

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 10, 2017

APPEARANCES:

Marine Board of Investigation

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KEITH FAWCETT, Member
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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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3 CAPT NEUBAUER: Good morning. This hearing will come to
4 order. Today is Friday, February 10th, and the time is 9:00 in
5 the morning. We are continuing at the Prime F. Osborn Convention
6 Center in Jacksonville, Florida. I am Captain Jason Neubauer of
7 the United States Coast Guard, Chief for the Coast Guard Office of
8 Investigations and Analysis in Washington, D.C. I am the Chairman
9 of 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 6301,
13 and Title 46 Code of Federal Regulations Part 4, to investigate
14 the circumstances surrounding the sinking of the SS *El Faro*, with
15 the loss of 33 lives, on October 1st, 2015, while transiting east
16 of the Bahamas.

17 I am conducting the investigation under the rules of 46
18 C.F.R. Part 4. The investigation will determine, as closely as
19 possible, the factors that contributed to the incident so the
20 proper recommendations for the prevention of similar casualties
21 may be made, whether there's evidence that any act of misconduct,
22 inattention to duty, negligence, or willful violation of the law
23 on the part of any credentialed merchant mariners contributed to
24 the academy, and whether there is evidence that any Coast Guard
25 personnel or its representative, or employee of any other

1 government agency, or any other person caused or contributed to
2 casualty.

3 I previously determined that the following organizations or
4 individuals are parties in interest to this investigation: TOTE
5 Services, represented by Mr. Luke Reid; ABS, represented by
6 Mr. Gerard White; Herbert Engineering Corporation, who's
7 represented by Mr. Spencer Schilling; and Mrs. Theresa Davidson,
8 who is next of kin for Captain Michael Davidson, master of the SS
9 *El Faro*, represented by Mr. William Bennett.

10 These parties have a direct interest in the investigation and
11 have demonstrated the potential for contributing significantly to
12 the completeness of the investigation or otherwise enhancing the
13 safety of life and property at sea through participation as party
14 in interest. All parties of interest have a statutory right to
15 employ counsel to represent them, to cross-examine witnesses, and
16 to have witnesses called on their behalf.

17 I will examine all witnesses at this formal hearing under
18 oath or affirmation, and witnesses will be subject to federal laws
19 and penalties governing false and official statements. Witnesses
20 who 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 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.

5 The members of the press are welcome and an area has been set
6 aside for your use during the proceedings. The news media may
7 question witnesses concerning the testimony that they have given
8 after I release them from these proceedings. I ask that such
9 interviews be conducted outside of this room.

10 Since the date of the casualty, the NTSB and Coast Guard have
11 conducted substantial evidence collection activities and some of
12 that previously collected evidence will be considered during these
13 hearings. Should any person have or believe he or she has
14 information not brought forward but which might be of direct
15 significance, that person is urged to bring that information to my
16 attention by emailing elfaro@uscg.mil.

17 The Coast Guard relies on strong partnerships to execute its
18 missions and this Marine Board Investigation is no exception. The
19 National Transportation Safety Board, NTSB, is providing
20 representatives for this hearing. Mr. Michael Kucharski, also
21 seated at the end of the table on my left, is representing the
22 NTSB at this session.

23 Mr. Kucharski, would you like to make a brief statement?

24 MR. KUCHARSKI: Yes, Captain. Good morning. And good
25 morning to everyone out in the audience.

1 I'm Mike Kucharski, the Nautical Operations Group Chairman
2 for the National Transportation Safety Board's investigation of
3 this accident. The NTSB has joined this hearing to avoid
4 duplicating the development of facts. Nevertheless, I do wish to
5 point out that this does not preclude the NTSB from developing
6 additional information separately from this proceeding, or these
7 proceedings, if that becomes necessary.

8 At the conclusion of these hearings, the NTSB will analyze
9 the facts of this accident and determine the probable cause
10 independently of the Coast Guard, issue a separate report of the
11 NTSB findings and, if appropriate, issue recommendations to
12 correct safety problems discovered during this investigation.

13 Thank you, Captain.

14 CAPT NEUBAUER: Thank you, Mr. Kucharski.

15 We will now call our first witness of the day, Mr. Alejandro
16 Berrios, former second mate and third mate on the *El Faro*. We
17 will continue now with his testimony from yesterday.

18 And, Mr. Berrios, I just want to remind you, you remain under
19 oath from yesterday.

20 MR. BERRIOS: Understood.

21 CAPT NEUBAUER: We'll now continue with the line of
22 questioning from Mr. Fawcett.

23 (Whereupon,

24 ALEJANDRO BERRIOS

25 was recalled as a witness, having been previously duly sworn, was

1 examined and testified, as follows:)

2 EXAMINATION OF ALEJANDRO BERRIOS (Cont.)

3 BY MR. FAWCETT:

4 Q. Good morning, Mr. Berrios. Thank you for being here.

5 A. Good morning.

6 Q. We're going to combine the two topic areas into one line of
7 questioning. So, when did you become a seaman or merchant
8 mariner?

9 A. I became a merchant mariner in 2010.

10 Q. As a mate, if you saw flashes on a vessel, flashes of light
11 in the area of the forward part of the vessel, which you didn't
12 understand where that light came from, what would you do?

13 A. Call the master.

14 Q. Why?

15 A. Because the standing orders of the master states that
16 whenever in doubt, you call the master.

17 Q. During a night watch on the *El Faro*, you served with Captain
18 Davidson for about 2 years, would that be correct?

19 A. I'll have to look at my records to confirm the length of the
20 sea time I spent with Captain Matt Davidson.

21 Q. Did you ever call the master?

22 A. Correct.

23 Q. Did he ever come to the bridge -- and we're talking about
24 Captain Davidson -- when you called him at sea?

25 A. I recall one time I called him and he came up to the bridge.

1 Q. And some of my questions may be a little out of order because
2 we did put everything into one line, so you'll pardon me. But
3 yesterday, I started asking you about what it was like to serve on
4 the *El Faro*, and you served on the *El Faro* in July of 2015.
5 During that time, did the chief mate fall asleep on watch?

6 A. Negative.

7 Q. Based on these questions --

8 CAPT NEUBAUER: Was that a question, Mr. Fawcett?

9 MR. FAWCETT: Yeah.

10 BY MR. FAWCETT:

11 Q. The question was during the time that Mr. Berrios served on
12 the *El Faro* in July of 2015, did the chief mate fall asleep on
13 watch.

14 A. I have no information about that.

15 Q. Does TOTE have any zero tolerance policies?

16 A. If I remember correctly, which is posted on the bulkhead on
17 the crew mess, it's 0.04 tolerance for alcohol, and zero tolerance
18 for a list of drugs.

19 Q. Do they have any policies about how you stand a watch on the
20 *El Faro* in terms of not sleeping on watch?

21 A. The standing order states that you have to be ready to work
22 100 percent, to stand on the watch. And if you can't do that,
23 then you're not well rested.

24 Q. Yesterday we talked about the whistleblower training and the
25 make a difference as part of the company training, and you spoke

1 about that training. I'm going to read from a Coast Guard
2 exhibit, which was introduced. It's Exhibit 379. And, sir,
3 there's a copy of it on the desk for you, a printed copy.

4 Mr. Birthisel?

5 UNIDENTIFIED SPEAKER: Yes, sir?

6 MR. BIRTHISEL: We have it.

7 UNIDENTIFIED SPEAKER: You have it?

8 MR. BIRTHISEL: We have it. We have it.

9 BY MR. FAWCETT:

10 Q. Okay. There's a kind of blown-up copy on the desk in front
11 of you. This is the 46 U.S. Code 2114, which is the Seamen's
12 Protection Act of 2010. I'm not going to read it all, but it
13 says, "Protection of seamen against discrimination; one a person
14 may not discharge or in any manner discriminate against a seaman
15 because:

16 "(A) The seaman in good faith has reported or is about to
17 report to the Coast Guard or other appropriate federal agency or
18 department that the seaman believes that violation of marine
19 safety law or regulation prescribed under that law or regulation
20 has occurred.

21 "(B) The seaman has refused to perform duties ordered by the
22 seaman's employer because the seaman has a reasonable apprehension
23 or expectation that performing such duties would result in serious
24 injury to the seaman, other seamen, or the public."

25 Finally, paragraph (C): "The seaman testified in a

1 proceeding brought to enforce a marine safety law or regulation
2 prescribed under that law."

3 And finally, "The seaman cooperated with the safety
4 investigation by the Secretary or the National Transportation
5 Safety Board."

6 My question to you, leading up to the time of the accident,
7 did you know this information?

8 MR. BIRTHISEL: Mr. Fawcett, are you asking him if he knew
9 what was in the C.F.R.?

10 MR. FAWCETT: I'm asking him if he knew that he was protected
11 from discrimination in these particular provisions of the law.

12 THE WITNESS: I knew that we were protected under the company
13 because, for a whistleblower, you have a hotline, and it states on
14 the document that there's not going to be any discrimination
15 against someone that brings something up. But I haven't read this
16 document before.

17 BY MR. FAWCETT:

18 Q. As a professional seaman, would it be a good idea if
19 companies and the unions published this information so that you
20 did know that?

21 MR. BIRTHISEL: Mr. Fawcett, are you asking him about policy
22 of the company?

23 MR. FAWCETT: I'm asking him if marine employers and marine
24 companies in general, and the unions that work on behalf of the
25 seamen, trained seamen or published this information so that he

1 would know that and all seamen would know that.

2 MR. BIRTHISEL: So you're asking if it would be helpful if
3 that occurred?

4 (Mr. Birthisel speaking with Mr. Berrios.)

5 THE WITNESS: The way I see it is that in any vessel that you
6 come on board, regardless with this company or another company, if
7 it's posted on bulkheads like crew mess and officers' mess, that
8 it's labeled and it has a visual, colors that will bring the
9 attention of a crew member to read it, and it states that there's
10 not going to be any discrimination of coming forward and being a
11 whistleblower for the safety of the vessel or for any other matter
12 that concerns you, then I think that will be more helpful than
13 having this sheet posted on a bulkhead.

14 BY MR. FAWCETT:

15 Q. I'd like to turn your attention, if you would, sir, to the
16 voyage data recorder transcript, page 266. Or excuse me, Exhibit
17 266, page 87. The third mate, the captain and the AB are having a
18 conversation at 11:22:50. In the brackets, "Sound of chuckle."
19 Unintelligible conversation, that's what those two asterisks mean.
20 "This dentist prescribed me a (expletive) narcotic." In brackets
21 again, "In an untranscribed area just prior to this section, third
22 mate and captain were discussing the effects of prescription
23 medication for a crew member and a medical logbook entry was
24 made," close brackets.

25 On the September voyage, you sailed with the third mate who

1 perished in the accident. Did he at any time tell you he had any
2 medical or dental issues?

3 A. No.

4 Q. At any time did the same third mate tell you that he was
5 taking any prescription medicines or over-the-counter medications?

6 A. No.

7 Q. Thank you, sir. Turning our attention to the port mates, you
8 served as a port mate mostly in San Juan, isn't that correct?

9 A. Correct.

10 Q. Talk about what the port mate does.

11 A. The port mate works the cargo-offs and assists the chief
12 mate, third mate or second mate on deck and, at times, takes over
13 the watch for a certain period of time to assist the chief mate,
14 second mate or the third mate.

15 Q. In your opinion, is a port mate critical to vessel
16 operations?

17 A. It helps. But if you can define critical maybe I can answer
18 better that question.

19 Q. If a vessel didn't have a port mate, for example in the Port
20 of Jacksonville, how would the mates get sufficient rest?

21 A. Following the STCW program on the computer, it will help you
22 see if you're in compliance with the STCW.

23 Q. In Jacksonville, without a port mate, could you still be in
24 compliance with the STCW requirements?

25 A. Me personally, I have filled out the STCW program and it

1 didn't show that I was not in compliance.

2 Q. If you would, tell us about how you fill out the STCW
3 records. Not only how you fill them out but what happens next.

4 A. What do you mean what happens next?

5 Q. All right. First, tell me how you fill out the STCW records.

6 A. I go to the bridge computer and open up the STCW program and
7 fill it out. It has 24 boxes that represents an hour of work, and
8 you can input there if you worked half of that hour or the full
9 hour, or even 15 minutes of the hour. And you fill out your STCW.
10 You can do it in advance to predict the next day to have an idea
11 of what you can work and what you cannot. And if there was going
12 to be a conflict, you talk to the mate and you arrange it between
13 the mates to make sure that everybody is in compliance with the
14 STCW program.

15 Q. Okay. So you go to the bridge computer and you type this
16 information in. After you're done, you said you went to the
17 mates. What does the captain do?

18 A. I don't understand your question.

19 Q. At the bottom of the form there is a comment box, which we'll
20 talk about in a minute, and a place for you and the master to
21 sign. What does the captain do with the form?

22 MR. BIRTHISEL: Could you bring up the form so we can just
23 look at it as we go through, please?

24 MR. FAWCETT: Yes.

25 MR. BIRTHISEL: Thank you.

1 BY MR. FAWCETT:

2 Q. We've brought up Coast Guard Exhibit 283, which is a
3 collection of the STCW forms for the *El Faro*. We do not have the
4 forms for the accident voyage. We have forms that are not signed
5 by neither the mariner nor the master. Looking at that form,
6 there's a comment box in the form. Did you ever see Captain
7 Davidson place comments in the box?

8 A. I don't recall, but I know that we were aware that you can
9 make comments on the box.

10 Q. Were all the forms that you filled out signed by you and
11 signed by the master?

12 A. Correct. And I would like to add the department head, the
13 chief mate, who also signed that form.

14 Q. If you'll turn your attention to Coast Guard Exhibit 304.
15 And Commander Yemma will also put it up on the screen. I'm going
16 to read a portion of that. It is 46 U.S. Code 8104. The title is
17 "Watches." Paragraph (a): "An owner, charterer, managing
18 operator, master, individual in charge, or other person having
19 authority may permit an officer to take charge of the deck watch
20 on a vessel when leaving or immediately after leaving port only if
21 the officer has been off duty for at least 6 hours within the 12
22 hours immediately before the time of leaving."

23 Were you aware of this federal requirement for rest?

24 A. I'm aware of it now. I wasn't aware of it back then.

25 Q. If you'll look at the Coast Guard Exhibit 283, which is the

1 STCW records, you'll notice down the right-hand side of the page
2 there are a bunch of instructions or reminders. Do you see that
3 instruction on that form? In other words, the part of the U.S.
4 Code that I just read.

5 A. Give me a minute here so I can go over it.

6 (Pause)

7 I don't see it.

8 Q. If you'll look at Coast Guard Exhibit 361? They're also in
9 the books and we'll put it on the screen. And I will give you
10 plenty of time to look at it. These are the selected logs from
11 the *El Faro* for the month of July. The first one I'd like you to
12 look at is the log sheet for July 7th, and down in the bottom of
13 the upper right -- take your time -- it appears that you stood at
14 watch starting at 1730 on that day. Will you take a good look at
15 that and just verify if that's correct?

16 A. Okay, I need you to zoom in on the form.

17 Q. Yes, sir, we're doing that. We also have copies in the
18 binders. While you're looking at that, the information that I see
19 from the log is that you assumed the watch at 1730, and the vessel
20 cleared the berth at 1936. I know that you probably can't recall
21 those details, but we'll zoom in so you can take a look at that.

22 (Pause)

23 A. Okay, what's your question?

24 Q. Did you assume the watch at 1730?

25 A. Yes, that's what it states here.

1 Q. And did the vessel clear the berth at 1936?

2 A. Standby.

3 MR. BIRTHISEL: Can you scroll this down so it's centered a
4 little bit, please? Thank you.

5 (Pause)

6 MR. BIRTHISEL: Mr. Fawcett, the question was when did it
7 clear the berth?

8 MR. FAWCETT: Yes, that's correct.

9 THE WITNESS: Can you ask your question?

10 BY MR. FAWCETT:

11 Q. Yes. What time did the ship clear the berth?

12 A. 2014.

13 Q. Okay. If you'll turn your attention to Exhibit 281, page 7,
14 which is the Coast Guard -- the STCW record for yourself. It's
15 coming up on the screen, sir. Correction, 283, and that's page 7.
16 As I read across there, it appears your rest period was 5½ hours,
17 and the only -- I'm not commenting about you, because I'm going to
18 ask another question, but does that appear to be how I'm
19 interpreting the STCW record?

20 A. Say again?

21 Q. Does it appear that the rest period was 5½ hours on July 7th?

22 A. So your question is if the rest period was 5½ hours?

23 Q. That's correct.

24 MR. BIRTHISEL: And you're asking if there was 5½ hours just
25 prior to getting underway, not earlier in the day?

1 MR. FAWCETT: Yes, I'm saying just prior to getting underway.

2 BY MR. FAWCETT:

3 Q. I'm trying to help understand how you fill out the logs on
4 the *El Faro* and using you as an example.

5 A. That's correct.

6 Q. Looking at the logs, just to make sure that I'm correct, if
7 you will turn your attention to the same exhibit but look at page
8 3, and I just want to make sure I'm looking at this correctly. On
9 the 1st of September there was a port mate aboard. I don't expect
10 you to know this, but his name was -- well, I won't give his name,
11 but there was a port mate. Looking at the 1st of September,
12 looking at the hours of 1400 to 1800 does it appear that the third
13 mate had 4 hours rest?

14 A. Between 14- and 1800, correct.

15 Q. So let's talk about rest. When you're not on watch during
16 this rest period, does it require you to be in your bunk,
17 sleeping? What does rest mean?

18 A. I'll have to look up that in the dictionary, but I can tell
19 you what it means to me. So, for me, rest is not working. That's
20 the short version of it. But, also, being on the bed, with my
21 feet off the deck, eyes closed, that's also rest for me.
22 Listening to music, taking a shower. And if I'm sleeping, then
23 that will be taking faster rest. But that's me. I can't speak
24 for someone else.

25 Q. So there are no requirements when you have a rest period to

1 actually sleep or be in your bunk, you can do anything you want,
2 correct?

3 A. To the best of my knowledge, correct.

4 Q. So looking at that same exhibit, the *El Faro*, on
5 September 1st, 2015, sailed from the berth at 2008, and their
6 departure report shows them departing Jacksonville at 2142. Based
7 on your experience with filling out STCW records, does it appear
8 that the third mate, Mr. Riehm, got rest as required under the
9 STCW regulations?

10 A. Can you go back to -- what date was that?

11 Q. On the 1st of September, they cleared the berth at 2008; they
12 departed Jacksonville at 2142.

13 CAPT NEUBAUER: Mr. Fawcett, can you redirect the witness and
14 the parties to the exhibit? You said back to the exhibit. I'm
15 not sure which exhibit you're talking to.

16 MR. FAWCETT: Yes, sir. Thank you. That would be the STCW
17 record for Mr. Jeremy Riehm for September, page 3, first entry,
18 line 1, where we have discussed 4-hour rest period between the
19 hours of 1400 and 1800.

20 THE WITNESS: Can you ask the question again?

21 BY MR. FAWCETT:

22 Q. Under those conditions, if you filled out your record, would
23 this indicate that you received the rest requirement?

24 MR. BIRTHISEL: So if this was his record and not Jeremy's,
25 him not knowing what Jeremy was doing, if this was his record,

1 you're asking him were those 4 hours non rest, meaning non rest?

2 BY MR. FAWCETT:

3 Q. Yeah, my question is would the rest period of 4 hours mean
4 you were in compliance?

5 A. According to the STCW sheet, correct.

6 Q. Speaking of the rest period, in the Port of Jacksonville, how
7 noisy was it in your cabin?

8 A. No noise.

9 Q. Looking at -- earlier I had asked you if you had been all
10 over the ship in your several years of service. A couple of
11 questions: The raised scuttles that go from the watertight deck
12 down into the holds, you're familiar with what I'm talking about?

13 A. Say that again?

14 Q. The raised scuttles that go from the second deck into the
15 hold that have the hand wheel closure, are you familiar with them?

16 A. Correct.

17 Q. During the later part -- well, during 2015, had you been in a
18 position to observe and operate every one of those scuttles?

19 A. Correct.

20 Q. Did every scuttle close as designed with a watertight
21 integrity so they can fully close and latch with the hand wheel?

22 A. Correct.

23 Q. The large watertight doors for loading cargo that are
24 equipped with a watertight gasket, did every one of those closures
25 close and secure watertight?

1 A. To the best of my knowledge, correct.

2 Q. Did you, in 2015, aboard *El Faro*, put on a survival suit?

3 A. Correct.

4 Q. When would that have been?

5 A. I don't recall.

6 Q. One of the things that you do on the *El Faro* is to inspect
7 lifeboats. And we've talked to you about that before and you
8 explained how you inspected them. I'd like you to turn your
9 attention to Coast Guard Exhibit 284, which is the *El Faro* weekly
10 safety checklist. The one that we have is the month of June.
11 It's got 5 weeks where different tasks are completed. My first
12 question, when was the last time you saw the *El Faro's* lifeboat
13 diesel engine run?

14 A. On a weekly basis.

15 Q. Who did that?

16 A. The third engineer.

17 Q. Can you talk about how the boats were inspected in terms of
18 the propulsion systems? In other words, the Fleming gear boat has
19 a gearbox, and the diesel boat has a diesel engine and
20 transmission. Can you tell me how that equipment was serviced?

21 A. What do you mean by serviced?

22 Q. In July of 2015, the *El Yunque* had some issues with its
23 diesel engine and the gearbox for the Fleming gear. So by
24 serviced I mean, other than running the boat, you need to check
25 the quality of the lubricating oil, the transmission oil, and look

1 at what's in the gearbox. Do you know when that was done?

2 A. I have no information on exactly when it was done, but I do
3 recall the third engineer, on a weekly basis, checking all the
4 components of the lifeboat, and myself being present at times to
5 visually inspect the wheel of the lifeboat.

6 Q. If you look down the checklist there's an area called
7 "Lifeboats, Life Rafts Visually Inspected." For both rafts, it
8 indicates that the annual service -- or correction -- the
9 hydrostatic release expiration date is 9/2015 for two of the rafts
10 and 5/2017 for the other raft. In your previous testimony at your
11 last hearing, you mentioned that there were spare hydrostatic
12 releases aboard; is that correct?

13 A. Correct.

14 Q. If you'll turn your attention to Coast Guard Exhibit 027,
15 this is an email about a hydrostatic release, INMARSAT
16 communication 29 September 2015. And it's from the *El Faro* chief
17 mate, Tuesday, September 29th, 2015, at 9:52 a.m., to Mr. Tim
18 Neeson, the port engineer; subject, Re *El Faro* Hydrostatic
19 Release. "Hello, Tim. Just following up. As far as I know, we
20 have not received the hydrostatic release still needed. Best
21 regards, Steve Schultz, Chief Mate."

22 Do you know if there was a hydrostatic release that that ship
23 was looking for?

24 A. I didn't know.

25 Q. The *El Faro* was scheduled to arrive in San Juan on the 2nd of

1 October 2015. Based on the safety inspection sheet, those
2 releases were going to expire in September. Would that in fact
3 mean that the hydrostatic release would have been expired?

4 A. To the best of my knowledge, when we get new life rafts on
5 board, we replace the hydrostatic release. So the only thing that
6 this tells me is that maybe the sheet wasn't updated with the new
7 hydrostatic release. But to the best of my knowledge, when I
8 sailed as second mate, I saw the new life raft in place on the
9 cradle. And we always had practiced changing the hydrostatic
10 release on the raft as you replace the raft.

