

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 U.S. Coast Guard Marine Board Investigation ICO the sinking of SS El Faro held in

2 Jacksonville, Florida held

3 17 February 2016

4 Volume 2

5 **CAPT Neubauer:** Good morning. This hearing will come to order. Today is February
6 17th, 2016 and the time is 9:09 a.m. We're continuing at the Prime F. Osborn
7 Convention Center in Jacksonville, Florida. I am Captain Jason Neubauer, of the
8 United States Coast Guard, Chief of the Coast Guard Office Investigations and analysis,
9 Washington D.C. I'm the Chairman of the Coast Guard Marine Board of Investigation
10 and the presiding officer over these proceedings. The Commandant of the Coast Guard
11 has convened this board under the authority of Title 46, United States Code, Section
12 6301 and Title 46 Code of Federal Regulations Part IV to investigate the circumstances
13 surrounding the sinking of the SS El Faro with the loss of 33 lives on October 1st, 2015
14 while transiting East of the Bahamas. I am conducting the investigation under the rules
15 in 46 C.F.R. Part IV. The investigation will determine as closely as possible the factors
16 that contributed to the incident so that proper recommendations for the prevention of
17 similar casualties may be made. Whether there is evidence that any act of misconduct,
18 inattention to duty, negligence or willful violation of the law on the part of any licensed or
19 certificated person contributed to the casualty, and whether there is evidence that any
20 Coast Guard personnel or any representative or employee of any other Government
21 agency or any other person cause or contributed to the casualty. I have previously
22 determined that the following organizations or individuals are parties in interest to the
23 investigation. Tote Incorporated, ABS, Herbert Engineering Corporation and Mrs.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 Teresa Davidson as next of kin for Captain Michael Davidson, Master of the SS El Faro.
2 These parties have a direct interest in the investigation and have demonstrated the
3 potential for contributing significantly to the completeness of the investigation or
4 otherwise enhancing the safety of life and property at sea through participation as party
5 in interest. All parties in interest have a statutory right to employ counsel to represent
6 them, to cross-examine witnesses and have witnesses called on their behalf.

7 I will examine all witnesses at this formal hearing under oath or affirmation and
8 witnesses will be subject to Federal laws and penalties governing false official
9 statements. Witnesses who are not parties in interest will be excluded from the hearing
10 room when not testifying. Witnesses who are not parties in interest may be advised by
11 their counsel concerning their rights. However, such counsel may not examine or
12 cross-examine other witnesses or otherwise participate.

13 These proceedings are open to the public and to the media. I ask for the
14 cooperation of all persons present to minimize any disruptive influence on the
15 proceedings in general and on the witnesses in particular. Please turn your cell phones
16 or other electronic devices off or to silent or vibrate mode. Please do not enter or depart
17 the hearing room except during periods of recess. Flash photography will only be
18 permitted during this opening statement and during recess periods. The members of
19 the press are of course welcome and an area has been set aside for your use during
20 the proceedings. The news media may question witnesses concerning the testimony
21 that they have given after I have released them from these proceedings. I ask that such
22 interviews be conducted outside of this room. Since the date of the casualty the NTSB
23 and Coast Guard have conducted substantial evidence collection activities and some of

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 that previously collected evidence will be considered during these hearings. Should any
2 person have or believe that he or she has information not brought forward, but which
3 might be of direct significance, that person is urged to bring that information to my
4 attention by emailing elfaro@uscg.mil. The Coast Guard relies on strong partnerships
5 to execute its missions. And this Marine Board of Investigation is no exception. The
6 National Transportation Safety Board, NTSB, provided a representative for this hearing.
7 Mr. Tom Roth-Roffy, also seated to my left is the Investigator in Charge for the NTSB
8 investigation. Mr. Roth-Roffy, would you like to make a brief statement?

9 **Mr. Roth-Roffy:** Yes, good morning Captain. I am Tom Roth-Roffy, Investigator in
10 Charge for the National Transportation Safety Board's investigation of this hearing. The
11 NTSB has joined this hearing to avoid duplicating the development of facts.
12 Nevertheless, I do wish to point out that this does not preclude the NTSB from
13 developing additional information separately from this proceeding if that becomes
14 necessary. At the conclusion of these hearings the NTSB will analyze the facts of the
15 accident and determine a probable cause independently of the Coast Guard. Issue a
16 separate report of the NTSB's findings and if appropriate issue recommendations to
17 correct safety problems discovered during this investigation. Thank you.

18 **CAPT Neubauer:** Thank you, sir. Before we begin the proceedings we have one
19 correction to the record to be made from yesterday. Mr. Keith Fawcett can you provide
20 that correction?

21 **Mr. Fawcett:** Yes, sir, Captain. Good morning everyone. Yesterday in testimony with
22 Mr. Morrell I made the statement that we did not have the list of bridge equipment. We
23 did have in our possession the ABS approved cargo ship safety equipment record which

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 contains a listing of bridge equipment. And we had that before the hearing. I would like
2 to introduce that as an exhibit to this hearing at this time.

3 **CAPT Neubauer:** Thank you. We will now call our first witness. We will now hear
4 testimony from Mr. Philip Greene, Rear Admiral, United States Navy, retired. Admiral
5 Greene, please come forward to the witness table and Lieutenant Commander Yemma
6 will administer your oath and ask you some preliminary questions.

7 **LCDR Yemma:** Good morning, sir.

8 **WIT:** Good morning.

9 **LCDR Yemma:** If you would please raise your right hand. Sir, a false statement given
10 to an agency of the United States is punishable by a fine and or imprisonment under 18
11 U.S.C. 1001, knowing this do you solemnly swear that the testimony you're about to
12 give will be the truth, the whole truth and nothing but the truth, so help you God?

13 **WIT:** I do.

14 **LCDR Yemma:** Thank you, sir. You may be seated. Sir, can you please state your
15 name for the record and spell your last name?

16 **WIT:** Yes, sir. Philip H. Greene, Jr., last name, G-R-E-E-N-E.

17 **LCDR Yemma:** Thank you, sir. And I think we need everybody to talk a little closer to
18 the microphone so that it picks it up. Thank you, sir. And counsel will you please also
19 state your name and spell your last?

20 **Counsel:** My name is Jack Fornaciari, my last name is spelled F-O-R-N-A-C-I-A-R-I.

21 **LCDR Yemma:** Thank you, sir. And Admiral Greene can you please state where you
22 are currently employed and what your position is?

23 **WIT:** I am the President of Tote Services Incorporated.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **LCDR Yemma:** And what are some of your general responsibilities in that position?

2 **WIT:** My general responsibility as President is to set the strategic direction for the
3 company. To develop our financial budgets consistent with our goals and objectives for
4 increasing and growing our business. To provide the top down leadership tone that's
5 related to the quality, safety, environmental aspects of operating our company. To
6 engage with third party clients. And to engage with the industry, as a leader within the
7 industry that I serve.

8 **LCDR Yemma:** And can you also describe generally some of your relative work
9 experience?

10 **WIT:** I am a retired Naval Officer, having spent 32 years on active duty in the surface
11 warfare community commanding ships. I departed the Navy as a 2 star flag officer.
12 Subsequently I served in the Senior Executive Service of the Department of
13 Transportation, as a Superintendent of the United States Merchant Marine Academy
14 and later as the Chair for the National Defense University – Department of
15 Transportation Chair for the National Defense University before joining Tote in the fall of
16 2012.

17 **LCDR Yemma:** And what is your highest level of education that you achieved?

18 **WIT:** I hold a bachelor's degree from the United States Merchant Marine Academy and
19 a Master's degree from Naval post graduate school and the National Defense
20 University.

21 **LCDR Yemma:** And do you hold any licenses or professional certification?

22 **WIT:** I earned an unlimited tonnage in the ocean master's license in 1988. And I
23 currently have that license in continuity.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **LCDR Yemma:** Thank you, sir. The board will ask you some questions.

2 **WIT:** Thank you.

3 **Mr. Fawcett:** Good morning Admiral Greene.

4 **WIT:** Good morning, sir.

5 **Mr. Fawcett:** All of my questions that I may ask you will relate to the time frame before
6 the accident voyage unless I note otherwise, okay?

7 **WIT:** Okay.

8 **Mr. Fawcett:** All right. So we're going to look over some broad topic areas this
9 morning. The first one will be the overview of management. The second broad topic
10 will be a broad overview of the safety management system. The third area in general
11 will be operations and overview of operations at Tote Services. And the final will reflect
12 on the accident voyage. And any related issues, subsequent hearings we'll go into that
13 in further detail.

14 **WIT:** Thank you.

15 **Mr. Fawcett:** So the same scheme as yesterday, after I finish my questions I will pass
16 it on to the Coast Guard for follow-up and then we'll move through the National
17 Transportation and Safety Board for follow-up questions and then the parties in interest
18 and then back to Captain Neubauer if he chooses to follow-up.

19 **WIT:** Thank you, sir. If it would be okay with you I would like to just make a brief
20 comment.

21 **CAPT Neubauer:** Yes, sir.

22 **WIT:** First off as a member of our leadership team within Tote Inc. and Saltchuk I want
23 to personally express how deeply grieved we are by the event itself. The tragedy, the

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 loss of our mariners, the impact it's had on their families. And since this event has
2 occurred on October 1st I can speak with a great sense of sincerity about our priority for
3 focusing on the families then and the families now and the families going forward. It's
4 been something very important to us and close to our hearts. I would also like to thank
5 the Coast Guard and commend the Coast Guard on their actions and their response in
6 the aftermath of this event. It was nothing short of extraordinary. From a personal and
7 professional perspective it was a tremendous level of effort and commitment and
8 expression of humanity that I observed. I also want to thank the NTSB for your
9 engagement and your purpose and the way this effort and investigation along with the
10 Coast Guard has been treated with openness and transparency. Professionally it's very
11 gratifying to see that. So thank you very much for the opportunity to make those
12 comments.

13 **CAPT Neubauer:** Thank you Admiral. Mr. Fawcett please proceed.

14 **Mr. Fawcett:** Also thank you for those comments. During the course of your testimony
15 if you would like to take a break please let us know, okay, sir.

16 **WIT:** Thank you.

17 **Mr. Fawcett:** The first topic I would like to turn your attention to some areas on
18 oversight and management and overview of management. And to set the stage, could
19 you talk about where you were and what you were doing as the El Faro got ready to sail
20 out on the accident voyage departing Jacksonville?

21 **WIT:** I was in Washington, D.C. attending the National Defense Transportation
22 Association conference engaging with a potential third party client. And that was on
23 Monday and Tuesday. On Wednesday I wrapped up my business in Washington, D.C.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 and flew to Houston to participate in the American Bureau of Shipping North American
2 regional committee which I am a member of.

3 **Mr. Fawcett:** And as a matter of Tote Services policy, does someone backfill for you
4 when you go out of town on these type of business trips?

5 **WIT:** Organizationally we have very talented people and our organization supports that
6 and supports the continuity of business through my vice presidents and directors and an
7 enormously competent staff.

8 **Mr. Fawcett:** During that same time frame, when did you become aware that Hurricane
9 Joaquin would impact your shipping operations?

10 **WIT:** I received a phone call on Thursday morning of the vessel being in distress.

11 **Mr. Fawcett:** So as we lead up to the following questions, have you had a chance to
12 review the accident voyage and the events leading up to the accident voyage to get
13 prepared for this hearing?

14 **WIT:** Well I'm not exactly sure specifically what you're suggesting in terms of review,
15 but in general I'm aware of the background behind the voyage.

16 **Mr. Fawcett:** Okay. So your daily job, what does it entail when you're – where do you
17 work normally?

18 **WIT:** Jacksonville, Florida, our headquarters.

19 **Mr. Fawcett:** Okay. And you – I mean in your opening you talked about sort of the
20 broad areas that you worked at on – as President of Tote Services. What does your
21 daily job entail?

22 **WIT:** So, maybe it's helpful if I talk about the organizational structure a little bit in terms
23 of our clientele and our business. At the time in October, September, we managed 25

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 vessels around the world. Our clients included Tote Maritime Puerto Rico, Tote
2 Maritime Alaska, American roll-on, roll-off, ARC as they're otherwise known. PASHA
3 [sic], the maritime administration ready reserve force and vessels for the military sealift
4 command. Tote Maritime Puerto Rico was one of those third party clients that we
5 supported in managing their vessels under the BIMCO contract. I think that my intent
6 there is hopefully to give you a little more clarity on the sense that Tote Services is an
7 independent stand-alone company, and while it has the brand name Tote, our sister
8 company which they are is a third party client within the clientele that we manage
9 vessels for.

10 **Mr. Fawcett:** So within that structure who actually owns the El Faro, or owned the El
11 Faro?

12 **WIT:** Tote Maritime Puerto Rico. As you, I'm sure are aware from your background, in
13 our vessel management business we provide a service. We don't own assets. The
14 service obviously full vessel management. Or a level of vessel management, is
15 dependent on what the client's desires and requirements are. It could be crewing, it
16 could be crewing and technical. It could be logistics back office support. It just depends
17 on the client's desires and requirements.

18 **Mr. Fawcett:** So as President of Tote Services who do you rely on to oversee the
19 marine operations of the El Faro and the El Yunque?

20 **WIT:** Well the way our portfolio is allocated within the company, are by, generally by a
21 third party client. In the case of the Tote Maritime fleet which includes Tote Maritime
22 Puerto Rico and Tote Maritime Alaska that's overseen by the Vice President for Marine
23 Operations Commercial Tote Maritime.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** And that's Mr. Morrell?

2 **WIT:** Yes, sir.

3 **Mr. Fawcett:** So I want to turn to your extensive maritime background, particularly your
4 naval background. Could you speak a little bit about, you mentioned surface warfare
5 and I don't know if the audience understands what you mean by that?

6 **WIT:** I'll do my best to keep it simple. It's the ship operation side of our Navy. And it
7 involves a career path of serving aboard vessels and working your way through various
8 levels of responsibility, hopefully to achieve command at sea.

9 **Mr. Fawcett:** In your naval role have you provided oversight of vessel operations?

10 **WIT:** I have.

11 **Mr. Fawcett:** And would you characterize that as direct oversight?

12 **WIT:** Yes.

13 **Mr. Fawcett:** And what would that ----

14 **WIT:** Direct in the sense of the operational and mission emphasis for vessels.

15 **Mr. Fawcett:** So in the naval world there is direct oversight of the actual naval
16 operations of the vessels?

17 **WIT:** I think in making an analogy between naval operations and commercial
18 operations we're talking apples and oranges. And they're two completely entities with
19 completely different mission sets and the analogies between the two are, you know in
20 my view different.

21 **Mr. Fawcett:** Okay. So the Navy conducts that oversight, would you say to determine
22 the safety and efficiency of the operation of it's vessels?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** In the Navy there's a readiness training and material component, which is
2 associated with overall vessel readiness.

3 **Mr. Fawcett:** All right. So who do you report to outside of the Tote Services
4 organization?

5 **WIT:** So my direct report is Anthony Chiarello who is the CEO of Tote Inc.

6 **Mr. Fawcett:** And what is your reporting relationship with Tote Maritime Puerto Rico
7 and Mr. Nolan.

8 **WIT:** As I stated earlier, Tote Maritime Puerto Rico is a third party client like any other
9 third party client.

10 **Mr. Fawcett:** In any way would you take direction from Mr. Nolan?

11 **WIT:** No.

12 **Mr. Fawcett:** How would you characterize contact from him about, for example, he
13 conveys ideas, there's one example where Mr. Nolan asked you to take another look at
14 the hiring for the candidate for Captain Davidson. How did that work?

15 **WIT:** Yes, sir. As a professional colleague and out of professional courtesy, I would
16 consider a request whether it be from Mr. Nolan or the CEO of ARC, and that is the way
17 we work with each other in a collegial and professional manner.

18 **Mr. Fawcett:** Thank you. So looking at the Tote Services organization, who is the
19 designated person ashore?

20 **WIT:** Captain John Lawrence.

21 **Mr. Fawcett:** And who does he report to?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** He has a reporting relationship, always has access to me. And he reports to Lee
2 Peterson who is the Director of Marine Services and Safety. But always has direct
3 access to the President for safety related matters.

4 **Mr. Fawcett:** And do you routinely meet with him, Captain Lawrence?

5 **WIT:** I would say that our engagement is frequent and the reason for that is the way we
6 have structured our office and I invite you to come with your – whatever opportunity
7 presents itself. When we established our headquarters in Jacksonville, I wanted to take
8 advantage of increasing communications to the way the office was set up. So we have
9 an open office concept. There are no offices. I don't have an office. The entire
10 headquarter staff is in cubicles and organized to facilitate communications. So I like
11 that. I think transparency and being able to share information is important.

12 **Mr. Fawcett:** Within that office would you say that people multi-task very well?

13 **WIT:** Well can you give me an example of what you're referring to?

14 **Mr. Fawcett:** Well in the cubicle environment, do the various departments and divisions
15 work closely together to solve common problems?

16 **WIT:** I think the general benefit of the way I have our office set up is to foster openness
17 and an exchange of information and to enhance teamwork.

18 **Mr. Fawcett:** So that I can understand the function of the designated person ashore,
19 can you give me an example of one of the items that he brought to your attention in that
20 role during the pre-accident time frame?

21 **WIT:** We have an afloat safety program that encompasses over 4 million man hours in
22 our fleet. Our safety performance with respect to recordable injuries is strong. But we
23 do have events that occur where those incidents are recordable injuries and those are

1 always provided to me and informed to me whether it's a person who shut a watertight
2 door on their finger or something had a speck of dust, just got past personal protective
3 equipment. If it resulted in a recordable incident we would communicate about that.
4 We would talk about, in general, our safety management system. We would discuss
5 ways to enhance safety awareness. So yes, there were a number of opportunities on a
6 regular basis for engagement. One of the things that we do in our company is we have
7 a weekly meeting. At the beginning of that meeting we always have a safety minute
8 and that is an important aspect for keeping the idea of safety front and center as a
9 priority for all of us.

10 **Mr. Fawcett:** So has Captain Lawrence ever come to you in that role to talk about
11 anything related to navigational safety?

12 **WIT:** Could you be more specific in terms of what would you evaluate that to be?

13 **Mr. Fawcett:** Well yesterday we discussed with Mr. Morrell the loss of propulsion
14 related to a human factor where a valve was closed by someone that didn't have the
15 required level of training. There were corrective actions, root cause analysis, it was
16 mentioned in a safety meeting, quarterly safety meeting. So how was that transmitted
17 to you at the time of the incident by the designated person?

18 **WIT:** Well in my capacity as President, I view that my responsibility is to emphasize the
19 importance of safety overall, to set the tone, to ensure that our system is receiving
20 attention that it should, and to be encouraging about the importance of safety as an
21 element of operational pride, of our reputation and credibility. A couple of cornerstone
22 elements that I emphasize and I know that our safety team recognizes as well as our
23 fleet, is the importance of near miss reporting and job hazard analysis in particular. So

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 it would be natural that those are the areas that we continue to deliver focus on across
2 our organization and to our fleet. I think that Captain Lawrence and our team do a very
3 good job.

4 **Mr. Fawcett:** Do you recall if he brought that to your attention specifically?

5 **WIT:** No. And as a President I wouldn't expect to hear about all the near misses or
6 know of them at the time they occurred.

7 **Mr. Fawcett:** Did you say you would or wouldn't be aware of them?

8 **WIT:** Would not, I wouldn't expect that would come up to my level at the time they
9 occur.

10 **Mr. Fawcett:** How about the results of an investigation into an incident such as that?

11 **WIT:** I think it would depend. I have Vice Presidents and a staff that are very
12 competent and I leave it to their judgement to bring the issues that they view are
13 noteworthy up.

14 **Mr. Fawcett:** And do you attend the quarterly safety meetings?

15 **WIT:** I do. I think it's a priority for Saltchuk, it's a priority for Tote, it's a priority for me
16 and I am present at those quarterly meeting. If I'm on the road I endeavor to call in. So,
17 yeah it's a priority for me.

18 **Mr. Fawcett:** So as President, Captain Lawrence as the designated person ashore,
19 reports to you, is that correct? In that capacity.

20 **WIT:** Yes.

21 **Mr. Fawcett:** And what are your expectations for how he performs that job?

22 **WIT:** Well Captain Lawrence is enormously qualified esteemed individual with a
23 commendable background. And what I expect as I expect with all of my employees is

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 that they have responsibilities and I expect them to carry those functions out in a
2 manner that's conforming to requirements and regulations. And that's what John
3 Lawrence does as a designated person.

4 **Mr. Fawcett:** Who evaluates his performance as a designated person ashore?

5 **WIT:** Well I think that from formal administrative standpoint Lee Peterson who's the
6 Director of Marine Services and Safety would take care of his annual evaluation. But I
7 can tell you that in any organization and I think you, or any of you would be cognizant of
8 this, that in engaging with people on a regular basis you're seeing how they perform.
9 You note their attitude, you see their follow-up and how they also engage with others.
10 And once again the way our office is set up we're a very professional group and we're a
11 very cohesive team.

12 **Mr. Fawcett:** Do you have any input formally or informally in his evaluation?

13 **WIT:** I don't have any direct input and I wouldn't expect to make that to Lee Peterson.
14 If I had an issue that was something that I wanted to have addressed with John, I would
15 either address it with him myself or I would ask Lee to address it with him. But he's
16 done a fine job.

17 **Mr. Fawcett:** So in late August of this year or early September there was a minor oil
18 spill from a reefer tank on board the El Faro. One of the complaints that was raised
19 about that spill was the difficulty in accessing the emergency answering service so that
20 the Captain could convey the information quickly and efficiently ashore. Are you aware
21 of that problem?

22 **WIT:** I can't recall that particular issue being raised, related to what you just talked
23 about.

1 **Mr. Fawcett:** So how – could you describe your reporting relationship with Tote Inc
2 itself?

3 **WIT:** Let me just, again as a means of helping you better understand our organization.
4 We've got a phenomenal ethos within Saltchuk, but as I look at Tote Inc. and our
5 leadership team, which is guided by Anthony Chiarello our CEO, the value that's placed
6 on ethics, integrity, character, transparency is so gratifying, and in particularly for
7 somebody who spent the better part of their life in a culture that was so extraordinary
8 like the United States Navy. So the relationships that we have are professional, they're
9 collegial, they're transparent and they're built on a foundation of ethics, integrity,
10 character and I'll add moral courage.

11 **Mr. Fawcett:** So looking towards the new construction that was going on and is going
12 on, on the west coast in San Diego, is the second ship out yet?

13 **WIT:** She is, yes, sir.

14 **Mr. Fawcett:** And where is she right now?

15 **WIT:** She is at this point departed Jacksonville and in route to San Juan on her maiden
16 voyage with cargo.

17 **Mr. Fawcett:** And what is the status of the El Yunque at this moment?

18 **WIT:** El Yunque is still in service and operating.

19 **Mr. Fawcett:** So shifting back to the ----

20 **WIT:** As an asset within our management fleet.

21 **Mr. Fawcett:** Shifting back to the time frame prior to the accident voyage, who was
22 working within the Tote Services organization management devoting time to the
23 construction of the new ships? Within the Tote Services group.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** We had an executive project management team. That was led by our Executive
2 Vice President Peter Keller. In San Diego we had an owner's rep office which was
3 headed up by what we called the Marlin project manager. And then 2 to 3 other
4 individuals, depending on the cycle of construction to support administrative or inspector
5 functions and so forth. Phil Morrell as the Vice President for Tote Maritime vessels was
6 also an active, what I would call advisor in the new construction Marlin class process.

7 **Mr. Fawcett:** Was Mr. Peterson directly involved with the new construction work going
8 on?

9 **WIT:** Mr. Peterson was involved, not with the construction piece so much, but with the
10 LNG infrastructure effort here in Jacksonville basically. Meaning supply and distribution
11 of bunker, LNG bunker fuel, in preparation for the ships operating between Jacksonville
12 and San Juan.

13 **Mr. Fawcett:** Were the talents of Mr. Fisker-Andersen, the Director of Ship
14 Management also being used in some way to support the goals and objectives of the
15 new construction project?

16 **WIT:** From time to time he was called in to support the Marlin efforts realizing that
17 those ships were coming to be part of the fleet here in Jacksonville. But also to his
18 support, some technical management requirements, technical expertise requirements,
19 with the project depending on where we were in the cycle of events.

20 **Mr. Fawcett:** To circle back around you said that the El Faro was owned by Tote
21 Maritime Puerto Rico, is that correct?

22 **WIT:** Yes, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Okay. So Tote Maritime Puerto Rico has a hurricane plan and it's
2 approximately 22 pages long. And there was an email from the risk manager down in
3 San Juan about the time that Hurricane Danny and Erika were moving about and
4 forming out in the Caribbean. And it's stated goal was to protect life. One of the things
5 that it mentions in there is the protection of assets. And are you saying that the El Faro
6 is an asset of Tote Maritime Puerto Rico? Or am I wrong?

7 **WIT:** First of all, with our third party clients I would imagine that depending on where
8 they operate from that they have their contingency plans for quote, their assets. In the
9 case of Tote Maritime Puerto Rico I think you're going to have to talk to Tote Maritime
10 Puerto Rico about the details of their contingency plan for weather. But my opinion
11 would be that they are referring to their terminal assets and cranes and things like that.
12 That would be my opinion.

13 **Mr. Fawcett:** Does Tote Services have a hurricane plan?

14 **WIT:** We provide within our operating manual for vessels policy and guidance to our
15 Masters for heavy weather contingency.

16 **Mr. Fawcett:** Do you have any idea when the last time the operations manual of
17 vessels, the particular section on the adverse weather plan or the plan that covers your
18 vessels has been updated?

19 **WIT:** We've – the, I guess the best way to state the update process is it would be a
20 periodic update process. But I leave that to John Lawrence who oversees the safety
21 management system with respect to when those updates are accomplished. I think I
22 need to have you repeat the other aspect of your question.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Well you've eluded to that the operations manual of vessels encapsulates
2 the protection plan for your vessels. Is that a way to characterize it?

3 **WIT:** Well I would say that our, I characterize our operations manual for vessels as is
4 conforming to the standards and protocols that are levied by treaties and regulations
5 that are aligned with those requirements such as SOLAS and ISM. So I'm very
6 confident that our operating manual for vessels aligns with those long standing treaties
7 and protocols and requirements that are levied by those – by those laws and guidelines.

8 **Mr. Fawcett:** So looking at your expectations for certain areas within Tote operations, I
9 would like to ask you if you could describe your expectations for the loading of a Tote
10 vessel such as the El Faro.

