower tanks
13 or the double bottom tanks.

14 I've reviewed the surveys and the ABS has reviewed the
15 surveys, and just a matter -- as a matter of thoroughness, I'd
16 like to note for the sake of the record that the Jacksonville
17 surveys have been previously marked as Exhibit 177, and the
18 interaction with, I guess, the crew member and the ABS surveyor
19 concerning the gangway, and the ABS surveyor's request to have the
20 winch fixed so we could raise the gangway to its full level is
21 what we described in that report.

22 As far as the other suggestion or other testimony concerning
23 a double bottom repair, I've submitted to the board Exhibit 116,
24 which is a description of a tank top fracture in the report dated
25 May 19, 2015, related to that fracture. I would submit that based

1 on a review of that report, and the location of the repair, that
2 there was no water ingress into the vessel.

3 There was similar testimony by the former crew member
4 concerning a repair forward, up by the Bosun's locker. In the
5 prior hearings, we submitted and presented the ABS surveyors that
6 conducted those surveys in the Bosun locker, and the hatchway
7 where a certain portion of the steel was propped and renewed.
8 That space was not a watertight space, and the repairs were
9 properly effected.

10 Lastly, during the course of, I guess, yesterday and the day
11 prior, there was some testimony concerning the lube oil system.
12 And the discussion of the lube oil system was in regard to the
13 vessel's loss of propulsion. There were certain presentations on
14 the level of the lube oil in the sump and the heel of the vessel.
15 ABS will provide an explanation and evidence as to how the class
16 rule was applied to the lube oil sump, and the lube oil sump
17 levels that are relevant to the approval. ABS stands by the
18 approval, and the surveys that were presented in -- for
19 Jacksonville and Puerto Rico, and presented to the board.

20 CAPT NEUBAUER: Thank you, Mr. White.

21 At this time, I recommend we go right into the final
22 statements for the hearing. I'd like to start with the statement
23 that was provided by Herbert Engineering Corporation, Mr. Spencer
24 Schilling.

25 He wrote Herbert Engineering appreciates the opportunity to

1 have been of assistance to the MBI hearings. We look forward to
2 continuing our discussions with Dr. Stettler regarding the MSE
3 report. Of course, we remain available to respond to any post-
4 hearing request from the MBI.

5 I would now like to go to Mrs. Davidson. Do you have a final
6 statement?

7 MR. BENNETT: I do, sir. It's a statement from Theresa
8 Davidson.

9 I offer my condolences to the families of the crew members on
10 the *El Faro*, which was lost on October 1, 2015. My daughters and
11 I know the pain you feel, as do Michael's siblings and parents. I
12 want to thank the Coast Guard and the NTSB for their hard work and
13 dedication in investigating the circumstances surrounding the loss
14 of the *El Faro*. I also want to thank the ABS, Herbert Engineering
15 and TOTE for cooperating with the investigation. It gives me
16 comfort that those charged with conducting this investigation will
17 continue to work to identify areas for future improvement, in
18 order to strengthen the safety of those who spend their lives at
19 sea. This investigation had uncovered many facts that were
20 unknown before the board was established.

21 One of the most significant facts we learned was the National
22 Hurricane Center's forecast of Hurricane Joaquin was one of the
23 worst in history, and weather data sent to the vessel was
24 inaccurate. Throughout this course of this investigation, you
25 learned a little bit about who Michael was as a ship's captain.

1 Crew members, both licensed and unlicensed, who sailed with
2 Michael described him as meticulous, concerned for safety, caring
3 for the welfare of his crew and a true professional. But Michael
4 was much more than a ship's captain. He was a son, an older
5 brother, a terrific father to two daughters and an amazing
6 husband. And if you really want to know who Michael was at his
7 core, you only need to read the last pages of the VDR. He
8 willingly gave up the opportunity to fight for his own survival
9 because he refused to leave a crew member behind. Some were
10 surprised that Michael made that choice. I was not. Sincerely,
11 Theresa Davidson.

12 On a personal note, to the family members for their kind
13 words to me, the dignity and grace that you have shown is
14 absolutely heartening and I will carry it with me for the rest of
15 my life.