11 Q. So looking at the Coast Guard Exhibit 326, this is the *El*
12 *Faro's* posted station bill, which lists its emergency instructions
13 for the vessel's crew. Section 3 says, "Each person on board
14 shall participate in emergency drills and shall be properly
15 dressed, including a properly donned life preserver."

16 Did drills ever start on your watch on bridge?

17 A. Correct.

18 Q. So let me see if I can phrase this. Someone would come up to
19 the bridge and say, hey, mate, we're going to have an emergency
20 drill, and on your watch you or someone in the bridge would sound
21 the alarm; is that correct?

22 A. No, sir. Let me add on to that. So the drills were planned
23 in advance, so we knew the time that the drill was going to take
24 place. That might not be entirely true. We once did a drill
25 without letting anybody know just to practice. But, what I mean

1 is that, going back to your previous question, I have not been on
2 the bridge on Steamship *El Faro* when a drill got started because
3 the second mate will come up and relieve me if the drill was
4 between 8 to 12 in the morning. He or she would relieve me prior
5 to the drill to start, maybe 20 minutes prior, take over the
6 watch, and then I'll just go down and get ready for the drill.

7 Q. During the drills on the *El Faro*, did you see all personnel
8 wearing lifejackets?

9 A. Yes.

10 Q. Section 4 of the same document says, "All persons in addition
11 to the crew shall participate in emergency drills assisting as
12 directed by the chief mate or chief engineer depending on the area
13 in which they are working." Would this include the Polish riding
14 crew?

15 A. To the best of my knowledge, any rider that we have on board
16 was directed to head up to the bridge and report to the master.
17 And from there, the master will direct them to anywhere else by
18 his choosing. But most of the time the riders were side by side
19 with the master. And I didn't visually all the time see this
20 happen, but I can hear on the UHF radio when the master calls his
21 muster on the bridge. He reports he has the riders next to him.

22 Q. So during a drill, would Captain Davidson come out on the
23 wing and look down on the boats and observe the way the drills are
24 being conducted?

25 A. Yes, I recall at times. In fact, I want to add that I

1 recall -- on my previous testimony I didn't recall that I saw
2 riders near my station, but I do recall Captain Davidson looking
3 down and talking to riders down at the boat station, and talking
4 to riders and the riders having their lifejackets on.

5 Q. Did you observe this when you were second mate in September
6 of 2015?

7 A. If I recall correctly, when I was second mate in 2015,
8 heading northbound, we didn't have a drill at that time.

9 Q. I'm going to refer to Coast Guard Exhibit 266, which is the
10 VDR transcript, on page 315. I'm not going to ask you to read it.
11 I will paraphrase it. If I need to read it, I will. But the
12 second mate is talking to one of the watchstanders on a watch, and
13 at 132 and 10 she says, "Remember the whole Jacksonville outbound
14 incident." And then later on she says -- there's another
15 reference on the transcript.

16 My question is, during your service on *El Faro*, was there any
17 steering incident with the vessel that involved something that the
18 bridge could control? By that I mean adjusting the rudder or
19 the -- anything like that. Were there any kind of steering
20 incidents on the ship?

21 A. No.

22 Q. As mate, could you operate all of the controls of the
23 steering system without talking to anyone else? In other words,
24 could you change the rudder strength, could you adjust any of the
25 dials and controls, without calling anyone else?

1 A. Yes. But I would like to add on to that, we always kept
2 everybody on the loop if we thought that we needed to adjust
3 anything on the autopilot for the ship to ride better. So we had
4 adjusted those before as a team just to find the best setting for
5 the ship to ride.

6 Q. So if you had to adjust the autopilot controls at night,
7 would you call the captain?

8 A. Correct.

9 Q. I'm almost done, sir. I appreciate your patience. Are you
10 good to continue?

11 A. Yes. How many questions you got left?

12 (Laughter)

13 Q. Just a few, sir.

14 CAPT NEUBAUER: Mr. Berrios, we still have other questions
15 from the panel, so if you'd like to take a break, just let me know
16 anytime.

17 THE WITNESS: I can finish Mr. Fawcett's questions and then I
18 would like to take a break.

19 CAPT NEUBAUER: Yes, sir.

20 Mr. Fawcett?

21 MR. FAWCETT: Thank you, sir. Thank you, Captain.

22 BY MR. FAWCETT:

23 Q. On the transcript there are two mentions about where
24 lifejackets are kept on the bridge. Where were they kept?

25 A. Under the chart table, under the bridge computer.

1 Q. How many?

2 A. To the best of my recollection, two.

3 Q. The storage location for those lifejackets, were they marked?

4 You know, did it say lifejackets here?

5 A. To the best of my recollection.

6 Q. During drills, did you ever see anyone put those lifejackets

7 on? In other words, not come to the bridge with lifejackets but

8 go to that storage location and put on the lifejackets?

9 A. I don't recall. But I would like to add on that at any drill

10 the second mate will brief me beforehand, and then I'll go down

11 below deck to get ready for the drill. So I didn't witness what

12 you're asking.

13 Q. So to clarify something and help us understand the

14 transcript, were the waypoints for the GPS displayed on the radar?

15 In other words, if I looked on the radar could I see the GPS

16 coursed from waypoint to waypoint?

17 A. I can't recall the course, but I can recall the waypoint and

18 the track line overlay.

19 Q. And it may be helpful if you can answer this: Do you

20 remember if it was displayed in a purple or magenta color?

21 A. At this time I can't recall.

22 Q. Do you remember if it was displayed -- I think the *El Faro*,

23 from her equipment log, had Furuno radars and a Raytheon radar.

24 Do you know if it was displayed on the Furuno radar?

25 A. I'm sorry, I can't recall. Just sailing other ships, it has

1 been a while. At this time I can't recall.

2 Q. When you took the information that was on the ship's GPSs,
3 the position information, and you laid out -- during your watch,
4 when you laid out the track of the ship, you would put the fix
5 from the GPS on the paper chart; is that correct?

6 A. Correct.

7 Q. Did you also put dead reckoning positions for what was going
8 to occur ahead? Now, the typical practice is to lay out dead
9 reckoning positions. Did you do that?

10 A. Correct.

11 Q. Have you had a chance to look at the track of the *El Faro* on
12 the accident voyage?

13 A. Can you pull that up?

14 Q. Let me rephrase it in the interest of time. The *El Faro*
15 passed down between San Salvador and Rum Cay. When you get down
16 into the islands like that, are you coastal navigation or deep-sea
17 navigation?

18 A. To the best of my knowledge, anytime that you have an island
19 in sight that the radar can pick it up, that means coastal
20 navigation.

21 Q. What would be -- how would you do coastal navigation? In
22 other words, what would be the difference from deep-sea
23 navigation?

24 A. On mileage -- that will be explained better, but for me, the
25 difference is that when you are proceeding coastal navigation you

1 have more means to assess the situation to fix your position. I
2 mean by this you can use visual pairings, you can use ranges on
3 the radar, you can do land fixes, you can still use the GPS
4 position, you can still use celestial navigation. You can take
5 soundings, most likely, depending the area that you're sailing to
6 confirm your position on the chart. You can use visibility range
7 and calculate for a light that you have dead reckon on the chart,
8 when it's estimated to be seen, and expect that to happen based on
9 your speed and your course.

10 Q. I don't have access to Captain Davidson's standing orders nor
11 his night orders because of the circumstances of the accident. Do
12 you know if Captain Davidson's standing orders or night orders
13 contained specific instructions for coastal navigation?

14 A. It has been a while, but I can say this; that every note that
15 he had were very specific. All his night orders were very
16 specific. And most likely all those details were in place,
17 especially taking soundings to crosscheck your position. And
18 whenever you have land in sight for doing the ranges on the radar
19 or parallel indexing, that was in place on his standing orders.

20 Q. Would you expect when the ship went from deep-sea navigation
21 to coastal navigation during the night for the mate to contact the
22 captain to let him know that they came in closer proximity to
23 islands and other potential navigation hazards?

24 A. I don't recall the specifics but I can testify on previous
25 voyages, and I cannot recall if this was in Steamship *El Faro*, but

1 on one of the steamships we sailed through the Providence Channel
2 and it was on my watch, and we practiced during my watch coastal
3 navigation. We used all the available means to plot the position,
4 and because this was planned and the captain knew beforehand, I
5 didn't feel the need to contact him. But I do recall always this:
6 Whenever in doubt, call the master. So I don't see why any of
7 the mates will feel we need to call the captain if the VR that the
8 captain knows beforehand hasn't changed.

9 Q. And my final question. Have you ever heard a Coast Guard
10 aircraft broadcasting critical weather information to ships at
11 sea?

12 A. You said aircraft?

13 Q. Yes, sir. In other words, a Coast Guard aircraft identifying
14 itself and saying sécurité, sécurité, sécurité, and then passing
15 what's deemed important weather information?

16 A. I can't testify a specific aircraft but I have heard weather
17 forecasts before on the bridge.

18 Q. And just to clarify, have you ever heard an aircraft make
19 those kinds of broadcasts?

20 A. Not an aircraft, to the best of my knowledge. I can't
21 testify from whom exactly it came, if it came from a ship, if it
22 came from Sector Miami or Sector San Juan, but a broadcast from
23 the Coast Guard.

24 Q. Just to follow up on that, have you ever used the ship's
25 high-frequency radio set to -- by ship I mean the *El Faro* -- to

1 monitor weather information that come across the high-frequency
2 radio by voice?

3 A. No.

4 Q. Thank you, sir.

5 CAPT NEUBAUER: Mr. Berrios, at this time we'll take a break.
6 The hearing will recess and reconvene at 10:20.

7 (Off the record at 10:05 a.m.)

8 (On the record at 10:24 a.m.)

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

10 Mr. Berrios, before we broke, Mr. Fawcett asked the question
11 if you had ever received an HF communication on the bridge of the
12 *El Faro*. Do you have a clarification on that point, sir?

13 THE WITNESS: Yes, sir. It's just that I want to add on,
14 just to be clear, that we know that there are stations that we can
15 monitor for weather forecasts through the single sideband. And
16 that was my clarification.

17 BY CAPT NEUBAUER:

18 Q. Was the HF radio active so that it would receive any
19 transmissions that were in range?

20 A. Correct. We have equipment similar to a modem that will help
21 you monitor all the required frequencies by law.

22 Q. Thank you. I just have two follow-up questions from the last
23 session with Mr. Fawcett. In regards to the lifejackets on the
24 bridge, did you ever visually see those jackets?

25 A. Yes.

1 Q. And also, were there any survival suits on the bridge?

2 A. Yes.

3 Q. And how many?

4 A. Two.

5 Q. And where were those stored?

6 A. The same place.

7 Q. And did you visually see those survival suits?

8 A. Correct.

9 CAPT NEUBAUER: At this time, Commander Denning will have
10 questions for you.

11 BY CDR DENNING:

12 Q. Good morning, Mr. Berrios. I'm going to walk you through
13 some of the VDR transcript that we've received and have had an
14 opportunity to review. I think that you said earlier in your
15 testimony yesterday that you had a chance to read the transcript.
16 Is that correct?

17 A. I read once.

18 Q. Okay. Great. Thank you. So I'm going to read through some
19 of this. Some of them I'll have you look at on the screen and
20 some of them I'll just read. First, I'd like to refer you to
21 Exhibit 357.

22 CDR DENNING: And, Lieutenant Commander Yemma, I apologize.
23 I should have frontloaded you with that. If you could present
24 that on the screen for Mr. Berrios, I'd appreciate it.

25 BY CDR DENNING:

1 Q. What that exhibit is, is a screenshot of the BVS images that
2 the crew would have been looking at early on in the voyage. There
3 is discussion on the VDR audio transcript about this particular
4 BVS package. This is the package that's current as of National
5 Hurricane Center Tropical Forecast Advisory 8. Do you see that
6 image on the screen?

7 A. Yes. Yes.

8 Q. Okay. So, with this image in mind, the first question I
9 wanted to ask you -- I'm actually going to refer back to your
10 memory -- American Practical Navigator, commonly referred to as
11 Bowditch, describes the dangerous semicircle of a hurricane,
12 correct?

13 A. Correct.

14 Q. And based on your knowledge of that document and your
15 training as a mariner, can you just describe for us your
16 understanding of the dangerous semicircle of a hurricane?

17 A. What specifics do you want me to describe about the dangerous
18 semicircle?

19 Q. Let's start with the location of the dangerous semicircle.
20 And don't get too distracted by the image at this point. I just
21 want you to think about your training as a mariner and where is
22 the dangerous semicircle of a storm.

23 A. On this side of the hemisphere, because it changes on
24 hemisphere. But on this side of the hemisphere will be northwest.

25 Q. Northwest?

1 A. Correct.

2 Q. Does it have anything to do with the motion of the -- the
3 direction of the movement of the storm, to your recollection?

4 A. Correct.

5 Q. I'm sorry. Correct, does that mean it does have -- it does
6 or does not have to do with the direction of the storm's movement?

7 A. It does.

8 Q. Okay. So can you describe that in a little bit more detail?
9 If a storm is moving, let's say, in a northerly direction, which
10 side of the storm is the dangerous semicircle?

11 A. Still northwest.

12 Q. And if the storm is moving in a southwesterly direction,
13 which side of the hurricane would be the dangerous semicircle?

14 A. Still northwest.

15 CAPT NEUBAUER: Commander Denning, could we -- we're asking
16 about weather navigational rules. If we can refer to Bowditch or
17 some publication that you're -- or if he could, to -- it may help.

18 CDR DENNING: Yeah, we can do that. I was actually trying to
19 understand his recollection as a mariner. The reason I'm doing
20 this is because there are a lot of discussions on the VDR from the
21 crew about their understanding of where the dangerous semicircle
22 is, and I'm comparing that with what I read in Bowditch. I could
23 read it, but I'd prefer not to do that. I think we can move on
24 from this particular line of questioning.

25 THE WITNESS: Let me clarify that, my previous answer.

1 Southwesterly heading, then the dangerous semicircle would be 45
2 degrees to the left of the northwest. That will be the average of
3 the dangerous semicircle.

4 BY CDR DENNING:

5 Q. Okay. Can you just describe why you -- what general
6 understanding you have on why that would be -- why that is the
7 dangerous semicircle? Based on the behavior of a storm, why is
8 one particular area of a storm more dangerous than another?

9 A. Because in that area the winds are higher, the sea state is
10 higher.

11 Q. Okay. If we could refer to the VDR audio transcript.

12 CDR DENNING: Commander Yemma, if you can pull up that
13 exhibit?

14 BY CDR DENNING:

15 Q. And I'm moving along from that particular topic. At 2305,
16 the evening of the 30th, the third mate is on watch. He's looking
17 at new information that arrived at 2253 on SAT-C.

18 MR. BENNETT: Commander Denning, can you give us the page
19 number?

20 CDR DENNING: It's on page number 268 of the audio
21 transcript.

22 MR. BENNETT: Thank you, sir.

23 MR. BIRTHISEL: I'm seeing 269. Is that where you want to
24 be?

25 CDR DENNING: Page 268 of the transcript is 269 of the PDF, I

1 believe. If you're looking at the bottom right corner, I believe
2 it should be 268.

3 BY CDR DENNING:

4 Q. So we've had an opportunity to review the actual SAT-C text
5 that would have come in at that time, and the wind information
6 that appeared in that particular message is expressed in knots,
7 but what it doesn't tell the mariner is the category of a storm.
8 As a mariner, would you find the actual category of the storm to
9 be useful information, or is all you really need the speed of the
10 wind?

11 A. I understand part of your question, but can you ask the
12 question again?

13 Q. Sure. I'm asking what is the useful information to you as a
14 mariner. Do you really care what the -- if a storm happens to be
15 a Category 1, 2 or 3, or do you simply care about the speed of the
16 wind?

17 A. Both.

18 Q. So it would be useful to you as a mariner to understand -- to
19 be told by all of the information you're receiving that the
20 category is a Category 3 at the time?

21 A. Using all available means.

22 Q. Okay. Thank you. And I'm just pointing out that this
23 particular message does not include category, and that would be
24 useful. So that's helpful. Thank you.

25 On the previous page, at 2305, the third mate wakes the

1 captain. He says, "Captain, sorry to wake you," and he gives him
2 the information that he just received on that particular message
3 which I've been talking about. It didn't include the category of
4 the storm, so he didn't communicate that to the captain, but what
5 he did communicate is that at 0400 they would be 22 miles from the
6 center of the storm, and that the captain -- he communicated that
7 he understood the captain's expectations to be that they not get
8 into the quadrant dead ahead of the storm. The captain responds.
9 We have no idea what he actually says because he's on the other
10 end of the phone. Later, the third mate tells his AB, "He seems
11 to think that we'll be south of it by then and the winds won't be
12 an issue."

13 So I set that up in context to tell you that, you know, if he
14 had woken up the captain, communicated to him that they'll be 22
15 miles from the center of the storm and the captain's thought,
16 apparently, is he'll be south of it, but 22 miles seems very
17 close. And along the lines of Mr. Fawcett's questions earlier,
18 you said you had called the captain on previous occasions. The
19 question I want to ask is when you have called Captain Davidson,
20 has it been challenging to you to wake him up?

21 A. No.

22 Q. When talking to him on the phone, did he seem to be
23 understanding what you're saying very clearly? Did he seem to be
24 awake or were there times when it seemed to take him a few moments
25 to really understand what you're saying?

1 A. On my experience, he will pick up the phone right away and
2 sound alive, positive, and happy that you made that phone call.

3 Q. And you said there were occasions when you asked him to come
4 to the bridge and he did do that, correct?

5 A. Correct. And I quote he would say, "I'll be right up."

6 Q. So was there any reluctance on his part to go ahead and come
7 up to the bridge, get up and come up to the bridge?

8 A. Define reluctant.

9 Q. Did you ever have to -- did he ever express that he didn't
10 want to, you had to talk him into coming up, Captain, I'm very
11 concerned, I really want you to come up here?

12 A. Say that again?

13 Q. I'm sorry. Maybe I'm speaking too fast. Were there
14 occasions where you asked for the captain to come up to the bridge
15 and he didn't seem to want to come up to the bridge and you had to
16 talk him into coming up to the bridge?

17 A. Negative. At all times he was available and he would come up
18 to the bridge.

19 Q. Okay. Thank you. Back to the VDR transcript. And you don't
20 have to turn to these pages, but I will just express to everyone
21 which page we're on and the time stamp just for future context.

22 On page 42, the 30th, at 0638, SAT-C weather information comes in
23 and the mates indicate that, "Now I think we're getting that every
24 3 hours now instead of every 6." Is 6 hours the normal frequency
25 you expect to receive SAT-C weather information?

1 A. That depends.

2 Q. Okay. And what does it depend on? When would that frequency
3 change?

4 A. If there's an advisory, the frequency rate will increase,
5 perhaps 3-hour intervals.

6 Q. On page 47 --

7 CDR DENNING: And we will go to that one, if you don't mind,
8 Commander Yemma.

9 BY CDR DENNING:

10 Q. So on page 47 of the transcript they're referring to a purple
11 line. And if I can get to it, I'll -- sorry. It's taking me a
12 moment. I'll read that to you. I just want to get an
13 understanding from you on what they may be referring to on that
14 particular line.

15 Page 47 of the transcript, at 6:57:19, the chief mate says,
16 "Yeah, I'd like to have my little thing following this little
17 purple line." So he's referring to a purple line.

18 Can you help us understand, is he maybe referring to a purple
19 line on the radar, a purple line on BVS? What might he be
20 referring to with that purple line, based on your knowledge of the
21 equipment? This is just helping us understand some of the
22 contexts of some of the --

23 A. The chief mate at the present time came from Steamship *El*
24 *Yunque* and, perhaps, the setup on the radars, even the brand, and
25 GPS main unit feeding information to the radars might have

1 different settings and showed that purple line that he was looking
2 for.

3 Q. Is there also a purple line on the radar, the ARPA radar
4 equipment?

5 A. I can't recall a purple line on the latest Furuno radars.

6 Q. During previous hearings, you and other witnesses testified
7 about the anemometer display. We hear some discussion in the VDR
8 audio transcript on the 30th, at 713, captain and chief mate are
9 speaking about the anemometer. They say --

10 CDR DENNING: And this is on page 54 for anyone following
11 along.

12 BY CDR DENNING:

13 Q. "If our anemometer worked, we'd be able to --" and then
14 there's some unintelligible words "-- like old school." And they
15 say, "Has anyone played with it enough --" this is the chief mate
16 speaking. "Has anyone played with it enough to know if the
17 number's good? Obviously the direction's not good. Is that
18 number any good?" And the captain replies, "I wouldn't trust it."

19 So, there, they seem to be speaking about the direction they
20 know is not good, not accurate information. In your recollection,
21 did the wind direction as displayed on the anemometer seem to stay
22 within a certain range or did it fluctuate greatly?

23 A. It seems to stay within the same range.

24 Q. And that's what we observed in the parametric data that we
25 also received on the VDR, is that it generally stayed within a

1 range approximately 180. At times it fluctuated in a full range
2 around 360, but in most instances it stayed around 180. Is that
3 your recollection or did it seem to stay in a different direction?

4 A. The color-coded relative wind on the display wouldn't go
5 around the display; it would stay fixed. But we had two units.
6 One of them would go around. The other one I cannot recall.

7 Q. Thank you. This is helping us correlate the information
8 we're receiving on the VDR audio transcript with the actual
9 parametric data and prior witness testimony. So that's why this
10 is helpful.

11 They also refer to the other numbers. They talk about
12 direction and then they say, "Is that number any good?" Is it
13 your understanding that they're likely talking about the speed of
14 the wind at that particular moment?

15 A. I'm not looking at the page, but I do recall they talked
16 about the wind speed. Is that what you're asking for?

17 Q. Exactly. So in the transcript they say, "Obviously, the
18 direction is not good. Is that number any good?" And keep in
19 mind that this is from Chief Mate Schultz, who was new on board
20 the *El Faro* as the chief mate.

21 A. I personally crosschecked the relative wind of the anemometer
22 display and I found that you can gather the true wind accurately.
23 And I can testify this because I have visually read the wind and
24 confirmed it in daylight against the anemometer and they were both
25 consistent. So I can testify that the relative wind on the

1 display was accurate.

2 Q. Thank you. That's very helpful. So you said there were two
3 units. Both of them read the same? Is that what I understand?

4 A. Negative. One of them would read the relative wind on the
5 display unit and will go around the 360 degrees, plus the wind
6 speed display. The other unit I can't recall.

7 Q. The one that did display the relative wind displayed that
8 accurately based on your evaluation of the wind speed based on the
9 Beaufort wind scale; is that correct?

10 A. The wind direction with the constant offset and the apparent
11 wind speed, 100 percent correct.

12 Q. Thank you, sir. On page 66 of the VDR audio transcript --
13 CDR DENNING: Commander Yemma, if you can display that for
14 Mr. Berrios, page 66?

15 BY CDR DENNING:

16 Q. At 0853, the third mate on board is discussing the prior port
17 call. He's discussing an issue where a reefer didn't get plugged
18 in properly and he says -- the chief engineer is who he's
19 referring to, I believe -- "Showed up after the fact. You know
20 these, you know -- I mean, granted, obviously I missed something,
21 but, man, I could not (blank) keep up." I believe Mr. Fawcett
22 asked you a little bit about this. Were there challenges with
23 getting all the work done while you were in port when you did not
24 have a port mate?