11 **WIT:** I leave that to the, first of all, Tote Maritime Puerto Rico I think is your source for
12 vessel loading and I would leave that also to for discussion at the Master level of the
13 vessel as well as our operation side of our business. As President I would not get
14 directly involved with that level of activity with Tote Maritime Puerto Rico as a client or
15 with any other client for that matter.

16 **Mr. Fawcett:** How about as President of the company your expectations for the ability
17 of a vessel such as the El Faro to handle adverse weather such as a hurricane?

18 **WIT:** I believe that we have the most competent mariners in the world in the United
19 States merchant marine. They're credentialed by our Government, they're credentialed
20 through a tedious arduous process to earn that license as an unlimited tonnage Master.
21 We vest in them, the responsibility, the accountability and the trust. They are the
22 experts in the safe operation of that vessel which includes the voyage planning
23 elements that would be associated with evaluating environmental conditions.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So we'll talk about hiring later, but were you involved with the hiring
2 process for the Captains of the Marlin vessels?

3 **WIT:** We had a selection process for the senior level of those vessels which I took an
4 active interest in as did the broader leadership element of our organization.

5 **Mr. Fawcett:** So Tote Services operates, or operated the El Faro, correct?

6 **WIT:** Yes, sir.

7 **Mr. Fawcett:** Do you know of an instance where the volume of cargo was reduced to
8 help the ship, the El Faro more effectively handle adverse weather?

9 **WIT:** No.

10 **Mr. Fawcett:** Are you familiar where the U.S. Coast Guard no sail order, which we call
11 a Coast Guard 835?

12 **WIT:** Yes.

13 **Mr. Fawcett:** Do you know if during the course of 2015 there was a Coast Guard no
14 sail order issued to either the El Yunque or the El Faro?

15 **WIT:** I don't recall any being issued.

16 **Mr. Fawcett:** Looking at vessel operations ----

17 **WIT:** Just to clarify, not all of them, I mean 835s don't equal no sail. They as I
18 understand it could equal that, but it's dependent on what the content of the 835 is.

19 **Mr. Fawcett:** Were you aware as President of Tote Services that there was an issue
20 that cropped up, and I do state that it was repaired well before the accident voyage, but
21 it related to the El Yunque life boat davits?

22 **WIT:** I don't recall. That would have been – those kinds of things would just not come
23 up to my level. They would have been handled at the Vice President level or below. I

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 mean on ships there are things that are – that come up on a regular basis that have to
2 be addressed and I expect that they're being addressed as our organization supports
3 doing that.

4 **Mr. Fawcett:** So we mentioned it yesterday but there are – Tote uses a device called
5 flash meetings. Could you explain what they are from your point of view?

6 **WIT:** Well it's not a device. It's just a title of a meeting. And in all of our Tote
7 companies there's a flash meeting. It's a weekly meeting that I hold where amongst
8 other things the status of our financial condition if you will, a snapshot on a relatively
9 real time basis of revenue versus expenses, versus other issues related to financials
10 are addressed. But also a time when our managers all get together and have the
11 opportunity to highlight matters of interest for the entire group. As I said before at the
12 beginning of this meeting that's called a flash meeting, we do a safety minute, I like that.
13 We ask everybody to come prepared and be able to deliver one. And I think we all
14 learn something to keep our focus in the right place.

15 **Mr. Fawcett:** So is there any time that the content of those meetings, do they come out
16 as a message of some type, or?

17 **WIT:** No, sir.

18 **Mr. Fawcett:** Is there another kind of a text message distribution system for information
19 throughout the organization?

20 **WIT:** I'm not sure what you're asking?

21 **Mr. Fawcett:** In other words ----

22 **WIT:** Not to me. I mean.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Well I mean something that would talk about the status of vessels,
2 sailing, tug and barge service, movements, delays in or arrivals or departure of the El
3 Faro or the El Yunque?

4 **WIT:** I know of no report that we have along the lines of what you refer to. But I am
5 confident that our portfolio managers stay abreast of matters relating to ships that are
6 within their cognizance. Which is what I would expect.

7 **Mr. Fawcett:** Looking at the Director of Safety and Services, Mr. Peterson's role within
8 the company.

9 **WIT:** Yes, sir.

10 **Mr. Fawcett:** Could you characterize what his role is?

11 **WIT:** Mr. Peterson's role is to provide, as a member of the executive team, is to provide
12 management support and to work closely with his direct reports who include John
13 Lawrence as the Operation Safety Manger, and with our marine purchasing supply
14 chain services side of our business who is another director. He also has as duties
15 assigned as you raised earlier support to the LNG refueling process that we established
16 and worked closely with our partners, the Coast Guard to put in place.

17 **Mr. Fawcett:** Part of his compliance and certification duties are to identify risk to
18 personnel, the environment and the ships and recommends corrective actions to senior
19 management. And we'll talk more about that in another session, but.

20 **WIT:** Certainly.

21 **Mr. Fawcett:** Has he identified any particular ----

22 **WIT:** Organization. He carries out the functions of compliance and certification that
23 support our safety management and quality management system. To include things like

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 ensuring near miss reporting is emphasized – emphasizing the priorities of job hazards
2 analysis. And overall like all of the people on our team, including my executive team,
3 the emphasis on safety as a critical component to our business.

4 **Mr. Fawcett:** So I'm just about to wrap up, I just have a few more questions for you, sir.

5 **WIT:** Yes, sir.

6 **Mr. Fawcett:** So if I came to you and I said who – who are the people within your
7 company, corporate organization that provides marine engineering expertise, who
8 would those people be?

9 **WIT:** Well when you say within our corporate, what are you getting at there?

10 **Mr. Fawcett:** Well off the ships, shore side personnel that would provide marine
11 engineering expertise, within your Tote Services organization?

12 **WIT:** Well first off I'll start at the, and I know you didn't ask this but I'm very proud of our
13 expertise of our mariners. And we work closely with two great unions, the American
14 Maritime Officers Union and the Seafarers International Union who provide eminently
15 qualified people to serve on board U.S. flagged ships as you know. So I believe first
16 and foremost that when you talk about our vessels from the Master/Chief Engineer to
17 the unlicensed men and women on the deck plates their level of expertise and
18 proficiency is impressive. We also have within our organization obviously exceptional
19 individuals with backgrounds in the technical side of what we do.

20 **Mr. Fawcett:** Shifting focus to nautical operations, not on the ships, I'm talking about
21 shore side personnel within the Tote organization, where would I find the expertise in
22 nautical operations?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Well I will have to go back to the most preeminent expertise for nautical anything
2 resides in those unlimited tonnage licensed deck officers aboard our ships. In the case
3 of El Faro a highly qualified experienced Master Mariner, a Chief Mate who had an
4 unlimited tonnage Master's license and on down the line. The most eminently qualified
5 individuals for vessel nautical activity are those mariners on board the ship.

6 **Mr. Fawcett:** But that's not the question I asked. What I'm looking for is shore side
7 support for maritime operations in the nautical operations department. Who could the
8 ship call on ashore for assistance with nautical issues if they needed support?

9 **WIT:** I can't think of any example, at least in my time where a Master has had to call
10 back to the home base and ask a question about nautical proficiency. He is the
11 preeminent expert defacto.

12 **Mr. Fawcett:** We may follow up on that later. How many years have you been working
13 in your present position?

14 **WIT:** Three years.

15 **Mr. Fawcett:** So thank you very much, I'm finished with my questions and I will ask
16 Commander Denning if he has any follow-up.

17 **WIT:** Yes, sir, thank you very much.

18 **CAPT Neubauer:** Commander Denning.

19 **CDR Denning:** So I do have a variety of questions and follow up. Captain we've been
20 going for a little over an hour, would you prefer to take a break now or would you prefer
21 to wait, continue on.

22 **CAPT Neubauer:** Let's get through your line of questioning then we'll take a break.

23 **CDR Denning:** Good morning Admiral.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Good morning, sir.

2 **CDR Denning:** Going back to the original questions, some of the first questions that
3 Mr. Fawcett asked. You mentioned a contract between Tote Services and Tote
4 Maritime Puerto Rico. Would that be something we would have an opportunity to obtain
5 and review?

6 **WIT:** Yes, the contract. Yes, sir.

7 **CDR Denning:** Based on your recollection of that particular contract, do you know
8 does it specify whether Tote Services or Tote Maritime Puerto Rico, who's responsibility
9 is the ISM requirements? Is that a TSI or a Tote Maritime function?

10 **WIT:** Well for our – for our afloat vessel management the ISO/ISM resides with the
11 vessel manager.

12 **CDR Denning:** The vessel manager. So is that ----

13 **WIT:** That's Tote Services.

14 **CDR Denning:** Tote Services.

15 **WIT:** But that's the same for our third party client ARC or MARAD. We're talking about
16 the safety, quality, environmental aspect of which safety is required for our vessels as
17 you well know. Quality and environmental are added items that we believe are
18 important.

19 **CDR Denning:** Organizationally, sir, you spoke of Tote Maritime Puerto Rico as a third
20 party contractor.

21 **WIT:** Third party client.

1 **CDR Denning:** Third party client, I'm sorry. So Tim Nolan the President of Tote
2 Maritime Puerto Rico, does he – does he have a – does he report directly to you or
3 anyone else?

4 **WIT:** Well he reports to Anthony Chiarello the CEO of Tote Inc.

5 **CDR Denning:** Just one item of clarification. There was discussion earlier about
6 weekly meetings and later I think you said quarterly meetings. Are there weekly
7 meetings in addition or are the meetings you refer to quarterly only?

8 **WIT:** Well Captain Fawcett brought up the weekly flash meeting. I think he also raised
9 that we had a quarterly safety meeting. He was correct in both regards.

10 **CDR Denning:** During the quarterly meeting you stated, I believe that it begins with a
11 safety minute, is that correct?

12 **WIT:** Well we endeavor to have all of our meetings begin with a safety minute.

13 **CDR Denning:** Okay. Can you describe for us some of the content in general of the
14 rest of the quarterly meetings? Just general topics that are discussed.

15 **WIT:** Well in general the agenda that John Lawrence establishes reviews incidents that
16 have occurred. So injuries whether they be recordable or lost time. Each one of those
17 are reviewed for the attendees. In addition we talk about near misses and we go
18 through the near misses. In my view near miss program is perhaps one of the most
19 important programs there is. And I'm a huge advocate for encouraging a near miss
20 reporting. It's a great way for people to benefit from something that almost happened
21 and do it in a constructive, positive, substantive way. So going through each one of the
22 lost time, recordable, near misses that can be, you know, substantial amount of
23 information to put out. Also if there's been any key policy updates that have come out,

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 let's say from the Coast Guard as you know the Coast Guard puts out marine safety
2 alerts which update on various policy items. So we would talk to key things that have
3 come out that are related to safety. Well we talk about any updates that are related to
4 operations, memos which we use as a supplement to our operating manual for vessels
5 to ensure everybody is aligned if you will. So it's a very healthy exchange, it's a very
6 important quarterly dialogue and from that a safety newsletter is promulgated. We have
7 our next quarterly safety meeting coming up I believe a week from Friday.

8 **CDR Denning:** That's actually a very good segue into the next topic that I wanted to
9 discuss. If you would in your exhibit binder, if you would open to Exhibit 45. That's a
10 safety alert that was issued at the beginning of this last hurricane season.

11 **WIT:** Umm huh.

12 **CDR Denning:** We'll give everybody a minute to pull that up. That's Exhibit 45.

13 **Tote Inc:** Is it Hurricane Danny?

14 **CDR Denning:** Yes, sir. Is this the type of document you were referring to Admiral
15 where you – that is discussed and reviewed at a safety meeting?

16 **WIT:** Well it depends.

17 **CDR Denning:** Okay. Do you recall this particular safety alert from when it was
18 issued?

19 **WIT:** Yes.

20 **CDR Denning:** Did you – do you review them prior to it being issued?

21 **WIT:** No. I have an enormously qualified staff.

22 **CDR Denning:** If you could just refer to the last paragraph.

23 **WIT:** Yes, sir.

1 **CDR Denning:** It says, this is a reminder that all of our vessels, well I think I'll go back,
2 it's a relatively short alert. So I'll just read it into the record. Danny became the first
3 hurricane of the 2015 season today. At noon today Danny was located about 1000
4 miles East of the Windward Islands in the Eastern Atlantic Ocean. It is forecast to move
5 in the general West, North-West direction through the next week which will take the
6 system across the Northern Islands of the Caribbean. It is on track to hit Puerto Rico by
7 next Tuesday. Weather forecasters are predicting 8 tropical storms, 4 hurricanes, and 1
8 major hurricane for the 2015 season in the Atlantic basin. This is a reminder to all of
9 our vessels in all oceans – reminder that all of our vessels in all oceans should review
10 their general and vessel specific heavy weather procedures and be prepared for the
11 unexpected occurrence. All ready reserve fleet vessels should review their updated
12 severe weather plans. What specific general and vessel specific heavy weather
13 procedures do you believe this is referring to?

14 **WIT:** Well first this, as I recall was put out because it was the first event of the
15 hurricane season. So it was promulgated in just the context that you read it to remind
16 all vessels, Captains, leaders on those vessels to do just what we suggested. The other
17 thing that was interesting about this as I recall was its transit or, I'm sorry track, I think
18 the first hurricane emanated in the Eastern Atlantic and had a track towards Puerto
19 Rico. I would expect that our Masters based on this would go back to the – refer to the
20 operating manual for vessels and then refer to their own professional references that
21 guide them in acumen of being the enormously competent mariners that they are and
22 we hold them to be based on their credentials.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CDR Denning:** Thanks Admiral. That concludes my follow on questions on this
2 particular topic.

3 **WIT:** Thank you.

4 **CAPT Neubauer:** I thank you. At this time we'll adjourn for a 10 minute recess.

5 *The hearing recessed at 1023, 17 February 2016*

6 *The hearing was called to order at 1038, 17 February 2016*

7 **CAPT Neubauer:** The hearing is now back in session. Before we start back with the
8 interviews, our – Lieutenant Commander Yemma has an announcement to make.

9 **LCDR Yemma:** Good morning everyone. So for everyone's awareness we at
10 attempting to broadcast these proceedings for the next two weeks on the internet live.
11 We're having some technical difficulties this morning. We think maybe because of
12 overlapping wireless connections. So if you do have a portable wireless hotspot that
13 looks like this and you're in the gallery, if you're using it for personal use, if we could ask
14 if you could please turn that off and we'll see if we can get the internet feed back up and
15 running again. Thank you very much for your cooperation.

16 **CAPT Neubauer:** Thank you. Commander Odom.

17 **CDR Odom:** Thank you Captain. Good morning Admiral.

18 **WIT:** Good morning, sir.

19 **CDR Odom:** So I have a line of questioning that's kind of specific to your safety
20 management system I would like to ask you. And first of all I would like to start with, are
21 you familiar with what document of compliance is?

22 **WIT:** Yes, sir.

23 **CDR Odom:** Does Tote Services have a document of compliance issued to it?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Yes, sir.

2 **CDR Odom:** And are you familiar with what a safety management certificate is?

3 **WIT:** Yes.

4 **CDR Odom:** And did the El Faro have a safety management certificate?

5 **WIT:** Yes, sir.

6 **CDR Odom:** And was the El Faro operating under the document of compliance for
7 Tote Services?

8 **WIT:** Yes.

9 **CDR Odom:** So with that being said would Tote Services as a stand-alone company
10 that operating that did not own the El Faro, it was responsible for the safety
11 management system on board the El Faro, is that correct?

12 **WIT:** Yes.

13 **CDR Odom:** Thank you. And was the El Faro entered in the U.S. Coast Guard
14 alternate compliance program?

15 **WIT:** Yes.

16 **CDR Odom:** For the purpose of inspections, that's what it was, that's a voluntary
17 program, is that correct?

18 **WIT:** Yes.

19 **CDR Odom:** So and under the documented compliance in the SMC, the alternate
20 compliance program, the ABS was responsible for issuing those certificates in doing the
21 alternate compliance on the vessel?

22 **WIT:** Yes.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CDR Odom:** So in the Exhibit 45, can you go to that please? And that's the safety
2 notice of position for Hurricane Danny. And in the safety notice it identifies that by
3 issuing the safety notice, my question is, do you feel like that identifies that Hurricane
4 Danny was a risk to the vessels and that notice needed to be issued to identify that
5 risk?

6 **WIT:** The safety alert was issued in a recognition of the first hurricane of the season as
7 a means to remind all of our vessels in all oceans to take the action of reviewing their
8 plans.

9 **CDR Odom:** So with the need to notify all ships operating everywhere of hurricanes, do
10 you feel like that it's fair to say that hurricanes are a risk to vessels and that Tote
11 recognizes that risk?

12 **WIT:** Well I think we have a period of time here in the Northern Hemisphere where we
13 all recognize that the prevalence of tropical storms is higher and that's during the period
14 of time that Danny occurred.

15 **CDR Odom:** So you all mentioned in the safety notice that there are procedures that
16 you remind them that they need to implement as a result of the pending storms and
17 hurricanes, is that correct?

18 **WIT:** We noted in safety alert that the vessels should review their procedures.

19 **CDR Odom:** So again to emphasize the fact that you have procedures in place on the
20 vessel for dealing with foul weather and hurricane, do you think that further supports the
21 point that weather is a risk to vessels?

22 **WIT:** Well we – I would expect that any prudent Master had a cognizant level of
23 knowledge, professional acumen and avoidance plans for that vessel. Within our

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 operating manual for vessels we refer them to review information as I recall in the
2 American practical navigator commonly known as Bowditch. But Masters like any
3 Captain of any – any of us here commanding vessels have their standing orders. And I
4 would imagine, although I don't get down to that level of detail, that standing orders
5 could also address those kinds of things from the standpoint of that Master, professional
6 acumen and credentials for the safety of that ship.

7 **CDR Odom:** So with regards to the safety management system, where do you see
8 your role in the process at Tote Services as what do you see as your role as
9 implementing the safety management system? Where do you fit in for that specific
10 task?

11 **WIT:** Where do I see? Are you asking where I see the President fitting in?

12 **CDR Odom:** Yes, for the implementation of the safety management system, what are
13 your duties and responsibilities and how do you serve the safety management system?

14 **WIT:** Our safety management system is aligned to international protocols, treaties, laws
15 and also regulations that the United States has adopted pertaining to requirements
16 within the safety management system. And our safety management system is aligned
17 in that manner.

18 **CDR Odom:** So with your specific day to day duties, what do you do and what is you
19 role implementing the safety management system?

20 **WIT:** Let me speak from a perspective of first of setting the tone about safety in general
21 about quality of our service and about our responsibilities with respect to the
22 environment. It's my function as the President to ensure that tone is set from the top
23 with a level of commitment of the priority and value that our management system, our

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 safety management system receives and that it is being developed and improved and
2 implemented with alignment to regulations and international standards.

3 **CDR Odom:** So who would you say is responsible in the company for ensuring the
4 implementation of the safety management system?

5 **WIT:** In our company, the designated person.

6 **CDR Odom:** So within the safety management system is the company or the vessel
7 responsible for implementing the system? Who is the ISM code written for?

8 **WIT:** The company provides a safety management system set of guidelines through
9 our operating manual for vessels, through our emergency manual for vessel, through
10 our vessel response plan that the Master is required to adhere to in accordance with
11 those policies and standards that we provide.

12 **CDR Odom:** So within your safety management system, do you have developed
13 contingency plans for different shipboard emergencies that are integrated between the
14 company and the vessel and are identified risk as far as plans, contingency plans or
15 integrated plans between the company and the vessels? Do you have those in place
16 through your safety management system?

17 **WIT:** We, within our emergency manual for vessels, have a number of areas such as
18 collisions, groundings, flooding, fire.

19 **CDR Odom:** So you have identified all of those items as risks and have contingency
20 plans for those ----

21 **WIT:** That lay out for the – and within in that prescribed for the Master and that vessel
22 guidance on response, emergency parties and those kinds of things. And with respect

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 to your other question if I understand it correctly, maybe you can repeat that for me just
2 to make sure I hear it.

3 **CDR Odom:** Do you, the question is, does the company have specific contingencies,
4 contingency plans, integrated contingency plans between the vessel and the company
5 to provide guidance to shore side personnel and the vessel in how to deal with a
6 specific emergency situations?

7 **WIT:** Our company meets the protocols, standards and laws that are established in
8 SOLAS, in ISM, and STCW. In our ISM safety management system manuals it
9 provides the necessary guidance and framework for our safety management system,
10 aligned with those treaties, protocols, laws and requirements set forth.

11 **CDR Odom:** So the answer to my question is – but to rephrase my question, did you
12 have contingency plans that's specific to flooding, fire, grounding and do those
13 contingency plans, are they integrated on board the vessels? Are they going to line up
14 with each other, both shore side and vessel side? I understand you're telling me that
15 your safety management system is in compliance with the treaty. But my question is did
16 you have specific plans that identify specific emergencies, contingency plans that
17 identify risks to your vessels and have developed plans required by the code to support
18 the vessels from shore side?

19 **WIT:** Well as I said, within our emergency manual response, I mean on our vessel
20 response plan, there are responses or scenarios that are highlighted. And a level of
21 response protocols that are outlined within those plans as I recall. But you know I don't
22 have them in front of me. I'm the President of the company, I have a staff that
23 administers this. So that's, you know, from my vantage point we're – what's incumbent

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 upon us is to ensure that we're in compliance with the laws, the treaties, the standards,
2 the protocols, which I believe we are.

3 **CDR Odom:** So one other question with regards to the safety management meetings,
4 the quarterly safety meetings. Leading up to hurricane season was – did you ever have
5 hurricane, planning for hurricanes or any of those as a topic in the safety meeting? In
6 the quarterly safety meetings to discuss planning for or preparing for the upcoming
7 hurricane season, is that a topic for discussion?

8 **WIT:** The safety alert that was put out, as I recall, was that important tickler, reminder
9 to our vessels and their Masters. And the responsibility for those vessels and those
10 actions associated with preparing, avoiding and addressing heavy weather scenarios
11 reside within the expertise of that Master on board that vessel.

12 **CDR Odom:** Shore side, did you guys ever have any discussions about the hurricane
13 season? Not specific to the vessel, but on the company. Did you guys from
14 management perspective? Did you guys ever discuss hurricanes, upcoming hurricane
15 season and have any type of scenario, an exercise, training or any of that with respect
16 to the weather alert season?

17 **WIT:** We addressed the season last year by promulgating the safety alert that you've
18 highlighted as an exhibit.

19 **CDR Odom:** Prior to the season did you?

20 **WIT:** That was in conjunction with the season.

21 **CDR Odom:** Thank you.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CAPT Neubauer:** Thank you. Sir, following up on that line of questioning. Are you
2 aware that – did Tote Services conduct audits of the El Faro’s safety management
3 system?

4 **WIT:** We conduct annual audits as required on all of the ships.

5 **CAPT Neubauer:** Who is responsible for conducting that – those audits from the
6 company?

7 **WIT:** The designated person is responsible for coordinating those audits. I don’t get
8 into the details of his efforts to coordinate that.

9 **CAPT Neubauer:** Did you ever review an audit from the El Faro?

10 **WIT:** No. But I wouldn’t have reviewed audits in general unless it was raised to my
11 level by the designated person or a Vice President for a specific reason.

12 **CAPT Neubauer:** Thank you, sir. At this time the NTSB, Mr. Roth-Roffy will ask
13 questions.

14 **Mr. Roth-Roffy:** Good morning Admiral Greene. Tom Roth-Roffy, National
15 Transportation Safety Board. Sir, does – could you describe the ship management of
16 responsibilities that TSI, you’ve probably already stated, but just recap the sorts of
17 things that TSI provides as a service to the third party clients.

18 **WIT:** The range of services within a full vessel management menu, if you will could
19 range from full vessel management, which would be technical management. It could be
20 crewing only. It could be crewing plus logistics or some back office support. It’s
21 dependent on the client.

22 **Mr. Roth-Roffy:** And these ship management services are provided to, as you
23 mentioned to other operating companies such as Tote Puerto Rico, Tote Maritime

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 Puerto Rico and I've seen others. How many ships does TSI provide ship management
2 services for?

3 **WIT:** At the time 25 ships. Actually, 24 plus one, let me just be precise here. Which I
4 count as a 25th, which is a support vessel to the offshore petroleum delivery ship,
5 Wheeler, but that support vessel is under the COI of the Wheeler.

6 **Mr. Roth-Roffy:** Sir, how many of those ships are operating in operational status and
7 how many are in, for example reduced operating status if you have a number?

8 **WIT:** It's about half and half. But the reduced operating status is one too often have
9 break outs is what they're called with the maritime administration, where a ship has to
10 demonstrate its operational readiness.

11 **Mr. Roth-Roffy:** Mr. Lawrence, he serves as a DPA for the El Faro. He also served in
12 that similar or that same function for other vessels under TSI management?

13 **WIT:** Yes.

14 **Mr. Roth-Roffy:** So he was the DPA for all 25 vessels?

15 **WIT:** That's correct.

16 **Mr. Roth-Roffy:** Sir, I know you've been with TSI just three years or so, but do you
17 have knowledge of the history of the Tote company and the reorganizations and re-
18 naming that have occurred in the recent years that you could perhaps describe, you
19 know how the company has kind of evolved to where it is now?

20 **WIT:** Over the last, in my three years here, we have been a team that has evolved from
21 a corporate structure to become more efficient, more aligned, more coherent, and I
22 believe because of that more effective broadly speaking Tote organization. I was one of
23 several leaders brought in as an element in invigorating our leadership team providing

1 new direction, new energy, new spirit. And also a group of other leaders led by our
2 CEO who placed great value on ethics, integrity, character, transparency and team
3 work. And that has in my view progressed from where we were three years ago of Tote
4 Inc., Tote Services, Sea Star Line, now Tote Maritime Puerto Rico, Totem Ocean Trailer
5 Express, now Tote Maritime Puerto Rico – Alaska to a unified and aligned Tote brand
6 that believes in its people, leverages it's processes and aligns its value system across
7 our organization.

8 **Mr. Roth-Roffy:** So is it fair to say that when you were brought in you identified some
9 reorganizational requirements to the company or were one of the main drivers in
10 reorganizing the structure?

11 **WIT:** Well I'm trying to qualify what you're focused on.

12 **Mr. Roth-Roffy:** Yeah.

13 **WIT:** Sorry about that.

14 **Mr. Roth-Roffy:** I apologize for the vagueness of the question. There's been some
15 restructuring of the organization. Were you part of that?

16 **WIT:** Which organization?