16 And for Theresa, who is listening on the phone, it has been
17 an honor to represent your husband here. Thank you.

18 CAPT NEUBAUER: Thank you, Mr. Bennett. And thank you, Mrs.
19 Davidson, for those words. ABS?

20 MR. WHITE: Yes. Let me say on behalf of ABS that every
21 employee in the company, from the chairman and CEO to the
22 surveyors and engineers remain saddened by the loss of *El Faro's*
23 crew. It's a devastating loss to the families, and the entire
24 maritime community. On a personal note, I've had an opportunity
25 to meet many of the family members here today. Thank you for

1 sharing your thoughts and concerns. In addition, some of you have
2 met or spoke with Lou O'Donnell, the assistant chief surveyor, Tom
3 Gruber, the head of the stability group, Dan Cronin and Suresh
4 Pisini from the structures group, as well as the individual
5 surveyors who perform surveys aboard the vessel in Jacksonville
6 and Puerto Rico. I wish to convey that these representatives of
7 ABS are dedicated to making sure that this investigation by the
8 MBI and the NTSB is both accurate and thorough.

9 To the extent that questions have been raised by family
10 members concerning what ABS does and what its role is aboard the
11 *El Faro*, we sought to address them. I hope that our explanations
12 and the presentation of our witnesses satisfied your questions and
13 concerns. Thank you.

14 CAPT NEUBAUER: Thank you, Mr. White.

15 For TOTE, Mr. Nolan, would you like to deliver a statement,
16 sir?

17 MR. NOLAN: Thank you, Captain. On October 1, 2015, we
18 unfortunately lost the *El Faro* and her crew. Thirty-three
19 families were directly impacted, the TOTE organization and the
20 whole maritime industry. I would like to again extend our sincere
21 and heartfelt condolences to each one the families and their loved
22 ones of the *El Faro* crew. We will never truly know the pain and
23 loss they have gone through. I do know how deeply this impacted
24 our organization, and the maritime industry. Please know the
25 families will forever be in our memories. Their names are

1 immortalized on the walls at AMO and SIU, as well as at their
2 respective academies and on the monument at the *El Faro* memorial
3 park. They will forever be in our heart and will never be
4 forgotten.

5 Over the past 16 months, I've gotten to know many of you.
6 We've shared some hugs. We've shared some laughs, and we've
7 shared some tears. We've even shared meals. One thing I can say,
8 I am amazed at your strength and your courage. You've truly served
9 as an inspiration to me, and from what I can see you did to the
10 organization as well.

11 I would like to thank Captain Neubauer and the U.S. Coast
12 Guard, Mr. Young and the NTSB, and everyone else that has been
13 involved in the Marine Board investigation. I know you have
14 invested countless hours into this process to truly understand
15 what happened, and to provide answers to the families, to TOTE and
16 the rest of the industry. We all owe it to the *El Faro* 33 to
17 learn what happened and share these learnings with the maritime
18 community.

19 We are aware this is one of the largest Marine Boards in
20 relation to the loss of a vessel and a crew, and for that we truly
21 thank you. Your efforts and commitments are what I would say are
22 miraculous. You located the *El Faro*. You located its VDR. And
23 you retrieved the VDR. I don't know if a VDR has ever been
24 retrieved at such depths before. And not only did you retrieve
25 the VDR, but you extracted valuable data from the VDR that

1 confirmed what many of us already knew. We knew that it was a
2 truly brave crew and experienced crew, and one that was there to
3 help one another. And they fought for the safety of the vessel
4 until the end. They will forever be true heroes. We look forward
5 to your completed report, and the learnings we can all take from
6 it.

7 The work of this board will be a lasting tribute to the *El*
8 *Faro* 33. To the families, may God bless you and you will always
9 be in my hearts. Thank you.

10 CAPT NEUBAUER: Thank you, Mr. Nolan.

11 Mr. Young.

12 MR. YOUNG: Thank you, Captain. On behalf of the entire
13 NTSB, especially the team conducting this investigation, I want to
14 extend our deepest condolences to the families who have lost the
15 brave loved ones in this tragic accident. We would like to thank
16 Captain Neubauer and the Coast Guard for including our agency in
17 these hearings, and for their exceptional cooperation.

18 We appreciate and want to extend our gratitude to the parties
19 to this investigation, that they continued to support throughout
20 the last 16 months by providing valuable information, hundreds of
21 documents, technical reviews, granting us access to the *El Yunque*,
22 and supporting our investigation while continuing their daily
23 functions at their respective companies and agencies. We want to
24 thank everybody involved in assisting us to locate and recover the
25 VDR, as it has been instrumental in this investigation.