25 A. Define challenges.

1 Q. Did you find it challenging to get all of the lashings
2 checked while you were in port?

3 A. No.

4 Q. Did you find it challenging to make sure that all the reefers
5 were plugged in as a third mate as described in here? It's kind
6 of describing some sort of chaotic situation during the loading.

7 A. No.

8 Q. Referring to page 101 of the transcript, the captain is
9 asking the mate on watch, "Is it okay if I take this down?" I
10 believe he's referring to some weather information. He says, "I'm
11 taking this below. Just giving a little reference, I'm going to
12 send the weather." A couple questions on that:

13 When sending voluntary weather information to NOAA on board,
14 is that done from the bridge of the ship or does the captain go
15 down below to do that?

16 A. From the bridge, on the first part of your question. And the
17 second part of your question, I have no knowledge about it.

18 Q. So can you describe for us how the weather information is
19 sent to NOAA from the bridge?

20 A. We have an AMVER program on the bridge and we have a floppy
21 disk that got inserted to access the program. We would gather all
22 the information that the program asked us when we fill it in, we
23 input the lat and long manually into the system and, long story
24 short, at the end of the inputs, when you're done, it will ask you
25 if you want to submit this. And you select that button and it

1 will generate code numbers into a file on the floppy disk. That
2 floppy disk then will be extracted from the computer and
3 transferred to the SAT-C unit, inserted in the SAT-C unit, and we
4 would send that to be entered.

5 Q. Thank you. So the captain is apparently discussing taking
6 some weather information down below. And now, when I say the
7 weather, it's parenthetical, so it sounded like during the
8 transcript process but we're not certain exactly what the captain
9 said. But with that in mind, do u have any insight on what the
10 captain might be referring to on the transcript? Did the captain
11 take the weather information down below and send it anywhere? Do
12 you have any in sight on what he might be referring to in this
13 particular quote?

14 A. It could mean many things. To whom he's sending it to -- I
15 mean, with this information there's a lot of lack of information
16 here for me to really make an assumption of where he was sending
17 this.

18 Q. Are you aware of any regular transmissions from the captain
19 to anyone other than the AMVER program, any other regular
20 transmissions from the captain regarding weather to anyone?

21 A. I don't recall.

22 Q. On page 255 of the audio transcript, again this is the
23 evening of the 30th, at 2120, mate says, "Should be ready to go."
24 Now, it's unclear which voyage -- I'll start with this: It's
25 unclear which voyage this comment is referring to, but it does

1 sound as though it might be relatively recent. And we've heard
2 testimony from other witnesses that storm lashings are done all
3 the time, but this statement says, "Yeah, it should be ready to
4 go. You know, plan B; if this happens, we do this, if that
5 happens, we do this. Because already twice now, you know, we left
6 port without expecting any weather. That's why we didn't ask the
7 longshoremen for storm lashes, which we should have."

8 So, again, it's not clear if he's talking about this
9 particular voyage or a previous voyage, but we've heard
10 testimony -- since we've heard testimony that storm lashings are
11 done all the time, this seems to contradict that. Why might the
12 third mate be speaking and asking longshoremen for storm lashings
13 if they're done all the time?

14 A. Let me think about this for a minute, what this may have
15 meant.

16 Q. Certainly.

17 A. And actually, can I take a head break?

18 CAPT NEUBAUER: Sure. The hearing will recess and reconvene
19 at 11:05.

20 (Off the record at 10:55 a.m.)

21 (On the record at 11:05 a.m.)

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

23 Commander Denning, can you continue, please?

24 BY CDR DENNING:

25 Q. So, Mr. Berrios, have you had a chance to consider my

1 question? Do you need me to restate it?

2 MR. BIRTHISEL: Would you restate it, please?

3 BY CDR DENNING:

4 Q. So my question is, with your understanding of storm lashings
5 and the normal procedure on board *El Faro*, why do you think that
6 the mate might be saying that we should have requested storm
7 lashings if that is the common practice, as we've heard from
8 witnesses in the past?

9 A. I don't know.

10 Q. What is your understanding -- I don't want to go -- we've
11 gone very deeply into what is and is not storm lashings in the
12 past, and I don't want to go too far down that road again, but
13 what's your understanding of the normal lashing procedures versus
14 requesting additional lashings for a storm voyage?

15 A. I'll have to refresh my memory. It's been a while as a cargo
16 man.

17 Q. Okay. We'll move on. We won't go into that now. On board
18 *El Faro*, according to the watch quarter station bill, whose
19 responsibility was it to, to the best of your recollection, to
20 take the EPIRB if abandon ship is ordered?

21 A. The second mate. But we can review this on the station bill
22 that you pulled up earlier.

23 Q. The station bill that we've received is Exhibit 326. The
24 reason I'm asking this question is because in the audio
25 transcript, on page 271, the AB says, "It's good to know that --"

1 and he speaks of two members of the stewards department "-- will
2 get the EPIRBs." And I'm contrasting that with what I see in the
3 watch quarter station bill that says it's the mate's
4 responsibility. So, do you have any insight on why he may have
5 thought that it would have been other people's responsibility to
6 get the EPIRB?

7 What I'm trying to do is validate the station bill that we
8 received because it seems to contradict with what I read in the
9 VDR transcript. So your recollection will help piece together
10 some of those final moments.

11 A. If you can scroll down to the SA?

12 Q. When you say SA you're speaking of the steward assistant?

13 A. Yeah. Can you scroll down to the abandon ship, please --
14 right there. Can you read what it states there?

15 Q. Sure. So it states, "Lifeboat No. 2 provide lifeboat radio
16 and SART."

17 A. Can you scroll up to the second mate's duty?

18 Q. Certainly. So under second mate it reads, "Lifeboat No. 1,
19 second in command. Lifeboat radio, SART, EPIRB."

20 A. Does that answer the question?

21 Q. In the audio transcript, they say that the steward assistant
22 is to grab the EPIRB. Do you think maybe they're referring to the
23 SART?

24 A. Probably. Could be.

25 Q. So my last line of questioning is just going to be about the

1 GMDSS equipment on board. What type of training to mates receive
2 on the operation of GMDSS equipment, particularly distress alerts?

3 A. We receive a GMDSS license. All officers that serve as
4 mission managers go through a program where you get trained on
5 GMDSS and get a certificate. And that certificate is posted on
6 the bulkhead on the bridge at all times. And we constantly
7 trained on the GMDSS on a daily basis.

8 The second mate's duty is to practice the use of the GMDSS
9 equipment on a noon basis as part of the Checklist 16-C, C as
10 Charlie, and a log entry is made on the deck log and on the GMDSS
11 deck logbook about the position. Also, furthermore, we have
12 training on bridge resource management on the bridge where we
13 would discuss the GMDSS on the beginning.

14 Furthermore, I recall the printout of the GMDSS on the noon
15 daily test being printed out and posted against the bulkhead under
16 the SAT-C column for the records of all different types.

17 Q. Thank you. So on the *El Faro*, the SAT-C equipment that they
18 had, the GMDSS equipment included a Furuno FELCOM15. We reviewed
19 the operator's manual. Does the training you just described and
20 the exercises you just described include hands-on working with
21 that equipment on a daily basis? Is that what I understood?

22 A. Do you have a picture of the Furuno you are talking about?

23 Q. We do have the manual that was submitted to the NTSB. We
24 have it on Accellion. We have not made that an exhibit, though.
25 If you want to see it, we can certainly pull that up.

1 A. I'm just trying to picture the equipment to give you the best
2 answer possible. But on that note, I can testify that on our
3 meetings we would go through all the equipment and the processes
4 on, for example, how to send a distress. I then do this with ABs
5 on watch, that you have a shortcut to send a distress, let's say,
6 for example, on the SAT-C.

7 We have a controller where you can press the soft key for at
8 least more than 4 seconds to send a shortcut distress, and that
9 you can sit down on the unit itself, and it has a soft key as
10 well. Plus, you have other options where you can go into the
11 settings on the upper part of the screen and scroll to the
12 distress tab and follow the instructions to send a distress.
13 Plus, you can send a distress, also, by just typing a text message
14 and inputting all the information that you would like.

15 You can also have a preloaded file that you can pull up and
16 then send a distress individually as you pull up the page of
17 transmit, under the tab. It will ask you what type of message you
18 are sending and it has a distress selection, and you can send that
19 to any station that you would like to send it to.

20 Q. So during your time on board vessels in general, how much
21 actual hands on -- do you ever test the equipment? Do you ever
22 actually send a test message, a test alert?

23 A. All the time.

24 Q. Now, there are two different types of messages. One is a
25 distress alert, which, as you described, is more of a -- maybe

1 that's the soft key you're talking about. It's very quick. And
2 then there's another distress message, which allows the user to
3 type in additional information.

4 The reason I'm asking these questions is in the audio
5 transcript there is a distress alert where the second mate had an
6 option of choosing one of several different distress types,
7 flooding, list, taking on water, flooding, listing, disabled and
8 adrift. And after she sends her message, her distress alert, she
9 receives a notice saying that her, quote/unquote, homemade one
10 failed. I believe that to be the distress message, and we're
11 comparing this with what we have received. The Coast Guard had
12 received a distress alert but did not receive a distress message.

13 Do you have any insight on why if the second mate who sent
14 the distress alert and a distress message, why one might have been
15 received and another -- are there any concerns with the equipment?
16 Is there anything you read on the transcript that might give us an
17 indication of why the Coast Guard might not have received a second
18 distress message that the second mate prepared?

19 A. I can't recall what I read on the transcript, but based on
20 what you just mentioned right now, there are not only two versions
21 of sending the distress message. You can pretty much send four
22 different ways, off the top of my recollection, and it seems like
23 perhaps she went and sent the file that she had preloaded, as she
24 stated before and you just mentioned, and hit send, and that goes
25 into the -- that's called outbox mail, and it's waiting for the

1 satellite to not be congested and goes through to get to through
2 the satellite, then to the station.

3 And then before or after she went and sent a second distress,
4 under the upper right corner there's a tab for distress and that's
5 the only one that will ask you what type of distress situation, to
6 the best of my recollection. You will pull up the options and you
7 will select the type. It's still a shortcut version of sending a
8 distress.

9 So, to the best of my knowledge, perhaps one didn't go across
10 the satellite to the land station. I wouldn't think that the
11 equipment wasn't working, but maybe the satellite was congested or
12 it was a missed signal. Because in the past I have experienced
13 the equipment fail on transmit, and you just resend another one
14 and it works 10 seconds afterwards, or 10 minutes afterwards.

15 Q. Thank you, sir. That was very helpful. And that completes
16 my questions. Thank you, Mr. Berrios.

17 BY CAPT NEUBAUER:

18 Q. Mr. Berrios, just one follow-up from that last line. When
19 you did experience periods of time when you would have a
20 transmission fail, do you remember weather conditions being a
21 factor or was it more just a missed satellite pass? Can you
22 describe any other details?

23 A. I can't recall.

24 CAPT NEUBAUER: At this time, I'd like to go to the NTSB for
25 questioning. Ms. Bell?

1 MS. BELL: Thank you.

2 BY MS. BELL:

3 Q. Good morning, Mr. Berrios. I have a few just follow-up
4 questions from the questions that have already been asked, and
5 then a few about training and that's it. I'll start with a follow
6 up from Captain Neubauer about the GMDSS messages. If you get one
7 that fails, how do you know that? Do you get an indication?

8 A. Correct.

9 Q. I'm sorry. What kind of indication?

10 A. It will show on the screen display of the SAT-C, and also it
11 will print out the message.

12 Q. Thank you. A couple of these questions are kind of random
13 just because they're following up on other questions that we've
14 asked. One question that came up about calling the captain in his
15 stateroom, when you called him in his stateroom and he came up to
16 the bridge, do you recall what time of day or night that was?

17 A. I can't recall all the times that I called him or if it was
18 daylight or at night, but I do recall a particular one at night.

19 Q. When you would have assumed he was sleeping; is that correct?

20 A. I can't assume if he was sleeping or not, but perhaps at
21 rest.

22 Q. Thank you. During watch turnovers on *El Faro* did you use a
23 checklist to relay weather and other bridge information to your
24 relief on a normal basis?

25 A. Can you say that again?

1 Q. During a turnover, if you are relieving a mate, do you use a
2 checklist to relay that information from what you've experienced
3 on the bridge in your -- during your watch?

4 A. During turnover watch, correct.

5 Q. Did you always use a checklist?

6 A. Correct.

7 Q. Did other officers always use a checklist?

8 A. Correct.

9 Q. Is there a requirement by the company to use a checklist?

10 A. Correct.

11 Q. Thank you. Some questions about the STCW hours. When are
12 you required to fill out the STCW hours in the software program?

13 A. I don't know exactly when it's required, but I know that we
14 practice on a daily basis and that we also, ahead of time, project
15 what could happen in the future so we can plan accordingly just to
16 comply with the STCW program.

17 Q. So you don't have a routine every day at a certain time you
18 have to fill that out or you do fill it out?

19 A. The routine is, during watch, anytime you can do it. For
20 example, for the third mate between 8 to 12, or 20 to 24, whenever
21 it fits best.

22 Q. Is it always done on a daily basis?

23 A. Correct.

24 Q. And you said that the program will tell you if you're not in
25 compliance with STCW requirements, correct?

1 A. Yes.

2 Q. And if you're not in compliance, what do you do?

3 A. I talk to the mate and we come up with a plan between the
4 three mates, or even the captain, just to comply with it. For
5 example, there has been times where Captain Mike Davidson would
6 stand up the watch and take over the watch for any mate just to
7 help us out to be in compliance. Or even if we were in compliance
8 and we felt we wanted to get more rest, he was always available to
9 take over the watch and more happy to do so.

10 Q. Did that occur on a frequent basis?

11 A. Yeah. You have to be careful from Mike Davidson. He would
12 ask you if you personally, if you were well rested, and he will
13 remind you that he's available to take over the watch. For
14 example, I remember one time that I was talking to him and I think
15 I said I can just go and use the head, and he took over the watch
16 just so I can use the head, not on the bridge, in my stateroom.
17 Or pick up paperwork or anything else, he would be available to
18 take over the watch anytime. Or just dinner relief, he would just
19 do dinner relief for the mates so they have more rest times.
20 Regardless, the STCW program was still in compliance.

21 Q. Thank you. You mentioned earlier when asked about sleeping
22 in your stateroom that you did not hear noise, there was no noise.
23 Do you wear earplugs when you sleep, or listen to music?

24 A. I never wear earplugs. And if I listen to music, only in one
25 ear.

1 Q. So it is quiet when you're sleeping, is that what I'm
2 understanding?

3 A. Correct.

4 Q. A question about the safety drills. You stated that the
5 safety drills were usually planned. Who knew about the drills?
6 Was it just the officers, or was it all of the crew?

7 A. All the crew knew that the drills were coming up. They were
8 posted at the crew mess, officer's mess on board and everybody was
9 advised. All the head departments will transfer that to the crew.
10 And I recall once that only the officers knew about it just to
11 keep everybody on their toes.

12 Q. How did that drill go?

13 A. It went great.

14 Q. Thank you. We were talking about the weather observation
15 weather reports. On the VDR, the second mate had indicated that
16 she was not familiar with how to send a weather observation and
17 she said, "I hope I did it right, because I've never done it
18 before." Who typically sends that report?

19 A. Every mate on watch, or whoever has the watch, if it's the
20 master or other officers that happens to coincide with the certain
21 update times of the weather observations would send that weather.

22 Q. So most of the mates would know how to do that; is that
23 correct?

24 A. Correct.

25 Q. Were you trained on sending out the weather information? I

1 know you walked through the process with us earlier, but did you
2 get some kind of training to do that?

3 A. It is a plug-and-play. I don't think there's any training
4 required to send the weather but it's just a plug-and-play.

5 Q. Thank you. During your testimony at the first MBI, you
6 indicated that you were present on the *Isla Bella* when they were
7 installing the BVS, the Bon Voyage System, on the bridge. Do you
8 recall who was actually doing that installation? Not a name, just
9 the company. Was it TOTE? Was it AWT?

10 A. I don't recall, but I can testify that it wasn't TOTE. I
11 take that back. I can't recall.

12 Q. And during that testimony, you also indicated that -- a
13 question came up about how frequently they wanted to receive
14 weather data. Do you recall who was asking that question, if it
15 was a crew member or the company who was installing the BVS?

16 A. I recall there was a crew member present and the company that
17 was installing the program, but I don't recall the name of the
18 person or the name of the company that was installing the program.

19 Q. Okay. Thank you. But it was not TOTE that was installing
20 it, or you're not sure?

21 A. If I were to assume, it wasn't TOTE.

22 Q. Do you recall if there were any other discussions at that
23 time on the setup characteristics or performance of BVS?

24 A. Can you ask that again?

25 Q. Do you recall if there was any discussion about how the setup

1 would occur, the updates and things like that, that you would
2 receive?

3 A. Yes.

4 Q. Can you elaborate on that?

5 A. The topic came up that the frequency of receiving automatic
6 data and I mentioned that to select the most frequent data
7 possible to receive on the outline mode.

8 Q. Do you recall if those conversations ever took place about *El*
9 *Faro's* BVS system when you were on the *El Faro*?

10 A. The BVS system was in place when I came on board.

11 Q. Were you aware if you would be able to make any changes to
12 that, the updates, the frequency of updates on *El Faro*?

13 A. I don't know if I recall back then.

14 Q. You stated that you were on the *Isla Bella* when they were
15 doing the installation. Do you recall if there was any, or are
16 you aware of any training that was provided for BVS for the crew
17 members?

18 A. All the crew that was at the time in *Isla Bella* were crew
19 that had worked with the BVS system and, to the best of my
20 knowledge, it was pretty much the same.

21 Q. So there was no additional training on *Isla Bella* for the
22 BVS, then?

23 A. I don't recall.

24 Q. On the *El Faro*, BVS information was sent directly to the
25 captain, who then forwarded it to the bridge. Was that the way it

1 was set up on *Isla Bella*?

2 A. To the best of my recollection, no.

3 Q. So it only -- as far as you know, on the ship that you're
4 working on now, does the information on the BVS go solely to the
5 captain and then he has to forward it to the bridge, or does it
6 also come to the bridge?

7 A. It also comes to the bridge.

8 Q. Thank you. Do you know who manages the BVS settings? So we
9 were talking about the setup frequency. Who would be in charge of
10 making any changes to that?

11 A. The master.

12 Q. Was everyone on the bridge aware of the times the BVS weather
13 would be coming in?

14 A. To the best of my knowledge, yes.

15 Q. Did Captain Davidson prioritize any one source of weather
16 information over another that you're aware of?

17 A. I don't know that if he emphasized one more than another, but
18 I can testify that the SAT-C message printouts were read and he
19 show by the officer and posted on the bulkhead. And I do recall
20 Captain Davidson selecting an area on the aft end bulkhead to --
21 for the SAT-C and the NAVTEX and any other printouts to be posted
22 on the bulkhead. And we always referred to the SAT-C message
23 prior to the BVS.

24 Q. Do you recall if Captain Davidson ever indicated that one
25 source of information was more accurate than another when it came

1 to weather?

2 A. About accuracy, that depends on the forecaster. But we were
3 all aware that the SAT-C message would lead any other message on
4 the bridge.

5 Q. Did you ever notice a difference in weather information
6 obtained by BVS and that obtained by SAT-C?

7 A. Yes.

8 Q. Can you elaborate?

9 A. I don't remember the details, but I have gathered forecasts
10 for many years, and now working on ships with the BVS, I can't
11 testify for how many times but I can say that for the most part,
12 maybe 98 percent, or 99 percent even, have been right on,
13 accurate.

14 Q. About which weather source are you speaking of?

15 A. Comparing SAT-C to BVS and any other NOAA forecast.

16 Q. So are you saying -- I'm not sure I'm understanding what
17 you're saying. Ninety-eight percent accurate between the two;
18 that if you're comparing the two that they're that close in
19 information?

20 A. Correct, like 99 percent. I don't recall -- if there were
21 many times, I would have recall at this time.

22 Q. Thank you. That's all the questions I have.

23 BY CAPT NEUBAUER:

24 Q. I just have two follow-up questions to Ms. Bell's. I think
25 you stated that SAT-C would lead any another source on the bridge

1 for weather. Does that mean that the crew realized SAT-C as the
2 latest information or had the latest weather information?

3 A. Correct.

4 Q. And then in regards to a watch stand, you testified that
5 there was a checklist filled out for each watch relief? Did I
6 understand that one correctly?

7 A. Correct.

8 Q. And I'd like to know how long, on average, did your watch
9 relief stay on *El Faro*, both coming onto watch and off going, in
10 minutes, if you can give me an estimate?

11 A. Can you ask that again?

12 Q. I'm curious how long it took you to relieve the officer on
13 duty, on average, when you came on watch and when you went off
14 watch. You mentioned you're doing the checklist. How long did
15 you -- can you give me an estimate on the overlap time?

16 A. That would vary, but to give you an average, 15 minutes, 10
17 to 15 minutes. Not less.

18 Q. And that would be a standard watch? It could take longer
19 based on other circumstances, would that be a fair statement?

20 A. Yes.

21 Q. Thank you.

22 CAPT NEUBAUER: I'd like to go to Mr. Richards of the NTSB at
23 this time.

24 BY MR. RICHARDS:

25 Q. Good morning. Before we move on, I just want to make sure I

1 clarify this appropriately. When you said that SAT-C would lead
2 BVS, what did you mean by lead?

3 A. That the base of the forecast will printout first on the SAT-
4 C message.

5 Q. So you on the bridge would receive the SAT-C information
6 before you received the BVS information; is that correct?

7 A. Correct.

8 Q. I just have one question for you this morning. While at sea
9 on board any vessel, have you ever received a request from the
10 National Weather Service to provide them with information?

11 A. I have seen printouts that state that if you are within 300
12 nautical miles from a particular weather system that all shifts
13 are required to send more frequent weather on the AMVER.

14 Q. But any vessel you were on in particular, has your vessel
15 ever received a specific request from the National Weather Service
16 or NOAA requesting that you provide them information?

17 A. No.

18 Q. Thank you.

19 CAPT NEUBAUER: Mr. Berrios, I think we're getting towards
20 the end of this round. Would you like to continue on at this
21 time?

22 THE WITNESS: Yes.

23 CAPT NEUBAUER: Mr. Kucharski, do you have any questions?

24 MR. KUCHARSKI: Thank you, Captain.

25 BY MR. KUCHARSKI:

1 Q. Good morning, Mr. Berrios, counsel. I'm going to try to keep
2 it on the same topic, but it's a little bit out of order what I
3 initially was going to start with. But on the weather questions
4 Ms. Bell and Mr. Richards asked you about, the lead time in SAT-C
5 and getting that information ahead of BVS, you sat with Captain
6 Davidson, correct?

7 A. Yes.

8 Q. Was he aware, to your knowledge, of that lead time on the
9 SAT-C? Did you discuss that with him?

10 A. I don't recall.

11 Q. You also were asked questions about the settings to track
12 the -- you discussed getting the BVS weather as frequently as you
13 could get the weather; is that correct?

14 A. Correct.

15 Q. And who did you have those discussions with?

16 A. I can't recall exactly, but I remember there was a TOTE crew
17 member representative and the person representing the company that
18 was installing the blower.

19 Q. Were you aware of the schedule of the BVS weather that came
20 out on a daily basis? They came out at certain times. Were you
21 aware of that schedule?

22 A. Yes.

23 Q. Was there a 2300, around 2300 -- let me be clear here. You
24 stood the 20- to 2400 watch at sea, the 8:00 at night to midnight;
25 is that correct?