17 **Mr. Roth-Roffy:** Yeah, that's where we're having trouble understanding is the
18 relationship between the different organizations.

19 **WIT:** So let me try to explain it a little bit because within Saltchuk we have Saltchuk's
20 kind of the parent entity. Then there are several operating groups if you will. So for
21 example Foss Marine Group has a – is a group with a CEO akin to Anthony Chiarello.
22 Within that group are a set of stand-alone operating companies. Tote Inc. is another
23 group. And within Tote Inc. we have three operating companies, Tote Maritime Alaska,

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 which runs in the Jones Act Trade between Tacoma and Anchorage. Tote Maritime
2 Puerto Rico which runs in the Jones Act Trade between JAX and San Juan. And then
3 Tote Services which is a full vessel management company among which our, among
4 which two of our clients, our third party clients happen to be Tote Maritime Puerto Rico
5 and Tote Maritime Alaska. That's kind of a hundred thousand foot view on the
6 organization. Does that help? Trying to help you here.

7 **Mr. Roth-Roffy:** Yeah appreciate that overview. But TSI was that an existing entity
8 before you arrived at the corporation?

9 **WIT:** Yes it was. In the fall of, you're interested to hear about Tote Services?

10 **Mr. Roth-Roffy:** That's correct.

11 **WIT:** Okay. So in the fall of 2012 Tote Services, as part of branding alignment, went a
12 name change to Tote Services. It had another name prior to that. And in February of
13 2013 I was appointed President of Tote Services and with a charge to grow the
14 company and to because it's a phenomenal company with great base of business, fine
15 reputation, but an opportunity to grow as well within the field of vessel management. A
16 part of that change management voyage involved a couple of things. One assimilating
17 technical management of the Totem and Sea Star line vessels under one entity which
18 happened to be Tote Services, a vessel management company. That was one
19 initiative. Another initiative was reviewing and ultimately deciding that we would
20 relocate the company from New Jersey where it had been located within the New York,
21 New Jersey, Philly area for almost 40 years. And we made a, you know this wasn't just
22 a unilateral decision, this was a corporate decision as you might imagine. We made a
23 decision to relocate to Jacksonville, Florida for vessel management. In my humble

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 opinion the East Coast is a very important region to be in for vessel management for
2 access to Washington, D.C. and to New York City and so forth. But also Jacksonville
3 was a positive place to come because of the work force here, the synergy with a sister
4 company that was here, and proximity on the East Coast. So we made that decision
5 that we would relocate the company to Jacksonville. It was also, as part of assimilating
6 what was called Tote – Totem Vessel operations, again you know what's in a name.
7 That element of the organization which had provided the technical management
8 services for Sea Star line and Totem Ocean Trailer Express in assimilating of that
9 element into our organization which occurred on January 1st, 2014. It provided an
10 excellent opportunity to revisit the structure of Tote Services, organizational structure.
11 Along with that we also had a very important, along the way in 2013 and into 2014 effort
12 for financial backbone alignment with our shared service platform and basically, taking
13 the ethos and leadership philosophy of our leadership team and spreading them
14 effectively across our organization. So it was very exciting as we undertook these
15 change management things, but it was done in a very methodical planned way realizing
16 first and foremost that safety programs and other key elements that sustain fleet
17 readiness are kept upper most in our minds. As we moved through 2014 obviously we
18 had employees that chose to move with us from New Jersey to Jacksonville. And in
19 fact everybody in our organization that had been with us in the New Jersey
20 headquarters was offered the opportunity to move, but you find out in these kinds of
21 things that for obvious reasons people have homes they own or kids in high school, or
22 family members or you know they just have things that make it so that maybe that kind
23 of move regionally doesn't fit into their game plan. Which also afforded us the

1 opportunity to then bring on new and talented employees from the Jacksonville area
2 and we also brought carryover employees who had great backgrounds and experience
3 from the Totem and Sea Star organizations as they assimilated into Tote Services. In
4 July 1st, July, August 1st that time frame of 2014 we stood up our new headquarters
5 here in Jacksonville in what I thought was a well planned out, seamless transition in a
6 purpose filled space that, as I've commented on earlier fit a philosophy of mine of
7 transparency, communication and teamwork. And then from that point have continued
8 to emphasize business processes, continuous improvement in all that we do, which by
9 the way is a cornerstone of the ISM system. And we are now well established and very
10 pleased to be here in Jacksonville. Great city and great people.

11 **Mr. Roth-Roffy:** Thank you, sir, for that overview of the recent history.

12 **WIT:** I hope it wasn't too long winded.

13 **Mr. Roth-Roffy:** So with the consolidations of reorganizations it seems like you're
14 moving towards a more efficient company. And would you consider the organization to
15 be fairly mature now?

16 **WIT:** Well I think we're, you know we're always in our organization seeking to stay on
17 the front end of what's, you know most relevant in terms of systems and technology,
18 best business practices. We really value that in Tote in all of our companies. And we
19 very much value that full motion of continuous improvement. I don't think any of us in
20 our leadership team feel that you ever want to get to comfortable. You always want to
21 be thinking about how you can be better and that's who we are.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Roth-Roffy:** You talked about the performance of, the high performance of the
2 employees in the organization. And one of the ways, would you agree to ensure high
3 performance is through a performance appraisal system? Would you agree to that?

4 **WIT:** Well I think it's inherent to any human resources framework.

5 **Mr. Roth-Roffy:** And does TSI currently have a performance appraisal process that's
6 perhaps described in some form of human resources instruction, that process
7 description?

8 **WIT:** Well we have an appraisal process. And it's an annual process.

9 **Mr. Roth-Roffy:** Is there a written procedure though that describes how that process
10 works so that the people involved in that process have an understanding, expectations
11 on how that system works?

12 **WIT:** Within our SQE, Safety, Quality and Environmental manual and within in
13 operating manual for vessels the appraisal process is noted and I think can be provided
14 to you if you desire.

15 **Mr. Roth-Roffy:** I apologize, sir. I'm not understanding the response. Do you have
16 some kind of an instruction describing your ----

17 **WIT:** There's no stand-alone instruction. But from a Tote Inc. policy level we have a
18 multitude of Tote policies and I can't recall which one specifically addresses the HR
19 policy, but I know we could do the leg work to go examine that and provide you the
20 feedback on human resources and shore side employee appraisal periodicity etc.

21 **Mr. Roth-Roffy:** Okay.

22 **WIT:** I just can't recall specifically here.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Roth-Roffy:** Yesterday we heard some testimony regarding the evaluations that
2 were on file for Captain Davidson and his – apparently only one evaluation had been
3 partially completed. Is there some management process to kind of track the completion
4 of these performance evaluations within the HR function?

5 **WIT:** So as the President of the company those, you're referring to the afloat senior
6 officer evaluation, is that what you're referring to?

7 **Mr. Roth-Roffy:** Yes, sir.

8 **WIT:** Those do not come to my level for any of our ships. I would only expect that
9 something within an appraisal would reach my level if there was either something
10 adverse that was significant or hopefully if somebody was just enormously off the chart
11 on the other side I would love to hear about that as well.

12 **Mr. Roth-Roffy:** Sir, you mentioned that the mariners aboard the vessels are highly
13 qualified and certificated by the U.S. Coast Guard. Would you consider the Coast
14 Guard credentialing process a minimum standard or goal standard to assess
15 performance, proficiency for mariners in the U.S. Merchant Marine?

16 **WIT:** Well I would like to think that the United States Coast Guard under Homeland
17 Security delivers requirements that are respected, that are creditable and that we're
18 proud of. And I believe that to be the case. So you asked minimum gold standard, I'm
19 sure that if we had a regulation here or something about you know all of the
20 requirements it would lay out as most documents do that are generated by the
21 Government, what the minimum standard is. I would hope that our credentialing
22 process that we have also represents, even if it's annotated as a minimum, the fact that
23 we're producing the finest officers to sail on our ships the world can provide. And I

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 know that if I was looking at our training institutions from the United States Merchant
2 Marine Academy to our State Academies, I think to the Coast Guard Academy to our
3 other institutions that we all could be proud that we deliver for our country and we
4 deliver credentials based on their education and training that we're proud of. And that
5 goes for the officers that served on our ships, on all of our ships today. I believe that
6 the American maritime officers, the seafarers international union, in my view they
7 represent a gold standard. Despite what level they're gauging off of from a statute or
8 regulatory perspective. Proud of our officers and our men and women who sail on the
9 ships.

10 **Mr. Roth-Roffy:** Sir, does TSI have a refresher training or upgrade training program for
11 it's crew members throughout a person's career? The initial certification process could
12 be, you know years in the past. There might be some requirement perhaps to do
13 refresher training. Does Tote have some sort of a training program for it's officers and
14 crew?

15 **WIT:** Sir, we are proud of the training facility that the American Maritime officers
16 provides at Dania and proud of the training facility the Seafarer's International Union
17 provides at Piney Point. If you've been to any of these facilities and seen the currency
18 of their simulators and technologies I think you'd – we would all be proud of what we
19 see. That's the function of sourcing your mariners from these organizations and the
20 benefit.

21 **Mr. Roth-Roffy:** So this sort of training that the officers are afforded, is it on their own
22 initiative to seek a training in specific areas or does Tote have some minimum training
23 requirements for that crew?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Well I would leave the crewing department in our company with the organizational
2 responsibility that they fulfill of ensuring that the mariners who sail on our vessels are in
3 compliance with the regulations of the certificate of inspection. And that's the inherent
4 training that we leverage and benefit from.

5 **Mr. Roth-Roffy:** Just returning to your SMS system you stated several times that it's
6 fully compliant with international regulations such as the ISM code or SOLAS and other
7 environmental regulations. What gives you that level of assurance that indeed you're
8 current system is compliant with that, those regulations?

9 **WIT:** The process of ISM participation I think is a very healthy one that places value on
10 self-assessment, continuous improvement, auditing, both internal auditing as well as
11 periodic review by, in our case the alternative compliance representative. We care
12 deeply about this ISM framework and organization and take seriously the idea of
13 continuous improvement. I would call it constructive criticism to get better and always
14 realizing that you can get better and push yourself to a higher standard every day and
15 every year in this process.

16 **Mr. Roth-Roffy:** Sir, and international regulations change periodically, modifications to
17 environmental regulations, the ISM code itself has been revised several times since it
18 was first implemented. And of course SOLAS is continually evolving. What sort of
19 internal controls within your SMS implementation do you use to maintain currency with
20 changes in these various regulations to ensure you're fully compliant with your
21 systems?

22 **WIT:** Well first of all I have an exceptional designated person who's amply qualified to
23 fulfill that function with an employment history that's deep within the safety, quality, and

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 environmental arena. Ongoing communication through. Ongoing communication
2 through organizations like the Coast Guard, like the Chambers of Shipping of American
3 and others that on safety related issues emerging changes to or suggested changes,
4 conversations ongoing to code and SOLAS and so forth that like every other company
5 in our business we stay abreast of it. And I think we also engage in, well obviously our
6 internal audit program, our annual reviews, our periodic reviews. And all of those when
7 you combined them are what allows us or any other entity that operates in our industry
8 to stay abreast of emerging dialogue, changes and so forth. We use our, depending on
9 the nature of the changes that might come up, I mean we have vehicles that also keep
10 our fleet abreast of that. I mentioned the OPS manual which I think you're familiar with.
11 A safety alert might be another one, depending on what it is. But you know I think we're
12 all aware for example the Coast Guard is very good about promulgating what they call
13 marine safety alerts which are often on the cutting edge of emerging conversations that
14 they're involved with as our representative to IMO. So I think there's many many ways
15 to stay abreast within in our company as other companies in our business would do.

16 **Mr. Roth-Roffy:** Talking about other companies in marine ship operations, some
17 companies have what's termed compliance officers. Does Tote have a similar function
18 within your organization?

19 **WIT:** Yeah we do.

20 **Mr. Roth-Roffy:** You know, formally track all the various changes in various
21 regulations, U.S. Regulations and international regulations.

22 **WIT:** Compliance has a lot of different aspects to it as I think you're aware. So we
23 have a compliance officer. In fact our Director of HR and Labor Relations handles

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 compliance in certain risk oriented areas that pertain to, let's say insurance and injuries
2 and claims and things like that. When you speak, and it sounds to me that you're
3 lumping compliance and certification in those things together as a means of how we
4 align our safety management system.

5 **Mr. Roth-Roffy:** Yes, sir. And I think I'm about finished with questions. I have one
6 more. Is your safety management system, you say it's compliant or aligned with the
7 various regulations. Was there somebody that certifies or approves or in some way
8 validates that is actually the case? For example, does the Coast Guard review and
9 approve your safety management system?

10 **WIT:** Well the Coast Guard is the flag state representative and through the alternative
11 compliance program it extends authority to the American Bureau of Shipping in our case
12 to issue our document of compliance.

13 **Mr. Roth-Roffy:** Thank you very much.

14 **WIT:** Yes, sir, yes, sir, thank you.

15 **CAPT Neubauer:** Yes, Mr. Kucharski.

16 **Mr. Kucharski:** Good morning Admiral Greene and thank you for your service.

17 **WIT:** Thank you Captain, thank you.

18 **Mr. Kucharski:** Just a few points of clarification. Initially you mentioned earlier that
19 Tote Maritime Puerto Rico was the owner of El Faro, is that correct?

20 **WIT:** Yes, sir.

21 **Mr. Kucharski:** The documentation we received showed that was owned by Sea Star
22 LLC. Did that change somewhere?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** I believe that the documents have all been updated, but I can certainly reconfirm
2 that with our counsel and let you know. But I'm pretty darn certain that we have dotted
3 the I's and crossed the T's and converted Sea Star Line LLC to Tote Maritime Puerto
4 Rico. But I can confirm that for you.

5 **Mr. Kucharski:** Thank you. And to continue on the line with the ISM, which is a basic
6 overview, and then I'll go into some other questions. Re-visit or look at some of your
7 earlier answers. Have you actually looked at the ISM code to get a broad overview of
8 the code?

9 **WIT:** Parts of it, but I mean I have subject matter experts on my staff and as President
10 of the company I wouldn't normally delve into a deep dive into the ISM code.

11 **Mr. Kucharski:** So would you be able to form an opinion of whether it painted in broad
12 strokes or had specificity, the ISM code itself?

13 **WIT:** I'm not sure I understand your question, sir.

14 **Mr. Kucharski:** Is the company at liberty, or liberty or maybe better put, did they put in
15 what they want to in their safety management system based on the guidelines, the basic
16 guidelines of the safety management code?

17 **WIT:** Forgive me. Can you describe what do you mean by putting in what you want to?

18 **Mr. Kucharski:** Put more specific information in there as guidance to your vessels, the
19 management of your vessels.

20 **WIT:** It's our – it's our intention to align our operations manual etc. with the
21 requirements that are laid out and the longstanding protocols and treaties that govern
22 the safety management systems elements that are also supported by our regulations
23 here in the United States.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** So would you know if, we talked a lot about heavy weather and you've
2 mentioned, you know the directives if you will to your fleet to review the heavy weather
3 sailing directives? Would you know if the safety management code actually has heavy
4 weather in it?

5 **WIT:** I could not be definitive about that. Something tells me that it's not mentioned in
6 the code. But I would have to go back and ----

7 **Mr. Kucharski:** And I guess that's my line of question.

8 **WIT:** Review.

9 **Mr. Kucharski:** What I'm thinking is, you know does the company put information to
10 the safety management system based on broad strokes that the safety management
11 code has?

12 **WIT:** Well I think we are aligned to consistency with codes and regulations.

13 **Mr. Kucharski:** Okay, thank you. I'll revisit that with some of the other people, maybe
14 like you say as President you don't get ---- Is Mr. Morrell a direct report of yours?

15 **WIT:** Yes.

16 **Mr. Kucharski:** And who do you report to directly?

17 **WIT:** Who do I report to directly?

18 **Mr. Kucharski:** Yes, sir.

19 **WIT:** I report to Anthony Chiarello, the CEO of Tote Inc.

20 **Mr. Kucharski:** Were you involved in the selection process for Mr. Morrell in his current
21 position?

22 **WIT:** Mr. Morrell was a Vice President with Totem Ocean Trailer Express. And we
23 brought him over from being a Vice President at Totem Ocean Trailer Express for the

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 vessel operations as an employee and Vice President officer in our company for his role
2 he serves with us.

3 **Mr. Kucharski:** So I guess I just need the definition of “we”. Were you involved in that
4 process?

5 **WIT:** Of course, I agreed with it.

6 **Mr. Kucharski:** Thank you.

7 **WIT:** Right thing to do.

8 **Mr. Kucharski:** Sorry?

9 **WIT:** Yes, I agreed with it. It was very much the right thing to do.

10 **Mr. Kucharski:** And we’ve asked questions, or I’ve asked questions about operations,
11 marine operations and if you care to consult with Exhibit 6 where it has the job
12 descriptions and the titles for the particular persons you can look at the Assistant
13 Manager Safety and Operations. You could look at the DPA’s where it talks about
14 operations. And then if you look at the Vice President of Marine Operations, could you
15 give us just an overview or tell us what your views are on the difference between
16 operations and marine operations? I’m a little bit confused trying to get this organized
17 so when we ask you questions or your personnel about nautical operations, where that
18 sort of falls in?

19 **Tote Inc:** Captain, you want him to review these things now?

20 **Mr. Kucharski:** If he cares to, or if he just care to state what his understanding of
21 marine operations and operations. The difference between them.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Well I can, if you'd like me to review all of these position descriptions I'm happy to
2 do that and come back and take a look at it afterwards just to refresh myself. But that's
3 – but if that's related to your question?

4 **Mr. Kucharski:** There's a title on here it says Assistant Manager Safety and
5 Operations. What's your view of operations? Or what's your definition of operations?
6 It's on page 1 of the exhibit.

7 **WIT:** Okay, I've taken a look at the Assistant Manager one. What operations involves
8 is, as this ----

9 **Mr. Kucharski:** I'm sorry, I can't hear you.

10 **WIT:** Sorry. What operation entails as it's used in a very broad, broad context here is I
11 think laid out here. And what it does not involve is oper – direction to the vessel. That
12 is the not the connotation of whether it's VP Marine Operations, Designated Person,
13 Assistant for Marine Operations and Safety. It has a very broad and lose connotation
14 about operations broadly. And I mean I could pick out, you know issues that are
15 pertaining to the elements that are highlighted here. But it does not involve direct
16 ordering of the vessels if you want to look at it in the sense of operational control or
17 something like that.

18 **Mr. Kucharski:** Thank you. Continuing on that, the question was asked earlier of you
19 about oversight of the nautical operations. In that same document that I just – as you
20 look at, page 1 of Exhibit 6 it talks about assist in the supervision and operation of both
21 the active and the de-active fleet. What is supervision, is that not some form of
22 oversight? And just to be clear I see that mentions supervision in operation, supervision
23 other parts of the safety management, I'm sorry, the job description is for other people.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 I just need to be clear when we asked you the question on nautical operations and who
2 is their oversight and you said you rely on the expertise of your excellent mariners. But
3 is there no oversight of nautical operations? Is there any supervision by a shore side
4 personnel, of those decisions?

5 **WIT:** No. The responsibility for, in a sense that you're referring to it, where the
6 imminent level of expertise, accountability and authority rests is for nautical expertise
7 and operations of that vessel is with the Master. With respect to supervision and so
8 forth here, we have Port Engineers that are remotely located here that – in various
9 locations around the country that report to a Director of Ship Management. You know
10 there's all kinds of levels of supervision in terms of support for readiness of the vessels.
11 But that would be where my assessment of this discussion on the loose notion of how
12 operations is referred to.

13 **Mr. Kucharski:** Are the Master's decisions on board the vessel, are any of the
14 personnel, are they reviewable?

15 **WIT:** The Master is in supreme control of that asset and has overriding authority for the
16 safety of that vessel and its crew. So that is a very important element of the authorities
17 that are vested in the Master of that ship.

18 **Mr. Kucharski:** I don't know if I got an answer to the question. Are the decisions
19 reviewable of the Master's decisions?

20 **WIT:** What do you mean by reviewable?

21 **Mr. Kucharski:** You have a review – any review process you have, near misses, when
22 you get misses at safety meetings, they come in ----

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** We're talking about nautical, we were talking about nautical topical area a
2 moment ago. As opposed to a near miss which is completely different item that's
3 submitted from the ship as a substantive and positive element of improving safety
4 consistent with our safety management system.

5 **Mr. Kucharski:** So would nautical not be considered in the safety management system
6 or in a near miss reporting system?

7 **WIT:** I would view that the authority for expertise, and you were referring to the Master,
8 that the Master has the overriding authority for the safety of his ship, for the crew. And
9 he is the ultimate decision on board that vessel. And it's just not my opinion, Captain. I
10 mean this is the opinion that's, I want to be clear about that. This isn't Phil Greene's
11 opinion, this is the opinion of our long standing international treaties, regulations,
12 protocols, regulations that are laid out as a result of those long standing treaties,
13 protocols and laws. So that's where I derive my view from, not just solely on my own
14 thought.

15 **Mr. Kucharski:** Thank you for that. The safety management system you have audits,
16 you make sure that the vessel crew including the Master complied with the company
17 policies, is that correct?

18 **WIT:** Well the safety management system provides the guidance and frame work that
19 the Master is to implement.

20 **Mr. Kucharski:** Okay. So that is not a form of making sure that they are - or oversight
21 to make sure that they're doing what's in the safety management system including
22 heavy weather preparations?

23 **WIT:** Say that again.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** So was that not a form of oversight, the safety management system ---
2 -

3 **WIT:** I think the safety management system as we've all discussed is an element of our
4 safety, quality, environmental program. It's a frame work that's established by ISM. It
5 provides guidance and for the Master to implement across the fleet. Not just in one
6 ship.

7 **Mr. Kucharski:** Prior to the El Faro sinking, what percentage of your time was involved
8 with the Tote vessels? Tote Alaska and Tote Puerto Rico.

9 **WIT:** What do you mean?

10 **Mr. Kucharski:** Well you have many duties, you manage – Tote Services manages for
11 many vessels, numerous fleets. Could you just give us just a very broad idea of what
12 percentage of your time was devoted to Tote Maritime vessels as opposed to the ARC
13 vessels or the Pasha vessels? You mentioned different fleets of mariner vessels.

14 **WIT:** Sir, I'm the President of the company with 26 ships in a fleet. I provide strategic
15 direction. I have qualified individuals within the portfolio areas, officers in the company.
16 I expect them to dedicate the time that is required and necessary and appropriate to
17 fulfill their duties in the capacities that they serve. And I rely and trust and count on
18 them to do that. As I oversee a significant company.

19 **Mr. Kucharski:** So you can't tell me what percentage is just for Tote vessels?

20 **WIT:** Well I'm not sure it's a relevant question in the sense of dealing with 26 ships, a
21 number of clients, a role in the industry as a leader and representative, client
22 engagement, budget and strategic vision development.

1 **Mr. Kucharski:** Can you tell us what percentage of Tote Services overall revenue
2 comes from the Tote Maritime Alaska and Puerto Rico operations? Percentage, we
3 don't need ----

4 **WIT:** You know I would have to go back and review the particular. I can certainly
5 provide you that, no problem.

6 **Mr. Kucharski:** Can you tell us like, give us a broad idea, 5 percent?

7 **WIT:** I can go back and take a look at it and give you that.

8 **Mr. Kucharski:** Mr. Morrell stated something to the effect that there was no
9 memorialized process where he gets notified of vessel changes or weather or anything
10 like that. Do you have an opinion on that? Are you aware of that?

11 **WIT:** I don't understand your question.

12 **Mr. Kucharski:** The notification when a vessel goes ahead and changes her track,
13 changes its track. He said he had no answer for any process of who gets notified.
14 Were you aware of that?

15 **WIT:** Again, I'm not tracking where you're going with this. I apologize.

16 **Mr. Kucharski:** I'm sorry?

17 **WIT:** I said I'm not tracking where you're going with the question. You held me out a
18 little bit.

19 **Mr. Kucharski:** There was a lot of questions asked yesterday about notification, who
20 gets notified when the vessel changes her – changes its normal track. Okay, weather
21 routing or whatever it may be. And when I asked who gets copied of these messages
22 or who it gets reported to directly, Mr. Morrell said he wasn't sure if there was any
23 process who exactly gets notified. It wasn't memorialized anywhere. And he said he

1 couldn't answer why there was no pro forma if you will of who was copied, who was
2 sent emails to.

3 **WIT:** Well first of all the authority for the voyage plan resides with the Masters as you
4 know. And it's at the Master's discretion to determine his best track depending on his
5 assessment. That's factored into the voyage plan. As the President I don't receive
6 those notifications by ships, from ships. The expectation is that the cognizant portfolio
7 manager and the DP would receive those notifications at the discretion of the Master.

8 **Mr. Kucharski:** Do you oversee the overall workloads and proportion of assignments
9 of work to your direct reports?

10 **WIT:** The, as the President of the company my direct reports have a portfolio. I expect
11 them to manage their priorities and their time and their people.

12 **Mr. Kucharski:** Okay. So if somebody told you that they were doing 85 percent on a
13 certain job and your direct report, you would not be aware of that?

14 **WIT:** I'm not sure what, I can't understand the scenario you're raising, so it's
15 hypothetical, speculative, I just don't see where you're coming from on that. As I said
16 I've got good people. They're hired to do a job and they execute accordingly.

17 **Mr. Kucharski:** Does Tote have any process then for job assignment where you have
18 – when we look at the different job descriptions and everything that's required there as
19 far as where time cannot be allocated to some of those jobs? Is there some kind of a
20 process to capture that?

21 **WIT:** I leave my allocation of priorities to the Vice President's and Directors to
22 determine. Just like my CEO leaves the priorities and allocation of my time to me to
23 determine. It's a way we approach business in our company.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** Are you familiar with the rapid response damage assessment service?

2 **WIT:** I am tangentially aware of what you're referring to I believe. Again I have a whole
3 staff who is dedicated to that level of detail in terms of that service, that particular
4 program. As the President of the company I wouldn't be deep diving down to that.

5 **Mr. Kucharski:** Were you involved at all in the decision to provide weather routing to
6 the vessels on the Puerto Rican trade after the El Faro sinking?

7 **WIT:** Repeat that again.

8 **Mr. Kucharski:** Were you involved in the decision to provide weather routing to the
9 vessels, the Tote vessels in the Puerto Rican trade after the El Faro sinking?