1 At a future date, a separate report of the NTSB findings will
2 be issued, and it will include our official determination of the
3 probable cause of this accident. We will continue to collect
4 evidence, develop findings, conduct analysis and issue
5 recommendations based on all the facts developed throughout this
6 investigation.

7 In closing, I would like all the family members, especially
8 all those who have been here day after day over the course of
9 these six weeks of hearings, to know how much this accident has
10 personally affected every single one of us on our team, as many of
11 us have spent decades at sea. Seeing you all here every day
12 demonstrates your dedication to your loved ones and to each other,
13 and it further empowers us to ensure that we are doing everything
14 to prevent a similar tragedy from occurring in the future. Thank
15 you all.

16 CAPT NEUBAUER: Thank you, Mr. Young.

17 Today, the MBI and NTSB investigations are transitioning to
18 the analysis phase. Although there's always a chance that a short
19 hearing session could be convened if new witnesses are identified
20 as the report is being written, I believe we have gathered the
21 factual evidence necessary to proceed with our analysis. However,
22 the MBI will continue to collect and review any evidence submitted
23 in the future, including submissions to the elfaro@uscd.mil email
24 address. Gathering the evidence over the last 16 months was
25 challenging, due to the wide scope of the investigation. I'd like

1 to take this opportunity to sincerely thank the parties in
2 interest, government agencies, maritime organizations, company
3 representatives, Merchant Mariners and individual witnesses who
4 dedicated their time and resources to this monumental endeavor.
5 The collective expertise of those involved in the process has
6 helped to clarify numerous technical and regulatory matters that
7 the maritime industry grapples with on a daily basis.

8 On behalf of the entire Board, I'd like to express our
9 deepest condolences to the friends, shipmates and families of the
10 mariners who were lost at sea during this accident. It has been
11 difficult to watch and listen as the struggle to come to terms
12 with the tragedy continues on a daily basis. Especially here in
13 the hearing room, it's very visible. But it's also important for
14 investigators to observe the emotional toll, as it strengthens our
15 resolve daily.

16 I have also been personally inspired by the solidarity and
17 the selfless spirit which has been clearly displayed throughout
18 the MBI process by those impacted by this incident. Your feedback
19 and suggestions have aided the overall investigation, and your
20 commitment to preventing a similar tragedy in the future is noble
21 and appreciated.

22 In closing, I want to emphasize that the members of the MBI
23 are conducting this investigation with a profound sense of duty to
24 identify the incident's causes and push for any needed changes to
25 enhance maritime safety. Even though the public side of this

1 investigation is coming to an end, please rest assured that we
2 will work to continue in earnest as the report is drafted and the
3 recommendations are generated.

4 In the interim, I am confident that conducting the
5 proceedings in a public forum and making them available on the
6 internet has helped to raise important safety issues that are
7 actively being identified and addressed around the world as we
8 speak today.

9 Finally, before we adjourn, I'd like to call for another 33
10 seconds of silence to honor those we lost. If everyone could
11 please stand at this time.

12 Thank you. You can be seated. Thank you. This hearing is
13 adjourned.

14 (Whereupon, at 12:32 p.m., the hearing was adjourned.)
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CERTIFICATE

This is to certify that the attached proceeding before the

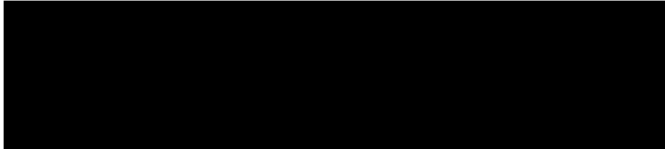
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: MARINE BOARD OF INVESTIGATION
INTO THE SINKING OF THE EL FARO
ON OCTOBER 1, 2015

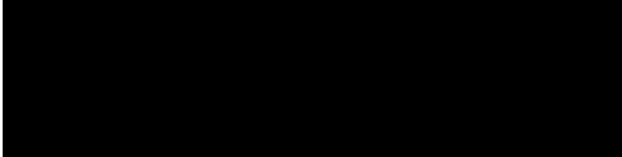
PLACE: Jacksonville, Florida

DATE: February 17, 2017

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.



U.S. Coast Guard
Official Reporter



Transcriber