1 A. Correct.

2 Q. And there was a -- Eastern Time, Eastern Daylight Time, which
3 was the time that the vessel was on when this accident occurred,
4 same time as San Juan. Were you aware of a scheduled forecast BVS
5 or forecast or weather information that came out around 2300?

6 A. I can't recall.

7 Q. Okay. You were aware that the weather came to the master of
8 the vessel, correct, from BVS?

9 A. Correct.

10 Q. Do you recollect obtaining at 2300, or on your 2400 watch do
11 you recollect getting weather sent up from you -- sent up by
12 Captain Davidson to the bridge?

13 A. I recall that I would get weather during night watch period,
14 on daylight or at night, but I don't recall the exact time.

15 Q. There were some questions asked about, I believe about
16 different routes that the vessel used -- or maybe there wasn't.
17 It was actually weather relating to lashes. But let me ask you,
18 were you on any of the Ponce class vessels when they approached a
19 tropical storm or a hurricane?

20 A. I don't recall.

21 Q. And just refresh my memory, what Ponce class vessels were you
22 actually on as third mate?

23 A. I sailed the Steamship *El Yunque*, Steamship *El Faro*, and the
24 Steamship *El Morro*.

25 Q. Great. That's very helpful. So we weren't able to capture

1 the actual voyage plans, the different voyage plans, the weather
2 routes from the *El Faro* because they weren't -- we're told they
3 weren't sent to the office and they were on board the ship. But
4 we did see them on the *El Yunque*. They looked like they were in
5 plastic page protectors and they have different voyage plats, if
6 you will. Are you familiar with those?

7 A. Yes.

8 Q. Okay. Now the million-dollar question. We saw them on the
9 *El Yunque*. Is that similar to what they have on the *El Faro*?

10 A. Correct. I think the word you were looking for is laminated.

11 Q. Oh, the ones we actually saw were not laminated. They were
12 like in page protectors. We have pictures of them. But maybe on
13 the other vessels they could have been, but, you know, those
14 plastic page protectors you put a piece of paper in. But anyways,
15 they had them in a -- was it in a book form that they had them in
16 *El Faro*?

17 A. It was ready, available on the upper right corner of the
18 chart table on the bulkhead.

19 Q. Okay. So was it in a bookshelf -- in a book form, or was it
20 like in these, you know, some kind of laminated pages on the *El*
21 *Faro*?

22 A. On the laminated pages, on the upper right corner on the
23 bulkhead.

24 Q. Great. Thank you. That's extremely helpful. You mentioned
25 a weather log where you received NAVTEX; is that correct?

1 A. Correct.

2 Q. Was that also weather information by NAVTEX?

3 A. Correct.

4 Q. Did you have any problems in certain areas getting NAVTEX
5 transmissions, certain weather conditions, or time of day, or
6 anything like that?

7 A. What do you mean by problems?

8 Q. Well, I think NAVTEX is a printed weather forecast. Is that
9 correct?

10 A. Correct.

11 Q. The printings, were they clear on there? Were there a lot of
12 errors? When I say problems, you know, the printout, it was hard
13 to read what it actually said?

14 A. We had both printouts. But I just want to mention that in
15 every NAVTEX that I have used has been the same. Also, particular
16 the Steamship *El Faro* had in place a new Furuno NAVTEX. It was
17 the latest technology on NAVTEX and it had a big screen that you
18 can also read out stored messages, prior messages. You can go
19 through the 415 kilohertz and the 490 kilohertz and check
20 different messages that have been stored into the NAVTEX.

21 Q. And when you look at those stored messages, again were there
22 lines missing, information missing, or did you see all the
23 information in there?

24 A. For the most part, it was all the information there. But at
25 times I have seen messages where a word or two is missing.

1 Q. And how about during different weather conditions, if it was
2 raining or it was at night or day, did that affect the NAVTEX
3 messages that you were getting on the *El Faro*?

4 A. Probably, but I can't confirm. I think it's more about
5 distance.

6 Q. So keeping with weather, was -- do you know if Captain
7 Davidson was aware that the weather that came in from BVS, the
8 time where it came in was a lot later than the actual weather that
9 was showing on the prognosis, if you will, the -- the actual
10 conditions or the analysis? I'm sorry. The analysis, the actual
11 analysis.

12 A. I can't confirm that, but I can add on to that that we took
13 the SAT-C seriously and that we relied a lot on the SAT-C printout
14 and the stored message on the SAT-C unit.

15 Q. Thank you. That's very helpful.

16 When you say we, now let's drill down on this. Captain
17 Davidson when you say we?

18 A. Correct. Captain Davidson in particular would read the SAT-C
19 message printouts that were on the aft bulkhead. And if it
20 happens to be that he came up to the bridge and there was a
21 printout that hasn't been read and signed, he would read it with
22 the mate on watch and initial it himself and post it on the
23 bulkhead. Same for the NAVTEX message; they were all initialed.
24 Plus, to add more, we would write down at the top edge of the page
25 the voyage number, if we were headed north or south, just in case,

1 for our own records to know how old the message was. It was a
2 quick reference to know how old that message printout was.

3 Q. And when you wrote that on there, was it local time that you
4 put on there or was it -- you know, the printout?

5 A. We would just write down the voyage number, if we were headed
6 south or north, and then we would initial it. And if we were
7 concerned about something on the sheet that needed to be looked
8 at, we would highlight it.

9 Q. Keeping with weather, did you discuss or overhear any
10 discussions about repairs to the anemometers on the *El Faro*?

11 A. I can't recall the specifics, but I recall the second mate
12 talking about it, that he worked on it, but I can't recall the
13 specifics.

14 Q. And which second mate would that have been?

15 A. Charlie Baird.

16 Q. How about on the other vessels, *El Morro* and *El Yunque*, did
17 you also overhear any discussions or did you participate in any
18 discussions about repairs to the anemometers?

19 A. I don't recall.

20 Q. Okay. Now to go back to my original order of questions.

21 How many contracts -- you said you started sailing in 2010.
22 And how many contracts did you have -- the contracts on the Ponce
23 class vessels, about how many?

24 A. I'll have to look up the records because, to the best of my
25 knowledge, a contract is started and ended the first day that you

1 come on board and the last day you came off. So I'll have to look
2 at the record to actually see how many contracts I've sailed.

3 Q. Okay. Would you say you've been sailing on those ships a
4 couple years, 3 years, 4 years, that type of thing? Just to give
5 a sense of your experience on the ships. I know you've probably
6 testified to this, but it would just be helpful to refresh my
7 memory.

8 A. Let's say early 2013.

9 Q. So you've also served as -- so let me understand it. So
10 since 2013 or '14, it was as third mate, correct?

11 A. Correct.

12 Q. And you also worked as a port relief mate; is that correct?

13 A. Correct.

14 Q. Okay. Did you work as a port relief mate both in
15 Jacksonville and San Juan?

16 A. No.

17 Q. Was it just in San Juan?

18 A. Correct.

19 Q. And could you explain to us, when you took over as port
20 relief mate, came on board, did you generally relieve, did you
21 relieve the mates that were -- the third mate and the second mate
22 that were permanently assigned to that ship so they could rest or
23 go ashore, or did they actually work the cargo watch with you when
24 the vessel was in port?

25 A. That seems like a long question. But to the best of my

1 recollection, I would come on board and, at times, relieve one of
2 the mates on watch for a period of time. If I remember correctly,
3 that time would be between 10- to 1400. And at times I remember
4 doubling up on deck and working along with the mates. Does that
5 answer your question?

6 Q. Yes, pretty much. When you say doubling up with the mate,
7 are we talking about the chief mate or one of -- the third mate
8 and second mate on the ship?

9 A. Any of them.

10 Q. So how many times -- was it once or twice that you served as
11 port relief mate or many times?

12 A. Many times.

13 Q. Okay. So going back, then, so I can get a handle on this,
14 you came on board. What time did you generally come on board?

15 A. Just to add on to how many times, I've been serving as a port
16 mate prior to being a crew member on the Sanchez for those
17 particular vessels. Now, what was your question again?

18 Q. Well, thank you for the clarification, first. So was there a
19 callout hour or hour you reported aboard in San Juan to be the
20 port relief mate?

21 A. Yes.

22 Q. Great. Could you tell us what that hour was?

23 A. I don't recall, but usually it was early, in daylight. And
24 just to add on, I just recall working between 8 and 10 hours.

25 Q. Okay. And you also -- when you were third mate on the, let's

1 choose the *El Faro*, you stood a cargo watch in port, both in San
2 Juan and in Jacksonville?

3 A. Correct.

4 Q. Do you know, at sea, if the ventilation fans to the cargo
5 holds were run?

6 A. Correct.

7 Q. Was there a set routine for these? In other words,
8 southbound runs their fans, northbound runs their fans, certain
9 speeds. Was there a routine for that?

10 A. Correct.

11 Q. Were the fans run on high speed or low speed, or any kind of
12 a speed, do you know?

13 A. On both.

14 Q. Now I'm just talking about at sea, just the at sea condition.

15 A. At sea, on low.

16 Q. And when you said correct, do you recollect going southbound
17 while fans were run, then going northbound when fans were run?

18 A. Correct.

19 Q. Could you tell us why that is?

20 A. It wasn't more like a southbound or northbound, one side or
21 the other, but it was more like the leeward side. So the windward
22 side would be shut off on any particular deck and the leeward side
23 will be running on slow.

24 Q. Great. And did you personally turn on and off any of those
25 fans?

1 A. Correct.

2 Q. Was there a written procedure on this somewhere as far as the
3 fans?

4 A. Correct.

5 Q. And where was this written procedure?

6 A. At H10 station.

7 Q. Okay. So is it stenciled on there, or how was it? You say
8 it was written procedures up there. How was it actually put up
9 there?

10 A. I have to think about this for a minute.

11 Let me take that back. I was thinking about the watertight
12 doors, about the procedure being in place at each station. On the
13 fans in particular I don't recall on station, but I do recall on
14 the chief mate's standing orders or the chief mate's night orders
15 for the port state that he would indicate the process on how to
16 turn them on or off, or what to leave on the on position or vice-
17 versa.

18 Q. Okay. And the chief mate's standing orders -- and I'll get
19 to that. We have a copy of the chief mate's standing orders, but
20 it's during cargo operations. So, to my, mind cargo operations
21 are in port, okay? But I'm asking about out at sea. It's very
22 critical to this investigation. At sea, if there was a written
23 procedure for turning those fans on and off?

24 A. At sea, we wouldn't adjust them unless it needed to be done;
25 then that would be something out of normal and would have been

1 informed from the chief mate to any of the officers, or even the
2 boatswain or deck slide.

3 Q. Okay. So, back to my question, did you ever see the written
4 procedure for at sea for running the cargo -- you said they ran
5 them on slow speed. The leeward side you ran those fans. So
6 that's away from the wind, correct? Ran those fans. Was there a
7 written procedure that you saw anywhere for that?

8 A. I can't testify for at sea. I'm not sure if I understand it
9 correctly, your question. But prior to departure, there was some
10 written notes from the chief mate on how to run the fans. And I
11 recall they were very particular about it. The chief engineer was
12 very particular about it as well.

13 Q. Great. Thank you. That's been very helpful, very helpful.
14 Do you recollect anyone calling the bridge while you were on watch
15 to report any of the scuttles -- do you know what I mean by
16 scuttles in the cargo holds? Yes?

17 A. Correct.

18 Q. On the second deck, the scuttles, do you recollect anyone
19 calling the bridge to report them being opened or closed?

20 A. Correct.

21 Q. And did you log that in the deck log, when they were opened
22 and when they were closed, when this person called up?

23 A. I don't recall on the deck log, but we had a white board on
24 the bridge and we kept record of the time that it was opened and
25 the time that it was closed and what crew member in particular was

1 heading down and when he was heading out.

2 Q. Great. That was on the *El Faro*, they had a white board on
3 there and that's where you noted the time and the crew member.
4 Was that at all hours that that was kept or was it just the
5 evening hours?

6 A. Correct. Any watch at sea was kept that way. And the reason
7 why was just to keep track of the estimated time of a crew member
8 in a cargo hold and just in case we needed to do a search and
9 rescue for any crew member in particular. We had a UHF on channel
10 15, so we had communication at all times. And if we had to do a
11 relief of watch following the Checklist 16B at sea, that would be
12 part of the turnover, part of the checklist. That requires you to
13 know what's going on and the surroundings of the vessel as well.

14 Q. And was that actual -- for the scuttles on the 16B, was it
15 preprinted or was that written in by the mate on watch?

16 A. The checklist includes any work on cargo. And to the best of
17 my knowledge, that's work -- for example, at sea, on a daily
18 basis, the crew member, the second mate, Danielle Randolph, she
19 would go in the cargo holds on deck and check lashing, re-check
20 lashing. And I know this because she would come afterwards to get
21 a cup of coffee. And I know this, also, from the chief mate. He
22 would go between 8 to 12. He'll be going in cargo holds and doing
23 his daily rounds of cargo hold checks for lashing, bilges, et
24 cetera, and he will come up during my watch, most of the time, and
25 do a log entry. Yes.

1 Q. Did you have any function of checking cargo when the vessel
2 was at sea?

3 A. No.

4 Q. Did you ever use those scuttles to go into any of the cargo
5 holds?

6 A. Yes.

7 Q. Could you tell us if they're fairly heavy, the actual
8 scuttle, when you lifted that up?

9 A. Describe? Fairly heavy.

10 Q. Did you use two arms or one arm to lift it?

11 A. I have done it with one hand or both.

12 Q. Was there any way to prevent that scuttle from dropping back
13 down?

14 A. Yes.

15 Q. Could you describe that? Was it like a clip that went to the
16 rail or something like that?

17 A. I have to think about it for a minute, but I recall there was
18 a line available. There also was a line that run all the way down
19 as a messenger line. Right now, I can't picture the pin. I can't
20 picture right now.

21 Q. The cargo hold, every cargo hold had two scuttles, one on
22 either side, did it?

23 A. It varied between vessel and vessel. I have to do some
24 thinking about it but, to the best of my recollection, *El Faro*,
25 for the most part, had it on both sides.

1 Q. Did you ever go down into a scuttle and then come out --
2 especially the number 3 hold, did you ever go down into that
3 scuttle and then go through the door, watertight door into the
4 entry room on the 3 deck level?

5 A. Probably. And I'm answering this because right now I can't
6 recall which vessel it was.

7 Q. Okay. I think I'd like to go to the cargo type questions.
8 And there's been a lot of talk about off button stows. Okay?
9 Now, you said you stood a cargo watch in port, that's correct.

10 MR. BIRTHISEL: We need a break.

11 CAPT NEUBAUER: Okay. The hearing will recess and reconvene
12 at 12:20.

13 (Off the record at 12:11 p.m.)

14 (On the record at 12:24 p.m.)

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

16 Mr. Berrios, it's time to continue with the line from
17 Mr. Kucharski. If at any time you'd like to break and stop for
18 lunch, just please let me know. Otherwise, I'm just going to keep
19 trying to get through it until lunch.

20 THE WITNESS: Understood.

21 CAPT NEUBAUER: Mr. Kucharski.

22 MR. KUCHARSKI: Thank you, Captain.

23 BY MR. KUCHARSKI:

24 Q. Thank you again, Mr. Berrios and counselor. These questions
25 are pretty much going to be -- I'm trying to keep them all in the

1 cargo area, cargo watch type questions. So, first off, could you
2 walk us through the closeout routine of the Ro-Ro cargo. In other
3 words, if you were on watch, you said you stood as the port relief
4 mate many watches, when they finished up roll-on/roll-off cargo,
5 where did they usually finish up? Where was closeout?

6 A. What do you mean about closeout?

7 Q. Last loads that came on board, where did they usually go to?

8 A. On the Ro-Ro decks, the starboard quarter.

9 Q. The starboard quarter of the second deck, where the ramp area
10 was?

11 A. Correct.

12 Q. And was it usually that to keep the avenues open, the
13 elevator operating and everything else, the speed of the elevator,
14 did you usually load the Ro-Ro cargo, load the lower decks first
15 and then try to finish up on the second deck? Was that pretty
16 much how it went?

17 A. I'm not sure I understood your question.

18 Q. Did they try to finish out the lower hold first and then work
19 upwards in the vessel until they got to the second deck; the
20 starboard quarter would be the last?

21 A. Correct.

22 Q. Can you tell us if there was any difference in the cargo
23 operations, the overall cargo operations in Jacksonville as
24 opposed to San Juan?

25 A. They were very similar.

1 A. Yes.

2 Q. How about the actual pace of things, the way things moved?
3 Was it a more rapid or faster pace in Jacksonville than San Juan?

4 A. The same.

5 Q. And how about the securing of cargo? Was that the same in
6 both San Juan and in Jacksonville?

7 A. Yes.

8 Q. So let's talk about the second deck of the *El Faro*. Did you
9 notice any differences in the D rings or the button arrangements,
10 any differences between the *El Faro*, the *El Morro* or the *El*
11 *Yunque*?

12 A. No.

13 Q. Talking about the actual cargo on the second deck, sometimes
14 you would carry automobiles, sometimes they could be boat
15 trailers, cargo without a Roloc box to them; is that correct?

16 A. Correct.

17 Q. And you also had cargo container, say, or there could be
18 over-the-road trailers that were on some kind of wheels, a
19 chassis, if you will, and they had a Roloc box at the forward end,
20 near the kingpin of the trailer; is that correct?

21 A. Trailers with Roloc box, correct.

22 Q. Did you ever see any of the Roloc boxes -- let's call it a
23 button. There's a button to attach the Roloc boxes to. Did you
24 ever see them off button?

25 A. Yes.

1 Q. Help me out here. Can you give me an idea, on the *El Faro*,
2 if it was 5 percent, 50 percent, 100 percent? Can you try to
3 quantify that at all?

4 A. Let me think about it for a minute.

5 (Pause)

6 I recall two to four.

7 Q. So on the *El Faro* it was in the numbers of two to four that
8 you would see per voyage?

9 A. I wouldn't say per voyage, but at times I recall to see two
10 to four.

11 Q. So would four have been the most that you ever saw off button
12 on the *El Faro*, on the second deck?

13 A. Correct.

14 MR. KUCHARSKI: Commander Yemma, could you pull up Exhibit
15 354, please?

16 BY MR. KUCHARSKI:

17 Q. And I believe these are -- well, it's stated the standing
18 orders for mates during the cargo operations. And, Mr. Berrios,
19 please tell me when you're ready.

20 A. Ready.

21 Q. Okay. Have you ever seen these before? Or not these, maybe,
22 particular ones, but I mean a copy of these before.

23 A. Yes.

24 Q. And the last page says Chief Mate Raymond T. Thompson and
25 Chief Mate Jaime Torres, correct?

1 A. Correct.

2 Q. Do you know if any other of the chief mates used this same,
3 very same form?

4 A. Let me think about it for a minute. I don't think I have
5 sailed with other chief mates on the steamships. I don't recall.
6 I don't recall.

7 Q. And refresh my memory. Did you sail with Chief Mate Schultz?

8 A. Thank you for reminding me. Yes, I did.

9 Q. And do you know if he had a set of standing orders for cargo
10 operations?

11 A. I don't recall. But I want to add on that Steve Schultz was
12 very particular on how things, he would like them to be run. But
13 I don't recall a piece of paper. Right now I don't have the
14 picture of the piece that I read.

15 Q. Did you check the parking brakes on all the automobiles to
16 see if they were set?

17 A. During my watch, correct.

18 Q. How did you do that?

19 A. You look through the window. If you can't see the parking
20 brake, depending on the feature of the car, whether the parking
21 break is set, then you have to open the door and physically check
22 or move your eyes around so you can see the actual brake is set.

23 Q. Did you -- I'm sorry, were you finished?

24 A. Yes, go ahead.

25 Q. Thank you. Did you ever physically have to get into the

1 automobile to check any of those, to see if their parking brakes
2 were set?

3 A. Yes.

4 Q. Thank you, Mr. Berrios.

5 MR. KUCHARSKI: Captain, I don't have any further questions.
6 Thank you.

7 BY CAPT NEUBAUER:

8 Q. Mr. Berrios, do you ever remember participating in a fire
9 drill where the crew actually exercised the fire dampers in any of
10 the holds?

11 A. I have to think about this for a minute. Part of your
12 question is yes, but specifically to the cargo holds, I have to
13 think about it for a minute.

14 Q. I understand. So I am going to go to the parties in interest
15 at this time. If you could think about that and maybe at the end
16 I'll ask it. I am curious to see which holds may have been
17 exercised, and particularly if one bolt was used over and over or
18 was it -- you know, did it vary is what I'm looking for.

19 A. Okay. Jason, I just wanted to add that on a monthly basis
20 the second mate will go around and exercise those constantly. So
21 this was an ongoing inspection or exercise. The second mate will
22 go over those on the ship and exercise them all.

23 Q. Did you personally do that as a second mate?

24 A. When I sail on the steamships as a second mate, I only sail
25 for less than a week as a second mate. But when I did my

1 indoctrinations on that, I would take whichever personnel is doing
2 the indoctrination and take them to the second deck and show them
3 how to close them and we would exercise them.

4 Q. Did you ever have a problem operating any of the fire
5 dampers?

6 A. No.

7 Q. Thank you.

8 CAPT NEUBAUER: At this time I would like to go to the
9 parties in interest. And I believe you have one clarification
10 from earlier testimony, sir?

11 MR. BIRTHISEL: I do, sir. Thank you, Captain.

12 BY MR. BIRTHISEL:

13 Q. Commander Denning earlier asked some questions about the
14 dangerous semicircle and he began the question, we were looking at
15 a graphic, and then there was some discussion about quadrants.
16 And then you began your response by discussing this hemisphere,
17 and, as part of your response you also indicated some discussion
18 about quadrants yourself. With regard to the dangerous
19 semicircle, forget quadrants, forget graphics, with regard to the
20 dangerous semicircle in this hemisphere, on which side of the
21 storm track is the dangerous semicircle?

22 A. On the right side of this hemisphere.

23 Q. Thank you, sir.

24 MR. BIRTHISEL: No further questions, Captain.

25 CAPT NEUBAUER: Mr. Reid, do you have any further questions

1 from TOTE?

2 MR. REID: No, sir.

3 CAPT NEUBAUER: Mrs. Davidson?

4 MR. BENNETT: No, sir.

5 CAPT NEUBAUER: ABS?

6 MR. WHITE: Yes, sir.

7 BY MR. WHITE:

8 Q. Good afternoon, Mr. Berrios. My name is Gerard White. I
9 represent ABS. Based on your experience, sir, I understood you
10 sailed on the vessels that were on the Caribbean run from
11 Jacksonville down to Florida -- Jacksonville down to Puerto Rico,
12 excuse me. Did you sail on -- I understand that TOTE also has
13 vessels on the Alaskan run, and my question is did you sail or
14 have you sailed on the Alaskan run for TOTE?

15 A. No.

16 Q. You indicated that, I think, on the vessels that you've been
17 on for TOTE, or based on your experience, you either weren't sure
18 or had not been in either a tropical storm or a hurricane; is that
19 correct?

20 A. Can you ask that again?

21 Q. Sure. Based on your experience to date, have you ever sailed
22 in a hurricane?

23 A. No.

24 Q. And similarly, have you ever sailed in a tropical storm?

25 A. Not that I recall.

1 Q. Okay. You know, during the course of the week there were
2 discussions concerning the motions of the vessel, and the rolling
3 of the vessel from side to side was discussed. Is it your
4 understanding, based on your training as a mariner, that the
5 pounding of the vessel describes the motion of the vessel when the
6 bow comes out of the water and come back down or slams on the
7 surface of the water or the swell? Is that your understanding of
8 what pounding is?