10 **WIT:** What I can tell you about weather routing is this. Isla Bella sailed from San Diego
11 to Jacksonville. As part of that voyage we as a company offered the services for vessel
12 routing to be used, which were used, and they seemed to be substantive and useful,
13 positive, received that way. And subsequently have adopted those – that service for all
14 of our Tote Maritime vessels as a result of using it for the Isla Bella's transit from San
15 Diego to Jacksonville.

16 **Mr. Kucharski:** But Admiral with all due respect, I don't know if that was direct answer
17 to my question. For the Puerto Rican trade they did not have weather routing before the
18 El Faro incident. After the El Faro incident were you involved in the decision to procure
19 it for the vessels on the Puerto Rican trade?

20 **WIT:** The – as I told you, the way we identified the vessel routing technology or service
21 was, which was after the El Faro incident was connected to the Isla Bella and her transit
22 from San Diego to Jacksonville.

23 **Mr. Kucharski:** So when you say ----

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** I fully supported the subscription to that service. I think it's a great idea.

2 **Mr. Kucharski:** Okay, great. So when you say "we", you did have a part of that
3 decision?

4 **WIT:** Surely.

5 **Mr. Kucharski:** Thank you. Is there any reason that ----

6 **WIT:** As I said I supported it. I supported that decision.

7 **Mr. Kucharski:** Yes, sir, thank you. Is there any reason you chose a company
8 different from the company that was provided with weather information for the El Faro
9 prior to the incident?

10 **WIT:** No. Is there any reason?

11 **Mr. Kucharski:** Yeah, they were different companies that you provided for ----

12 **WIT:** No.

13 **Mr. Kucharski:** The Isla Bella.

14 **WIT:** We selected another user, but not for any reasons that I know of that would
15 discount the capability that might exist with the others, other voyage planning system.

16 **Mr. Kucharski:** Thank you. Just briefly, I won't ask you detail, I'll save that for some of
17 the other people, the record was collected this morning for the bridge equipment list for
18 the El Faro. Did you look at the El Faro bridge equipment list and compare it to what we
19 received for the El Yunque? Just a quick question.

20 **WIT:** Did I look at -- I don't know which list you're referring to. So I mean what list are
21 we are talking about here? The one that he introduced into the record?

22 **Mr. Kucharski:** Yes.

23 **WIT:** I haven't looked at that list.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** Okay, thank you. I would like to go back to an earlier statement you
2 made about your Navy time and when you were asked about merchant ships and I think
3 you used the phrase we were comparing apples and oranges in some respects.

4 **WIT:** In the Navy versus merchant marine?

5 **Mr. Kucharski:** Yes, sir.

6 **WIT:** That's my opinion.

7 **Mr. Kucharski:** Can you tell us how they differ navigating the vessel and avoiding bad
8 weather? Without getting to the numbers of people, just basic, let's get down to the
9 basics of navigating a vessel and avoiding weather.

10 **WIT:** What specifically would you like to know? I mean let's be specific here, about
11 your question as opposed to a broad general United States Navy mission oriented
12 approach to how they do business and a commercial vessel. I would like to answer the
13 best that I can, but it's – I'm not exactly sure what you're asking.

14 **Mr. Kucharski:** You were Commanding Officer on a Naval vessel?

15 **WIT:** Yes.

16 **Mr. Kucharski:** It was underway?

17 **WIT:** Right.

18 **Mr. Kucharski:** Yes. So you were SWO qualified before you became Commanding
19 Officer, correct? Surface Warfare Officer.

20 **WIT:** That's correct.

21 **Mr. Kucharski:** Okay. So you stood a bridge navigational watch on a Naval vessel?

22 **WIT:** Yes, sir. What's your question?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** My question is do they navigate, are you aware of how they navigate a
2 merchant vessel on – in your fleet as opposed to how they navigate a Naval vessel?

3 And are there really any differences between the two?

4 **WIT:** Well in terms of the principals of navigation I would suggest that they are
5 relatively the same.

6 **Mr. Kucharski:** And when you were serving in the U.S. Navy when you were a
7 Commanding Officer on this Naval vessel, did they have any type of weather
8 information for routing on board those vessels and recommendations?

9 **WIT:** There were weather routing services.

10 **Mr. Kucharski:** Thank you. After the El Faro's sinking have you or your staff reviewed
11 the heavy weather directives which you have in your safety management system?

12 **WIT:** The safety management system in the operating manual for vessels provides
13 guidance to the Master to carry out review of his plans and avoidance for particular
14 weather requirements.

15 **Mr. Kucharski:** I'm sorry, ----

16 **WIT:** That's contained ----

17 **Mr. Kucharski:** That didn't answer my question. Did you ----

18 **WIT:** That's what contained in our operating manual for vessels.

19 **Mr. Kucharski:** I'm sorry?

20 **WIT:** That is what is contained in the operating manual for vessels, that direction.

21 **Mr. Kucharski:** Let me ask that question again. Do you know if – did you or anybody
22 on your staff review those heavy weather directives as contained in the safety

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 management system as guidance to your Masters, was that reviewed after the El Faro
2 sinking?

3 **WIT:** It's been reviewed since then.

4 **Mr. Kucharski:** Thank you. And my last question Admiral.

5 **WIT:** Yes, sir.

6 **Mr. Kucharski:** And it goes along with training. Does Tote offer training over and
7 above compliance, over and above compliance? Is training offered to your personnel,
8 your marine personnel?

9 **WIT:** We do not offer supplementary training to what the union training facilities already
10 provide to our credentialed mariners.

11 **Mr. Kucharski:** Do you know if the AMO or SIU offers courses in addition to what is
12 required by the licenser or credentialing process?

13 **WIT:** The array of course that are offered by AMO and at Piney Point are vast. I
14 couldn't lay out all of the courses that they have to you. So I'm very proud of the
15 courses that they offer and they do a very good job at administering the training and
16 delivering mariners that are fully qualified to sail on board our ships.

17 **Mr. Kucharski:** So would you say that your marine personnel are offered the full array
18 of courses within their regiment if you will, if its deck department it would be all of those
19 courses that AMO offers to your deck officers, those would be available to the deck
20 officers of your vessels?

21 **WIT:** The courses, I would hope that the crewing department and I expect that they are,
22 open to this knowledge because none of our vessels sail without fully qualified crews

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 that have the required credentials that meet laws and regulations. That's the
2 requirement and that's what we meet.

3 **Mr. Kucharski:** And HR at your company handles the training requirements if you will?

4 **WIT:** The Director of HR and Labor Relations.

5 **Mr. Kucharski:** Thank you. No further questions.

6 **CAPT Neubauer:** Thank you. Does Tote have any questions?

7 **Tote Inc:** No further questions.

8 **CAPT Neubauer:** Does ABS have any questions?

9 **ABS:** No further questions.

10 **CAPT Neubauer:** Does Herbert Engineering have any questions?

11 **HEC:** No questions.

12 **CAPT Neubauer:** Does Mrs. Davidson have any questions?

13 **Ms. Davidson:** No questions at this time.

14 **CAPT Neubauer:** Sir, I just have one follow-up question and it's a hypothetical
15 question.

16 **WIT:** Okay.

17 **CAPT Neubauer:** If the Tote Services Master communicated a voyage plan that was
18 considered manifestly unsafe by the company, who at the company has the duty and
19 the authority to intervene? Who would have that authority?

20 **WIT:** With all due respect – with all due respect Captain, our Masters wouldn't do that,
21 wouldn't create a voyage plan in my estimation that was anything but based on their
22 immense credentials, their qualifications and their recognition for the voyage at hand.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CAPT Neubauer:** If for any reason Tote Services had to intervene against a Master's
2 decision, who would have the authority and who is charged to do that? And this could
3 range from anything from the Master doesn't have enough information or even like a
4 misconduct situation. How would that be handled by that company?

5 **WIT:** Well I think we're, again with all due respect we're asking now about a question
6 about an administrative matter relating to a discipline scenario versus a voyage plan
7 which the, again the long standing protocols, laws and treaties and the regulations that
8 we're governed by vest that responsibility solely in the Master of the vessel.

9 **CAPT Neubauer:** Sir. Are there any further questions at this time for this round of
10 questioning? Commander Odom.

11 **CDR Odom:** Admiral you mentioned a Master's overriding authority earlier on. I just
12 wanted to get clarification on what your perception of that authority is. Is your
13 perception of the overriding authority does that mean that is absolves the company from
14 providing the Master with a frame work necessarily – necessary to safely operate the
15 vessel? And does the overriding authority just give him the opportunity when necessary
16 for the safety of the ship, to operate outside of that frame work provided by the
17 company?

18 **WIT:** Overriding authority in my assessment is the recognition of the Master's
19 credentials, experience and judgement as it applies to the vessel's safety and it's crew.

20 **CDR Odom:** But does that authority, overriding authority mean that the company
21 doesn't need to provide the Master with the necessary frame work to safely operate the
22 vessel?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** The company provides a quality, safety, environmental management system.
2 That management system is implemented by the Captain. In exercising his judgement
3 and authority under circumstances that he is the most knowledgeable about, he is on
4 the scene, he is dealing with it, he has the overriding authority to exercise his best
5 judgement, authority and action as the Captain, the Master with the authority by law that
6 invested in him.

7 **CDR Odom:** Thank you.

8 **CAPT Neubauer:** Are there any further questions?

9 **Tote Inc:** No further questions Captain.

10 **ABS:** No questions.

11 **CAPT Neubauer:** Thank you. At this time the hearing will adjourn for lunch and
12 reconvene at 1:10 p.m.

13 *The hearing recessed at 1211, 17 February 2016*

14 *The hearing was called to order at 1315, 17 February 2016*

15 **CAPT Neubauer:** The hearing is now back in session. Admiral Greene you're
16 reminded that you remain under oath from this morning.

17 **WIT:** Yes, sir. Captain if it's permissible, while I was at lunch I was thinking about our
18 last exchange between you and me. And it occurred to me that it may have been
19 miscommunicating with each other. And I wanted to just provide a clarification if that's
20 amendable to you?

21 **CAPT Neubauer:** Yes, sir.

22 **WIT:** Given a scenario at sea of something that would be considered, let's say
23 manifestly unsafe, the expectation and in fact the management system provides for

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 feedback to the DP and it can be done by a crew member, it could be done by an officer
2 on the ship, it could be done via a phone call, a hotline complaint, an email, a
3 depending on the nature of the circumstance, I don't want to categorize the
4 communication method in comparison to perhaps the urgency element, but I think the
5 point of it is if somebody detected or felt that there was a manifestly unsafe
6 circumstance and there would be recourse to feed that back. And I believe an
7 obligation to feed that back to the DP or another member of the team at home plate. In
8 which case clearly that would trigger action to address it. Similarly when the ship's in
9 port in terms of the evaluating the Captain and the ability to observe what's going on,
10 there are on a regular basis whether it's in Puerto Rico or in Jacksonville, members of
11 the Tote Services team, particularly here in Jacksonville obviously where we're head
12 quartered from the Port Engineers, Director of Ship Management who are engaging and
13 observing and seeing the Captain and other of the leadership team on board the ship in
14 action. And it's another opportunity where the crew also and anybody else for that
15 matter who had a sense of something that was inherently or manifestly unsafe could
16 feed that information to the Designated Person or to the Director of Ship Management
17 or a Port Engineer or to an officer in the company or through a hotline. And action and
18 follow up would occur. Similarly other representatives who visit the ship in San Juan,
19 the company representative from Tote Maritime Puerto Rico I know from Mr. Nolan's
20 feedback to me that they visit the ship and in Jacksonville obviously their
21 representatives come on board the ship as well. So there's a multitude of people who
22 have engagement and observation and can provide feedback should that be warranted
23 given the circumstance. And you know outside those extremes, however, I mean the

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 Captain is as I have emphasized that authority invested with the responsibility as we've
2 talked about previously this afternoon and this morning. I will tell you that we also in
3 terms of well what do you do in follow up. Well I'll tell you that in cases where we've
4 had feedback about leadership on board the ship we have removed people including
5 Masters from positions because of administrative reasons that were inconsistent with
6 our company's ethos. And to preempt you from saying well can you tell us about those
7 instances, I would not like to enter those into the public record out of respect for the
8 individuals that were involved in it. They have – they're not related to the case that
9 we're talking about. And also from a, you know protective of information HR side. If
10 you so require more detail on those things we can certainly provide that to you in writing
11 via our counsel. So I just felt after thinking about it at lunch time I wanted to circle back
12 on that and give you a few additional thoughts.

13 **CAPT Neubauer:** Thank you, sir. At this time we will start a new line of questioning
14 starting with Mr. Fawcett.

15 **Mr. Fawcett:** Thank you Captain. Good afternoon, sir.

16 **WIT:** Good afternoon, sir.

17 **Mr. Fawcett:** In the interest of efficiency we're going to combine several broad topics
18 into one topic area. And that would include operations as well as crewing of the El Faro
19 and the Marlin ships. So just to piggy back on the point you just made. Did any – were
20 there any underway audits conducted on the El Faro?

21 **WIT:** Were there any audits conducted on the El Faro, or audits when the ship was
22 underway conducted on the El Faro?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Correct. In other words did an audit take place while the vessel was
2 underway at any time?

3 **WIT:** Not that I know of. Not that I can note.

4 **Mr. Fawcett:** Just to clarify ----

5 **WIT:** Normally audits occur in port, but as you know.

6 **Mr. Fawcett:** Did you mention earlier that a portfolio manager or some similar language
7 might track the movement of vessels that work for Tote Services?

8 **WIT:** I think in the context of the question that I was asked previously about cognizance
9 of the vessels whether they were in port or materiel matters that when I used the
10 portfolio term the cognizant Director of Ship Management manager who has that
11 particular client base inside his portfolio would look after or be aware of those kinds of
12 things.

13 **Mr. Fawcett:** So in the case of Captain Lawrence, the Designed Person ashore, the
14 emails that we've seen indicate he was on vacation from the 27th of September to the
15 30th of September. Were you aware of this at the time?

16 **WIT:** I don't recall his vacation plans from that period. So I wasn't personally tracking
17 his vacation at that time. So I can't recall that he was on vacation.

18 **Mr. Fawcett:** Do you know who would report to you as a Designated Person ashore as
19 an alternate in his vacation?

20 **WIT:** Well first of all Captain Lawrence was available to be contacted on vacation or
21 when he was at the office. He was available 24 hours a day whether he was traveling
22 to see his family or not as part of the emergency response team process. So I would
23 expect that he would have been available.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So you have an extensive maritime background. Are you aware of
2 companies with a fleet the size of your fleet of ships that monitor the movements of their
3 ships on a moment by moment basis?

4 **WIT:** No.

5 **Mr. Fawcett:** Are you aware that companies such as applied weather technology offer
6 not only the tracking of ships on an instantaneous basis but also provide an overlay of
7 weather tracking services so that you can have both weather tracking as well as the
8 positions of ships at any given time?

9 **WIT:** You're referring to the Bon Voyage system?

10 **Mr. Fawcett:** No I'm saying that there are other companies out there that supply that
11 kind of service?

12 **WIT:** Well I'm sure there are several companies out there that provide the kind of
13 service that you're referring to. But I would have my executive team or Vice President
14 for Marine Operations or others be involved in that in terms of the provision or to bring
15 to me thoughts on that as it unfolded.

16 **Mr. Fawcett:** Since the accident have you put any enhanced tracking systems or
17 procedures in place for your vessels?

18 **WIT:** Well as Captain Kucharski asked previously with the transit of Isla Bella from San
19 Diego to Jacksonville we subscribed to a vessel routing tool. And which was very well
20 received and we've provided that to our Tote Maritime fleet.

21 **Mr. Fawcett:** Okay.

22 **WIT:** Which I supported.

1 **Mr. Fawcett:** Okay. So right now the new ships and the El Yunque, are you able to
2 track their positions at any given time?

3 **WIT:** I don't – I'm not quite sure I understand the question. But I don't think we have a
4 reason to track them.

5 **Mr. Fawcett:** Thank you.

6 **CAPT Neubauer:** Mr. Fawcett can you clarify, do you mean tracking from shore?

7 **Mr. Fawcett:** Yes. I'm sorry, shore based tracking of your vessels at sea.

8 **WIT:** I think we receive reasonable updates in the form of a required report which is a
9 noon report and as I said we don't have a reason to track them minute by minute or
10 otherwise. I suppose if somebody had a desire to inquire about the particular location of
11 the vessel they could come up on AIS online, anybody can access that.

12 **Mr. Fawcett:** Does anybody at Tote that you're aware of examine like the past voyages
13 of your vessels to determine if they were conducted efficiently and safely?

14 **WIT:** I don't think we've had any reason to question the safety of voyage planning or
15 transits back and forth between San Juan and JAX and vice versa. There is an internal
16 audit process that occurs as part of the safety management system which occurs on the
17 vessels annually.

18 **Mr. Fawcett:** So in late August the El Faro took the Old Bahama Route over the top of
19 Cuba and into San Juan. And in our prehearing development of information that we
20 received, it was reported that she encountered weather on that route. Do you know if
21 anybody assessed whether or not that particular route was effective and dealing with
22 the adverse weather that they actually encountered?

23 **WIT:** No.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Were there any follow up ramifications for the vessel taking that alternate
2 route down through the Old Bahama Channel?

3 **WIT:** No. Not that I know of.

4 **Mr. Fawcett:** Does anybody within the organization examine the effects that has on the
5 schedule for arrival and receipt of goods say in San Juan? Like the delayed arrival,
6 what are the impacts? Did someone assess that?

7 **WIT:** Certainly nobody assesses that in the ship management organization. There may
8 be an assessment of that within Tote Maritime Puerto Rico, but I can't address that.

9 **Mr. Fawcett:** So who handles – you have a number of tugs that did at one time move
10 cargo, Tote cargo down to and from San Juan, correct? Tugs and barge.

11 **WIT:** There were tugs that were under charter, under a BIMCO charter between the tug
12 owner and Tote Maritime Puerto Rico. That was not – Tote Services was not a part of
13 that contractual arrangement for tug services by that company.

14 **Mr. Fawcett:** How about for oversight of those operations?

15 **WIT:** We did not have any safety management system relationship with that charter
16 relationship between the company Tote Maritime Puerto Rico and who they had a
17 BIMCO contract with for the tug services. That was between Tote Maritime Puerto Rico
18 and the tug service.

19 **Mr. Fawcett:** Looking at the harbor tugs that meet the El Faro when she gets to
20 Jacksonville, departs Jacksonville, who pays for the service of those tugs that maneuver
21 the ship out into the river?

22 **WIT:** Ultimately Tote Maritime Puerto Rico pays for the services.

23 **Mr. Fawcett:** At any point do you pay for those services?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** I'm not sure if that particular cost is a pass through cost or a direct cost. I can find
2 out and get back to you.

3 **Mr. Fawcett:** Is there anybody – does anybody from your organization do some sort of
4 suitability determination to make sure that those harbor tugs are ready to go to provide
5 those tug services to the El Faro or the El Yunque?

6 **WIT:** No.

7 **Mr. Fawcett:** You don't? You accept the fact that when you contract them they're
8 ready to go?

9 **WIT:** We don't contract them. I believe they're on a service, at least as I understand it,
10 on behalf of Tote Maritime Puerto Rico. And again I would have to clarify whether the
11 cost of the tug is a pass through to Tote Maritime Puerto Rico or one that they directly
12 pay for. I just have to confirm that.

13 **Mr. Fawcett:** Looking at the pre-accident time frame, what were the plans, the detailed
14 plans for the El Faro?

15 **WIT:** Well at a general discussion level, and I'll give you the detail that I have, from a
16 corporate perspective El Faro, the intention was to shift El Faro to our Alaska trade in
17 support of the Tote Maritime Alaska conversion projects.

18 **Mr. Fawcett:** And where was that vessel going to go to shipyard?

19 **WIT:** She was scheduled for Grand Bahama shipyard.

20 **Mr. Fawcett:** Do you know if she was going to actually shift and go to the shipyard in
21 the Pacific Northwest straight through the channel?

22 **WIT:** Ask that again.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** In other words, I've seen other information that she was going to change
2 from Grand Bahamas and go to a shipyard in the Pacific Northwest. Are you aware of
3 any changes from the plan to actually go to the Grand Bahamas?

4 **WIT:** No, I'm not aware of any other plan that shifted from Grand Bahama. There was
5 a – the intention was Grand Bahama given time frames for availability of the yards. I
6 suspect if the yard was unavailable that other options would have to be considered and
7 that may have included a PNW yard, but I can't recall those details.

8 **Mr. Fawcett:** And there was a boiler survey conducted that recommended some repair
9 work to be done on the boiler. Do you know when that was going to be done and
10 where?

11 **WIT:** Well with respect to the boiler report that's not something that as a President I
12 would have been involved with the details on or was aware of.

13 **Mr. Fawcett:** So I would like to turn your attention to personnel and crewing of the EI
14 Faro and the new ships, okay?

15 **WIT:** Yes, sir.

16 **Mr. Fawcett:** Did Mr. Nolan have any impact on the crewing decisions related to the
17 Marlin class ships?

18 **WIT:** Mr. Nolan as the owner, if you will of the vessels was offered along with his Vice
19 President of Marine Operations the opportunity to participate and be made aware of
20 candidates for the Marlin class. But that was mostly from an informational perspective
21 and a courtesy perspective quite frankly.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So the hiring of the Captains for the new ships, outside of the Tote
2 organization, not the existing Captains or the permanent Captains, can you talk about
3 what that philosophy was for the hiring of people outside of the permanent Captains?

4 **WIT:** For the Marlins?

5 **Mr. Fawcett:** Yeah, correct.

6 **WIT:** Earlier Mr. Roth-Roffy asked about the organizational changes and dynamics and
7 we very much are a company that, and now I'm talking at large, that had a new
8 leadership team involved, new energy, new perspectives. We were moving forward
9 with new ships, new technology and combining that philosophy with our opportunity with
10 a collective bargaining agreement which allowed us to have selectivity for the Masters
11 we chose to and endeavored to open the aperture on equally qualified candidates. So
12 that was the philosophy.

13 **Mr. Fawcett:** And just so I heard you clearly, did you say uniquely qualified?

14 **WIT:** No equally.

15 **Mr. Fawcett:** Equally qualified. So did you actively participate in the selection process
16 for these new senior officers for the Marlin class ships?

17 **WIT:** We would coordinate bringing a candidate in for a discussion to get to know them,
18 understand their background, experiences a little bit more personally. And I participated
19 in that as President of the company. And the reason I did is because it had a level of
20 visibility for all of us in leadership positions consistent with our corporate culture of new
21 and opening the aperture up.

22 **Mr. Fawcett:** So what was your personal criteria for selection for the Marlin class
23 ships? I mean you have a host of merchant mariners coming to you. In general if

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 they're Masters they're equally credentialed. If they're Chief Engineers for example
2 they hold a Coast Guard license. But what was the criteria you were looking for as the
3 President of Tote for those individuals that you actually selected?

4 **WIT:** Well it was a collective effort first of all. It wasn't a top down oriented process. It
5 was very much collaborative seeking inputs. And keep in mind, I mean these
6 individuals were all eminently qualified. I mean defacto they were unlimited tonnage
7 Master mariners, any ocean, any tonnage. They were esteemed, seasoned, they were
8 very qualified. In many ways when you only have four positions and you have more
9 than that who are, in my view professionally and eminently qualified, you leave talent on
10 the table. And that's just – that's a good thing in the sense of having a lot of good
11 people to choose from in terms of credentials and backgrounds. But we only had four
12 slots, good people were not selected.

13 **Mr. Fawcett:** So with regard to the operation of the El Faro and the El Yunque, what
14 would be your expectation for what the Master actually does?

15 **WIT:** Ask that question again.

16 **Mr. Fawcett:** In other words, how would you expect them to conduct for example deck
17 operations?

18 **WIT:** Which ships are we talking about? Any ship, right?

19 **Mr. Fawcett:** The El Faro and the El Yunque. They're unique in that they're a lo-lo, ro-
20 ro ship. So I'm looking at the role of the Master with that unique type of ship.

21 **WIT:** Well they're cargo vessels. I mean we have container ships, we have the
22 PONCE class, I don't know they were necessarily unique. A merchant marine officer is
23 credentialed to sail on a cross section of vessels. It doesn't say on his license you can't

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 go on that ship or you can't go on this ship. You might have to have maybe a PIC or
2 something if you're going on a tanker, but our mariners are very qualified versatile
3 individuals, and I'm not talking just about our mariners, but in general. So I would
4 expect them to carry out their respective roles given the positions and responsibilities
5 that go with those roles on board the vessel and do it well.

6 **Mr. Fawcett:** Do you know if you had a way that you kept track of how you selected
7 and interviewed all of the candidates for the Marlin ships? In other words did you use
8 the same criteria for all of them and did you keep records of those interviews?

9 **WIT:** I believe the Director of, at that time Labor and Risk management kept a matrix of
10 the candidates that we wished to consider. And that can be provided to you if you don't
11 already have it. In terms of notes or records from the discussions with the candidates I
12 don't know if there are any notes or records from those discussions with the candidates.

13 **Mr. Fawcett:** That's all the questions I have. Thank you, sir.

14 **WIT:** Yes, sir.

15 **CAPT Neubauer:** Commander Denning.

16 **CDR Denning:** Admiral just one follow on question just to make sure it's clear. As far
17 as the weather routing that you've talked about several times, Jeppesen I believe is
18 what you purchased for the ships. I just want to make sure it's clear, is that for the
19 Marlin class ships as well as the, my question is does the El Yunque have it as well?

20 **WIT:** All of our ships have that tool available to them.

21 **CDR Denning:** Thank you. That's my only question on this line of topics.

22 **WIT:** That would be all of the – it's all the Tote Maritime ships. It's not just in JAX, it's
23 Tacoma based ships as well.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CAPT Neubauer:** Commander Odom.

2 **CDR Odom:** Just a couple follow on questions. You did mention about everybody on
3 the crew having an open channel to voice their concerns. Did you as the President of
4 Tote ever visit the vessel to articulate the need to have that open channel of
5 communication and personally tell the crew that that feedback was welcome in that
6 respect?

7 **WIT:** No I did not with any of our ships.

8 **CDR Odom:** So also discussing an alternate DPA, does Tote have an alternate DPA?
9 I understand that Mr. Lawrence goes on vacation he's always accessible, but do they
10 have somebody that's designed as an alternate DPA?

11 **WIT:** We have qualified individuals in addition to the DP.

12 **CDR Odom:** Thank you.

13 **CAPT Neubauer:** Mr. Roth-Roffy.

14 **Mr. Roth-Roffy:** No questions at this time.

15 **CAPT Neubauer:** Mr. Kucharski.

16 **Mr. Kucharski:** Yes, sir. Good afternoon Admiral.

17 **WIT:** Hi Captain.

18 **Mr. Kucharski:** I do have one follow on question. You talked about cross decking and
19 you know licensed, you have a licensed Master mariner with unlimited license so you
20 would expect them to be able to cross deck. Can you explain what you meant by that?

21 **WIT:** Well I don't think I term – I never used the term cross deck.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** Okay. Would you expect with an unlimited Masters license except for
2 like a special tanker endorsement or something like some kind of certification they
3 would be able to go on different ships, say a tanker or a container ship?

4 **WIT:** Well if you're asking me if I thought a Master on the ORCA class in Tacoma could
5 go and be Master on the PASHA car carrier I would say absolutely yes. As an example.

6 **Mr. Kucharski:** How about an example if a person who were a Master on one of the
7 tankers, would they be able to go on a ro-ro ship, say the PONCE class ships?

8 **WIT:** That would be dependent on a, that their availability and, but yes, I think a Master
9 mariner is an esteemed credential, people don't get there by virtue of a single data
10 point. It takes years to accrue the experience, the proficiency, the judgement and the
11 versatility.

12 **Mr. Kucharski:** You had experience, you had command at sea experience?

13 **WIT:** Thankfully.

14 **Mr. Kucharski:** Would you be able to give any opinion on your thoughts of handling a
15 tanker as opposed to handling a container ship or a roll on roll off ship in heavy seas?

16 **WIT:** I don't think I'm able to offer an opinion on that. That's just conjecture at this
17 point. I don't see a need to offer an opinion on that.

18 **Mr. Kucharski:** Thank you.

19 **CAPT Neubauer:** Does Tote have any questions?

20 **Tote Inc:** No questions, sir.

21 **CAPT Neubauer:** Does ABS have any questions?

22 **ABS:** No questions, sir.

23 **CAPT Neubauer:** Does Mrs. Davidson have any questions?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Ms. Davidson:** I do have a few.

2 **CAPT Neubauer:** Sir.

3 **Ms. Davidson:** Admiral you had 25 ships under the Tote program, correct?

4 **WIT:** Correct.

5 **Ms. Davidson:** And each one of those ships had 2 Captains assigned to the ship?

6 **WIT:** Well the FAST TEMPO is a support vessel for one of the ships and I can't speak
7 for the rotation on that vessel but it's over 1000 gross tons so she would have a Master
8 as well.

9 **Ms. Davidson:** So is it fair to say that in your pool of Captains to select from for the
10 Marlin class vessel you would have had at least 50 Captains to choose from?

11 **WIT:** Well certainly if you do the math that way, there were 50 exceptional Masters
12 within our fleet and others that were not within our fleet, but members of the AMO and
13 sailing elsewhere that would have been in addition to that.

14 **Ms. Davidson:** So you had a significantly large pool of Masters to choose from for 4
15 billets, correct?

16 **WIT:** Under your mathematical calculus there were many Masters on board our vessels
17 in terms of the number of ships and rotation.

18 **Ms. Davidson:** And was Captain Davidson considered for one of those spots?

19 **WIT:** In the Marlin?

20 **Ms. Davidson:** Yes.

21 **WIT:** Yes he was.

22 **Ms. Davidson:** Was he on the short list of Captains to have a spot on one of those
23 ships?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** He was brought in to the interview process and given consideration amongst a,
2 overall an adequate number of people.

3 **Ms. Davidson:** Did you believe he was qualified to be Master of one of the Marlin
4 ships?

5 **WIT:** He was eminently qualified to be a Master of one of our LNG fueled ships.

6 **Ms. Davidson:** Thank you, sir. No more questions.

7 **CAPT Neubauer:** HEC do you have any questions?

8 **HEC:** No questions.

9 **CAPT Neubauer:** Sir, I just have two follow up questions. Did you personally ever
10 have any concerns about Captain Davidson's leadership abilities?

11 **WIT:** No.

12 **CAPT Neubauer:** Did you ever become aware of concerns regarding his leadership
13 abilities from any Tote Services senior staff?

14 **WIT:** If you, well what are you referring to, give me a specific as opposed me to figuring
15 out what you're asking.

16 **CAPT Neubauer:** Were you ever informed by senior staff or become aware of, prior to
17 the accident of any type leadership, bridge management, those types of issues for
18 Captain Davidson prior to the incident?

19 **WIT:** There was an email, are you referring to one of the exhibits?

20 **CAPT Neubauer:** Sir, I was just wondering. If you have an email I'm definitely, will turn
21 to the exhibit.

22 **WIT:** Well I have an exhibit, I think it's in your exhibits.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CAPT Neubauer:** Yes, sir. Can you just tell me the general concern that you
2 remember?

3 **WIT:** I didn't have a concern. The email expressed a comment that was from the
4 crewing manager concerning his leadership. The content of the email in my
5 assessment was overly emotional and I read it, I set it aside and I moved on.

6 **CAPT Neubauer:** Yes, sir. Are there any further questions for the witness?

7 **Tote Inc:** No, sir.

8 **Ms. Davidson:** No, sir.

9 **ABS:** No, sir.

10 **CAPT Neubauer:** Are there any – do any PII's any concerns with the testimony
11 provided by Admiral Greene?

12 **Tote Inc:** No, sir.

13 **ABS:** No, sir.

14 **HEC:** No, sir.

15 **CAPT Neubauer:** Admiral Greene, we are now complete with your testimony for today.
16 However I anticipate that you may be recalled to provide additional testimony at a later
17 date. Therefore I am not releasing you from your testimony at this time and you remain
18 under oath. Please do not discuss your testimony or this case with anyone other than
19 your counsel, the National Transportation Safety Board or members of this Coast Guard
20 Marine Board Investigation. If you have any questions about this, you may contact my
21 legal advisor, Commander Jeff Bray. At this time we will take a 5 minute recess before
22 we call our next witness.

23

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 *The hearing recessed at 1353, 17 February 2016*

2 *The hearing was called to order at 1402, 17 February 2016*

3 **CAPT Neubauer:** The hearing is now in session. We will now hear testimony from Mr.
4 Lee Peterson, Tote Services Director of Safety and Services. Mr. Peterson please
5 come forward to the witness table and Lieutenant Commander Yemma will administer
6 your oath and ask you some preliminary questions.

7 **LCDR Yemma:** Would please raise your right hand. A false statement given to an
8 agency of the United States is punishable by a fine and or imprisonment under 18
9 United States Code Section 1001, knowing this do you solemnly swear that the
10 testimony you're about to give will be the truth, the whole truth and nothing but the truth,
11 so help you God?

12 **WIT:** I do.

13 **LCDR Yemma:** Sir, can you please state your full name and spell your last for the
14 record?

15 **WIT:** Kenneth Lee Peterson, P-E-T-E-R-S-O-N.

16 **LCDR Yemma:** Thank you, and counsel can you please also state your name and spell
17 your last for the record?

18 **Tote Inc:** Gary L. Halbert, last name is spelled H-A-L-B-E-R-T from the law firm
19 Holland and Knight.

20 **LCDR Yemma:** Thank you. Mr. Peterson where are you currently employed and what
21 is your title?

22 **WIT:** I'm employed with Tote Services and my title is Director of Marine Services and
23 Safety.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **LCDR Yemma:** What are some of your general responsibilities in that position?

2 **WIT:** I've got the manager of safety and operations and the manager of purchasing,
3 marine purchasing, reporting to me.

4 **LCDR Yemma:** And can you also generally describe some of your prior relevant work
5 experience?

6 **WIT:** Sure. I sailed in the merchant marine for 24 plus years. After coming out of
7 school I had my own business steam turbine mechanical drive systems as a service
8 engineer, it was a two man operation with that. And that's what brought me to Tote –
9 Totem Ocean and to Sea Star Line. Started working for Sea Star Line as a contractor
10 back in about 2000 doing their steam turbine work. And then I was asked to come on
11 board as the Port Engineer in 2010. I took my current position in the beginning of 2014.

12 **LCDR Yemma:** And what is the highest level of education completed please, sir?

13 **WIT:** I have a bachelor of science degree.

14 **LCDR Yemma:** And do you hold any professional licenses or certification?

15 **WIT:** Chief Engineer unlimited horse power, which is not current, I let that lapse.

16 **LCDR Yemma:** Thank you, sir. The board will have questions.

17 **CAPT Neubauer:** Mr. Fawcett.

18 **Mr. Fawcett:** Good afternoon Mr. Peterson.

19 **WIT:** Good afternoon.

20 **Mr. Fawcett:** Once again I'll just state that the questions I'm going to ask you all relate
21 to the time leading up to the loss of the crew and the El Faro. And if there's other times
22 I'll reference those specifically. Is that okay with you?

23 **WIT:** Understood.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** We're going to explore just a couple of topic area in the course of this
2 hearing. What is the overview of the job of the Director of Safety and Services, and the
3 other one is the safety of operations that fall under your purview. So the first area that
4 we would like to – well first is after I finish my questioning and the Coast Guard finishes
5 theirs we will shift to the National Transportation Safety Board and then we'll go to the
6 parties in interest and return to the Coast Guard to the Captain if he has any follow up
7 questions.

8 **WIT:** Understood.

9 **Mr. Fawcett:** So the first area I would like to talk about is the overview of the job of the
10 Director of Safety and Services. And if you would like to take a break at any time
11 please let us know.

12 **WIT:** Thank you.

13 **Mr. Fawcett:** So starting at the time frame when the El Faro departed Jacksonville on
14 her accident voyage, can you describe to us where you were and what you were doing?

15 **WIT:** I would have been in our office here in Jacksonville just doing the regular daily
16 tasks.

17 **Mr. Fawcett:** So Lieutenant Commander Yemma asked you about your general, sort of
18 general overview of what you did at the time of the accident. Could you fill that in a little
19 bit more in your own words, describe what your role and function is?

20 **WIT:** Yeah, I oversee John Lawrence and his team doing the safety side. John's
21 responsibilities are safety and compliance. I shouldn't say compliance as far, but
22 certification making sure the audits are done, that sort of thing. On the other side with
23 marine purchasing Lisa G, both of these people they're extremely capable, I got very

1 lucky in that respect taking on this job. Also as part of my responsibilities is special
2 projects which are assigned to me by the President and at that time the projects
3 involved LNG peripheral projects dealing with the LNG ships. The biggest one was
4 developing the infrastructure for fueling these ships once they get to Jacksonville. I was
5 also involved with making sure that training was ready to go for the people that were
6 going on those ships. Some of the regulatory required training which is basic and
7 advanced LNG safety courses the Coast Guard requires. In addition to that we've sent
8 all of our engineers to MAN, the main engine and auxiliary to about 4 different training
9 courses for those guys.

10 **Mr. Fawcett:** So I'm not familiar with the new ships. Are you familiar with the bridge
11 setup on the new ships?

12 **WIT:** Not too much, no. I've been on the bridge but that's as far as I can go with that.

13 **Mr. Fawcett:** Do you know if it's an integrated bridge where all the equipment is
14 clustered around the watch standers?

15 **WIT:** Yes, yes, everything's centralized right in the.

16 **Mr. Fawcett:** So in addition to the engineering training that's been provided and the
17 required training for the LNG, did that trickle down, did the crew have to have a special
18 certification to work on that vessel, the unlicensed personnel?

19 **WIT:** Yes. That's where it came into the basic courses which were done up at Piney
20 Point, the SIU. And then the advanced courses which were handled by the AMO down
21 at Dania.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Was there any discussion that you were aware of at Tote about sending
2 the ship's navigation officers, bridge team officers to bridge resource management
3 training?

4 **WIT:** Well they're required to have a bridge resource management training. But I think
5 that's part of the STCW requirements.

6 **Mr. Fawcett:** How about additional training for ship handling for the new integrated
7 bridge ships, new construction ships?

8 **WIT:** No, there hasn't been.

9 **Mr. Fawcett:** Do they have a typical propulsion system or is it, in terms of propellers,
10 rudders, screws, anything like that?

11 **WIT:** The only thing different about it is the fuel. It's a slow speed diesel, just to a
12 standard fixed prop.

13 **Mr. Fawcett:** So how long have you worked at Tote Services?

14 **WIT:** 2000, oh Tote Services, uh 2014, January 2104.

15 **Mr. Fawcett:** And then Tote in general because I think you were ----

16 **WIT:** I was with Sea Star which is now Tote Maritime Puerto Rico.

17 **Mr. Fawcett:** And when did you join that?

18 **WIT:** 2010, excuse me, 2010, August of 2010.

19 **Mr. Fawcett:** Have you had any other positions other than your present position at this
20 time?

21 **WIT:** Well I started out as a Port Engineer, and then was a Senior Port Engineer about
22 a year later. And then I came to this job. I've only held this position with Tote Services.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** When you were a Port Engineer, were you a Port Engineer for the EI
2 Faro or the EI Yunque?

3 **WIT:** The EI Faro was laid up at that time. I was a Port Engineer for the EI Yunque and
4 the EI Morro.

5 **Mr. Fawcett:** Did you conduct evaluations of senior marine personnel such as the
6 Master and the Chief Engineer?

7 **WIT:** Yes I did.

8 **Mr. Fawcett:** And how often did you do that?

9 **WIT:** It was once a year. The form comes from the HR manager any time after about
10 October 1st and then we turn it around and it will go to my, at that time it would have
11 gone to the Director of Operations up in Tacoma for their input. I was the only one in
12 the, as far as the Port Engineers go I was the only one down here in Jacksonville at that
13 time.

14 **Mr. Fawcett:** Did you ever conduct an evaluation for Captain Davidson?

15 **WIT:** No, sir, I did not.

16 **Mr. Fawcett:** So talk about your reporting relationship within the organizational chart,
17 who do you report to?

18 **WIT:** Currently?

19 **Mr. Fawcett:** No at the accident time.

20 **WIT:** Oh at the accident time. I report to Admiral Greene.

21 **Mr. Fawcett:** And how often do you engage with Admiral Greene in performing your
22 job? I mean do you have a weekly meeting, a daily meeting?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** We have at least two meetings a week. We'll have an executive team meeting on
2 Mondays and then we'll have the flash which has been discussed many times here.
3 That's usually on Wednesdays. Beyond that we'll get together when adhoc whenever
4 something needs to be talked about. He's always available though. As you I think
5 understand the way our office is set up everybody's within talking distance of each other
6 as far as on the executive team. And I have Patty Finsterbusch
7 and John Lawrence are directly in front of me. Less distance than we are talking right
8 now, so.

9 **Mr. Fawcett:** Are you involved with the content of the quarterly safety meetings like
10 preparing, assembling the agenda, the content of the agenda?

11 **WIT:** No, Patty and John take care of that.

12 **Mr. Fawcett:** So you said you were involved with special projects?

13 **WIT:** Yes, sir.

14 **Mr. Fawcett:** And so the LNG work is approximately what percentage of your time?

15 **WIT:** It's – it took a lot of time. It varied a lot. There would be peaks and valleys with
16 that. But it could be up to, because as I put in my interview up to 85 percent of the time,
17 but it was cyclical.

18 **Mr. Fawcett:** So could you give me an estimate?

19 **WIT:** Well I would say anywhere from half of my time to 85 percent of my time, 85
20 being the high. Yes, sir. Okay, so at any particular time it could be as little as, well it
21 could vary in a month between half of my time and as much as 85 percent of the time.
22 Am I being clear on that?

23 **Mr. Fawcett:** Yes I understand.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Okay.

2 **Mr. Fawcett:** Thank you for that clarification.

3 **CAPT Neubauer:** Could we clarify just approximately for the month of September prior
4 to the accident voyage?

5 **WIT:** September was, we were getting towards the end of the skid project, I mean it
6 was well underway, we had the equipment, so it was probably maybe half of my time at
7 that time. Between that and training requirements and things like that.

8 **Mr. Fawcett:** So in a general sense from the position of Director of Safety and
9 Services, how does your department ensure the safety of the crews on board your
10 vessels? In particular the El Faro.

11 **WIT:** By maintaining our safety manuals on there, basically just promoting that safety
12 culture within the company and that's something I have to say that I've seen, I think this
13 is industry wide though that people are taking safety more serious. When we all started
14 sailing, you know compared to what things are doing today, but as I started working for
15 Tote as a contractor I was working with the crews a lot at that time as you can imagine
16 when you're working on turbines or any of the drive systems. I saw big improvements
17 over the years. With the LNG ships coming online that's put another huge emphasis on
18 the safety. And that's where we brought a couple people in from the LNG carriers that
19 understand that culture what has to go along with that. But it's been remarkably
20 contagious and it's spilled over into the whole fleet.

21 **Mr. Fawcett:** What other things does your department do to promote safety on board
22 vessels?

1 **WIT:** We got the near miss reports, that's a big push of John Lawrence he's a huge fan
2 of that and pushing it whenever he can. He sees the real results of that, what that can
3 do for the crews. Safety bulletins going out to the ships. Our quarterly safety meetings.
4 There's, if you look in our training addendum you'll see the topics for each week for the
5 drills and the – and also for the safety meetings they're once a month. There's topics
6 listed that they should cover in that time. There will be a track training as far as making
7 sure everyone's gotten through a lot of that training.

8 **Mr. Fawcett:** So from a position shore side how do you ensure that the drills on board
9 the ship are being properly carried out?

10 **WIT:** The drills, I mean that's going to come down to the audits, that's one of the big
11 things we're going to be looking at, on the audits. Are they logging that these drills are
12 done on a regular basis. Beyond that for safety meetings or track training that requires
13 crew members to actually sign in and prove that they were in attendance at that training.

14 **Mr. Fawcett:** And could you give me an example of what you mean by track training?

15 **WIT:** These are specific topics that have to be covered. We would have to open up the
16 training addendum to show you what those topics are.

17 **Mr. Fawcett:** Would those be, for example attendance at ship board drills?

18 **WIT:** Not the drills. The drills is, that's an all hands everybody shows up for those.
19 Those would have to be logged in the deck log. As far as, you're talking about the life
20 boat drill or something like that. The track training would be more like I think security
21 events, the bridge management team, the training that they will go through together up
22 there. There's quite a list in there.

23 **Mr. Fawcett:** So let's – who conducts the drill on board the El Faro?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** I think it's going to vary. I think the Captain will assign who is going to take care
2 of them. From a general standpoint it's the Captain, if you're talking a boat drill, fire drill.

3 **Mr. Fawcett:** What does the Captain use to assess the quality of the drills?

4 **WIT:** It's going to be feedback from his crew. They do these drills so often that the
5 Captains are going to have a good feel for if there's something that's amiss, that it's just
6 not going right, the timing's not there, the people aren't ready, aren't donned out
7 properly. He will get feedback from his mates.

8 **Mr. Fawcett:** Do they have a written guide or checklist to help them facilitate, for
9 example a drill where people would don an exposure suit?

10 **WIT:** I'm not sure if there's a checklist for how they would do it, but there is in that guide
11 that I was talking about that is one of the things that is done on a regular basis we'll say.
12 There is, It's listed there as survival suits donned.

13 **Mr. Fawcett:** Do they have to report feedback to you if a drill doesn't go well?

14 **WIT:** Umm, I don't think there is anything in our system for that.

15 **Mr. Fawcett:** Is there a way for you to feedback to them some kind of corrective
16 action?

17 **WIT:** Sure.

18 **Mr. Fawcett:** What would that be?

19 **WIT:** It could be, depends if we think it's a fleet wide that could go out as an OPS
20 memo where we're actually adding something into our procedures. Or if it's just a
21 vessel specific it could be as simple as an email.

22 **Mr. Fawcett:** So can you talk about a topic on safety alerts, how they are identified? In
23 other words, you have a number of safety alerts that come out during the calendar year.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Umm huh.

2 **Mr. Fawcett:** What would trigger a safety alert and is there something that says, for
3 example this needs a safety alert?

4 **WIT:** I'm not sure what you mean by, just that last part, I'm sorry.

5 **Mr. Fawcett:** Okay. For example a safety came out around Danny.

6 **WIT:** Yeah.

7 **Mr. Fawcett:** What triggered that?

8 **WIT:** I think it was just Danny, it was on someone's mind that it would be a good idea to
9 get something out just as reminder to everyone that the season has started. I mean I've
10 seen that in the past where it's been more just along the lines of an email, so it wasn't
11 as formal. But just a reminder to everyone that hurricane season is here. Be mindful of
12 that, take what precautions you need to. But as far as other safety alerts, it's – it could
13 be anyone in the office that says, that comes across something that they think would be
14 of a value to the vessels. Some of the regular ones are going to be, and the ones that
15 the Coast Guard sends to us, then we will just distribute those to the fleet. But they are,
16 they're numbered as they're sent out so that we can track what alerts have gone out.
17 And then they will put those in a binder on board the vessel.

18 **Mr. Fawcett:** So let's turn our attention to a minute – for a minute to what might trigger
19 an investigation within your department? For example, you mentioned near miss. What
20 type of investigations does your department conduct?

21 **WIT:** It would be causes for injuries. You know if it's an incident as opposed to a near
22 miss, someone did get hurt, some equipment did get damaged. We've had cases

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 though where a near miss, you know we – they could be of some value to just push
2 those out to the entire fleet also.

3 **Mr. Fawcett:** How about something related to standards of watch keeping on board
4 your ship, would that trigger an investigation?

5 **WIT:** Can you give me an example?

6 **Mr. Fawcett:** A report that a ships officer for example might not have conducted
7 themselves according to accepted standards and practices.

8 **WIT:** Yeah, that could trigger an investigation for sure.

9 **Mr. Fawcett:** So where does that come from? I mean does that come from you
10 assessing a situation and then saying I want a follow up investigation, or could it come
11 from upper management?

12 **WIT:** Any and all. It can come from any source. We may talk it over with the executive
13 team. It depends on the severity of it and how far we have to go into it. But I would say
14 anyone can come up with the suggestion that this warrants an investigation.

15 **Mr. Fawcett:** And once that's complete what happens?

16 **WIT:** You know we haven't had one that's been that – what we would do with it, I guess
17 it really depends, Mr. Fawcett on what we're talking about. You know whether it would
18 have an impact on our safety management system, in other words our manuals. Is it
19 something that warrants an OPS memo going out to change something? If we found a
20 problem with our system, do we have to change it? Or is this another safety alert that's
21 going out? Or is this something that's pushed over to HR and some other kind of action
22 has to be taken.

1 **Mr. Fawcett:** The one that I know of is the one that's mentioned in the safety news
2 letter when the ship was disembarking the pilot and there was an issue with the
3 propulsion system. It talked about route cause analysis and it was, you know the way
4 an investigation is conducted, the causal factors and so forth. Can you walk us through
5 how that investigation was conducted?

6 **WIT:** Well something like that you would, I believe Mr., uh Captain Lawrence, it would
7 depend on the vessel for a lot of that. What was the route cause, what are the
8 corrective actions on that? So that's going to come from the people on board, on site
9 and then he would take a look at that and see if there's further investigation needed or if
10 – to make sure it's complete and it fulfills the idea that this won't happen again. We
11 want to make sure that this is just a one time event.

12 **Mr. Fawcett:** Are you familiar with that incident?

13 **WIT:** I am. The one where the – one of the crew members shut off the wrong valve.

14 **Mr. Fawcett:** Do you know how that was ultimately classed? Was that classed as a
15 near miss?

16 **WIT:** I believe it was. I don't know, I don't know.

17 **Mr. Fawcett:** So would you describe the use of OPS memos?

18 **WIT:** Yes. With our system there's going to be, it's continually evolving system,
19 continuous change, continuous improvement. So whenever we have a – something
20 that needs to be changed in our, for example our operating manual for the vessels, our
21 OMV, if someone comes up with a change for those and that can be from anyone. We
22 have dedicated change forms for those that people can fill out and send in, a request for
23 a change. It will be reviewed and either accepted or not. But we also take suggestions,

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 verbal suggestions or email. As of late we've gone to just making sure that we are open
2 to any kind of input for changes that people see need to happen in those manuals. So
3 what happens, rather than print out that whole thick manual every time we make a
4 change, we put out an OPS memo and that directs the people who have the control
5 copies that this will replace a certain section of that OPS, or of that manual. Whether
6 it's in the OMV or the training or wherever it's at. And then on a regular basis, annual
7 basis, those OPS memos will be incorporated into the manual and we'll send out a
8 complete manual, basically starting from scratch then with the OPS memos.

9 **Mr. Fawcett:** So can you give – give me an example of an OPS memo?

10 **WIT:** Well, okay. I would have to look in there Mr. Fawcett. I don't have one off the top
11 of my head.

12 **Mr. Fawcett:** So what is the purpose of shipboard drills? In other words, let's – let me
13 give you an example. An abandon ship drill. What's the purpose of it?

14 **WIT:** Purpose with any drills is you want people to be able to react quickly, not have to
15 think about it. You want an organized response to whatever emergency it is. That's the
16 purpose of the drills. And so – and people know where to go. You want that – first you
17 want them to understand it, then you want it to be second nature for them.

18 **Mr. Fawcett:** Would another purpose of a drill be to identify deficiencies in equipment
19 or procedures?

20 **WIT:** Absolutely.

21 **Mr. Fawcett:** So during the accident voyage and prior to the accident voyage there was
22 a labor crew on board the El Faro, is that correct?

23 **WIT:** Yes, sir.

1 **Mr. Fawcett:** Predominantly they were Polish nationals?

2 **WIT:** Yes, sir.

3 **Mr. Fawcett:** Prior to them getting aboard the El Faro, was there any, within the safety
4 division under your safety department, was there any discussion about how they were
5 going to incorporate the language difficulties or the language issues with the safety
6 operations on board the vessel?

7 **WIT:** Uh, not that I'm aware of.

8 **Mr. Fawcett:** Who would that have fallen under if it wasn't the safety and service area?

9 **WIT:** I think that would have been raised by the Captain or the Chief Mate or some of
10 the crew members if they had a concern about that. I don't know that we were aware
11 that we had the riders on there at that particular time from my standpoint.

12 **Mr. Fawcett:** So I'm talking about in the preliminary stages before they were actually
13 assigned to the vessel. Was there any discussion about how you would incorporate
14 potential language issues into shipboard operations?

15 **WIT:** Not with my department, no.

16 **Mr. Fawcett:** So I've talked about drills and I know that you conduct, not you
17 personally, but your company conducts exercises.

18 **WIT:** Yes, sir.

19 **Mr. Fawcett:** Could you talk about, you know basically the difference between a drill
20 and an exercise?

21 **WIT:** In my mind, boy that – in my mind a drill is repetitious for a specific event,
22 launching a life boat. Where an exercise may be for a larger process which would
23 involve more steps. That would be my definition.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So what kind of exercises, from shore side have you conducted or been
2 involved with?