9 A. That makes sense. Correct.

10 Q. And similarly, if the vessel, based on your training, if the
11 vessel was pounding while you were on watch, would you reduce
12 speed to ease the motion of the vessel in the seaway?

13 A. Yes.

14 Q. And based on your training as a mariner, would the purpose in
15 reducing speed when a vessel is pounding, would that be to reduce
16 the stress on the hull and to reduce the potential for shock loads
17 on the cargo gate?

18 A. Yes.

19 Q. On the vessels you've sailed on for TOTE, the *El Yunque*, the
20 *El Faro* or the *El Morro*, or the vessels that you've sailed on
21 since then, is there any procedure during the course of heavy
22 weather to move the automatic -- withdrawn. Based on your
23 experience on the vessels that you've sailed in TOTE, is there any
24 procedure in place to take the vessel off automatic steering or
25 the mike or the gyro pilot and put it back onto hand steering?

1 A. Just to break up your question, I recall that we would have
2 any practice if the autopilot would not steer as normal, then we
3 would switch to hand steering. We would call up the master and
4 notify the master. We would call the engine room and notify the
5 engine room and have them go around and inspect the steering gear
6 room and report back to the bridge. And we would keep the master
7 informed.

8 Q. Okay. Thank you. So in the event that in the course of
9 heavy weather or under conditions where the vessel didn't track
10 well in the prevailing sea condition, there would be a procedure
11 to take it off automatic steering and put it on hand steering with
12 the AB, correct?

13 A. I can't remember the specifics, but I do recall there was
14 instructions. If I remember correctly, even on Captain Davidson's
15 standing orders he had a paragraph about the steering.

16 Q. When we talked about pounding, is it your experience, based
17 on your training as a mariner, that the vessel might be more
18 likely to pound in the event that you were heading into a sea or
19 if you had a following sea?

20 A. It will pound more if you're heading into the sea.

21 Q. Is there also a potential for it to pound with a pitch pole
22 if you have a following sea?

23 A. You asked if it will pitch more on following seas? Is that
24 your question?

25 Q. I used the word pitch poling, but to the extent that the

1 following sea was pushing the vessel down, or the bow down into
2 the sea. That's what I'm referring -- I used the term pitch
3 poling. But would that also result in a shuddering of the vessel
4 due to the action in the seaway?

5 A. That depends on other factors like the swell period, the wave
6 period, both heights of the swell, how the vessel is strained, and
7 what speed do you have on that particular vessel, on that
8 particular leg.

9 Q. Have you ever been in a sea condition where the bow where the
10 masthead light is positioned, where the bow went into the sea and,
11 as the waves came over, you saw the illumination or the reflection
12 back of illumine of the masthead light from the bridge?

13 A. Not in a merchant ship.

14 Q. Okay. Have you ever been on a vessel, on any vessel where
15 containers were lost during the course of a transit, lost
16 overboard?

17 A. No.

18 Q. Are there any procedures that you're aware of to take in the
19 event that containers are lost while underway at sea?

20 A. Yes.

21 Q. And can you tell us what those might be?

22 A. You would record the position and notify the nearest U.S.
23 Coast Guard station. You will notify the office. That's just the
24 start.

25 Q. Okay. Do you recall what the deep draft or loading draft of

1 the *El Faro* typically would be when you left Jacksonville?

2 A. Just looking from this sheet on July 7th it looks like we
3 left Jacksonville at 32-feet-10-inches.

4 MR. BIRTHISEL: And for the record, that's 361.

5 BY MR. WHITE:

6 Q. Okay. And to the extent that the loaded draft of the *El Faro*
7 would be approximately 30 feet when she was loaded, if the vessel
8 was proceeding too fast for the prevailing conditions, would this
9 increase the potential for pounding?

10 A. I want to go back to the previous question. I just want to
11 add on, also, that this draft is taken with a salinity of 1.023.
12 So as we sailed offshore, past the sea buoy, it would be in salt
13 water, and then our draft will change.

14 Q. Okay. And a draft of 4, typically would that be
15 approximately 30 feet, something less than the deep draft back
16 end?

17 A. Correct.

18 Q. Thank you, mate. I have nothing further.

19 BY CAPT NEUBAUER:

20 Q. Mr. Berrios, we're going through a few final questions up
21 here and then we'll be done for the day, unless there are other
22 questions around for the PIIs. But one question I had, sir, is
23 when you were standing watch towards the later evening hours, I
24 believe you would have an AB on the bridge with you. Is that
25 correct?

1 A. Correct. And can I add that the AB on the ships is present
2 during daylight and at night. So every watch at sea we have an AB
3 available for the watch.

4 Q. Thank you. That answered my question that I was going to
5 ask.

6 CAPT NEUBAUER: At this time we'll go to Mr. Richards for a
7 question.

8 BY MR. RICHARDS:

9 Q. Are you familiar with National Weather Service port
10 meteorological officers, or PMOs?

11 A. No.

12 Q. Have you ever noticed somebody from the National Weather
13 Service or NOAA visit a vessel, board a vessel?

14 A. Perhaps. And I want to add on to that to install the
15 barometer reading, the electronic version. And if I recall
16 correctly, it had a seal on and initialed that it was calibrated
17 when installed by that person itself, and the device was from
18 NOAA. But I can't recall exactly the person that came on board.

19 Q. But you recall specifically an instance where someone from
20 the National Weather Service did some type of work or installation
21 of the barometer?

22 A. I believe so, yes. I don't recall exactly which vessel but I
23 remember on the steamships. I believe it was on the steamships
24 somebody came on board and installed one, but I can't recall
25 exactly.

1 Q. You can't recall which vessel specifically?

2 A. Correct.

3 MR. RICHARDS: Could we go to Exhibit 357 very quickly,
4 please?

5 BY MR. RICHARDS:

6 Q. This was the screenshot of the BVS that we've -- do you see
7 that?

8 A. Yes.

9 Q. Do you see the wind field, the surface wind field identified
10 by the black wind barbs?

11 A. Yes.

12 Q. Do you note the center position of the storm identified by
13 the red cyclone symbol?

14 A. Repeat the question?

15 Q. Do you note the center of the storm identified by the red
16 cyclone symbol?

17 A. Correct.

18 Q. Did you note that there appears to be an offset between the
19 center, the position of the center, the red cyclone symbol and the
20 center of the circulation identified by the black wind barbs?

21 MR. BIRTHISEL: Could you repeat the question one more time,
22 please?

23 BY MR. RICHARDS:

24 Q. I'm just wondering if you identified the position of the
25 storm identified by the red cyclone symbol, and in the center, or

1 approximately the center of the surface of wind field identified
2 by the black wind marks.

3 A. Yeah, you can say that it's a little bit offset.

4 Q. Have you ever noticed anything like this before with BVS?

5 A. I can't recall.

6 Q. Okay. Thank you.

7 CAPT NEUBAUER: Mr. Kucharski?

8 MR. KUCHARSKI: Yes, sir. Thank you.

9 BY MR. KUCHARSKI:

10 Q. A quick question, Mr. Berrios. Did you ever look at the
11 cargo securing manual before the *El Faro* sinking?

12 A. I believe so.

13 Q. And I will ask you one question on Exhibit 354. I don't know
14 if you have to go to it. I'll just read it to you. But it says
15 at the very top of page 2, it says, "No button is available or
16 there was a problem with its securing mechanism, trailer should be
17 double lashed." Did you find any problems with the securing
18 mechanisms of the trailer, of the Roloc box that went to the
19 button? Did you ever find any problems with the security
20 mechanisms?

21 A. No.

22 Q. While you were standing watch on the *El Faro*, did the engine
23 room ever call the bridge, call you and speak to the engineer on
24 watch, or someone from the engine room saying that there was a
25 bilge alarm in one of the cargo holds?

1 A. I can't recall for that specific vessel.

2 Q. The gyro pilot if you will, or the autopilot that Mr. White
3 was talking about, are there settings to that, manual settings
4 that you put in there for the vessel to steer?

5 A. Correct.

6 Q. Did you put those in yourself or did the captain put those
7 in?

8 A. I remember the captain being present when we adjust the
9 settings.

10 Q. Do you recollect that Captain Davidson had any standing
11 orders not to change those settings for pounding without his
12 authorization?

13 A. I don't recall, but I know it was the practice to notify
14 Captain Davidson if we thought that we needed to adjust the
15 settings for any particular seascape.

16 Q. Thank you again.

17 MR. KUCHARSKI: And thank you, Captain. I'm finished with my
18 questions. Thank you.

19 CAPT NEUBAUER: Mr. Fawcett?

20 BY MR. FAWCETT:

21 Q. When you were aboard *El Faro*, whose responsibility was it to
22 launch the rafts?

23 A. To the best of my recollection, it's everybody's
24 responsibility that is assigned to that lifeboat station. And I
25 mention lifeboat station because it's near the lifeboat, the life

1 rafts.

2 Q. And on the voyage in September you had two extra rafts; is
3 that correct?

4 A. At this time I can't recall exactly how many rafts. I know
5 in the past I had a better picture of it, but I can't recall. I
6 think I talked to Kucharski about it and maybe on the records we
7 can get a better accurate answer.

8 Q. And then if you turn your attention to Exhibit 266, which is
9 the VDR transcript, page 242, just to help me understand, because
10 you're the -- as the third mate, you are the safety inspector. At
11 time 1951:12, there's a conversation between the chief mate and
12 the third mate and it says -- I'll only read the intelligible
13 portion. "I saw what you did with the shackle. That's fine for
14 now. I didn't use that long shackle down there because -- in
15 parentheses -- neither one of those life raft. That's the one
16 with the cables attached to it like they -- all over."

17 The rafts in the cradles, are they fitted with a long
18 shackle?

19 A. It's the same shackle that is in every cradle I have seen on
20 my career that is connected to the hydrostatic release.

21 Q. And when he says, "That's the one with the cables attached to
22 it," are there cables attached to a serviceable life raft?

23 A. Perhaps that was lingo that I'm unaware of, but maybe the
24 cable -- maybe the life raft painter, but I can't testify to that.

25 Q. So the serviceable life rafts have a long shackle; is that

1 correct?

2 A. There is a shackle that it works together with the
3 hydrostatic release.

4 Q. Thank you very much.

5 CAPT NEUBAUER: Mr. Kucharski?

6 MR. KUCHARSKI: Yes, sir. This will be very quick.

7 BY MR. KUCHARSKI:

8 Q. Mr. Berrios, was your -- you were saying you looked at safety
9 equipment on board the ship; is that correct?

10 A. Correct.

11 Q. Where was your abandon ship station?

12 A. Lifeboat No. 2.

13 Q. Who was assigned to the life rafts itself, to launch the life
14 rafts?

15 A. I can't recall. But to the best of my knowledge, it's a
16 station record. We will have to look at the station to be able to
17 refresh my memory.

18 Q. The physical location of the life rafts themselves, could you
19 take that life raft and just throw it right over the side and it
20 goes right to the water?

21 A. Yes. If you manually disconnect the hydrostatic release, the
22 shackle Mr. Fawcett was talking about, perhaps, if you take that
23 off, which it's very easy to take off, with a push you can let the
24 life raft go over the side.

25 Q. And the life rafts are on the boat deck, correct, where the

1 lifeboats are, just a little bit aft of the lifeboat?

2 A. Correct. The ones that were on the cradle, the extra ones
3 were up forward, if I remember correctly.

4 Q. And if you throw that over, there's not a deck right below
5 that, it goes right over the side?

6 A. Right over the side.

7 Q. Okay. Thank you. No further questions.

8 CAPT NEUBAUER: Are there any final questions for Mr. Berrios
9 at this time?

10 MR. BENNETT: Yes, sir.

11 CAPT NEUBAUER: Mrs. Davidson.

12 BY MR. BENNETT:

13 Q. Mr. Berrios, good afternoon. I want to ask you a few
14 questions following up with Mr. White's questions about the ship
15 pounding, pitching and rolling. In a storm, the master needs to
16 take his course into consideration to make sure that the ship
17 doesn't pitch, pound and roll, correct?

18 A. Correct.

19 Q. I also want to make sure that those who don't have a voice
20 here today are protected. There was a comment made about Second
21 Mate Randolph not knowing how to put weather into a machine. You
22 knew Danielle Randolph, correct?

23 A. Yes.

24 Q. And knowing that she had to do weather twice a day, do you
25 think she was being sarcastic and kidding around about not knowing

1 how to put weather in the machine?

2 A. Probably.

3 Q. You sailed with Captain Davidson several times, correct?

4 A. Correct.

5 Q. Did he promote a safety culture aboard the *El Faro*?

6 A. All the time.

7 Q. Did he take the drills seriously?

8 A. All the time.

9 Q. Did he make the crew don their Gumby suits?

10 A. Yes.

11 Q. Did he promote among his deck officers weather awareness?

12 A. Repeat your last --

13 Q. Did he promote among his deck officers to be aware of the
14 weather?

15 A. Correct.

16 Q. Did he promote proper bridge resource management?

17 A. Correct.

18 Q. Did he promote open communication with his deck officers?

19 A. Correct.

20 Q. Did he promote open communication with his engine officers?

21 A. Correct.

22 Q. Did he promote open communication with the crew?

23 A. Correct.

24 Q. Was he one of the captains that had the surprise drill?

25 A. Correct.

1 Q. Did you enjoy sailing on the *El Faro*?

2 A. Correct.

3 Q. It was a good crew, correct?

4 A. Correct.

5 Q. And that starts with the captain, right?

6 A. Correct.

7 Q. Describe his standing orders for us.

8 A. I don't remember exactly, you know, all that it stated, but I
9 do remember that they had a lot of paragraphs on different topics
10 and that they were very specific and very complete so you didn't
11 have a doubt of how to stand good watch and perform your duties in
12 all aspects. And you knew exactly when you had to call him.

13 Q. Were they more detailed than other captains'?

14 A. Correct.

15 MR. BENNETT: No further questions.

16 CAPT NEUBAUER: TOTE, did you have any questions?

17 MR. REID: No, sir.

18 CAPT NEUBAUER: ABS?

19 MR. WHITE: No, sir.

20 CAPT NEUBAUER: Mr. Berrios, you are now released as a
21 witness at this Marine Board of Investigation. Thank you for your
22 testimony and cooperation over two sessions. I know that you took
23 time off from your duties as a second mate and I appreciate it.
24 If I later determine that this Board needs additional information
25 from you, I will contact you through your counsel. If you have

1 any questions about this investigation, you may contact the Marine
2 Board Recorder, Lieutenant Commander Damian Yemma.

3 (Witness excused.)

4 CAPT NEUBAUER: At this time, do any of the PIIs have issues
5 with the testimony that we just received?

6 MR. REID: No, sir.

7 MR. BENNETT: No, sir.

8 MR. WHITE: No, sir.

9 CAPT NEUBAUER: The hearing will now recess and reconvene at
10 2:00.

11 (Whereupon, at 1:07 p.m., a lunch recess was taken.)

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A F T E R N O O N S E S S I O N

(2:05 p.m.)

CAPT NEUBAUER: The hearing is now back in session. At this time, we will hear testimony from Mr. Lou O'Donnell, ABS Assistant Chief Surveyor for the Americas Division.

(Witness sworn.)

CAPT NEUBAUER: Mr. O'Donnell, since you were called by ABS to be a witness, we'll start off with the questioning by Mr. White.

THE WITNESS: Thank you.

(Whereupon,

LOU O'DONNELL

was called as a witness and, having been duly sworn, was examined and testified as follows:)

EXAMINATION OF LOU O'DONNELL

BY MR. WHITE:

Q. Mr. O'Donnell, just as a matter of background, can you explain your role as an assistant chief surveyor for North and South America at ABS?

A. Yes. I am responsible for all survey operations in North and South America, providing survey determination, guidance to our surveyors within the division, training, I participate in training with our surveyors and I have a lot of feedback into that, and I'll also act as liaison to the U.S. Coast Guard, U.S. flag, and other flags here within our division.

1 Q. To the extent that there were surveyors that testified in
2 these proceedings from ABS's office in Jacksonville or ABS's
3 office in Puerto Rico, do they report to you or -- do they report
4 to you?

5 A. Indirectly, yes. They would report to their port principals,
6 but they also report to me, as well, in survey aspects.

7 Q. And do you know each of the surveyors that testified here,
8 before the MBI?

9 A. Yes, sir. Yes, sir, I do.

10 MR. WHITE: And, you know, yesterday we presented Mr. Gruber
11 and we explained that Mr. Gruber was on the engineering side of
12 ABS and he dealt with some of the stability and load line matters
13 and the approvals. Obviously, Mr. O'Donnell is on the surveying
14 side.

15 BY MR. WHITE:

16 Q. So, Mr. O'Donnell, can you explain the role of an ABS
17 surveyor and what the survey cycle is for a vessel?

18 A. The role of the surveyor is to actually -- is the person that
19 will go out to the vessel and perform all the surveys in
20 accordance with our rules, IMO regulations, for the U.S. flag, the
21 additional requirements in accordance with the ABS supplement, and
22 for other flags we have similar instructions or special
23 instructions that our surveyors will perform in the course of
24 their normal surveys. This would be annual surveys, which would
25 be for class and statutory and confirming the vessel was in

1 accordance with the rules and the applicable regulations.

2 And then we have what the Coast Guard calls a mid period, we
3 call an intermediate hull survey, and that would be between the
4 second and third annual survey. That's a little bit more of an
5 in-depth survey. We would go through some ballast tanks, look at
6 some hull structure; possibly, it could be incorporated with an
7 intermediate dry-docking survey.

8 And then we have what we call a special survey or a renewal
9 survey. That's the 5-year survey, which is a very extensive
10 survey of the vessel. And the survey requirements vary based upon
11 the type of vessel and age of the vessel.

12 Q. And I'm going to back you up a little bit. When you said a
13 class rule, what is, like, an ABS class rule, practically
14 speaking? What does it address and what standards does it set?

15 A. We have our own rules, and a lot of our rules are based upon
16 requirements that come from IACS, and they're also requirements
17 that come from IMO, which become what we call IACS, which is the
18 International Association of Class Societies. They become unified
19 requirements and they also get incorporated within our rules. But
20 we have specific rules for hull machinery. Any of the additional
21 class notations that we may grant to a vessel, all those notations
22 that a vessel will receive have specific rule requirements,
23 whether it be at new construction, the annual survey, intermediate
24 survey, and special survey.

25 Q. Can an owner or a vessel work to exceed the minimum standards

1 that a class rule provides?

2 A. Yes.

3 Q. And to the extent that the standard set by the class rule is
4 determined by the surveyor to be -- or if the condition of the
5 structure or the piece of machinery is less than the class rule,
6 can you tell us what the surveyor would do?

7 A. If a surveyor finds a piece of hull structure or machinery,
8 whatever it may be, and that piece of machinery is not in
9 accordance with the class rules, it would either have to be
10 corrected, repaired, or brought up to the satisfactory standard of
11 the rule.

12 Q. And I asked a similar question to Mr. Gruber yesterday, but,
13 you know, for the purposes of a class rule, does a class rule
14 warrant, guarantee or ensure the survivability of a vessel in any
15 sea condition?

16 A. No.

17 Q. And I'm going to ask you to expand upon that a little bit.
18 What do the class rules do as far as -- or do they have any
19 connection with the operation or maintenance of the vessel or the
20 uncertainties that a vessel may face under a certain set of sea
21 conditions?

22 A. Could you repeat the question, please?

23 Q. Sure. You indicated that a class rule doesn't warrant,
24 guarantee or ensure the survivability of a vessel in any sea
25 condition. What I'm looking for you to discuss is, from an

1 operational level, what is the owner's responsibility concerning
2 the vessel?

3 A. Our class rules are minimum standards. The operation,
4 maintenance and control of the vessel is the responsibility of the
5 owner/operator. You can look at it as, you know, our rules apply
6 in the minimum and then it's the responsibility of the
7 owner/operator to maintain the vessel to at least those minimum
8 standards. And if they choose to exceed those minimum standards,
9 that's their prerogative. But what our surveyors will be going
10 out and looking for is that the hull, the machinery and equipment
11 will meet those minimum class standards or other applicable
12 requirements.

13 Q. You talked about, you know, the three surveys or the survey
14 cycle, the annual, the intermediate and the special survey. With
15 regard to a hull survey, tell us what Part 7 of the ABS rules,
16 what it is and how it will be applied by a surveyor to a
17 particular survey.

18 A. Part 7 of our Steel Vessel Rules is what we call the survey
19 after construction or blue book. That book contains all the
20 survey requirements, whether it be an annual, intermediate or
21 special hull survey, annual or special survey of machinery, annual
22 or special survey of automation, and each one of those surveys has
23 specific requirements, specific items that the surveyor would need
24 to examine and find in satisfactory condition.

25 Q. Okay. And you already indicated that in addition to the

1 survey cycle there is, you know, the set of rules or the surveys
2 themselves that cover the hull and the machinery, and there's a
3 distinction between that. And those would include -- that would
4 encompass the class surveys that ABS would perform. Can you just
5 describe, and I think you've mentioned it already, on the
6 regulatory side, what is the regulatory side and what governs
7 those type of surveys?

8 A. Do you mean the statutory side?

9 Q. Yes.

10 A. Acting on behalf of the Coast Guard or other flags with the
11 statutory side, that would contain safety of life at sea, or SOLAS
12 surveys, which would relate to life-saving, fire-fighting,
13 structure, machinery. Then we have the marine pollution surveys,
14 or MARPOL, and that would be for marine pollution, emissions,
15 sewage prevention, garbage. And then there's various -- depending
16 on the type of vessel, there's various other IMO requirements, gas
17 code, if a vessel carries dangerous goods. We could go on and on.

18 It really depends on the type of vessel the requirements that
19 would apply, but there's several IMO regulations.

20 Q. Okay. Now that we've described, you know, what the survey
21 rules are and that you could have a class survey or a regulatory
22 survey, earlier this week we heard from Captain Flaherty of the
23 Coast Guard concerning the ACP program. And a certain exhibit,
24 Exhibit 329, was introduced this week and Captain Flaherty had
25 testified.

1 Before we get to some of the criticisms of the ACP program,
2 I'd like you to just explain again, what is the ACP program?

3 A. The ACP program is an opportunity where the owners of U.S.-
4 flagged vessels, if they elect, can enter the program and avoid
5 the duplication of surveys by class and the flag, which would be
6 the U.S. Coast Guard. How it works is we have class rules and
7 then we have the IMO requirements. And under the U.S. flag we
8 have what is called the supplement, which is a bridge which
9 contains the C.F.R. requirements that the Coast Guard has deemed
10 aren't covered by class rules and the IMO regulations which are
11 applicable to that vessel.

12 Q. Okay. So under the Alternate Compliance Program, a
13 particular surveyor can use the supplement, the class rules and
14 any IMO requirements, correct?

15 A. That's correct.

16 Q. And just to go through some of the jargon just briefly, what
17 is an ACS?

18 A. ACS is Approved [sic] Class Society.

19 Q. And under the ACP program, do you know how many authorized
20 class societies or ACSs there are?

21 A. If memory serves me correct, I think it's five.

22 Q. Okay. So ABS is one of those class societies?

23 A. Yes.

24 Q. And just on the jargon a little bit, NVIC 2-95, Change 2,
25 what is it and what does it do?

1 A. That's a Navigation Vessel Inspection Circular 2-95, Change
2 2, which is the most current NVIC, as we call it, regarding how
3 ACP works, what the roles are for the owner, the class society, or
4 the approved class society, which would be the ACS, and the Coast
5 Guard.