3 **WIT:** Well there are the exercises where they do a regular test of their SSAS system.
4 We did have an exercise on the El Faro when she was laid up with the local fire
5 department, that was back in probably 2013.

6 **Mr. Fawcett:** So I'm doing my best not to use acronyms, I swim in a world of acronyms.

7 **WIT:** Yes, sir.

8 **Mr. Fawcett:** So could you explain what SSAS is?

9 **WIT:** That's our emergency alert system that goes out. If they hit a button on the ship it
10 sends out an alert to let them know that the ship has a security alert.

11 **Mr. Fawcett:** So ----

12 **WIT:** Are you talking company wide exercises, or?

13 **Mr. Fawcett:** Yeah. What kind of exercises do Tote – have you been involved with,
14 within the Tote organization?

15 **WIT:** I don't have an answer for you right now then.

16 **Mr. Fawcett:** All right. So turning to, you mentioned life boat drills, do you have an
17 idea of how often they're conducted on board the El Faro?

18 **WIT:** Weekly.

19 **Mr. Fawcett:** So, and I would like to clarify from the outset, and I'm looking for the
20 connection with safety. There was an issue with the davits with the El Yunque. Are you
21 familiar with the issue?

22 **WIT:** Peripherally. I knew there was an issue. I was not involved in the repair.

23 **Mr. Fawcett:** Do you know what the issue was?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** It had to do with the foundation, beyond that I don't know.

2 **Mr. Fawcett:** And they were actually repaired well before the accident voyage, but ----

3 **CAPT Neubauer:** Can you clarify, I believe you said El Yunque davits.

4 **Mr. Fawcett:** Yeah that's correct.

5 **CAPT Neubauer:** So then you mentioned the accident voyage.

6 **Mr. Fawcett:** The accident voyage of the El Faro. So in other words, sometime a little
7 later in the summer the El Yunque's davits were repaired to meet class and there was
8 no longer an issue with it. But the question I'm asking, I'm just trying to put that in the
9 right time frame, do you know who discovered the issue with the problem with the
10 davits?

11 **WIT:** I don't, I don't know.

12 **Mr. Fawcett:** In other words I don't mean the person. I mean did Tote discover the
13 problem with the davits? Was it an external organization such as class or the Coast
14 Guard?

15 **WIT:** I'm not sure.

16 **Mr. Fawcett:** Do you have any involvement in your position with the movement of
17 vessels for Tote?

18 **WIT:** No, sir, I don't.

19 **Mr. Fawcett:** I would like to turn your attention for a minute to Exhibit 25, page 203.
20 That's the oil, the offshore manual for vessels.

21 **WIT:** Okay.

22 **Mr. Fawcett:** Do you see a revision date on the adverse weather plan? Let me find the
23 correct page for you, sir. It's should be on the table of contents page.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Yeah, it's 10.8 I believe it is. Oh it's tagged here. Revision date 8, let's see, it
2 says revision date of 8/15.

3 **Mr. Fawcett:** Okay. Is that the last time that the adverse weather plan has been
4 updated?

5 **WIT:** That would be the last time that something in that section was updated.

6 **Mr. Fawcett:** Okay. If you would turn to page 9 in that same document.

7 **WIT:** Uh huh. Okay.

8 **Mr. Fawcett:** Are you on 9 now?

9 **WIT:** Yes, sir.

10 **Mr. Fawcett:** So what's the revision date of the adverse weather plan?

11 **WIT:** Uh we're still showing 8/15.

12 **Mr. Fawcett:** Okay. And do you know what was added to the adverse weather plan?

13 **WIT:** Well it's the navigation section, it's that whole section of 10 that had a revision.

14 **Mr. Fawcett:** Okay. But specifically looking at the adverse weather plan, if you turn to
15 page 9 on the table of contents.

16 **WIT:** On the table of contents?

17 **Mr. Fawcett:** Yes. Of the exhibit, I'm sorry. Pardon me for that.

18 **WIT:** Oh, okay.

19 **Mr. Fawcett:** Yeah marked in red at the bottom, exhibit page 9.

20 **WIT:** Has a date of 1/8.

21 **Mr. Fawcett:** And that's for the adverse weather section?

22 **WIT:** The adverse weather was 3/96.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So basically in the third month of 1996 that was revised, that particular
2 section on adverse weather?

3 **WIT:** Correct.

4 **Mr. Fawcett:** And who updates that operations manual?

5 **WIT:** At that time it would have been the – Harry Rogers, but now it would be John
6 Lawrence.

7 **Mr. Fawcett:** So at this time I conclude that section of my questions and I'll pass it on
8 to Commander Denning.

9 **CAPT Neubauer:** Commander Denning.

10 **CDR Denning:** You spoke about drills, abandon ship drills and survival suits. Was
11 there – have you been – become aware of any issues on any of your ships of survival
12 suits being stolen?

13 **WIT:** Stolen? Not that I'm aware of.

14 **CDR Denning:** Any problems with that?

15 **WIT:** No, sir.

16 **CDR Denning:** Are you aware of any need to lock up survival suits on board any
17 ships?

18 **WIT:** No, sir.

19 **CDR Denning:** Are you aware of where the survival suits are kept on the ships?

20 **WIT:** In the crew member's cabins.

21 **CDR Denning:** That's all the questions I have on this particular topic.

22 **CAPT Neubauer:** Commander Odom.

23 **CDR Odom:** Good afternoon. Can you open to Exhibit 45 please?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Hurricane Danny.

2 **CDR Odom:** What is the date that the safety – was sent out?

3 **WIT:** 8/20/2105.

4 **CDR Odom:** And you had earlier stated that the reason that was sent out to increase
5 awareness that hurricane season was here and you need to be aware of hurricanes.

6 **WIT:** As a reminder, yes.

7 **CDR Odom:** So my question is why does Hurricane Danny which is the fourth named
8 storm of the season and prior to that you had Anna, Bill and Claudette all within your
9 area of operations, was there a safety notice sent out for any of those?

10 **WIT:** No, sir, there wasn't.

11 **CDR Odom:** And there was nothing sent out prior to the commencement of hurricane
12 season?

13 **WIT:** Correct.

14 **CDR Odom:** This was specific to Hurricane Danny.

15 **WIT:** This was, yes, sir.

16 **CDR Odom:** Thank you.

17 **CAPT Neubauer:** Mr. Roth-Roffy.

18 **Mr. Roth-Roffy:** Good afternoon Mr. Peterson.

19 **WIT:** Good afternoon.

20 **Mr. Roth-Roffy:** Regarding the training program for the crew members aboard the
21 Marlin class vessel, I believe you said you were involved in developing that?

22 **WIT:** Yes, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Roth-Roffy:** And do you know if the – that training program is attached with some
2 kind of instruction or procedure or was it just discussions that you identified with the
3 requirements for the training of the crews of the vessels?

4 **WIT:** The policy letters that the Coast Guard put out dealing with the LNG fueled
5 vessels, they outlined the requirements. They weren't finalized at that time. We worked
6 with the different unions and based that training on the current best knowledge we had
7 from ISM as far as what they – what was expected. As it turned out it was, nothing
8 really changed from what those requirements were. They had competencies put out
9 that we had to meet for the basic, basic LNG safety course. And the way that the Coast
10 Guard has established that is the basic course is any crew member who will be dealing
11 with emergencies on board the ship. Tote's position was that everyone's going to be
12 involved with an emergency, so we elected not to break that down into, you know
13 there's a couple of people that don't have it, we would rather have everybody have that
14 awareness training. On the other side the way the regulation reads it was all the
15 engineers and the Master had to have the advanced LNG course. Again Tote elected
16 to just say let's have all the licensed officers on board the ship will have the advanced
17 training. Beyond that we're working on, working with the local fire fighting academy
18 here at, it's Fire Academy of the South. We initiated questions with them about possible
19 LNG fire fighting capability. And as that's turned out now, Tote among other local
20 organizations helped out to develop a LNG fire fighting course at that school. And the
21 first people through it were the first responders here in Jacksonville so that we knew we
22 had everyone trained up properly for that. And beyond that where we ended up, our
23 initial question we were looking for an actual LNG fire fighting facility. There's one in

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 Texas, there's one up in Massachusetts, but we wanted to see about getting one here in
2 Jacksonville since this kind of become the center of the LNG world right now. Again
3 with Tote Maritime's participation in that as well as other organizations they've been
4 able to get the infrastructure together and we think we'll see a LNG fire fighting
5 capability at that school by the end of the summer.

6 **Mr. Roth-Roffy:** Were the crew members of the other vessels, the non-Marlin class
7 vessels, did they have a similar training curriculum that was developed that specifically
8 addressed the uniqueness of vessels that they were serving on?

9 **WIT:** No, sir.

10 **Mr. Roth-Roffy:** Not to your knowledge?

11 **WIT:** Not to my knowledge.

12 **Mr. Roth-Roffy:** The Tote's safety management system, is that a paper based or an
13 electronic system?

14 **WIT:** It's a paper based system, we're going to an electronic and we've also just got the
15 okay to implement a new system that will be totally electronic based, but it will give us
16 the opportunities to make changes on the fly rather than working through the OPS
17 memos. We will be able to send new changes into the system. The programs that
18 we're looking at, and this is something we've been checking for near a year to get this
19 rolling, but we will be able to track those changes so people will come back to the ship
20 and they'll be able to say since I've been gone what's changed. It will also hold tracking
21 for different people's training on board the ship. We're pretty excited about getting this
22 implemented.

1 **Mr. Roth-Roffy:** That answers my question. Before the implementation of this
2 electronic system how are you tracking these OPS memos, you know all the OPS
3 memo that you received aboard vessels? Is there some kind of configuration, control
4 sheet?

5 **WIT:** Yes. It's a – they'll send out an email with it. They'll add that number onto the
6 next one and put it in there, then they have to reply back to the office. We've got one
7 person who tracks that at the office to make sure that they have received that OPS
8 memo and put it into the binder.

9 **Mr. Roth-Roffy:** In your view who's responsible for ensuring that the safety
10 management system is effectively implemented for vessels and ashore in the Tote
11 Service Incorporated?

12 **WIT:** Well we all are at the end, Mr. Roth-Roffy. I mean it's all of our responsibility to
13 make sure that this system works. And that's – we've been working very hard to make
14 sure everyone knows how to navigate the system. That's something we've recently
15 done is for the shore side folks is to set up a specific place within our server that they
16 can go to access this and make it clean, make it easy to pull this information up. But
17 we're all responsible for the implementation of this system.

18 **Mr. Roth-Roffy:** In your view is the SMS system effectively implemented within the
19 Tote Service Incorporated organization?

20 **WIT:** Yes, sir. I have a lot of confidence in our system.

21 **Mr. Roth-Roffy:** That's all I have, thank you.

22 **WIT:** Thank you.

23 **CAPT Neubauer:** Mr. Kucharski.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** Thank you Captain. Good afternoon Mr. Peterson.

2 **WIT:** Hello Captain.

3 **Mr. Kucharski:** You mentioned that you sailed on the merchant marines for 24 years.

4 **WIT:** Yes, sir.

5 **Mr. Kucharski:** Was that all in the engine department?

6 **WIT:** Yes, sir.

7 **Mr. Kucharski:** Captain Lawrence reports to you, does he direct report to you?

8 **WIT:** Yes, sir.

9 **Mr. Kucharski:** And it says in his job description, it mentions operations is a part of his
10 job description. Can you tell us what kind of operations he's involved with? Is it vessel
11 operations?

12 **WIT:** It would strictly be with anything involving the safety side of that, the audits, that's
13 what it means.

14 **Mr. Kucharski:** So it would be vessel operations?

15 **WIT:** Yes, sir.

16 **Mr. Kucharski:** Does your job include or involve oversight of marine operations?

17 **WIT:** No, sir.

18 **Mr. Kucharski:** Looking at Exhibit 6, page 13, that's your job description. It mentions
19 you assist in the supervision and operation of active fleet.

20 **WIT:** What was that number again, sir?

21 **Mr. Kucharski:** It's on page 13 of your – Exhibit 6. And it's right under the summary, it
22 says assist in the supervision and operation of both the active and deactivated fleet.

23 **CAPT Neubauer:** Sir, take your time to find the exhibit.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Okay, I'm there. What was your question again?

2 **Mr. Kucharski:** It says you, under your job summary, assist in the supervision and
3 operation of both the active and deactivated fleet. Could you tell us who you assist in
4 that supervision?

5 **WIT:** The assistance would be to the operations side. Just what assistance we can
6 provide as marine services in the purchasing realm and the safety realm.

7 **Mr. Kucharski:** So it was company personnel that you're assisting?

8 **WIT:** Yes, sir.

9 **Mr. Kucharski:** Shore side?

10 **WIT:** Well, yes.

11 **Mr. Kucharski:** According to essential duties it says your department identifies risks to
12 personnel on ships. Can you tell us if you identified any heavy risk or hurricane risk to
13 either your ships or personnel?

14 **WIT:** Where specifically is that Captain? Is that under the –

15 **Mr. Kucharski:** I didn't write the cite down. I'll come back, I'll come back to that
16 question. Would you that your department oversees emergency responses or conducts
17 emergency drills?

18 **WIT:** Yes.

19 **Mr. Kucharski:** What is your understanding of the rapid response damage assessment
20 program?

21 **WIT:** I believe that's the ABS program that we did contact them when – during the El
22 Faro incident. They have all the information, my understanding is they have all the
23 information at hand already that's why we subscribe to that and we can tell them what

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 our situation is and they will be able to do some assessments of the structural integrity.

2 That's my understanding.

3 **Mr. Kucharski:** Your understanding. Were you involved in the contracting for that?

4 **WIT:** No, sir, I was not.

5 **Mr. Kucharski:** Is the RRDA or the rapid response damage assessment program is
6 that captured in the safety management system?

7 **WIT:** I don't know, I don't know. I don't know if it is or not. I believe it is part of our
8 emergency response team manual. I believe we have information in there for the
9 contact information with them. But I don't know, I don't know where else it would be
10 listed.

11 **Mr. Kucharski:** Who would be able to tell me if it's captured somewhere in your safety
12 management system?

13 **WIT:** I think one of my team would have to research that and see where it's at.

14 **Mr. Kucharski:** Was that system available to the ship board personnel in addition to
15 the shore side personnel?

16 **WIT:** I honestly don't know how that would work. I'm not sure.

17 **Mr. Kucharski:** Who would I direct that question to?

18 **WIT:** Umm, I think Mr. Morrell might have a better handle on how that's set up.

19 **Mr. Kucharski:** Were there any drills conducted under that program?

20 **WIT:** I don't know.

21 **Mr. Kucharski:** But that's – it's an emergency response type system or no?

22 **WIT:** For the ABS program we're talking about?

23 **Mr. Kucharski:** Yeah, the rapid response damage assessment.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** It is, yes.

2 **Mr. Kucharski:** The cite you had asked me for, it's on page 13 as far as identifying risk
3 to personnel.

4 **WIT:** Oh, okay.

5 **Mr. Kucharski:** Page 13 of Exhibit 6.

6 **WIT:** Yeah I would say with, of course the way this is written up these are, these are
7 the manager of safety and operations duties as he works underneath me. But through
8 our – the near miss program, sorry, to our near program that would be one way we
9 would do risk assessments.

10 **Mr. Kucharski:** So that would be Captain Lawrence again?

11 **WIT:** Yes, sir.

12 **Mr. Kucharski:** Have you ever seen as your oversight for the department, or Captain
13 Lawrence, have you seen any risk assessments on heavy weather or hurricane
14 avoidance or anything like that?

15 **WIT:** Not for hurricane avoidance I have not seen.

16 **Mr. Kucharski:** Heavy weather?

17 **WIT:** No, sir.

18 **Mr. Kucharski:** Does the company have a risk assessment matrix?

19 **WIT:** I'm not sure.

20 **Mr. Kucharski:** On page 16 of the same exhibit under supervisory responsibilities it
21 states manages officers on managed fleet, you supervise a total of 250 or more sea
22 going personnel on the active vessels. Do you see that?

23 **WIT:** Yes I do.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** Can you tell me how you manage, or your department manages the
2 officers on the managed fleets?

3 **WIT:** Only in the respect of the safety side making sure they've got the manuals up to
4 date. And that audits are conduct, everything from the safety side.

5 **Mr. Kucharski:** Along with the audit program, so that's – the audits are conforming to
6 ensure compliance with the safety management system?

7 **WIT:** That's correct.

8 **Mr. Kucharski:** It says on the same page the department is responsible for formulating
9 general safety policy to develop a company and vessel personnel. What safety policy
10 would it be for company, would it be shore side?

11 **WIT:** Yeah, we do have a SQE program for the shore side also.

12 **Mr. Kucharski:** And you say your department conducts audits, is that correct?

13 **WIT:** We will conduct them or he basically does the scheduling for the audits.
14 Sometimes we will use outside auditors as well as our internal people. We do like to
15 mix that up a bit. We found that, or we want to make sure that our people stay current,
16 but if we can bring in other people on a somewhat regular basis it mixes it up, gives us
17 some fresh ideas, fresh insight into how we're doing with our system.

18 **Mr. Kucharski:** Have you ever personally audited a Tote vessel in your current
19 capacity?

20 **WIT:** I have not. I have not been trained as an auditor.

21 **Mr. Kucharski:** As part of your auditing procedures, has your department ever
22 reviewed any VDR recordings?

23 **WIT:** No, no, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** How about as part of an accident investigation, has your department
2 ever downloaded and reviewed a VDR report?

3 **WIT:** Not since I've been in this position.

4 **Mr. Kucharski:** Do you know if your company has a policy for random downloading
5 and review of vessel VDR reports?

6 **WIT:** I don't know. Beyond just our regular service, you know our yearly service where
7 they do download it.

8 **Mr. Kucharski:** So you don't have any random downloading?

9 **WIT:** Not that I'm aware of.

10 **Mr. Kucharski:** Going back earlier to a statement that Admiral Greene made about
11 expectations for Captain Lawrence as DPA, he said he was on call 24/7 even while on
12 vacation. Is that correct?

13 **WIT:** That's pretty much how John's taken it on. He will answer calls even on vacation.

14 **Mr. Kucharski:** Do you have an alternate DPA?

15 **WIT:** I'm the alternate.

16 **Mr. Kucharski:** You're the alternate?

17 **WIT:** That being said, the way John will always hang onto those, I've never had an
18 occasion to where I've had to step in for him.

19 **Mr. Kucharski:** Thank you.

20 **CAPT Neubauer:** Does Tote have any questions?

21 **Tote Inc:** No questions, sir.

22 **CAPT Neubauer:** Does ABS have any questions?

23 **ABS:** No questions, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CAPT Neubauer:** Does Mrs. Davidson have any questions?

2 **Ms. Davidson:** No questions.

3 **CAPT Neubauer:** And HEC have questions?

4 **HEC:** No questions.

5 **CAPT Neubauer:** Good afternoon Mr. Peterson I have a few follow up questions. We
6 earlier talked about some davit issues, life boat davit issues on the El Yunque. Are you
7 aware of any problems with the El Faro davits in the months ahead of the accident
8 voyage?

9 **WIT:** No, sir, I'm not.

10 **CAPT Neubauer:** I would like to talk about who processes the casualty reports at Tote
11 Services. Are you responsible for reviewing accidents and submission of the CG-2692
12 reports of accident, injury or death for your company, sir?

13 **WIT:** No, John Lawrence is.

14 **CAPT Neubauer:** Do you review those CG-2692 reports before submission to the
15 Coast Guard?

16 **WIT:** There will be a lot times depending on what's involved and then John will pass it
17 over to me for review before he sends it in.

18 **CAPT Neubauer:** Do you remember any accident reports or any cargo damage from
19 heavy weather operations between the Jacksonville and Puerto Rico route in the –
20 since your time as safety manager?

21 **WIT:** Yes, there's been times when there's been cargo damage. That was the
22 question?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CAPT Neubauer:** Yes, sir. Was that cargo damage primarily due to heavy weather,
2 operations in heavy weather?

3 **WIT:** Yes, heavy weather.

4 **CAPT Neubauer:** Do any of those operations include named storms, tropical storms or
5 hurricanes?

6 **WIT:** I wouldn't be able – I don't remember, I don't remember.

7 **CAPT Neubauer:** Were you aware of the El Faro's accident voyage where they
8 encountered Tropical Storm Erika in late August of 2015?

9 **WIT:** Yes.

10 **CAPT Neubauer:** Was there any cargo damage sustained during that voyage?

11 **WIT:** I don't know, I don't know.

12 **CAPT Neubauer:** Do you know if the vessel encountered the storm during that
13 voyage?

14 **WIT:** As I remember it, I don't think she hit any severely heavy weather on that voyage.

15 **CAPT Neubauer:** I would like to go back now to the day before the accident voyage,
16 September 30th, 2015. Sir, do you remember what you were specifically working on that
17 day?

18 **WIT:** This was the day before the accident?

19 **CAPT Neubauer:** Yes, sir.

20 **WIT:** The day of our last call.

21 **CAPT Neubauer:** The day before the accident, September 30th that would have been
22 after the vessel departed but before the morning of the accident.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** I don't remember what I was doing. I was working in the – I was in the office that
2 week for sure.

3 **CAPT Neubauer:** Sir, do you remember tracking or were you aware of Tropical Storm
4 Joaquin and then Hurricane Joaquin?

5 **WIT:** I was aware of it, but I was not actively tracking it.

6 **CAPT Neubauer:** Did you review any of the forecast information for that tropical storm
7 or hurricane?

8 **WIT:** I don't remember. I have the NOAA website on my computer, you know as a
9 favorite so I do pull it up quite often for what's going on out there, but I don't remember
10 specifically that time.

11 **CAPT Neubauer:** Do you remember if anybody else at Tote Services in the office was
12 tracking or following that storm?

13 **WIT:** I'm sorry, I don't remember.

14 **CAPT Neubauer:** That's all the questions I have at this time. Mr. Fawcett can you
15 begin the next line of questioning?

16 **Mr. Fawcett:** Yes, sir, Commander Denning had a follow up.

17 **CDR Denning:** Mr. Peterson, Captain Neubauer just asked you about cargo damage.
18 Can you go into a little bit more detail on the circumstances of the cargo damage that
19 you're aware of?

20 **WIT:** I've seen it where down on 2nd deck you'll get a container that's pushed around a
21 little bit from the water coming on board.

22 **CDR Denning:** Were there issues with the cargo securing hardware?

23 **WIT:** I don't believe so, I think it was just heavy weather.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CDR Denning:** So the damage was caused by shifting water on the 2nd deck?

2 **WIT:** Yes, sir.

3 **CDR Denning:** So the water alone caused the damage. Did the cargo – is that true,
4 the water caused the damage to the cargo?

5 **WIT:** I don't remember the details to be honest with you.

6 **CDR Denning:** Do you recall cargo on the 2nd deck shifting during transit?

7 **WIT:** Not just, no. No, I don't.

8 **CDR Denning:** Are you aware of any instances where the buttons and D-rings that are
9 used on the 2nd deck have come lose or been damaged in any way?

10 **WIT:** There have been times when they've had to be replaced.

11 **CDR Denning:** Thank you.

12 **CAPT Neubauer:** At this time we've been going over an hour. We'll take a recess for
13 10 minutes.

14 *The hearing recessed at 1506, 17 February 2016*

15 *The hearing was called to order at 1519, 17 February 2016*

16 **CAPT Neubauer:** The hearing is now back in session. Mr. Fawcett will lead the next
17 line of questioning.

18 **Mr. Fawcett:** Good afternoon again.

19 **WIT:** Mr. Fawcett.

20 **Mr. Fawcett:** I would like to turn your attention to the broad topic of the safety of
21 operations. And I want to sort of revisit a topic we discussed earlier. But before the
22 accident voyage had you ever used web based AIS tracking it's available online?

23 **WIT:** Yes, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** You have?

2 **WIT:** Yes, sir.

3 **Mr. Fawcett:** Have you ever used it to monitor the position of the El Faro?

4 **WIT:** Yes, sir.

5 **Mr. Fawcett:** And why would you do that?

6 **WIT:** Just because I can.

7 **Mr. Fawcett:** And could you describe when you use that type of web based system
8 that's commonly available what kind of information do you get from that regarding the El
9 Faro?

10 **WIT:** Well for any vessel it will give you the position of the ship and the speed and I
11 believe the heading.

12 **Mr. Fawcett:** And how is that information displayed?

13 **WIT:** If you hold the cursor over the icon for the ship, the one I've used it'll come up.

14 **Mr. Fawcett:** Is the position of the El Faro, if you were looking for that ship and you
15 looked on that screen will it show it on a chart or map or some other graphic
16 representation?

17 **WIT:** Yes, sir. It was – it was a map. I think there was one type that had closer to
18 being like a chart.

19 **Mr. Fawcett:** And do you recall why you did that?

20 **WIT:** I've done it with a lot of our ships. Just curious, or friends that I know are on
21 ships, I'll look them up.

22 **Mr. Fawcett:** Can you do that anytime of the day or night?

23 **WIT:** Yes, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Can you do that from home?

2 **WIT:** Yes, sir.

3 **Mr. Fawcett:** Do they have that type of service available for example on like an Iphone
4 android device handheld?

5 **WIT:** Yes, sir, they do.

6 **Mr. Fawcett:** So turning our attention to the safety of operations. Who within Tote is
7 responsible for the safety of operations, vessels that are out to sea?

8 **WIT:** For the safety of operations. Umm, well primarily it's going to be on the vessel
9 themselves, of course they're going to be looking out for their own, but I'm sure you're
10 referring to, within the shore side community.

11 **Mr. Fawcett:** Right. In other words, looking from shore side you look, you know during
12 the accident voyage time frame, you have two vessels in operation going back and forth
13 from Jacksonville to San Juan. Within Tote who is responsible for the safety of the
14 operation of those two vessels?

15 **WIT:** In my mind it would be, the first one would be the Port Engineers as far as they're
16 the ones who are going to be looking at the noon reports. From a safety management
17 system of course that falls into the safety and operations department under the – under
18 my department.

19 **Mr. Fawcett:** So as it existed prior to the accident voyage, if you look at the position of
20 the vessel how is that described?

21 **WIT:** For the noon reports you're talking?

22 **Mr. Fawcett:** Correct.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** There's a format. It's part of our forms document that lists exactly what they're
2 supposed to tell us on those noon reports. There was a specific one for the PONCE
3 class ships because it also included things on the steam cycle, vacuum, how much
4 fresh water they have, what's the first stage pressure, it may have even gone into lube
5 oil pressures and such like that. But above that as far as it will give the position of the
6 ship, the speed, heading, the sea state and a few other things.

7 **Mr. Fawcett:** So the position, is that described in latitude and longitude?

8 **WIT:** Yes, sir.

9 **Mr. Fawcett:** So once I got that position if I'm looking at the noon report, how would I
10 then know where the ship actually is?

11 **WIT:** By looking at a chart. You would have to look at a chart.

12 **Mr. Fawcett:** So to find the specific position of a ship looking at the noon report you
13 would have to go to a navigational chart and you would have to input the coordinates to
14 derive the correct position of a ship, is that correct?

15 **WIT:** That's correct.

16 **Mr. Fawcett:** So turning our attention to personnel operating on the vessels. How
17 important is being familiar with the particular and unique vessel to the safety of
18 operations?

19 **WIT:** Oh I think it is an important factor. And that's why they – that there's always a lot
20 of stress on familiarization with the ships. We know they have the basic capabilities and
21 as Admiral Greene had mentioned about the qualifications of our officers is across the
22 board for our ships, but yeah they have to be familiar with the individual ships. You
23 have to know where the equipment is. It's an important factor. And that's why we do

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 have a familiarization as people come on board. They have to know where the life
2 boats are, they have to know where the fire fighting equipment is at.

3 **Mr. Fawcett:** So who conducts the familiarization for the safety of operations?

4 **WIT:** On board the ship it's going to be, it will be one of the crew members or one of the
5 officers will be assigned and it's usually, if it's a deck person coming on board it will
6 probably be a Second Mate or Third Mate would take them on a familiarization tour of
7 the ship. On the engine side it may be the First Engineer or he may assign one of the
8 other engineers to take on that task.

9 **Mr. Fawcett:** So once again turning to safety of operations, if I'm a new Chief Mate
10 reporting aboard one of your ships, the El Yunque or the El Faro how do I know how to
11 conduct safely the operations that I'm about to conduct, for deck operations like
12 checking the lashing and security of cargo, the other duties that I'm assigned for deck
13 operations?

14 **WIT:** It would be depend on the experience that we have with the other mates on
15 board. You, for something like that it doesn't necessarily have to be from the top down.
16 That could be a Second Mate showing the Chief Mate about the unique lashings on
17 board this ship and what we're looking for. There's going to have to be some interaction
18 there though between those people or we may even have them overlap as far as riding
19 with the other Chief Mate for that couple days down to San Juan or vice versa.

20 **Mr. Fawcett:** So looking at the El Faro and the El Yunque, the hatches or scuttles that
21 go from the watertight deck to the holds below.

22 **WIT:** Yes.

1 **Mr. Fawcett:** Were they exactly the same or were they different? How did they differ if
2 they were different?

3 **WIT:** They did differ. The El Faro had additional manholes on the port side where the
4 Yunque or the Morro only had them on the starboard side. The other difference
5 between the ships is the El Yunque they're dogged, four separate dogs as opposed to a
6 hand wheel on the El Faro that engages the dogs.

7 **Mr. Fawcett:** So when you say dogged, how – on the one ship that has dogs, how do I
8 secure that hatch?

9 **WIT:** You're closing it and then you're, similar to what you would see on a watertight
10 door usually, with just the handle that you're rotating it to engage the dog onto the
11 wedge.

12 **Mr. Fawcett:** The other type of hatch or scuttle going down into the holds has a hand
13 wheel mechanism on it?

14 **WIT:** Correct. It essentially does the exact same thing except it's using the hand wheel
15 to close all four dogs at the same time rather than individually.

16 **Mr. Fawcett:** Is that hatch – is there a way if I look down at that handle that I can tell if
17 it's properly secured or not?

18 **WIT:** I'm not sure if there were any markings on that. I don't know.

19 **Mr. Fawcett:** How about the way that liquid cargo was carried aboard, was there a
20 difference in the two ships on how that was carried?

21 **WIT:** Yes, sir. The El Morro and the El Yunque had large tanks. Each of those tanks
22 would hold two railroad cars. And we had seven tanks on board the other ship, so that
23 would be the El Yunque. The El Faro did not have that capability and that's actually

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 why she was not brought into service sooner. With the addition of the new vessels the
2 plan for the new ships is we have 53 foot, basically like an ISO tank that is put down into
3 the cell guides and they're left there permanently, they can only be lifted on and off if
4 they're empty. But once they're in place, and they can be taken out if we had to do any
5 maintenance or repairs on them, but as long as they're down there they're pipped up to
6 the system. So they saw the possibility of being able to fabricate these tanks early
7 rather than later for the Marlins and go ahead and put them on the El Faro. So they had
8 six tanks built ahead of time, brought over and they were taken down and put two of
9 them in hold number 1. And these are – when I'm talking ISO tanks, these are the
10 standard tanks you'd see going over the road that are in a container frame, I think Phil
11 Morrell might have described this yesterday too. They're in a container frame and it's
12 for carrying bulk liquid over the road. But being these are 53 foot tanks, usually those
13 ISO's are only 40 tanks, being these are 53, same concept, but they would be too heavy
14 to handle once they're filled up. So we had those tanks were placed down, like I say
15 two of them in number 1 hold, and four in the number 2 hold basically in the same
16 positions as the other ships. And a lot of the pipe work and the pumps were moved over
17 from the other ships, we were able to salvage some of that from the El Morro before she
18 went out of service. So this allowed the El Faro, which was considered the better
19 condition vessel to be put back into service and take the El Morro assets.

20 **Mr. Fawcett:** Turning our attention again to the Chief Mate. What's your understanding
21 of the safety aspects of their job when it comes to loading the ship and maintaining the
22 stability of the vessel?

1 **WIT:** Well that is a big part of their job. They are the ones that oversee the loading of
2 the ship. They have to work closely and vice versa they have to work closely with the
3 stevedores in both ports and they also have to work with whoever is taking care of the
4 CargoMax, the stability program ashore. It's a real collaboration between those two.
5 And again this is one of our advantages of being on this run, two ports. You know the
6 same people are doing that every time as opposed to being on an international run or
7 something where they will similarly have the shore side people or the stevedore
8 companies or whoever doing that initial input to the systems. But here we have the
9 advantage, these people really know these ships very well. So that's my understanding
10 of how the Chief Mate has to work with that stability. Then he's given the program at
11 the end of the day and for him to review. I don't – I'm not real – very familiar with what
12 he actually does with that program as he gets it.

13 **Mr. Fawcett:** So the effectiveness of the Chief Mate and how the Chief Mate carries
14 out their duties and responsibilities is that a safety issue?

15 **WIT:** Yeah. I mean I think you could make that argument with just about any position
16 on the ship though. We're all about people doing their job. They're all dependent on
17 each other for sure.

18 **Mr. Fawcett:** Could you please turn your attention to Exhibit 5, page 54. And I do
19 apologize that the names have been redacted because at one point this exhibit was
20 under review for possible display. But It's an email from Jeff Matthias [sic] to Tim
21 Neeson.

22 **WIT:** You said Exhibit 5?

23 **Mr. Fawcett:** It's Exhibit 5 page 54.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** We only go to page 52.

2 **Mr. Fawcett:** Standby we'll make sure you have a copy of that.

3 **CAPT Neubauer:** Do the PII's have a copy of that exhibit?

4 **Tote Inc:** Is that the exhibit that has SV blocks?

5 **Mr. Fawcett:** That's correct. We'll have a copy of that for you in just a minute, sir.

6 **WIT:** Okay.

7 **Mr. Fawcett:** So this is Mr. Matthias [sic] the supervisor for the ongoing conversion
8 work. The date of the email is 8/31. Could you read the first line in that email?

9 **WIT:** We are on our third new Chief Mate this month and he is still trying to find the
10 mess deck. So I didn't even want to bother to ask.

11 **Mr. Fawcett:** So did anybody from the corporate side discuss with you like the
12 implication of the rotation of the Chief Mates on shipping operations?

13 **WIT:** No, sir, they didn't. From my background I seen this, I was amazed with this
14 operation down here to be honest with you where we keep the same people rolling over
15 and over again in and out of rotations. This is not unusual to have a regular turnover on
16 board ships. But especially with our new ships coming on board.

17 **Mr. Fawcett:** Okay. I would like to turn your attention to evaluations of personnel.
18 From the safety side have you ever been involved with evaluations of senior officers
19 such the Masters or Chief Engineer?

20 **WIT:** Yes, sir.

21 **Mr. Fawcett:** And was that ----

22 **WIT:** I'm sorry, not from the safety side, only from the Port Engineers. When I was a
23 Port Engineer I did evaluations.

1 **Mr. Fawcett:** I understand, thank you.

2 **WIT:** In the position I'm in right now I don't deal with evaluations.

3 **Mr. Fawcett:** Does Captain Lawrence as the repository of nautical expertise, does he
4 get involved with the evaluation of Masters?

5 **WIT:** Only in the sense that, again being a small office if there's issues with someone,
6 the word could usually get around. And having input as far as the evaluation.

7 **Mr. Fawcett:** At one point we were talking to a Chief Mate during our preparation for
8 these hearings and he said that he had to talk to Captain Davidson so he would lead
9 safety meetings for the El Faro. From a safety operation, you know your position a
10 Director of Safety, were you aware of that situation?

11 **WIT:** I did hear about that later. I was not aware of it at the time.

12 **Mr. Fawcett:** Can you characterize that?

13 **WIT:** You mean as far as what I heard about it?

14 **Mr. Fawcett:** Yeah, what you heard.

15 **CAPT Neubauer:** Can you characterize the concern that you heard.

16 **WIT:** Well I just heard that the Chief Mate had made it clear to the Captain that he is
17 supposed to be running those meetings. And he did start running the meetings after
18 that from what I heard. There's a lot of, lot of pluses to having a Captain who will
19 delegate, is willing to let people learn the systems, but apparently in that case it was
20 outlined that the Captain should be the one actually running the meeting. And once he
21 realized that he did do it.

22 **Mr. Fawcett:** And how long has Captain Davidson worked for Tote in the position as
23 Master?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** I believe since 2013.

2 **Mr. Fawcett:** Okay. I would like to turn your attention to the deviation voyage that took
3 place in late August. And if you'll turn your attention to Exhibit 4, page 59. That's
4 Exhibit 4, page 59. And what you should have in front of you is an email dated August
5 26th, 2015, am I correct on that?

6 **WIT:** August 26th, 2015.

7 **Mr. Fawcett:** Right. So it's from John Lawrence to the Captain and it's copied Mr.
8 Fisker-Andersen, Ms. Finsterbusch and the subject is Erika. It says, "good day Captain,
9 I realize you have been in various communications with Jim Fisker-Andersen and SSL
10 regarding plan/ops in preparation for Erika and I have been copied on the same.
11 However to ensure we are all on the same page and nothing is missed in the risk
12 assessments and action area, please send me a detailed email with your
13 preparations/avoidance plans and update daily until all clear. Thanks and regards,
14 John." What capacity was Captain Lawrence performing when he sent that email?
15 Was he performing the role of Designated Person Ashore or the Manager of Safety and
16 Operations?

17 **WIT:** I don't have an answer for that.

18 **Mr. Fawcett:** Were you aware that this message had been sent at the time it was
19 drafted and sent?

20 **WIT:** I was not.

21 **Mr. Fawcett:** So do you routinely see the departure messages for the El Faro?

22 **WIT:** Yes, I'm part of the distribution for those.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So on any given day who is directly responsible to monitor the departure
2 messages, arrival messages, and noon reports within your organization?

3 **WIT:** That would be the Port Engineer assigned to that vessel.

4 **Mr. Fawcett:** Could I find that in writing somewhere?

5 **WIT:** Umm, I don't know. We do have a list within our forms manual that shows the
6 format for these arrival reports, departure reports and noon reports. And along with that
7 there is a distribution list of who they're supposed to go to. But to answer your
8 questions, Mr. Fawcett, I don't know it does delineate a specific person or a specific
9 position for that.

10 **Mr. Fawcett:** On the accident voyage during that time frame you were working in the
11 office?

12 **WIT:** Yes, sir.

13 **Mr. Fawcett:** Did you happen to take a look at the departure message for the El Faro?

14 **WIT:** I usually do, but I can't specifically that I noticed that time.

15 **Mr. Fawcett:** It was unique in that in the bottom of the note section it said that
16 precautions were being taken for, I think it said observed for Joaquin. Did you catch
17 that note?

18 **WIT:** I don't remember that.

19 **Mr. Fawcett:** Do you know what that means?

20 **WIT:** Yes, sir.

21 **Mr. Fawcett:** What that note means?

22 **WIT:** Precautions are being taken for Joaquin?

23 **Mr. Fawcett:** Yeah.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Yes, sir.

2 **Mr. Fawcett:** And what does that mean for the El Faro?

3 **WIT:** That they know the storm is out there and they're prepping the ship as he
4 specified earlier where he had actual detail, that same idea. You're making sure your
5 lashing are done, your scuttles are closed, that everything is secured on board.

6 **Mr. Fawcett:** And for clarification I believe that may be from the noon report for the 30th
7 of September, but it is a note. Did you know what route that ship was on when that note
8 was added to that message?

9 **WIT:** I did not.

10 **Mr. Fawcett:** Thank you very much. I pass my questions over to Commander
11 Denning.

12 **CDR Denning:** I don't have any follow on questions on this particular line of topic.

13 **CAPT Neubauer:** Commander Odom, do you have any questions?

14 **CDR Odom:** Good afternoon. You had stated earlier that in the office arrangement
15 that you have you are very close to Mr. Lawrence in relationship to where you work.

16 **WIT:** Yes, sir.

17 **CDR Odom:** On the day of the departure was there any discussion in the office with
18 regards to Hurricane Joaquin?

19 **WIT:** Not that I remember.

20 **CDR Odom:** Okay. So you guys routinely do JSA's on board the ship, is that
21 something that's practiced?

22 **WIT:** Yes, sir.

23 **CDR Odom:** So would a JSA ever be required for a voyage plan?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** In my mind a voyage plan is a JSA.

2 **CDR Odom:** Okay.

3 **CAPT Neubauer:** Commander Odom, can you clarify the acronym please?

4 **CDR Odom:** I'm sorry, a job safety analysis. It's a risk analysis.

5 **WIT:** Yeah, that is like I say, in my mind that's exactly why you're doing that. You're
6 out there looking at the weather, you're looking at traffic, whatever the circumstances
7 may be and making the best – coming up with the best route to avoid those risks.

8 **CDR Odom:** So why would the vessel go south bound on the late August voyage and
9 do a voyage plan through the Old Bahama Channel for the hurricane in late August and
10 then choose to go the direction that they went for Joaquin?

11 **WIT:** I wish I could answer that question, sir.

12 **CDR Odom:** Does Tote use any type of a pre-departure checklist for the vessel?

13 **WIT:** Yes, sir.

14 **CDR Odom:** Is there anything different about the checklist that they do for if they were
15 departing for weather, is there one specific for weather?

16 **WIT:** No.

17 **CDR Odom:** So they would use the same departure checklist?

18 **WIT:** Right.

19 **CDR Odom:** Thank you.

20 **CAPT Neubauer:** Mr. Roth-Roffy, do you have any questions?

21 **Mr. Roth-Roffy:** Good afternoon, just a couple of questions. You mentioned when you
22 first joined Tote that the El Faro was laid up. Can you tell me if it was in deep layup or
23 was it in reduced operating status, or exactly what it's status was?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** You know I have to step back on that. She was still in service when I first came to
2 the company. It was shortly after that that it was laid up. And it went into a deep layup.
3 We took it up to Baltimore because of the hurricane season down here we couldn't find
4 a place where we could moor in Jacksonville, actually we weren't allowed to keep it in
5 port in Jacksonville during the hurricane season.

6 **Mr. Roth-Roffy:** And do you know if there was a crew maintained on board and if the
7 certification documents were maintained during the layup period?

8 **WIT:** There was not a crew on board. In fact we had cameras put on board as well as
9 remote alarms for bilges, intrusion and fire. The documents were, I can't speak to that
10 as far as how the documents were maintained. Because I know we – once we were
11 going to break her out we had to do our inspections and such. But I do not remember
12 how that worked.

13 **Mr. Roth-Roffy:** Do you recall how long that layup period lasted?

14 **WIT:** I would have to look back in the notes and see. It was a considerable amount of
15 time, but – and I think she was brought out once to take the ships place while we were
16 in shipyard and then put right back into layup.

17 **Mr. Roth-Roffy:** Companies have different safety management systems, they vary
18 slightly, would you agree to that?

19 **WIT:** This is probably the deepest I've been involved with a safety management
20 system. I quit sailing in 2003 and there wasn't the emphasis that there is now.

21 **Mr. Roth-Roffy:** Do you know if the company provides training to new crew members
22 or any refresher training to current crew members regarding the safety management
23 system?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Yes, actually we, we've, it's something we've initiated recently as far as a power
2 point presentation so that people understand exactly our system and how it's made up
3 and how defined things is. It's been very helpful.

4 **Mr. Roth-Roffy:** And you said recently, when was that?

5 **WIT:** It's been within the last two months.

6 **Mr. Roth-Roffy:** And prior to that time was any training provided to the crew member
7 on SMS?

8 **WIT:** It would have been training within the crew. In other words the Captain or the
9 Chief Mate or somebody else taking people through it. But this is a, it's a nice – it's a
10 nice way to have it now because it's the same for everyone. So there's some uniformity
11 to it.

12 **Mr. Roth-Roffy:** And about how long is that training period?

13 **WIT:** It's not real long. Actually I want to say it might be a half an hour or so. I'd have
14 to check on that though. I went through it, but I don't remember what the length of time
15 was.

16 **Mr. Roth-Roffy:** Thank you. That's all I have.

17 **CAPT Neubauer:** Mr. Kucharski.

18 **Mr. Kucharski:** Captain. Thank you. Mr. Peterson.

19 **WIT:** Captain.

20 **Mr. Kucharski:** Back to Exhibit 6, page 13, your job description.

21 **WIT:** Yes, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Kucharski:** It's going to be part of the way down. Probably be half way down the
2 page, three quarters of the way. It's the paragraph that starts with assist marine
3 operations. Do you see that?

4 **WIT:** Yes, sir.

5 **Mr. Kucharski:** Okay. And it say, and I believe this through the Manager of Marine
6 Operations, Manager of Marine Safety and Operations, not this particular duty. But it
7 says assist marine operations, Government, and commercial and coordinates with Port
8 Engineers ensuring that the cargo gear and deck equipment are properly repaired. Do
9 you see that?

10 **WIT:** I do see that.

11 **Mr. Kucharski:** Are you familiar with that process?

12 **WIT:** I am not. That is no longer part of duties.

13 **Mr. Kucharski:** It's no longer apart of your duties?

14 **WIT:** The duties for the ----

15 **Mr. Kucharski:** I'm sorry?

16 **WIT:** It's no longer apart of the duties for the Manger of Safety and Operations.

17 **Mr. Kucharski:** And where is duty delegated now?

18 **WIT:** I'm not sure, I don't know.

19 **Mr. Kucharski:** Who would I ask that question?

20 **WIT:** Possibly the Port Engineer.

21 **Mr. Kucharski:** Thank you. Do you know if any of the personnel on board were
22 provided company cell phones?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Yes, sir. The Captain and the Chief Engineer are provided cell phones. Currently
2 we also provide the Chief Mates with cell phones on the newer vessels.

3 **Mr. Kucharski:** Are any of those iridium cell phones?

4 **WIT:** No, sir, they're just regular cell phones.

5 **Mr. Kucharski:** Thank you.

6 **CAPT Neubauer:** Tote do you have any questions for the witness?

7 **Tote Inc:** No questions, sir.

8 **CAPT Neubauer:** ABS do you have any questions?

9 **ABS:** No questions, sir.

10 **CAPT Neubauer:** And Mrs. Davidson, do you have any questions?

11 **Ms. Davidson:** I have some questions. Mr. Peterson, going back to the conversation
12 between the Chief Mate and the Master as who was to run the safety meeting. Was
13 that the Chief Mate telling the Master that here at Tote since you're a new employee I
14 want to let you know that the Master is in charge of the safety meetings?

15 **WIT:** Umm, to that yes. Basically yes. That's the way I believe he phrased it to him.

16 **Ms. Davidson:** And once Captain Davidson realized what the rules were at Tote he
17 followed those rules, right?

18 **WIT:** Yes, sir.

19 **Ms. Davidson:** He was compliant with Tote's rules, correct?

20 **WIT:** Correct.

21 **Ms. Davidson:** If you had one to describe Captain Davidson, how would you describe
22 him?

23 **WIT:** Meticulous.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Ms. Davidson:** Thank you. No further questions.

2 **CAPT Neubauer:** HEC do you have any questions for the witness?

3 **HEC:** No questions.

4 **CAPT Neubauer:** Mr. Peterson I have one follow up question. Did you ever receive
5 any safety concerns or field concerns from the crew members of the El Faro or El
6 Yunque related to cargo loading and specifically the amount of cargo loaded?

7 **WIT:** No, sir.

8 **CAPT Neubauer:** Were there ever any discussions that cargo loadings should be
9 modified prior to a storm voyage?

10 **WIT:** Not to me, no.

11 **CAPT Neubauer:** Are there any follow up questions for Mr. Peterson? Mr. Fawcett are
12 we – do you have another line of questioning or is that?

13 **Mr. Fawcett:** That completes our line of questioning, sir.

14 **CAPT Neubauer:** Are there any – do the parties in interest have any concerns with the
15 testimony given by Mr. Peterson?

16 **Tote Inc:** No, sir.

17 **Ms. Davidson:** No, sir.

18 **ABS:** No, sir.

19 **CAPT Neubauer:** Mr. Peterson, we are now complete with your testimony for today.
20 However I anticipate that you may be recalled to provide additional testimony at a later
21 date. Therefore I am not releasing you from your testimony at this time and you remain
22 under oath. Please do not discuss your testimony or this case with anyone other than
23 your counsel, the National Transportation Safety Board or members of this Coast Guard

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 Marine Board of Investigation. If you have any questions about this, you may contact
2 my legal advisor, Commander Jeff Bray. Thank you, sir, for your testimony.

3 **WIT:** Thank you.

4 **CAPT Neubauer:** At this time we will take a 10 minute recess.

5 *The hearing recessed at 1554, 17 February 2016*

6 *The hearing was called to order at 1608, 17 February 2016*

7 **CAPT Neubauer:** The hearing is now back in session. We will now hear testimony
8 from Mr. Michael Kondracki, Director of Labor Relations and Risk Management for Tote
9 Services. Mr. Kondracki, please come forward to the witness table and Lieutenant
10 Commander Yemma will administer your oath and ask you some preliminary questions.

11 **LCDR Yemma:** Could you please raise your right hand, sir. A false statement given to
12 an agency of the United States is punishable by a fine or imprisonment under 18 U.S.C.
13 1001, knowing this do you solemnly swear that the testimony you're about to give will be
14 the truth, the whole truth and nothing but the truth, so help you God?

15 **WIT:** I do.

16 **LCDR Yemma:** Thank you, you can be seated please. Sir, can you please state your
17 name and spell your last for the record?

18 **WIT:** My name is Michael Joseph Kondracki, K-O-N-D-R-A-C-K-I.

19 **LCDR Yemma:** And counsel could you also state your please, and spell your last
20 name?

21 **Tote Inc:** My name is Jack Fornaciari, F-O-R-N-A-C-I-A-R-I.

22 **LCDR Yemma:** And Mr. Kondracki can you please state your employment and some of
23 your responsibilities in that position please.

1 **WIT:** Yes I would be delighted to. I work for Tote Services Inc. I'm currently the
2 Director of Ship Management and I oversee a portfolio of seven ships operating
3 internationally. At the time of the incident I was the Director of Labor Relations and Risk
4 Management. So I was more in charge of the HR and crewing aspects of the company.

5 **LCDR Yemma:** Could you describe some of your relative work history please?

6 **WIT:** Certainly. I graduated from the U.S. Merchant Marine Academy in 1988. I went
7 to go work for Lykes Brothers steamship company, I was recruited into their
8 management training program. I went through a series of working in a different
9 departments to learn how to operate a liner company so I spent time in operations, in
10 traffic and intermodal. So after leaving Lykes I had also worked for some other major
11 shipping companies such as intermarine, international ship holding and at the same
12 time I had also been a selective reservist in the Navy. So essentially I ended up
13 spending half of my time on active duty in the Navy or otherwise working in the
14 merchant marine. My time in the Navy had been as a program manager for the
15 merchant marine reserve program. And also working for the CNO on staff in N42 with
16 most of my time being as the branch head for sealift policy and programs.

17 **LCDR Yemma:** And what is your ---- I'm sorry.

18 **WIT:** And I was going to go into my educational level as well.

19 **LCDR Yemma:** Please, thank you.

20 **WIT:** So I have a Master's in business administration. I also have a Master's diploma
21 in national security studies and also in project management. I've had lots of different
22 professional types of training course under my belt as well. Such as six sigma training,
23 project management and internal auditing.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **LCDR Yemma:** Do you hold any licenses?

2 **WIT:** I am in process of renewing my officers license to the third assistant engineer.

3 **LCDR Yemma:** Thank you. The board will questions for you now.

4 **Mr. Fawcett:** Good afternoon Mr. Kondracki.

5 **WIT:** Good afternoon, sir.

6 **Mr. Fawcett:** All of my questions unless I note otherwise will relate to the time period
7 before the accident took place resulting in the loss of the crew and the sinking of the El
8 Faro. So if you have any time that you would like to take a break during your testimony
9 please let us know. And we're going to basically stick to exploring one broad topic and
10 that's your role as the Director of Labor Relations for the Tote Services organization.
11 Before they I – before they do that, I just want to talk about the risk management role for
12 just a minute so that I can understand what that role is.

13 **WIT:** Yes. So risk management was not taking a look to do a JSA on a voyage plan.
14 Risk management from that standpoint was more from handling crew injury claims.
15 From handling asbestos claims and also from handling certain insurance type of items
16 such as obtaining certificates of financial responsibility.

17 **Mr. Fawcett:** And for clarification, do you know if that's a substantially different
18 description of that role then what the risk management people would do at Sea Star
19 Line Inc., which I use the old name because it was in service at the time?

20 **WIT:** I really don't know.

21 **Mr. Fawcett:** The reason I bring that up is we talked about it in a previous exhibit that
22 there was a hurricane plan and they talk about the protection of people as their number

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 one priority. Do you get involved with the protection of the assets that Tote Services
2 has?

3 **WIT:** From a shipboard standpoint, no.