6 Q. If we move to the ACP program and some of the issues raised
7 by Captain Flaherty earlier in the week, could you address or
8 discuss for us what the qualifications are or whether there are
9 specific qualifications for ABS surveyors to perform ACP surveys
10 or surveys in general? What training do they get?

11 A. For surveys in general, whether they be a class survey or a
12 statutory survey -- well, let me back up. All our surveyors
13 undergo a mandatory training regime, which I testified to
14 previously, at the first MBI. They get hired and we have a
15 specific on-boarding regime they have to go through. They do a
16 lot of online training to become familiar with the rules, our
17 processes, general information. And then while they're doing
18 that, they also are out in the field getting a lot of on-the-job
19 training in the specific types of surveys they will do.

20 As they go through this training regime, every specific
21 survey task we have, for example, I'll take a few like annual
22 hull, annual machinery, annual safety equipment, and then you get
23 to your intermediate surveys for class and statutory, plus your
24 special or your renewal surveys for class and statutory. Each one
25 of those specific survey processes the surveyor would have to do a

1 minimum of two times with a fully-qualified surveyor in that
2 survey process.

3 And even after two times, the trainer who is working with
4 that surveyor trainee still -- it's still up to that trainer to
5 make the decision whether the surveyor has a full understanding of
6 all the requirements or the rules for that particular survey,
7 whatever it may be, and they control whether or not that surveyor
8 will be qualified in that specific survey process.

9 Q. And -- did I cut you off?

10 A. I was going to expand. For ACP, we don't have a specific
11 survey process; however, what we do is we provide a lot of
12 training to our surveyors in other ways. I send a monthly,
13 quarterly blast to my surveyors in this division, as well as
14 surveyors worldwide, about the ACP, any special changes or
15 requirements or where we see things going with ACP or things they
16 may or may not be aware of about the ACP process and the other
17 specific processes we may use with U.S. flag. So I would consider
18 that as training as well.

19 If you look at our quality system, we're required to do this
20 kind of -- get this kind of information out to surveyors. So we
21 send it to the surveyors in charge of each port, and then they
22 spend, you know, a block of time with their survey staff locally
23 going over this information we send out, which is some additional
24 training.

25 CAPT NEUBAUER: Mr. O'Donnell, when you first started with

1 that answer I think you said for ACP and all the specific survey
2 processes. I'm just assuming you meant training process?

3 THE WITNESS: No, not training process. We don't have a
4 specific survey task or a qualification in our quality system for
5 ACP. And the reason being with that, Captain, would be we, as I
6 said, we have a quality system. We have all the specific
7 requirements, not just the U.S. flag but other flags, in a
8 process. If you're do a survey, for example, on a U.S. flag
9 vessel, our surveyors understand when they read the survey status,
10 they do their survey preparation, they see the vessel is in ACP,
11 they see it's U.S.-flagged, then they know they have to go, to
12 refer to that country-specific file where the special instructions
13 will be for the vessel. So it will tell them there, you know,
14 they have to follow the supplement or any additional special
15 survey requirements because that's a U.S.-flagged vessel.

16 When I say we don't have a specific survey process, for all
17 the processes we do, say whether it's in machinery, safety
18 equipment renewal, that's a specific survey process. In the
19 course of doing an ACP survey, it's very similar to doing those
20 IMO type surveys, which would be, you know, your safety of life at
21 sea, MARPOL, plus they know that they have to also take care of or
22 survey those additional requirements that aren't covered by the
23 rules and the IMO requirement for an ACP vessel.

24 And we also have what we call a survey checklist for each
25 survey process, and incorporated in those checklists we

1 incorporate the additional requirements that are in the supplement
2 for U.S.-flagged vessels. So for each specific process that
3 they're doing, whether it's class related or it's statutory
4 related, say safety equipment, safety construction, IOPP, your
5 international oil pollution annual survey, those additional
6 specific requirements from the supplement are engrained right
7 inside that survey checklist.

8 CAPT NEUBAUER: Thank you.

9 BY MR. WHITE:

10 Q. And to the extent that the ACP program was described in the
11 NVICs and the memorandum of understanding was to avoid or
12 eliminate some of the redundancy faced by commercial owners with
13 regard to the inspection process for both statutory surveys and
14 class surveys. And can you address just generally so we have an
15 understanding, how does the ACP program eliminate or reduce that
16 redundancy?

17 A. So for a non-ACP vessel, let's say it's fully Coast Guard
18 certified or they don't participate in the ACP program, ABS would
19 come aboard and do our class surveys. And for the majority of the
20 U.S.-flagged fleet we would still do the annual load line survey
21 or renewal survey as we're the assigning authority here in the
22 United States. And on some of these vessels we would also do the
23 safety construction survey on behalf of the Coast Guard.

24 So we would go through our whole survey process, do our
25 surveys and complete it, and then, normally, sometimes maybe while

1 we're doing the surveys, the Coast Guard may be there and they
2 would do their full annual for a COI or their full intermediate or
3 renewal for a COI. And in the course of that, in that type of
4 system, there's a lot of duplication of survey inspection effort.

5 Under ACP, you remove that duplication where ABS is doing
6 basically all the class surveys, the statutory surveys, and those
7 additional requirements, you know, that aren't covered in the
8 class and in the statutory side at one time. And I think in --
9 well, I don't think, I know. I know how I feel I'm removing that
10 redundancy. A lot of the class-related surveys, there's a lot of
11 IMO requirements engrained, or the statutory side engrained into
12 the classification side. For example, fire pumps, electrical,
13 structure, steering gear, things like that, they intertwine or
14 they work together.

15 Q. So, for example, the fire pump, if an ABS class surveyor was
16 aboard a vessel to do a class survey on a fire pump, the goal of
17 the ACP program is to have, while he's there doing the inspection
18 on the fire pump for class aspects, to do the same inspection on
19 what's required on the regulatory side. That would be, normally,
20 or could be carried out by the Coast Guard, correct?

21 A. That would be correct.

22 Q. Some of the other criticisms that we heard this week was in
23 connection with an 835. I think the specific criticism we heard
24 was that there was a reluctance of ABS surveyors to make Coast
25 Guard 835s a, quote/unquote, condition of class. Could you tell

1 us, could you comment on that and tell us what, if any, specific
2 process is followed by the ABS with regard to making 835s a
3 condition of class?

4 A. Yes. We have a specific process or instructions, survey
5 instruction, general survey instruction that no matter if the
6 vessel is U.S. flag or not, if there's a condition of class or a
7 condition against a statutory certificate we have, we'll issue
8 condition of class for the class side or a statutory deficiency,
9 which we call an outstanding deficiency, for the statutory side.

10 I have a hard time believing our surveyors are reluctant to
11 issue a condition of class when there's an 835 that can't be
12 rectified prior to a vessel sailing. I see it every day in my
13 work, day to day, where we do that. We would issue a condition of
14 class on something that's not rectified.

15 Now, for a little clarification, if we know the Coast Guard
16 has attended the vessel and they issue maybe four or five 835s, we
17 treat it -- we call that flag state intervention. And we have
18 another process where we report on that. We report in a narrative
19 type format. So, what our surveyor would do is if an inspector
20 came on board and issued four deficiencies or 835s, we would go on
21 board, we would examine each of those deficiencies, and we would
22 state exactly what the deficiency was and we would report in a
23 narrative format exactly what was done to rectify that deficiency
24 and share that with the Coast Guard.

25 Q. One of the other criticisms had to do with the issuance of a

1 PR-17. Can you tell us what a PR-17 is?

2 A. Yes. PR-17 is the International Association of Class
3 Societies Procedural Requirement 17.

4 And being polite and not putting everybody in here to sleep,
5 essentially, what it is, to sum it up, it's a way to report when a
6 surveyor goes on board a vessel and they see a possible failure in
7 the safety management system, or ISM as a lot of people know it,
8 what it is, whether it may be due to lack of maintenance, crew
9 proficiency, and there's a few other specific categories where
10 they could see failures in that safety management system.

11 The PR-17 is a driver to report to the Recognized
12 Organization who is doing the management system certification that
13 there could be a possible failure in that safety management
14 system, thereby forcing the owner to do an investigation into that
15 report, and then respond back to that Recognized Organization that
16 issues the safety management system certificate.

17 Q. Last night I asked you to review some of the records on the
18 *El Yunque*. With regard to the issuance of PR-17s, what, if
19 anything, did you find concerning the *El Yunque* and the issuance
20 of PR-17s?

21 A. I found evidence of recent issuance of PR-17s on the *El*
22 *Yunque*.

23 Q. And based on the notes, can you tell me what dates those PR-
24 17s were issued by the class?

25 A. In our Jacksonville report, JS-3049801, dated 16 December

1 2015, PR-17s were issued. And then again in our Jacksonville
2 report, JS-3063456, dated 12 January 2016, a PR-17 was issued.

3 CAPT NEUBAUER: Mr. White, are those in the exhibits?

4 MR. WHITE: No, sir. I just asked him to scan the record. I
5 think he looked at -- well, we can ask him, but --

6 BY MR. WHITE:

7 Q. How did you find that as far as the PR-17s?

8 A. I looked in our ABS survey manager, which the Coast Guard has
9 access to, but we have -- there will be no problem providing those
10 as exhibits.

11 CAPT NEUBAUER: Thank you. I was just trying to follow
12 along. But I can get them after this testimony.

13 THE WITNESS: Absolutely, sir.

14 BY MR. WHITE:

15 Q. So to the extent that Captain Flaherty testified this week
16 that, in his view, there was a reluctance of ABS surveyors to
17 issue PR-17s, do you agree or disagree?

18 A. I would have to disagree.

19 Q. One of the other areas we discussed with Captain Flaherty had
20 to do with communications. And one of the specific aspects was
21 whether or not the Coast Guard received notification regarding
22 upcoming inspections or surveys. Whose responsibility is it to
23 provide the Coast Guard with notification as to upcoming
24 inspections and surveys?

25 A. The owner/operator. And, in conjunction with that, whenever

1 we receive requests for ACP surveys, we have a fax cover sheet,
2 which is a bit dated, that is applied on every survey status for
3 an ACP vessel that we can use to forward on to the local OCMI and
4 its inspection staff. In today's day and age, a lot of our survey
5 requests or requests for service on ACP vessels come to us via
6 email.

7 So we just go ahead and forward the complete trail of the
8 survey request with any reply we have already generated to the
9 ship owner of what we expect, and we want to do that survey right
10 along with the Coast Guard to try to coordinate if they would like
11 to attend.

12 Q. In your experience, you know, based on your experience as a
13 surveyor and, now, your position as assistant chief surveyor, what
14 kind of relationship exists between ABS's surveyors and the local
15 Coast Guard offices from the ports or offices that work --

16 A. Luckily, in my job I get to get around and see my survey
17 staff in Americas. And I have seen since my tenure in the last
18 almost 3 years a very good relationship with the local Coast
19 Guard. They're on a first name basis in a lot of areas. And
20 since I have taken this position I've tried to foster a strong
21 relationship with the Commercial Vessel Compliance Office, the
22 traveling inspectors, and other people within the Coast Guard.

23 I also attend our engineering quarterly meeting, which is
24 more when our engineers meet with Marine Safety Center and the
25 Engineering Standards Center from the Coast Guard to provide any

1 additional support and insight I can from a surveyor perspective
2 when we have those meetings and go over things.

3 Also, the last couple years I have been invited so graciously
4 by the Coast Guard to attend their CID conference, they're, I'm
5 thinking, chief of inspectors -- chief of inspections conference.

6 It's when they bring in from all over the world the inspection
7 chiefs from the different sectors and areas of the world, and we
8 have been asked to speak or give a small presentation at that
9 conference. And it was a good opportunity to see people that
10 normally only can communicate by email due to time differences and
11 things like that, but to build and foster stronger relationships.

12 Q. Getting back to the notification of upcoming surveys, who
13 decides whether the Coast Guard either responds or decides to
14 attend to a particular inspection or survey?

15 A. That would be up to the local OCMI, or the Chief of
16 Inspections.

17 Q. So ABS doesn't control whether the Coast Guard attends or
18 whether they don't attend?

19 A. Normally, no.

20 Q. There were some further discussions regarding the supplement
21 that you mentioned earlier that's used during -- by a surveyor to
22 perform an ACP survey. Can you tell us -- as far as the
23 supplement, there was some criticism that it needed to be updated.
24 Where are we, where is ABS and the Coast Guard with regard to
25 updating supplements as of today?

1 A. As I know right now, we have two supplements in. They've
2 been with the Coast Guard since late last fall. One big change I
3 know is for offshore support vessels trying to bring the
4 supplement in line with the, well, what's been termed the El
5 Grande rules, which is for OSVs greater than 6,000 gross tons.
6 And the international vessels supplement is also with the Coast
7 Guard. We're waiting for final comment. It's gone back and forth
8 a few times.

9 Q. To revisit another comment from testimony earlier in the
10 week, has the Coast Guard ever asked ABS to incorporate the
11 C.F.R., the Code of Federal Regulations, hydrostatic testing
12 requirements into the ACP software?

13 A. Not during my tenure.

14 Q. And there was some further discussion from Captain Flaherty
15 concerning the attendance by an ABS surveyor aboard the *El Faro* in
16 connection with a repair to the economizer module. Do you have
17 any comment on Captain Flaherty's assessment of that surveyor's
18 attendance?

19 A. I would say it was a bit, maybe, unfair. I know that
20 surveyor personally. She's not only a good surveyor but she's a
21 very good surveyor, a very thorough surveyor. And I think
22 possibly the stress or the atmosphere of testifying, she may not
23 have come across as well as she could have, but I know her
24 capabilities and I would fully support her actions.

25 Q. And have you reviewed the surveys, the survey reports that

1 that ABS surveyor did in fact issue in connection with our
2 inspection of ballast tanks and structure on the vessel?

3 A. Yes, I have, and they were very thorough and very detailed.

4 MR. WHITE: Go ahead. I didn't mean to interrupt you.

5 UNIDENTIFIED SPEAKER: Can you have him repeat the answer?

6 BY MR. WHITE:

7 Q. Can you repeat the answer?

8 A. Yes, I have. They were thorough and detailed.

9 Q. And can you describe what the role of an economizer is on a
10 steam plant?

11 A. An economizer is essentially a heat exchanger, which is in
12 the uptakes or the stack of the boiler where your exhaust gases
13 from the fire go up. And what it does is it preheats the feed
14 water going into the boiler, and it's an efficiency maker for the
15 boiler, is essentially what it is.

16 Q. And in your view, does the economizer have anything to do
17 with the loss of the *El Faro*?

18 A. No.

19 Q. One of the other areas that Captain Flaherty discussed this
20 week was entitled Oversight in his report. And on page 15 of his
21 report under Oversight, there is sort of a list of items that he
22 thought should be addressed. I'm not going to go through each of
23 those, but I'm going to highlight Item 7 and I'm going to read it
24 into the record. Item 7 on page 15 of Exhibit 329 states as
25 follows:

1 `"The ACS surveyors who are conducting an exam on behalf of
2 the Coast Guard must not also engage in routine statutory class
3 surveyor's surveys during the same visit. This would provide a
4 separation between class-required vessel exams and Coast Guard
5 required vessel exams performed by the ACS members, which would
6 reduce any confusion as to why the ACS surveyor is attending the
7 vessel."

8 And I'd like to get a comment on that with respect to the
9 purpose of the ACP program.

10 A. I previously testified just recently the class surveys and
11 statutory surveys and what we do under ACP intertwine so much
12 maybe it's that I'm misunderstanding the context of what is
13 written here, but I firmly believe because those surveys
14 intertwine so much, the duplication to follow a process like this
15 would almost be going back to, you know, Coast Guard inspection
16 ABS survey. I mean, from my experience, and since 1995 when I
17 started doing the first ACP vessels, the goal was to bring them
18 together and then use the supplement for that gap. And I just see
19 this driving it apart.

20 Q. In fact, this would actually recreate the redundancy that the
21 ACP program sought to eliminate, correct?

22 A. As I would understand it, yes.

23 Q. Just one other item on the Oversight. In Item 6 on that same
24 page, page 15, there was an indication in paragraph 6 that there
25 was confusion as to the owner's responsibility to report a marine

1 casualty. Looking at that with 2-95, could you explain whose
2 responsibility it is to report a marine casualty?

3 A. It's the owner/operator's responsibility.

4 Q. And do you think that's pretty clear in the industry?

5 A. From my experience, fairly, yes. And I know the Coast Guard
6 has just recently put out direction. I can't remember the MSIB
7 number, but they put out a specific direction to clients about
8 marine casualty reporting.

9 CAPT NEUBAUER: Would that be Navigation Inspection Circular
10 1-15?

11 THE WITNESS: Yes, sir. Thank you, Captain.

12 BY MR. WHITE:

13 Q. And in addition, the Coast Guard has a separate form, right,
14 a CG-2692, which is titled "Report of Marine Casualty", correct?

15 A. Yes.

16 Q. Before we leave the Oversight items, there were some issues
17 mentioned or testified to concerning the testing the lifeboats.
18 Can you explain what issues, if any, you feel there are concerning
19 surveys on lifeboats, statutory surveys?

20 A. I don't see any issue. In our annual survey, we go through
21 the lifeboat, and a lot of times during the annual survey, when
22 the opportunity exists, we'll have the crew lower the boat to the
23 water, operate the boat. They're also required by SOLAS. There's
24 a minimum of every 3 months to go lower that boat to the water and
25 exercise the boat.

1 Also, in addition, on the annual survey part of the statutory
2 requirements under SOLAS is they bring in a qualified individual
3 to also go over the lifeboat, examine the lifeboat, its equipment,
4 releasing mechanisms, and then there's a 5-year survey that needs
5 to be done of the lifeboat as well, where you test falls and the
6 releasing mechanisms to determine if they're still in satisfactory
7 condition. And on top of that, at the 5-year also the falls will
8 be reviewed. That's a specific requirement for U.S. flag, and
9 it's a requirement of SOLAS as well.

10 Q. Leaving the subject on the side, let's talk about the vent
11 arrangements. And let's start out with the vent arrangements,
12 ventilation arrangements for the *El Yunque*.

13 You know, before we get to that, you've been aboard the *El*
14 *Yunque*. Can you tell us when you were aboard?

15 A. I've been aboard the *El Yunque* twice. In October 2015, when
16 we started the initial investigation, when I was asked to
17 participate by the NTSB. We went on a joint visit with the U.S.
18 Coast Guard and a lot of people that day. And then I returned to
19 the vessel last fall, September with the NTSB and traveling
20 inspectors.

21 Q. And when you attended last fall, and I believe it was in
22 September of 2016, how many months had the *El Yunque* been out of
23 service?

24 A. Approximately 5½, 6 months.

25 Q. And after you boarded in October 2015 and the joint

1 NTSB/Coast Guard investigation and attendance took place, there
2 was a visit in November 2015, in Jacksonville. And do you know
3 which ABS surveyor attended in Jacksonville?

4 A. Yes. That would have been my divisional lead surveyor, my
5 lieutenant, essentially, my second in command.

6 Q. And based on that inspection, we understand that the Coast
7 Guard had a team of inspectors, including traveling inspectors and
8 five inspectors and a trainee aboard the vessel. Based on the
9 conclusion, or at the conclusion of that inspection by the Coast
10 Guard, what, if anything, did the Coast Guard tell ABS concerning
11 the results of the November 2015 inspection aboard *El Yunque*?

12 A. They were very satisfied with the condition of the vessel.

13 CAPT NEUBAUER: Mr. White, I'd like to ask a clarifying
14 question on this point, sir.

15 BY CAPT NEUBAUER:

16 Q. Was it your understanding that a full ISC exam was done on
17 the *El Yunque* at that time?

18 A. A full ISC exam?

19 Q. Was it your understanding that the scope of that inspection
20 that Mr. White is referencing was -- did you think that was a full
21 internal structural exam of the *El Yunque*?

22 A. No.

23 Q. What was your understanding that that exam was?

24 A. They examined tanks and generally examined the vessel. I
25 know they went to the engine room and some other areas.

1 Q. Was that exam specifically to look at the plug area, bottom
2 shell, and the tankage in that -- area?

3 A. That was part of the exam, yes.

4 Q. I just wanted to be clear on what type of exam. What type of
5 exam would you label that? Was it more of a spot check or was it
6 something that was required by statute?

7 A. I would say more of a spot check, or I think you call it an
8 interim exam or the special exam that you have between annuals.

9 Q. That was part of the -- you would call that a mid period
10 exam?

11 A. No, not a mid period. I think that's what you call it, I'm
12 sorry, a mid period exam.

13 Q. Thank you. I just wanted to clarify the purpose of that.

14 A. No problem.

15 MR. WHITE: In Exhibit 371, there was some discussion
16 concerning the fire dampers, you know, the dampers in that
17 picture. Do you have that up on the screen, please? Okay.

18 BY MR. WHITE:

19 Q. There was some prior discussion concerning the access points
20 on -- the access ports on the fire dampers. Can you tell us what
21 the access ports are there for and what an ABS surveyor does with
22 those?

23 A. Which ones?

24 Q. I'm looking at the photo. If you looking at the number 134
25 on the right-hand side of the photo, the one with the damper,

1 there's an inspection port that's dropped down.

2 A. Do you mean the small inspection port?

3 Q. Correct.

4 A. That inspection port there would be what the surveyor would
5 use in an annual survey to examine if the fire damper is, one,
6 still there and, two, to be able to see the fire damper, that it's
7 in good condition, and then you could see the fire damper
8 exercise, that will be open.

9 Q. And to exercise you mean move the louver back and forth to
10 make sure it opened and closed, correct?

11 A. That's correct.

12 Q. And that would be done at an annual inspection. When, if at
13 any time, would there be a need or a survey item to go into the
14 ventilation ducts?

15 A. If in the course of the annual survey the surveyor saw
16 something they didn't like or something deficient inside with that
17 fire damper, they would go in there. If they saw from their
18 exterior examination something suspect, they could expand the
19 scope of their survey as needed.

20 Q. And with those places inside the ventilation ducts, would
21 those be accessed during a special survey?

22 A. Yes.

23 Q. There was some prior testimony concerning some holes that
24 were either cut, torched or present aboard the *El Yunque*. Do you
25 recall that testimony?

1 A. Yes.

2 Q. If the holes were cut aboard *El Yunque* or any other vessel,
3 what is the owner's obligation regarding modifications?

4 A. They would need approved plans, in most cases, and they would
5 need to contact ABS.

6 Q. And as far as the surveying, did you see any of those holes
7 when you were on with the NTSB in October of 2015?

8 A. I do not recall seeing those holes.

9 Q. And as far as the survey, you indicated that, you know, in an
10 annual survey, the damage would be looked at, they need to be
11 exercised, a special periodical survey that they would get inside
12 the trunks, and to the extent that they have any other concerns,
13 they would be free to expand the scope of the survey. But can you
14 tell us as far as what a survey is as far as a snapshot in time of
15 what, or what role does a survey have in determining whether class
16 requirements are met?

17 A. The surveyor can come on board and perform all the surveys
18 required, whether they're class, statutory, additional
19 requirements of the flag, and it's a snapshot in time. And from
20 the course of those surveys, depending on the type of survey
21 that's going on, the surveyor makes a determination finding
22 whether everything is found satisfactory and the vessel is fit to
23 proceed.

24 Q. There was some prior discussion concerning an LL-11-D. What
25 is an LL-11-D and -- let's start with that. Excuse me. What is

1 an LL-11-D?

2 A. It's a survey and report of load lines.

3 Q. And, you know, last evening I asked you to get on the
4 computer and look at *El Yunque's* survey items and see what you
5 found regarding an LL-11-D. And can you tell us what you found
6 and what, if any, significance it has to the questions raised
7 earlier in the week?

8 A. Well, the LL-11-D is a form, we call it the report of load
9 lines, and what it is, it shows where all the openings,
10 ventilators, air pipes, scuttles, inlets, discharges, protection
11 of the crew, as it's called in the regulations, the handrails will
12 work, port lights, where all these are located on the vessel. And
13 as part of the annual hull and annual load line survey, more so
14 the annual load line survey, the surveyor is required to review
15 that document to see if there's been any modification made that
16 would affect the LL-11-D or affect the load line surveys.

17 Q. During Mr. Gruber's testimony there was discussion about, you
18 know, the vessel was built in 1975 and plans were approved. In
19 1993, the vessel had been lengthened and plans were approved.
20 Then in 2006, the vessel had been converted and, you know, plans
21 were approved.

22 With regard to the LL-11-D and the fact that the *El Yunque*
23 was also lengthened and converted, what, if anything, did you find
24 concerning the LL-11-D and the *El Yunque* for '93 and 2006?

25 A. Excuse me. Are you referring to the *El Faro* or the *El*

1 Yunque?

2 Q. I stand corrected. For the *El Faro*, what, if anything, did
3 you find concerning the LL-11-D for 1993 and 2006?

4 A. I could find that in 1993 we had a surveyor's delivery
5 checklist that indicates that the LL-11-D was updated based on the
6 modification that took place in that time of putting the mid body
7 in; however, looking through records I am unable to locate that
8 1993 updated or revised LL-11-D. And then I followed along with
9 the survey history when the next modification took place in 2006
10 and I was able to find in that survey report that there was clear
11 indication that there were no modifications made which would
12 affect the load lines, so the LL-11-D was not updated at that
13 time.

14 Q. Let's go back to 1993 for a minute. You know, as far as
15 1993, when they did in fact lengthen the vessel, what structure
16 would be relevant to be or need to be updated when the plug or the
17 ship was lengthened?

18 A. Briefly, the additional ventilators would have had to be
19 added to the LL-11-D, the count, air pipes for the new double
20 bottom ballast tanks that would have been in place, or any other
21 tanks, noting -- the cover page would have to be changed denoting
22 that the vessel was modified and length changed. You would also
23 have to add the additional handrails, protection of the crew, you
24 know, in that area. So that's what is required to be updated.

25 Q. And so you found, at least on the records you reviewed, you

1 didn't find the actual LL-11-D for '93?

2 A. No, sir. I could find the reports and everything but the LL-
3 11-D.

4 Q. But the reports, based on your review, indicated that it was
5 updated in 1993, but not in 2006, because the changes didn't
6 affect the load line?

7 A. That's correct.

8 Q. Moving from the LL-11-D, if we go to the damper for a minute,
9 you know, there were some discussions from diagrams reviewed in
10 the course of the week concerning the damper. Can you explain, if
11 anything, as far as what you know concerning the approval of the
12 damper arrangement for the *El Faro* in 1975?

13 A. From the material that I have and have been able to review, I
14 would have to assume that the surveyor and Coast Guard inspectors
15 involved in the construction of the vessel at that time, they
16 would have used those plans, the vessel would have been built to
17 those plans. And based on what we can look at from history of the
18 vessel, they accepted the arrangement that was in place at that
19 time.

20 Q. And in 1975, what would be the Coast Guard's role in approval
21 of that arrangement?

22 A. They would have had involvement in looking at that. We would
23 have still -- well -- yeah, we would have been the load line
24 assigning authority back then, but they still would have had
25 involvement with some of the plan approval of the vessel.

1 Q. So does the ABS surveyor when he boards the *El Faro* or the *El*
2 *Yunque*, each time he boards it he'd cover every space and piece of
3 machinery at every time and at every boarding or does the survey
4 schedule dictate what spaces or machinery is looked at and tested?

5 A. The survey rule requirements, in Part 7, dictate what's
6 looked at. They're not going to look at every square inch of the
7 vessel every time they board.

8 Q. Let's go to *El Faro* for a minute. During the course of the
9 week there's been testimony from some former crew members on *El*
10 *Faro*. Can you tell us, as far as a lube oil system, is there any
11 class rule concerning the design limitations that need to be taken
12 into account for that system?

13 A. In the 1974 Steel Vessel Rules there is, for the lube oil
14 system, there are inclinational requirements for static
15 athwartship and for pitch and yawl. That would be 15 degrees
16 athwartship and 5 degrees forward and aft.

17 Q. You've reviewed the VDR transcript, you've operated the
18 plants as a marine engineer when you sent to sea, and there's been
19 testimony this week. As far as the limitations or the challenges
20 posed by a crew operating a vessel in heavy weather and seas that
21 were faced by *El Faro*, can you add or do you wish to comment at
22 all based on the testimony provided this week?

23 A. I think the crew probably faced a lot of challenges due to
24 the heavy weather, but from all the interviews I've done of crew
25 members and the testimony we heard of Chief Engineer Gay the other

1 day, I think they pretty well covered it. A lot can go on down in
2 the engine room. I'm sure the engineers were doing everything
3 they could to get the main engines back online. The only thing I
4 can think of is if the vessel was inclined and they couldn't get
5 lube oil pressure, they would have needed lube oil pressure to be
6 able to open the throttles to get propulsion on the vessel.

7 Q. And so to the extent that the, you know, the testimony from
8 Chief Gay indicated that, you know, heavy weather and motions
9 associated with the heavy weather would pose some challenges for
10 fuel or lube oil, are you in agreement with that assessment?

11 A. I am.

12 MR. WHITE: Captain Neubauer, sir, we have nothing further.

13 CAPT NEUBAUER: Thank you.

14 Mr. O'Donnell, we've been going for about an hour. Would you
15 like to take a break or keep going?

16 THE WITNESS: Can we take a short break?

17 CAPT NEUBAUER: Certainly. The hearing will recess and
18 reconvene at 3:15.

19 (Off the record at 3:07 p.m.)

20 (On the record at 3:20 p.m.)

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

22 Mr. O'Donnell, I think since we started with ABS it would be
23 appropriate to go to the other PIIs at this time.

24 Does TOTE have any questions?

25 MR. REID: No, questions, sir.

1 CAPT NEUBAUER: Mrs. Davidson?

2 MR. BENNETT: No questions.

3 BY CAPT NEUBAUER:

4 Q. Mr. O'Donnell, I just have some questions based on your
5 testimony. It's been about a year since you first testified in
6 the first session of the MBI, and at that session you did
7 mention -- I was reading your testimony and you had mentioned
8 there were a few issues that were being worked on. You mentioned
9 during your testimony today that one of those was the Supplement.
10 I think back then you said that it hadn't been updated since 2011,
11 for a Supplement applicable to the *El Faro*. Is that your
12 recollection, sir?

13 A. For international vessels?

14 Q. Yes, sir, something that would be applying to the *El Faro*.

15 A. Yeah, as far as I recall, the latest Supplement update for
16 vessels on international voyages is 2011.

17 Q. So that's still being worked on, but ABS submitted a copy to
18 the Coast Guard, which is being reviewed at the Coast Guard?

19 A. Yes, on that and the offshore support vessels. I'm almost
20 100 percent sure that the Engineering Standards Office is still
21 waiting for their final reply.

22 Q. And when did you supply that to the Coast Guard, the
23 international vessels?

24 A. I'd have to check. I think there was a meeting in early
25 November with our folks and your folks down in Houston, but I'd

1 have to check and get the exact date. I could get that.

2 Q. Sir, I don't need the exact dates, but it happened since your
3 last testimony?

4 A. Yes, it has.

5 Q. I was curious to know if there had been any other
6 improvements besides anything else you've testified this afternoon
7 that have been worked for ACP or any concentrated inspection or
8 survey efforts you're having, really anything that has changed
9 since last year that you'd like to provide an update on that
10 Mr. White hasn't covered already today.

11 A. You know, I feel we've had a change in CVC. I feel I've
12 really strengthened my relationship with the guys in Commercial
13 Vessel Compliance 1. I know Captain McAvoy retired in, I think it
14 was June of 2016, and Captain Jen Williams has taken over.

15 I've been to the CID conference last fall. We actually had a
16 meeting of all the Authorized Class Societies with Admiral Thomas
17 in November, as well. And we've had some discussions on how to
18 improve programs that are ACP, and the MSP.

19 And I think down at the sector and district level I've had
20 meetings there, as well, with the Coast Guard. And the one thing
21 I always say is this is fostering better relationship, improving
22 communication. And I can see over the 3 years, not just in the
23 last year, there's been a great improvement in that, in my eyes,
24 and I'm always continually challenging and pushing my guys, you
25 know, to foster those relationships, improve the communication,

1 you know, not with just the U.S. Coast Guard but with all the flag
2 states that we work with.

3 Q. Can you give a percentage of ACP vessels for U.S. deep draft
4 in the ACP program that are covered by ABS at this time? Do you
5 have an approximate percentage?

6 A. I know it's more than 90 percent.

7 Q. Thank you. I want to check back on the PR-17s that you
8 referenced that were issued in Jacksonville in December of 2015,
9 and the there's another that was issued subsequently to that. I
10 don't know -- I don't believe you mentioned what they were linked
11 to; is that correct?

12 A. No, I did not.

13 Q. I was wondering if you -- if a PR-17 was issued for the fixed
14 fire-fighting systems that were found -- issues that were found on
15 *El Yunque* in December 2015 or the vent trunk issues that were
16 found during the document of compliance inspection or audit that
17 was on *El Yunque* later the next year.

18 A. For the December 2016 -- excuse me, December 2015, that PR-17
19 was issued due to the piping for the CO2 units and the sprinkler
20 system.

21 Q. Was there a PR-17 issued for the vent trunk issues found on
22 *El Yunque* during the DOC audit?

23 I guess the first question would be do you believe that the
24 conditions found in the vent trunks at that time would warrant a
25 PR-17?

1 A. At that time, we attended the vessel and effected repairs
2 when things were found in February 2016 in the DOC audit. So in
3 conjunction with that, because the vessel was attended
4 immediately, no.

5 Q. So that would mean that you did not see the conditions found
6 to be a symptom of the SMS failure?

7 A. Not at that time.

8 Q. Continuing with *El Yunque*, have you had a chance to review
9 the gaugings from the second deck area of the *El Yunque* that were
10 done -- ordered by Sector Puget Sound in April of 2016, or around
11 that timeframe?

12 A. Very briefly.

13 Q. And when you attended the *El Yunque* in Tacoma, did you enter
14 all of the vent trunks?

15 A. Not all of the vent trunks.

16 Q. When you were on board the *El Yunque* at that time, had
17 repairs, some partial repairs been already completed inside the
18 vent trunks?

19 A. Yes, I saw in the vents some partial repairs.

20 Q. I'd like to get your assessment and opinion on the nature of
21 the wastage and issues inside those vent trunks, and I'm coming
22 from the standpoint that Sector Puget Sound listed them as
23 longstanding, the inspector from Puget Sound. And by definition
24 of longstanding, I'm wondering if in your opinion if you think
25 that the conditions inside those vent trunks were lasting beyond

1 one survey cycle, one complete cycle, in a substandard condition.

2 A. That would be a bit difficult to answer. I didn't go in all
3 the survey -- excuse me, I didn't go in all the exhaust vent
4 trunks like they did. I only went, I think it was, in one or two
5 trunks. And you know, I didn't get the scope of the inspection or
6 survey that they did, but what I did see in the trunks I went in,
7 there were areas where repairs were effected and I noted that
8 there were areas that they had already written up and our guys
9 have attended in Seattle, had already written up and was part of
10 the repairs.

11 You know, there was an intention for that vessel to go back
12 into service, in Alaska service, and there was a lot of repairs
13 that were written up. A large repair list was generated in
14 association of when those gauges were taken and after those gauges
15 were taken, which were specifically just for the second deck, the
16 thickness measurements. But there was a lot of repairs that were
17 written up and I think they were agreed to by ABS, Coast Guard
18 Sector Seattle and TOTE.

19 Q. Do you know if ABS ever went back and reviewed prior gauges
20 from *El Yunque*, especially on the second deck area, to see -- to
21 compare?

22 A. At that time after the gauging had been taken, we received
23 word from TOTE that all work was going to stop because they hadn't
24 made a decision on what they were going to do to the vessel. But
25 it would have been my -- I know my guys would have gone back and

1 looked at previous gaugings based on the new thickness
2 measurements or gaugings that were taken in April and made some,
3 you know, survey determination decisions, recommended repairs,
4 things like that.

5 CAPT NEUBAUER: Yes, sir. At this time, I'd like to call up
6 Exhibit 382 that we just added this morning. I just want to give
7 some background because I think it's important to frame what this
8 picture is.

9 BY CAPT NEUBAUER:

10 Q. This photograph was taken inside a supply blister for the
11 number 3 starboard hold on *El Yunque*. And it depicts what I would
12 call a freeboard in the blister that is approximately 7 inches at
13 the base and 6 inches high. And there are two of these inside the
14 blister, and this blister is a supply fan blister. And the fan,
15 although it can't be seen in this photo, is, I'd say, directly
16 behind.

17 You're seeing the blister inside -- or you're seeing the
18 freeboard inside the actual blistered plate, and then the other
19 coming towards you is the actual shell plate or part of the
20 blister in the supply head. Is that definition accurate, or can
21 you give a better one?

22 A. I'm having a bit of difficulty trying to orient. I mean, I
23 think I can see where the side shell is at -- the cutout that
24 you're speaking of is in the side shell. But trying to orient,
25 you know, which way is up, down, port, starboard, port aft, that

1 would be very helpful.

2 Q. Yes, sir. The tape measure is being seen from the side shell
3 up. So the 6 inches is in the upward direction. Does that help
4 with the orientation, sir?

5 A. Yes. So the far end where the tape is resting would be the
6 outer side of the blister?

7 Q. That's correct, sir. And I want to -- the reason I'm
8 bringing this up is this condition was found in *El Yunque* and, in
9 my understanding and review of the blister plans, that freeboard
10 should be a 1-inch diameter drain hole. If you reviewed the
11 plans, then would you agree with that assessment for *El Yunque*?

12 A. I would have to specifically review the plans for the *El*
13 *Yunque*.

14 Q. Are you aware of discussions in regards to this freeboard or
15 concerns raised by this freeboard?

16 A. I was aware of discussions in drain holes that were on the *El*
17 *Faro*, but I'm not aware of this.

18 Q. And the background I think you're referring to is there was
19 some concern that this similar type drain hole may have been in
20 the supply blisters of the *El Faro*, vent supply blisters, is that
21 accurate?

22 A. Yes. I think it was confirmed from some video from one of
23 the dives that that was not the case.

24 Q. The MBI has reviewed the underwater video of the *El Faro*
25 blisters in the same location and it appears that they are 1-inch

1 diameter drain holes that would be applicable or in accordance
2 with the plans. However, can you give me an idea, or your idea of
3 what would happen if water entered this freeboard and where would
4 that water go to in a heel of about 20 degrees?

5 A. Water would enter the blister.

6 Q. Would the water -- is this blister -- would the water
7 directly go into the supply vent, potentially? Is there any sill
8 after this frame port?

9 A. I would have to double-check the plans to see what the sill
10 height and everything would be. It would be hard to determine
11 just from this picture.

12 Q. If the plans indicated a 1-inch diameter drain hole for this
13 supply blister, would you see this as a problem?

14 A. Not if that was what was on the approved plan.

15 Q. I've reviewed the approved plans for this supply blister and
16 it was indicated, at least for the plans that I've seen for
17 several different Ponce class vessels, it was a 1-inch diameter
18 drain hole. If that's the case, would you see this as an issue, a
19 potential down-flowing issue?

20 A. Yes, I would. It would appear to be an unapproved
21 modification.

22 Q. You said unapproved modification?

23 A. Yes. If it was not in accordance with the plan, then it
24 would be an unapproved modification.

25 Q. The MBI has reviewed dry dock photos of the *El Yunque* that

1 clearly indicate that these drain ports of approximately the same
2 size were in place in 2014 at the dry dock. Would that concern
3 you from ABS perspective? Assuming that I'm correct that the 1-
4 inch diameter holes are in the plans.

5 A. If it was not in accordance with the plan, yes.

6 Q. My question is how would something like this get detected at
7 a dry dock? Or would you anticipate an item like this should be
8 detected during a dry dock that is led by ABS on the Coast Guard's
9 behalf?

10 A. Could you repeat the question?

11 Q. Yes, sir. Who, under ACP, is primarily responsible for
12 detecting issues like we just discussed?

13 A. It would be ABS.

14 Q. Thank you.

15 CAPT NEUBAUER: At this time, I'd like to go to Commander
16 Denning for some questions.

17 BY CDR DENNING:

18 Q. Hello, Mr. O'Donnell.

19 A. Yes, sir.

20 Q. Just a few follow-on questions to those covered earlier. You
21 stated earlier in your testimony that if an inspector issues, say,
22 four 835s, your surveyors would do some kind of report in
23 narrative format. Is that in lieu of issuing a condition of
24 class, or in addition to, or something else?

25 A. I stated if the Coast Guard hadn't gone on board and done a

1 flag state intervention or inspection and issued 835s and we were
2 called immediately in and the 835s were rectified prior to the
3 vessel's departure from that location, we have a process. We
4 treat that as a flag state intervention report. We would clearly
5 report in a narrative format what the deficiencies were and what
6 was done to correct each one of those deficiencies for the vessel
7 to leave.

8 Now, if a deficiency couldn't be rectified or corrected, or
9 if the Coast Guard, with that deficiency, allowed a period on the
10 835, say 30 days, 60 days, for the vessel to rectify it, we would
11 then either issue a class recommendation or a recommendation
12 against one of the statutory certificates, or both, depending if
13 it affects class and statutory surveys.

14 Q. So does that mean, then, that if it's rectified quickly
15 enough that it will not be documented in your system specifically?

16 A. No. It will be documented in a narrative report.

17 Q. And is that narrative report retrievable by the Coast Guard
18 when we search ABS records?

19 A. Yes. It would be in the survey report. It would be on a
20 flag state intervention task.

21 Q. How much detail would that show up? I mean, would an
22 inspector that's trying to review the history of a vessel have to
23 drill deeply down into that narrative report in order to see the
24 deficiencies or does it show up as sort of a checklist as it would
25 if a condition of class had been --

1 A. It would show up very similar to a condition of class. We
2 call that narrative type reporting as a statement of observation
3 in our report, and it would be clear in the report. It would look
4 almost just like a condition of class or an outstanding
5 deficiency.

6 Q. Moving on to the LL-11-D that you mentioned. I'm having
7 trouble finding the most recent one. Is ABS required to keep a
8 copy in your records? Is that sort of an outlier? Do you have
9 records like that for most vessels?

10 A. Yes, we do.

11 Q. Is that a requirement to maintain by ABS policy?

12 A. It's required to be on board the vessel. We try to keep a
13 copy of everything in our archives and our files. And we did lose
14 some files, and I think I previously testified to that at the
15 first MBI, in one of the tropical storms that came through
16 Houston, and we lost some files when there was a transfer to Iron
17 Mountain.

18 Q. And you stated in your testimony today that the modifications
19 made in 2006 did not require a new LL-11-D; is that correct?

20 A. It did not require the LL-11-D to be updated or revised,
21 that's correct. And we can go by the survey report that states
22 that.

23 Q. Remind us of the modifications that took place in 2006. Just
24 since we're talking about it right now.

25 A. I would have to have the survey report in front of me.

1 Q. And is the LL-11-D reviewed? You said it's reviewed during
2 annuals, correct?

3 A. It's reviewed or it's looked at by the surveyor to give them
4 a perspective of, you know, what the closures and everything
5 should look like on a vessel. But it is verified in each annual
6 survey.

7 Q. And if a surveyor finds something different on board the
8 vessel than what's shown on the LL-11-D, how do they handle that
9 situation?

10 A. They would update or revise the LL-11-D. And depending on
11 how extensive it is, if it was, say, an addition of one new air
12 pipe, they would amend it, add that air pipe, you know, verify its
13 height, verify that whatever's being added is in accordance with
14 the convention. And if it was a major update, say it was a lot of
15 work done, you know, new ventilators, air pipes, scuppers,
16 discharges, things like that added, it would probably behoove them
17 to revise the LL-11-D in its entirety and issue a new one.

18 With the advent of technology here in the past 5 or 6 years,
19 we have a good system now where we can do this electronically and
20 we can keep a history of the revisions in an LL-11-D.

21 Q. Is there any evidence in your files of a surveyor finding any
22 issues on board that are in contrast with what's seen on the LL-
23 11-D over the past few decades?

24 A. Specifically to these vessels or other vessels?

25 Q. Specific to the *El Faro*.

1 A. Not that I saw.

2 Q. Do the surveyors look at the plans for the vessel at all
3 during annual exams or any other exams?

4 A. Depending on what survey that would be doing, if they
5 questioned something, they would go to plans that would possibly
6 be on board, or they could seek plans from our Plan Review Center
7 or our archives.

8 You know, specifically, not getting off subject, but for,
9 like, the fire plan, the fire and safety plan, that's a plan
10 that's referred to at every annual survey to make sure there's
11 been no modifications, similar to the LL-11-D.

12 Q. If a surveyor saw rat holes or something in the ventilation
13 trunks or anything that raised their attention that they
14 questioned whether they were on the plans or not, would they
15 typically refer back to the plans, ask for plans?

16 A. Yes. Yeah, if they did.

17 Q. Is there any evidence in your file of anything like that
18 occurring on the *El Faro*?

19 A. Not that I'm aware of.

20 Q. Did I hear you correctly earlier that the surveyors would
21 only go inside every ventilation trunk if they saw something from
22 outside that raised their attention?

23 A. They would only enter those trunks if they saw something
24 suspect in the course of the annual survey or something that
25 triggered them, you know, to further examine, you know, perform a

1 more detailed examination. Those small openings on the covers,
2 the large, closely-spaced, bolted covers are there, and that was
3 actually a rule change that we made in, I think it was, 2006 that
4 all those fire dampers like that have to have an inspection
5 opening so we can be able to confirm the fire dampers at annual
6 surveys.

7 Q. During previous testimony we looked at Exhibit 342, which is
8 ABS Circular of Instruction No. 33, regarding an LL-11-D. If you
9 can turn to page 7 of that, we talked about the paragraph that
10 states, "All ventilator openings in exposed positions will be
11 provided with efficient, weathertight closing appliances," and it
12 goes on. The last sentence in that paragraph says, "It should be
13 pointed out that a fire damper alone generally does not suffice as
14 weathertight closing appliance."

15 Are your surveyors trained and aware of this particular ABS
16 circular?

17 A. Could you go back to the first page in that circular, please?

18 Based on the date of this circular, I am pretty sure that
19 these instructions have been revised. It was originally issued in
20 1948, revised in November 1982, and I think we have more current
21 instruction than that. These are all circular notes that were in
22 place prior to our process instruction and the quality system we
23 have in place right now. So it would be fairly safe to assume
24 that these instructions may be outdated.

25 Q. Do you believe that that particular aspect has been changed?

1 A. I would have to investigate it further.

2 Q. So I'll just be straight to the point. Should a fire damper
3 alone generally suffice as a weathertight closing appliance or
4 not?

5 A. In an exposed condition?

6 Q. You can run through a variety of conditions if you'd like,
7 but I'd ask the same question for each condition that you can
8 think of.

9 A. I would say no in an exposed condition.

10 Q. And what do you mean by an exposed condition?

11 A. Can you go back to the other page?

12 Q. Page 1 again?

13 A. This could vary from fire damper to fire damper depending on
14 the arrangement of the fire damper.

15 Q. Okay. Are your surveyors aware of the regulation that we
16 spoke about earlier this week, 46 C.F.R. 92.15-10, that says that
17 fire dampers are required to remain open? What I'm getting at is
18 it may not even matter if they're considered weathertight or
19 watertight if they're required to remain open anyway.

20 Do your surveyors consider that, compare that with the plans
21 that are on board? And if they notice an issue that came to their
22 attention and maybe made it through the plan approval process for
23 ABS and the Coast Guard, if your surveyors notice something that
24 is a concern, either a conflict between this ABS guidance or
25 another regulation and how a mariner is required to -- if there's

1 another conflicting regulation, how would they address that
2 scenario?

3 A. They would probably address it through our engineering office
4 and my office for a determination.

5 Q. And we don't have any evidence that anything like that
6 occurred on the *El Faro*?

7 A. No, not that I'm aware of. I would like to point out that I
8 don't know when this regulation came in, or this specific thing.
9 You know, I'd like to look at it a little further. I'm sorry.
10 Not this regulation, the C.F.R. cite that you're citing, would
11 that be applicable under ACP? Is it in the supplement?

12 Q. I would have to research that myself. All I know is that I
13 see a regulation that requires the -- it's an operational
14 regulation not a material condition regulation, so I wouldn't
15 think it would be in the supplement, but it's going to be, maybe.

16 CAPT NEUBAUER: Okay. I think we -- can ABS research this
17 issue and get back to the Board on the applicability?

18 THE WITNESS: Yes, we can.

19 CAPT NEUBAUER: Thank you. And also your interpretation.

20 THE WITNESS: Yes, we'll look into it.

21 BY CDR DENNING:

22 Q. And only a few more questions. You mentioned earlier that if
23 holes were cut, it's the owner's obligation to notify ABS, and
24 then it would be cross-referenced with approved plans. Is this
25 requirement for owners and operators to notify ABS if they make

1 any modifications, is that written down anywhere?

2 A. Yes. It's very clear in Part 1 of our Steel Vessel Rules
3 under the conditions of classification.

4 Q. And beyond holes being cut, is it also the owner's
5 responsibility to maintain the vessel in general, or is it ABS's
6 responsibility to find every issue and give them a list of things
7 that they need to correct? Can you expand on that for us a little
8 bit?

9 A. It's the owner's responsibility to maintain the vessel. The
10 rules and regulations set minimum standards, but overall it's the
11 owner's responsibility to maintain the condition of the vessel to
12 those rules and standards. It's all depending on the rules and
13 standards.

14 Q. Thank you, sir. That's all I have.

15 A. You're welcome.

16 CAPT NEUBAUER: Mr. Fawcett?

17 BY MR. FAWCETT:

18 Q. Good afternoon, Mr. O'Donnell.

19 A. Good afternoon.

20 Q. Just real quick, just for clarity, if you'll turn your
21 attention to Exhibit 306? That's an email on Tuesday, July 7th to
22 Mr. Weinbecker, copied to Mr. Neeson, and the subject is Salt
23 Water Service Pump and Lifeboats. It's from the chief engineer on
24 the *El Yunque*. If you'll take a moment to look through that
25 email, one of the lines says the port lifeboat engine was full of

1 water. And after you look at that, my question is, what is the
2 requirement of the owner if this situation were to be discovered
3 during the course of the vessel's operation?

4 A. I would say that they would be required to report this
5 condition to ABS and the U.S. Coast Guard because it affects a
6 major piece of lifesaving equipment.

7 Q. Would that be at any time the vessel was operational, meaning
8 at dock or at sea?

9 A. That would be anytime the vessel is operational. If you have
10 some kind of casualty or a situation similar to this, it should be
11 reported as soon as they're aware of it. We have a process where
12 we can issue a nonattendance report when we have damage like this
13 reported to us while a vessel is at sea, and we would make a
14 recommendation that the vessel should be attended in its first
15 port of call.

16 Also, I would ask that the captain report it to me as a
17 surveyor something like this, by email, if they notify the Coast
18 Guard or their respective flag, and what risk assessment he might
19 have put in place or what he's done to address this issue. You
20 know, having a lifeboat now that has an engine that doesn't work,
21 what measures have they taken on board, or additional measures
22 have they taken on board with the equipment they have to, you
23 know, assure they can get off the vessel if they need to.

24 Q. If I told you that that boat might have been used by placing
25 water in the vessel to weight-test the davits on that vessel,

1 would you say that the company should have a procedure in place to
2 prevent water from entering the engine during the davit weight
3 test?

4 A. I would say that they would want to take precautions to make
5 sure that the engine didn't get filled with water, yes.

6 Q. Thank you very much.

7 BY CAPT NEUBAUER:

8 Q. Mr. O'Donnell, a couple follow-up questions and then I
9 recommend we take a break, and then it would pass to the NTSB. Is
10 that acceptable?

11 A. Yeah. Fine.

12 Q. Did you have a chance to review the underwater wreckage of
13 the *El Faro* at all?

14 A. I've seen some screenshots and short videos, but I haven't
15 had time to review all the underwater footage.

16 Q. From what you've seen, would you agree that the hull was
17 primarily intact with the possible exception of the area over the
18 maintenance room boiler ducting?

19 A. Yes.

20 Q. Have you also had a chance to review the VDR transcript?

21 A. I have not only reviewed the VDR but I was invited by the
22 NTSB to listen to key portions of the VDR in the last 4 hours of
23 the *El Faro*.

24 Q. Yes, sir. I'd like to try to get your professional opinion
25 to help the Board understand kind of the last series of events on

1 the *El Faro*. And these would be an opinion. Would it be your
2 opinion that the engine room would likely have been the last under
3 deck space to flood from what you know?

4 A. That would be very difficult to say not knowing the chain of
5 events. But from what I heard on the VDR, the bridge was in
6 communication with the engine room very close up to the final
7 minutes. It sounded like the engineers were doing a lot down
8 there to try to get the vessel, you know, going again. But it
9 would be very difficult for me to answer something like that. I
10 would have to assume if the engine room was closed up, it could
11 have been. But I wouldn't want to say for sure.

12 Q. Are you aware of any hazards to a steam boiler vessel during
13 flooding events?

14 A. Yes.

15 Q. Can you describe potentially what that hazard may be?

16 A. If the boiler was hot and it was shocked with cold water, it
17 could possibly have had a catastrophic failure, boiler explosion
18 maybe.

19 Q. Has that occurred in the past, that you know of, on any
20 vessels, any steam propulsion vessels?

21 A. Not that I'm aware of right at this minute, what I can think
22 of, no.

23 Q. Are you aware of what kind of damage that type of event would
24 occur -- would incur?

25 I mean, that could be possible with -- the damage above that

1 we've seen on the underwater wreckage could be due to something
2 like that type of event?

3 MR. WHITE: Damage to the house --

4 BY CAPT NEUBAUER:

5 Q. Damage to the house and the stack area.

6 A. It could have been but I can't say for sure, you know. You
7 know, I wish I could, but I can't say for sure. But it could have
8 been a possible cause.

9 Q. Thank you.

10 CAPT NEUBAUER: At this time, the hearing will recess and
11 reconvene at 4:10, with questions from the NTSB.

12 (Off the record at 4:00 p.m.)

13 (On the record at 4:12 p.m.)

14 CAPT NEUBAUER: The hearing is now back in session. At this
15 time, I'm going to continue on with questioning from the NTSB.

16 Mr. Stolzenberg?

17 MR. STOLZENBERG: Thank you, Captain.

18 BY MR. STOLZENBERG:

19 Q. Good afternoon, Mr. O'Donnell. I just wanted to run through
20 a few clarifications on some of your previous statements.

21 Regarding the LL-11-Ds, to clarify, if it's an amended LL-11-D,
22 that's only going to be kept on board the vessel; if it's revised,
23 we could expect it possibly in the ABS documentation files or
24 history files?

25 A. If it was a minor amendment, let's say, you know, they have

1 one air pipe or maybe they changed, increased the height of an air
2 pipe, that may be handwritten and left on board. But if it was a
3 major revision, lots of additions, lots of changes, that would be
4 a whole revision of the LL-11-D.

5 Q. And that revision, would that be submitted to the gentleman
6 Mr. Gruber, yesterday, in the Load Line and Stability Group?
7 Would that be submitted officially?

8 A. Yes, it would. For an example, like the 1993 modification
9 would have been submitted and reviewed by the Stability and Load
10 Line Group.

11 Q. So in the case of the *El Faro*, even if we had, say, the last
12 modification, the 2006 LL-11-D, is it possible that that version
13 which we have a copy of, or the Load Line and Stability Group has
14 a copy of, is not the same as the one on board the vessel during
15 the accident?

16 A. We don't have the 2006 revision. And as I previously
17 testified, there were no modifications made which would require
18 the LL-11-D to be updated. So I have to assume the version that
19 was on board was still the version from 1993, when the major
20 modifications were made, when the mid body was put in.

21 MR. WHITE: Okay. Mr. Stolzenberg, just as a point of
22 clarification, I think the LL-11-D that was located was from 1975.

23 MR. STOLZENBERG: Understood. Thank you. And thank you for
24 the clarification.

25 BY MR. STOLZENBERG:

1 Q. Regarding inspections by ABS surveyors of the ventilation
2 trunks, to clarify, it sounded to me like on an annual inspection
3 we don't expect, or you wouldn't expect a surveyor to go in each
4 and every trunk. Is that correct?

5 A. Correct, unless they saw something suspect that would drive
6 them to expand the scope of the survey and go inside the trunk.

7 Q. Understood. So, when could we expect a surveyor to be inside
8 each and every trunk?

9 A. At the load line renewal and special survey. That will be on
10 a 5-year basis, at the load line renewal survey, special survey of
11 all.

12 Q. So in the case of the *El Faro*, can you estimate what date
13 that would be?

14 A. The last special survey for the *El Faro* was completed on
15 29 January 2011.

16 Q. Thank you. Moving on to another topic earlier, the term
17 exposed was discussed regarding the exhaust fire dampers for *El*
18 *Faro*. Is there a definition for the term exposed in the load line
19 convention for these types of dampers?

20 A. I'm not 100 percent sure. I'd have to pull up the Load Line
21 Technical Manual or the International Load Line Convention. But
22 exposed, in my view, would be if the damper was on the exterior of
23 the shell where you could have run up in seas and rain hitting the
24 damper or making, you know, direct contact with the damper. That
25 would be exposed. In the case of the *El Faro* and the *El Yunque*,

1 you're looking at the design of the exhaust damper. It has
2 multiple baffles and sills in the path that the air would have to
3 travel, so the damper is not exposed. To me, my opinion, it would
4 not be in an exposed condition.

5 Q. Thank you. I just wanted to bring up one the previous
6 exhibits quickly. Let me check the number.

7 Exhibit 371, we've seen this exhibit a few times this week.
8 Regarding Radial Frame 135 there, and I don't -- when you have it
9 up, let me know.

10 A. We see it.

11 Q. To the right of 135 you see the exterior louvers to this
12 exhaust vent trunk. It's fairly obvious those louvers are fully
13 holed through, external to the outside of the ship. And I
14 understand that's not a violation of the statute requirements or
15 any of that, but would that kind of wastage be an indication that
16 an internal survey of the trunk needs to be performed?

17 A. If that had been seen by the surveyor from the outside, which
18 it probably wouldn't have been seen. The only way it would have
19 been seen, if they had taken those covers off. It does look like
20 there's some wastage there.

21 Q. But that would be visible from the pier, those louvers, would
22 you agree with that?

23 A. If visible, yes.

24 Q. Okay. Lastly, regarding fire dampers, is there a type
25 approved, weathertight fire damper? And maybe you can, for the

1 benefit of everyone here, including me to a degree, say what type
2 approval is?

3 A. Type approval is when a fire damper or a piece of machinery,
4 a valve, receives what we call a design assessment. The specific
5 piece of equipment, whatever it may be, is, you know, reviewed in
6 accordance with whatever rules and regulations that would be
7 applicable and could receive a technical certificate.

8 Now, we had various levels of that that I could go on for
9 hours and explain, but approved, you have to be careful. Approved
10 and type approved are two different things. Type approved,
11 there's a lot of steps to get to that level of type approval.
12 Design assessed is like the lowest level and type approval is the
13 highest level.

14 Now, an approved fire damper can be looked at in a different
15 context. Being a damper, you know, is it approved as a fire
16 damper or is it approved -- being approved as a fire damper, it
17 has to meet certain rule criteria, and also IMO criteria under the
18 fire test procedure codes as well. It has to pass certain tests,
19 certain specific tests. So approved and type approved can be two
20 very different things.

21 Q. Thank you. What I'm looking for is are most of these
22 external weathertight fire dampers like we have in the *El Faro*,
23 are they more difficult to assess because they're custom each
24 time? And let me not put words in your mouth. Are most of these
25 types of external weathertight fire dampers custom?

1 A. First, I wouldn't agree that's an external damper. But yes,
2 yes, dampers are, they are reviewed, design reviewed and approved.
3 For a damper like a closure, let's take, for example, say like a
4 mushroom ventilator; that has to be reviewed and approved. The
5 closures, even the closures we use on air pipes, they have to
6 be -- they have to meet certain criteria. Like a watertight hatch
7 or door, it has to be reviewed and approved that it meets certain
8 criteria under the rules and load line regulations.

9 Q. So, do you know of a type-approved load line weathertight
10 fire damper?

11 A. I would have to review our database. Not off the top of my
12 head, but I know of dampers or closures that are approved, design
13 approved.

14 Q. Thank you.

15 MR. STOLZENBERG: That's all I have, Captain.

16 CAPT NEUBAUER: Mr. Kucharski?

17 MR. KUCHARSKI: Yes. Thank you, Captain.

18 Mr. O'Donnell, good afternoon.

19 Counselor.

20 BY MR. KUCHARSKI:

21 Q. I'm not an engineer by trade, so bear with me. I do have a
22 question, though, an engineer-related one which you brought up
23 about the 15-degree parameter for the lube oil system operation, a
24 list parameter. Do you remember that?

25 A. The inclination requirements or the inclination from the

1 rules, yes.

2 Q. Great. And so the requirement is for it to be able to
3 operate at 15 degrees? Is that what -- a 15-degree inclination?

4 A. If I recall correctly, 15 degrees static aboard ships.

5 Q. Okay. So static -- not being a rolling situation, just a
6 static situation; is that correct?

7 A. That would be correct.

8 Q. And you said you were a licensed engineer. You happen to
9 hold a seagoing license; is that correct?

10 A. Yes.

11 Q. What license is that?

12 A. Second steam, third motor.

13 Q. Did you sail on that license?

14 A. Yes, I did.

15 Q. Were you aware of that 15-degree inclination?

16 A. Back then, no.

17 Q. Do you know if it's part of the licensure for any seagoing
18 license, whether it's deck or engine? Is that somewhere -- sorry.
19 I sailed a long time and I never heard that, but is that part of
20 the licensure anywhere that you know?

21 MR. WHITE: Just to clarify, are you asking whether the
22 limitation provided in an ABS class rule --

23 MR. KUCHARSKI: Yeah, correct. I believe the licenses have
24 rules included in them. Is that knowledge anywhere that you know
25 of that it's based upon?

1 MR. WHITE: I'm just looking to distinguish, Captain, the
2 difference between an ABS class rule and a license requirement
3 based on a statute. Other classification societies may have
4 different rules for that specific system or other systems, and
5 that's the context of my clarification.

6 BY MR. KUCHARSKI:

7 Q. Okay. So let me ask a follow-up question. Is that just an
8 ABS rule, 15 degrees?

9 A. That was the ABS rule in 1974, the steel vessel rules.

10 Q. Okay. And that was an ABS rule, Steel Vessel Rules in 1974,
11 but it was applicable to the *El Faro*?

12 A. Yes, sir.

13 Q. Okay. Thank you for that clarification. Your group, they're
14 surveyors, correct, that you manage? Is that correct?

15 A. Yes.

16 Q. Do the surveyors of your group have any -- do they provide
17 information into the Rapid Response Damage Assessment program? Do
18 they provide information to that?

19 A. Field surveyors?

20 Q. Either you or anyone from your group.

21 A. I will provide survey assistance to RRDA when requested, yes.

22 Q. And so you personally have participated in the RRDA process?

23 A. Yes, I have.

24 Q. And are there other groups that feed information into the
25 RRDA?

1 A. RRDA has their own group of engineers, and from the survey
2 side -- the engineering side, my colleague on the engineering
3 side, the assistant chief surveyor -- excuse me, assistant chief
4 engineer would also provide guidance and input to RRDA when
5 requested, as well as our chief engineer and our chief surveyor if
6 so requested.

7 Q. So, what kind of information when you participated in a
8 scenario, was it actual, some kind of an emergency on a ship, or
9 was it a drill, or have you done both?

10 A. Both.

11 Q. So, what kind of information did you feed into the particular
12 scenario, or any of the scenarios? What kind of information did
13 you actually feed into that?

14 A. From a rule perspective, based on the conditions, the RRDA
15 would relay to us all the information they had, pictures,
16 strength, stability, conditions of the vessel. If it was a
17 casualty of something on that vessel and the owner wanted to
18 proceed from one location to another, we as a group would take
19 that information, review it, and then we would make a
20 determination whether the vessel would be fit to proceed in that
21 type of condition, or we would make other determinations or
22 recommendations of what would need to be done to put that or place
23 that vessel in a safe condition so it could proceed from point A
24 to point B.

25 Q. Did any of the input actually involve what you do to help the

1 vessel save a vessel, if you will, as opposed to just moving it?

2 A. The input, the actual exercise is input. I haven't
3 necessarily had to save a vessel. It was more making a
4 determination that the vessel was in a condition where it would be
5 fit to proceed, you know, meet the minimum requirements of the
6 rules.

7 Q. And in those particular situations, do you know if it was the
8 ship that contacted the RRDA or if it was the owner who did that?

9 A. In the case that I was working, it was the owner's
10 representative that contacted RRDA.

11 Q. Did you participate or any members from your group
12 participate in the *El Faro*, in feeding information into the RRDA?

13 A. Not directly. By the time we were notified, the RRDA had
14 already stood down.

15 Q. I believe that's it, sir. Thank you very much,
16 Mr. O'Donnell.

17 MR. KUCHARSKI: Thank you, Captain. That's it.

18 CAPT NEUBAUER: I'd like to go to the PIIs at this time.

19 TOTE, do you have any final questions?

20 MR. REID: Just one, sir.

21 BY MR. REID:

22 Q. Mr. O'Donnell, good afternoon. Thank you for your testimony.
23 Are you aware that the *El Yunque* was owned by three separate
24 companies prior to TOTE acquiring her?

25 A. No, sir.

1 Q. Thank you.

2 CAPT NEUBAUER: Mrs. Davidson?

3 MR. BENNETT: No questions, sir.

4 CAPT NEUBAUER: ABS?

5 BY MR. WHITE:

6 Q. Mr. O'Donnell, just to follow up or clarify a response that
7 was provided to Commander Denning, Commander Denning had asked
8 you, with regard to the repair list, who generated the repair
9 list, whether it was the owner or ABS, and I don't believe you
10 actually responded. But in any event, could you explain, to the
11 extent that there are deficiencies found in a specific report or
12 survey, how that correlates to whether or not an owner wants to
13 repair a vessel or how an owner determines the extent of repair?

14 A. Well, if we go aboard a vessel doing surveys and we find
15 deficiencies or things that are wrong or need to be corrected,
16 repaired, the surveyor would normally provide a work list to the
17 owner, a repair list. And then, you know, each one of those items
18 would have to be -- you'd go back and you'd verify that they're in
19 satisfactory condition or repaired as the recommendation that we
20 give them.

21 Q. Okay. The other item for clarification, you indicated that
22 the ventilation arrangement on the *El Yunque* and the *El Faro* was
23 approved going back to 1975, correct?

24 A. That's correct.

25 Q. And sitting here today, is there any doubt as to that fact,

1 that the ventilation arrangement, the damper arrangement was
2 approved in 1975?

3 A. No.

4 MR. WHITE: And just to make a short comment in response to
5 Captain Kucharski's line of questioning on RRDA, I was just going
6 to advise the families that RRDA is Rapid Response Damage
7 Assessment, and that was utilized by TOTE during the *El Faro*
8 casualty. And the documents and the calculations were performed
9 and then at some point, unfortunately, ABS stood down because
10 contact with the *El Faro* could not be established.

11 All of those materials -- and the head of RRDA and the
12 engineers then worked and mobilized within 15 or 20 minutes to
13 assess the damage and provide answers to TOTE. All of that
14 information was provided to the MBI and the head of the RRDA was
15 interviewed.

16 CAPT NEUBAUER: Mr. O'Donnell, can you confirm that that
17 summary -- is that consistent with your understanding?

18 THE WITNESS: Yes, sir, it's correct.

19 CAPT NEUBAUER: Mr. Kucharski?

20 MR. KUCHARSKI: Yeah, just a follow-on question because
21 Mr. White says it was stood down and it was stood up. Do you have
22 any idea of when it was actually stood up?

23 THE WITNESS: I was in another meeting when the incident took
24 place and I wasn't advised until we were stood down. I don't have
25 the times.

1 MR. KUCHARSKI: Thank you.

2 CAPT NEUBAUER: Are there any final questions for
3 Mr. O'Donnell at this time?

4 MR. REID: No, sir.

5 MR. BENNETT: No, sir.

6 MR. WHITE: No, sir.

7 CAPT NEUBAUER: Mr. O'Donnell, you are now released as a
8 witness at this Marine Board of Investigation. Thank you for your
9 testimony over two sessions. If I later determine that this Board
10 needs additional information from you, I will contact you through
11 your counsel. If you have any questions about this investigation,
12 you may contact the Marine Board recorder, Lieutenant Commander
13 Damian Yemma.

14 At this time, do any of the PIIs have issues with the
15 testimony that we just received?

16 MR. REID: No, sir.

17 MR. BENNETT: No, sir.

18 MR. WHITE: No, sir.

19 CAPT NEUBAUER: The hearing will now adjourn and reconvene on
20 Monday, February 13th, at 9 a.m. Thank you.

21 (Whereupon, at 4:35 p.m., the hearing was recessed, to
22 reconvene, Monday, February 13, 2017, at 9:00 a.m.)

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CERTIFICATE

This is to certify that the attached proceeding before the

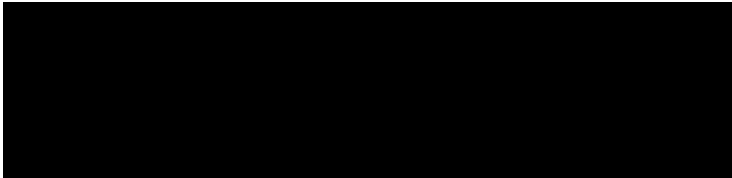
NATIONAL TRANSPORTATION SAFETY BOARD

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

PLACE: Jacksonville, Florida

DATE: February 10, 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