4 **Mr. Fawcett:** How about the protection of office infrastructure?

5 **WIT:** We have an emergency preparedness plan.

6 **Mr. Fawcett:** Do you get involved with reconstitution of the offices after a hurricane or
7 storm that would pass through this area?

8 **WIT:** Yes that's addressed in the emergency preparedness manual.

9 **Mr. Fawcett:** So that manual covers shore side operations, is that correct?

10 **WIT:** That is correct.

11 **Mr. Fawcett:** Does it cover shipboard operations?

12 **WIT:** No it does not.

13 **Mr. Fawcett:** So to set the stage, looking at the departure from Jacksonville on the
14 accident voyage, can you tell us once the El Faro was getting ready to depart
15 Jacksonville where were you and what were you doing in relation to your activities with
16 Tote?

17 **WIT:** I was working in Jacksonville that week. And going through my typical routine of
18 work.

19 **Mr. Fawcett:** And that entails what?

20 **WIT:** Well it varies from day to day depending on what kind of pop-ups may happen
21 during the day. And or what are the longer term projects. You know there's very rarely
22 any two days that are exactly alike in the shipping industry. A lot of times it just the
23 operational needs. And if somebody gets injured that needs immediate attention and

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 you put everything else on hold. I can't specifically tell you what I was doing on that day
2 that the vessel sailed. It really would not have been that significant to me because
3 ships are sailing everyday throughout the world. It's just one of many ships.

4 **Mr. Fawcett:** Could you have been involved during that time frame with the crewing
5 operations for the new Marlin ships and the decisions being made for them?

6 **WIT:** Yes, it would be very likely that I was paying attention to filling out the crewing.

7 **Mr. Fawcett:** So have you worked other positions within the Tote organization?

8 **WIT:** I have. I have been a Director of Ship Management. I was dealing with MSC
9 ships, with MARAD ships and with ARC ships.

10 **Mr. Fawcett:** And ARC what does that mean?

11 **WIT:** American roll on, roll off carriers. It's a shipping company that operates seven ro-
12 ro's internationally.

13 **Mr. Fawcett:** So who do you directly report to within Tote Services?

14 **WIT:** As the Director of Labor Relations and Risk Management I directly reported to
15 Phil Greene.

16 **Mr. Fawcett:** And who's your direct report?

17 **WIT:** I had the Crewing Manager, Melissa Clark, the HR Manager, Melissa Serridge.

18 **Mr. Fawcett:** And how long did Ms. Serridge work for you at Tote?

19 **WIT:** So I started as a the Director of Labor Relations on March 15th.

20 **Mr. Fawcett:** Of?

21 **WIT:** Of 2015.

22 **Mr. Fawcett:** Melissa Clark, her function is?

23 **WIT:** Melissa Clark is a Crewing Manager.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Do you know how many years experience she has in crewing vessels?

2 **WIT:** I believe over a decade.

3 **Mr. Fawcett:** Has she worked for other shipping companies?

4 **WIT:** Not that I'm aware of.

5 **Mr. Fawcett:** So walk us through, with regards to Labor Relations, what that job entails.

6 **WIT:** Well we have two main unions that we work with, the AMO, American Maritime
7 Officers Union, and also the SIU, the Seafarers International Union. The former being
8 our officers and the later being our unlicensed. So we have frequently interactions with
9 them on administration of our collective bargaining agreements, actually executing
10 collective bargaining agreements as we had issues perhaps with a crewman then it
11 takes interaction. Those types of items.

12 **Mr. Fawcett:** Do you rely on the judgement and input that Ms. Clark and Ms. Serridge
13 give you to perform the Labor Relations functions for Tote?

14 **WIT:** I would take it under advisement in part.

15 **Mr. Fawcett:** So when it comes to crewing decisions who makes the decisions?

16 **WIT:** The decision is made more from a, well let me back up a second. Depending
17 upon the level of the position being selected, typically the lower level positions we would
18 let the Crewing Manager pick. But when it comes to more senior officers then we pay a
19 lot more attention to the selection process and the selection process would typically be,
20 not the Crewing Manger or myself acting in a vacuum but instead we would be working
21 as a collective team so to speak or a panel where we would bring in the President, the
22 Vice Presidents, the Director of Marine Services, the Designated Person, the Crewing

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 Manager, myself and we would go through either an interview process and or other
2 relevant information that we had on the individual such as evaluations.

3 **Mr. Fawcett:** So the team would include the Designated Person?

4 **WIT:** Yes, sir.

5 **Mr. Fawcett:** Why would that be?

6 **WIT:** Because our Designated Person comes with a level of expertise as a Master
7 Mariner. So what we try to do is pull our subject matter expertise from everybody's
8 different backgrounds so that way we can make as much of an informed decision as
9 possible.

10 **Mr. Fawcett:** All right. So let's talk for a moment about the crewing the Marlin class
11 ships. Could you walk us through that process?

12 **WIT:** Sure. So when I started on March 15th the parameters had kind of already been
13 set that we weren't really considering the current PONCE class Masters. That two of
14 the Masters that had essentially been identified that was Captain Mare and Captain
15 Thompson. So I was getting into the game a little late. But when we were looking at
16 candidates for the Master and or Chief Mate sometimes the Masters, somebody could
17 have been sailing as a Master but we would still also would be considering him as a
18 Chief Mate. So once we reviewed their resume and most people gave the collective
19 thumbs up we would bring them in for an interview. So then we would have that panel
20 of all of those people as well as some folks from Sea Star Line, or Tote Maritime Puerto
21 Rico would be invited as well to participate. And then we would go through the
22 interview process. And then typically after the interview process is done we would have
23 time to have a follow up meeting to see on what people thought on the outcome.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So in the August time frame, September time frame of 2015, there were
2 a number of Chief Mates going aboard the El Faro and they were being evaluated for
3 potential positions within the company, is that correct?

4 **WIT:** Not fully correct. It was more or less twofold, one was since Chief Mates from the
5 PONCE class had been selected for going up to be the Master on the Isla Bella they
6 had to go out to San Diego to help with prepping the ship for delivery. So that left a
7 vacancy so to speak that needed to be filled. So when we were looking to fill those
8 positions we were also trying to take advantage of candidates that we thought were
9 going to possibly be moving on to the new ships. So there was a combination of the
10 two items.

11 **Mr. Fawcett:** Did you have a ready pool of people to fulfill relief positions on board the
12 El Faro during, say the summer of 2015?

13 **WIT:** We didn't seem to have any shortage of individuals and the union at the same
14 time would have been able to supply just in case somebody had gotten sick or
15 something like that. That's the benefit of having a union. They have a national job call
16 board. So that's another available resource.

17 **Mr. Fawcett:** So Captain Stith came aboard the El Faro and served as a Chief Mate for
18 a short period time, is that correct?

19 **WIT:** Yes he did.

20 **Mr. Fawcett:** Where did he come from?

21 **WIT:** He was serving as the Chief Mate, which becomes the master upon activation on
22 the, I believe it was the Bellatrix in New Orleans, one of the MARAD ships.

23 **Mr. Fawcett:** Does the Bellatrix routinely conduct voyages on the ocean?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** No, it's in a reduced operating status. So it doesn't on a regular basis, they go
2 through turbo activations, but that vessel had also recently gone to dry docking so she
3 was underway at least within the last year.

4 **Mr. Fawcett:** So in the case of the Bellatrix how much time in the last year before you
5 brought Captain Stith aboard was it underway? Can you just give me an idea?

6 **WIT:** Yeah it was probably one week to the dry dock, one week back, something along
7 those lines.

8 **Mr. Fawcett:** So Captain Stith was brought aboard the El Faro and he spent how many
9 weeks as Chief Mate?

10 **WIT:** I don't recall off the top of my head, but I think he came on for a very short period
11 and then came back on for approximately a two week period and then he was moved
12 over to the El Yunque.

13 **Mr. Fawcett:** How was his evaluation for retention within the company conducted?

14 **WIT:** I'm really not certain if you're asking you know anything prior to March 15th. I
15 don't know. I can tell you about his interview and how that went.

16 **Mr. Fawcett:** Okay. So he went aboard, he went aboard the El Faro, served in the
17 capacity as Chief Mate. Who after that service evaluated his competency and
18 performance?

19 **WIT:** Well we had feedback from the Port Engineer, the Director of Ship Management,
20 those were our main sources.

21 **Mr. Fawcett:** Okay. So what they did was they evaluated him in his capacity as Chief
22 Mate, is that correct?

23 **WIT:** That's what he was sailing as, so yes, of course.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** And what happened next with Captain Stith?

2 **WIT:** Then he was put as the Master of the El Yunque.

3 **Mr. Fawcett:** So he went to sail as Master of the El Yunque after a short evaluation as
4 Chief Mate aboard the El Faro, is that correct?

5 **WIT:** I wouldn't put it in such a tight context. He had been sailing, or he had been
6 assigned as our Master on the Bellatrix, so he was already familiar with our safety
7 management system, how our payroll system worked, so it wasn't like we just pulled
8 him, put him on for a couple of weeks and made him the Master.

9 **Mr. Fawcett:** Where is Captain Stith serving now?

10 **WIT:** I believe he's actually sailing as Master on the Perla Del Caribe.

11 **Mr. Fawcett:** And for clarification that's one of the new construction ships?

12 **WIT:** Yes, sir, that's the second of the two dual fueled LNG ships.

13 **Mr. Fawcett:** Okay. If you could take us through the Captain Davidson's story as it
14 related to his position on board, for potential position aboard the Marlin class ships.
15 Just in general terms could you walk us through how that went?

16 **WIT:** So approximately May 12th I actually went to inform Captain Davidson that he had
17 not been selected, I wanted to inform him in person. Captain Davidson was a
18 consummate professional and took what I would consider not welcome news very well
19 and we had a discussion about him remaining on the El Yunque and he had even
20 mentioned the fact that he had Alaskan experience. So that was good to hear. And
21 then the next event that had essentially happened is that our senior leadership wanted
22 to bring Captain Davidson in for an interview and be reconsidered. So sometime in July
23 Captain Davidson came to the office in Jacksonville, was interviewed by the panel with

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 the same folks that I had described before, the President, the Vice Presidents, the DP,
2 Director of Marine Services, myself, Crewing Manager, Mr. Nolan had been invited and
3 Mr. Wagstaff from Tote Maritime Puerto Rico and we conducted the interview. So after
4 conducting the interview approximately on August 4th we reconvened the panel to have
5 a follow on discussion the merits of the interview with Captain Davidson. The general
6 consensus coming out of it was that Captain Davidson would be a good Master, but just
7 like with anybody else we wanted to work towards continual improvement and maybe
8 say, have – offer some constructive criticism on maybe things we thought that we would
9 like to see him you know work on or develop just like we all do in our normal daily lives
10 and jobs. So the panel, one of the Vice Presidents then went to Phil Greene as a follow
11 on and said you know we made a consensus, we think that Captain Davidson should be
12 selected. And then that was presented to Phil Greene and then when Phil had actually
13 made arrangements to go notify, that was the – sometime in August. Just before Phil
14 was going to go out to the vessel and notify Captain Davidson, myself and Melissa
15 Clark had just wanted to reiterate to Admiral Greene that there was an item, I
16 specifically wanted to call it an item that really like them to make sure that he's enforcing
17 a zero tolerance policy. And then Phil had to – I provided some additional information
18 and things were just kind of put on hold after that.

19 **Mr. Fawcett:** Zero tolerance policy?

20 **WIT:** No alcohol policy on board the ships.

21 **Mr. Fawcett:** Could you elaborate?

22 **WIT:** Uh, yes there was an incident that happened where there was a, and this all was
23 second hand, I didn't have all the facts, but allegedly there was an incident where a

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 crew member down in Jacksonville came back to the El Faro with some level of alcohol
2 and the Captain, you know refused to allow him back on board the ship and, you know
3 until he sobered up. Like I said I'm dealing with some imperfect information, I like to
4 deal only with facts that I can prove. And that was one of those things where it was a
5 little bit of a gray area because theoretically the sailor was not back on board the ship,
6 so one could argue that the policy was enforced, but then one could also say none of
7 our sailors should be consuming alcohol. So after informing Admiral Greene on that,
8 you know he informed me that I should just put everything on a stand still as a result of
9 that information as it pertained to Captain Davidson.

10 **Mr. Fawcett:** And was this documented anywhere?

11 **WIT:** It was not documented, it was all verbal second hand information. That's how I
12 had gotten it.

13 **Mr. Fawcett:** There was another incident that occurred regarding some repairs that
14 were done on forepeak, are you familiar with that event?

15 **WIT:** I became familiar with it after the incident.

16 **Mr. Fawcett:** Were you aware – what time frame are you saying after?

17 **WIT:** Umm, I really can't remember if it was before October 1st or after October 1st, but
18 the time frame that I believe the incident you're referring to happened in January. I
19 started in that role in March 15th. So it happened prior to me coming on watch so to
20 speak. But yes I had been made aware of the incident about a welding repair.

21 **Mr. Fawcett:** That's correct.

22 **WIT:** Right.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So was it May that you said that Captain Davidson was not going to be
2 selected for the Marlin class ships?

3 **WIT:** The decision had been made, it was approximately May 12th, but I want to say I
4 went to the ship to notify him in person as a professional curtesy instead of just giving
5 him a call or an email.

6 **Mr. Fawcett:** You don't know the reason why?

7 **WIT:** The decision had – when I came in the decision had already been made that the
8 parameter that we were working with was look outside of the current PONCE Masters.

9 **Mr. Fawcett:** So I would like to shift your attention for a moment to how the unions
10 provide crew persons for the El Faro. How does it work?

11 **WIT:** Oh you're asking me, okay. For the senior officers once they become assigned to
12 the ship they go through a probationary period. They essentially become permanent to
13 the vessel. So say Captain Davidson was considered permanent to the El Faro. For,
14 and that goes for the Captain, the Chief Mate, the Chief Engineer, the First Assistant
15 Engineer. The other positions, officer positions, those can be called into the union and
16 they will fit them and there's no guarantee of permanency. There's also a permanency
17 for the certain unlicensed positions as well for the top three. Then all the rest, once
18 again kind of go to a job call board, but they sometimes tend to get some level of
19 frequency in returning back to the vessels.

20 **Mr. Fawcett:** So if a seafarer on board the ship has a grievance, they're all union
21 employees, how is that handled?

22 **WIT:** In the CBA or the collective bargaining agreement there's a clause which outlines
23 a grievance process. So typically you've got a limited amount of time that the individual

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 has to claim a grievance, at least with officers, it typically needs to be done before they
2 depart the vessel, should be in writing, and then there's a process that they go through
3 where the two parties try to get the facts, get the resolution. If they don't come to a
4 resolution then they go to potentially arbitration as a worst case scenario.

5 **Mr. Fawcett:** So you mentioned a probationary period for senior officers, is that
6 correct?

7 **WIT:** Yes, sir.

8 **Mr. Fawcett:** How long is that?

9 **WIT:** I want to say it's 90 days.

10 **Mr. Fawcett:** So looking at seafarers on board the El Faro, does everyone that sails on
11 board the El Faro in any capacity including passengers have access to the, and the
12 ability to call the Designated Person ashore?

13 **WIT:** Yes.

14 **Mr. Fawcett:** How about, is there some kind of ethics line or 1-800 number that people
15 can call?

16 **WIT:** So when one goes on board any of our ships there's a placard on board that says
17 here's the number for the Designated Person. Now they're supposed to be getting
18 trained that that Designated Person, you know you can call that number without any
19 retribution. It goes to, directly to the Designated Person. That Designated Person has
20 direct connectivity or reporting authority to the President of the company. The person
21 calling in can remain anonymous if they want. So it's there to help encourage the guys
22 out on the ship for a safe environment and don't be afraid to call in if you see something
23 wrong.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Is that part of the orientation briefing?

2 **WIT:** I believe it is covered, absolutely.

3 **Mr. Fawcett:** Do you know if the Polish ship riding gang got that orientation on role of
4 the DPA?

5 **WIT:** I have no way of knowing, sir.

6 **Mr. Fawcett:** Is that a labor issue?

7 **WIT:** Those Polish workers weren't part of the typical crew. They weren't, you know
8 part of the SIU, they weren't part of the AMO. You know they came on as a riding gang
9 as supernumeraries. I just don't know.

10 **Mr. Fawcett:** If you'll turn your attention to Exhibit 5, page 52. I'm looking at an email
11 dated 8/10/2015 and it's from you and it's sent to Phil Greene and Melissa Clark. It
12 might be the last page in that series.

13 **WIT:** Page 54 we're getting close. Sir, which is it again?

14 **Mr. Fawcett:** It should be Exhibit 5, page 52 entitled crew assessment.

15 **Tote Inc:** We have page 52 of Exhibit 5.

16 **WIT:** It's crew assessment of issues.

17 **Mr. Fawcett:** Yes, correct.

18 **WIT:** Okay.

19 **Mr. Fawcett:** Can you talk about what prompted you to draft that email?

20 **WIT:** Yes. Admiral Greene had requested to see if there was trends amongst any of
21 the ships or the between the different unions. So that way if we notice any trends then
22 we could take action on them.

23 **Mr. Fawcett:** That last two lines of the correspondence, could you read them allowed?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** The El Faro has a cluster so far in 2015 so we will have to monitor this ship
2 closely. Blue circle in the attached.

3 **Mr. Fawcett:** And it should say, another thing.

4 **WIT:** Best regards, Mick.

5 **Mr. Fawcett:** Doesn't it say, another thing is that the incidents vary in nature from
6 unsanitary kitchens to violent actions.

7 **WIT:** Not the one I'm looking at.

8 **Mr. Fawcett:** Okay, I think it's, yes if you will look in the attachment, I'm sorry, pardon
9 me. Yeah, if you'll look to the top of that exhibit, last sentence.

10 **WIT:** Okay, I see it.

11 **Mr. Fawcett:** Does it say that?

12 **WIT:** It says another thing is that the incidents vary in nature from an unsanitary kitchen
13 to violent actions period.

14 **Mr. Fawcett:** Okay. So why would the situation on the El Faro have to be monitored
15 closely?

16 **WIT:** Because there was an incident where there was something violent in nature and I
17 don't remember every detail of every little thing that was put on in this spreadsheet. I
18 would have to go back and refresh my memory.

19 **Mr. Fawcett:** Okay.

20 **WIT:** As you can see there's, I mean there's numerous incidents over a period of time.
21 I just don't remember them off the top of my head.

22 **Mr. Fawcett:** Okay. So how do you, how does your role as labor relations fit in to the
23 assessment of the evaluations of senior officers?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Are you asking me about the evaluation process for the senior officers?

2 **Mr. Fawcett:** Yeah, how does your role fit in with the evaluation of senior officers?

3 **WIT:** Well the process for the evaluation is that the, in October is supposedly the
4 evaluation month. Our Port Engineers complete a form that's in our SMS. That form
5 after he completes it is then given to a Director of Ship Management who is assigned to
6 those vessels. That Director of Ship Management will overlay his comments and marks
7 on top of the Port Engineer's and then after is completed it will typically go to the Vice
8 President in charge of those vessels for a final review. Then after that's approved the
9 document is provided back to the crewing manager, for the crewing manager to then
10 send it to the individual officer that had been evaluated so that way they can provide
11 comments and sign it. That's the process.

12 **Mr. Fawcett:** And who's responsible for the completeness and thoroughness of those
13 evaluations to make sure that they're done in a timely fashion, that they're complete,
14 and that they're assembled for the individuals that are supposed to be evaluated?

15 **WIT:** I would imagine it's probably several people. The people involved in that chain
16 and the person who is in charge of HR at that time.

17 **Mr. Fawcett:** Who's ultimately responsible?

18 **WIT:** I mean you could always say the top guy is ultimately responsible, but you know
19 from an actual process standpoint the most senior person that probably looks at them is
20 the Vice President.

21 **Mr. Fawcett:** So why aren't there evaluations for Captain Davidson as Master?

22 **WIT:** I wish I knew. It was before my time, sir.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So how can the Port Engineer evaluate the competence of a Master in
2 nautical operations?

3 **WIT:** My personal opinion, I don't know if he can without actually having sailing with
4 him. There's many different – the form goes through many different attributes and
5 they're graded on those many different things. But you know the technical competency
6 from when you say a nautical standpoint, if you're asking like navigation or something
7 like that, typically by the time somebody's a Master mariner they've been sailing for a
8 while, they've gone through a vigorous amount of studying and series of examinations
9 to show proficiency.

10 **Mr. Fawcett:** So how does Tote constantly reassess their competency for command?

11 **WIT:** Are you talking about an overall standpoint, or from specifically the nautical part?

12 **Mr. Fawcett:** For command of a Tote vessel.

13 **WIT:** Well the evaluation process is supposed to be, you know the major mechanism
14 for it.

15 **Mr. Fawcett:** I'm about to wrap up. But I just have a question about Exhibit 5, page 36,
16 if you turn to that please. Do you see that exhibit in front of you? We're looking at an
17 email from Ms. Melissa Clark to Phil Morrell and Mick Kondracki. It's dated July 30th,
18 2015. Subject line, promotion of Steven Shultz.

19 **WIT:** Yes I do see it.

20 **Mr. Fawcett:** Okay. If you'd read the last full paragraph that starts with, "I'd like"?

21 **WIT:** I'd like to offer the Chie Mate El Faro position to him immediately so he can
22 prepare to return to work as early as next week. We can brief him on the divide and
23 conquer plan with regards to the crew cooperation, etc. before he joins.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** So this was written on July 30th, can you explain to me what the divide
2 and conquer plan is?

3 **WIT:** Bear with me, sir. Let me read the entire email, I may have a better
4 understanding.

5 **Mr. Fawcett:** Oh you can read the whole thing aloud if you like.

6 **WIT:** The demotion of Jaime Torres has left us short a Chief Mate on the El Faro. El
7 Yunque, 2/3, okay, Steve Shultz is home on vacation, relieve Ray Thompson. Phil as
8 you may remember Steve was Chief Mate on the Great Land from 2005 – I'm really not
9 100 percent clear. And I don't – I'm really not 100 percent clear on what is meant by
10 that besides taking available assets to fill open gaps.

11 **Mr. Fawcett:** So the – with regards to crew cooperation, does it mean anything to you?

12 **WIT:** Like I say, I'm not 100 percent clear on what that means. It may have something
13 to do with Jamie Torres being – as a result of us having taken action to remove Jaime
14 Torres from that vessel.

15 **Mr. Fawcett:** I don't have any more questions. I thank you very much for your candor,
16 sir.

17 **WIT:** Thank you.

18 **Mr. Fawcett:** I'll pass it over to Commander Denning.

19 **CDR Denning:** Good afternoon. If you would in your exhibit binder flip to Exhibit 47.

20 **WIT:** Okay.

21 **CDR Denning:** Is that the Tote Services org chart?

22 **WIT:** Page 1 is not.

23 **CDR Denning:** Yeah, if you could go to page 9 please.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Okay, got it.

2 **CDR Denning:** When Mr. Fawcett started you mentioned that you're currently the
3 Director of Ship Management, you were previously the Director of Labor Relations and
4 Risk Management. I'm looking at the box titled Directors of Ship Management. I would
5 like you help us understand just the role of that position there as it relates to the
6 individuals at this time on March 31st, the date of this particular document. And maybe
7 how that's changed since you went into the Ship Management position. And the reason
8 I ask this question is just to help us clarify some of the lines in this particular document.
9 Some of them overlap, it's a little bit challenging to understand the roles and
10 responsibilities. And particularly what I see here is Directors of Ship Management and
11 that position at that time report to the Vice President of Marine Ops Government. And I
12 see a lot of MARAD language beneath there. Is this particular to the Government ships
13 only, does it also ----

14 **WIT:** I'll take a crack at it Commander.

15 **CDR Denning:** Thank you.

16 **WIT:** Okay. So the Directors of Ship Management are assigned to a group of ships.
17 So Mike Roberts has the MARAD ships, Dennis O'Meara has the Military Sealift
18 Command ships, I had the ARC ships, the American roll-on roll-off ships. I was
19 essentially dual hatted during that time frame. So I did have responsibilities to also
20 oversee certain responsibilities as a Director of Ship Management like the other ones.
21 At the same time I was also executing the Director of Labor Relations job duties. So I
22 guess theoretically I could have been, you know dotted line and put in both places.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CDR Denning:** So has there been a big shift in your responsibilities then since that
2 time, or has it mostly been a title change?

3 **WIT:** Well, I'm now 100 percent focused back on my Director of Labor, excuse me,
4 back on my Director of Ship Management duties. And I can also spend more time on
5 back filling some other items in operations as well.

6 **CDR Denning:** And then shifting focus to the vessels such as the El Faro and the El
7 Yunque, I see also on this organization chart towards the very middle of the page I see
8 Sea Star PE which I believe stands for Port Engineer. I see ---

9 **WIT:** Yeah, and Commander while I'm catching it I should have also mentioned that the
10 other Director of Ship Management is Mr. Jim Fisker-Anderson who has the Tote
11 Maritime vessels. He just wasn't neatly in that same box. But he's the other director.

12 **CDR Denning:** So it's sort of a dividing line between the Government ships and the
13 commercial ships?

14 **WIT:** Yes, precisely.

15 **CDR Denning:** Thank you.

16 **WIT:** You're welcome.

17 **CDR Denning:** You said that when you came aboard you were told that the decision
18 had been made by upper management not to offer any of the positions, the Master
19 positions on the Marlin class ship to any of the existing Masters on the PONCE class
20 ships. Did they – did management inform you at that point why that particular decision
21 had been made?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** You know that train had already left the station, I didn't really see the point. I
2 really don't even want to speculate on it. When I walked in I was given parameters and
3 I took that at face value and just moved forward.

4 **CDR Denning:** Right. I'm not asking you to speculate, I'm just asking did they inform
5 you any particular reasons?

6 **WIT:** No.

7 **CDR Denning:** Any general reasons?

8 **WIT:** Wanted to move in a different direction, is maybe like the only thing I can recall.

9 **CDR Denning:** And did they say what that direction was?

10 **WIT:** Well just to look outside for other candidates.

11 **CDR Denning:** Is that indicative of any issues with the existing candidates?

12 **WIT:** I don't think so. Because, you know after having met those Masters on those
13 ships there's some pretty high caliber Masters. It was probably more of a, you know like
14 I say I don't like to speculate, but maybe just you don't know what you don't know
15 unless you look outside.

16 **CDR Denning:** That concludes my questions. Thank you.

17 **CAPT Neubauer:** Mr. Roth-Roffy.

18 **Mr. Roth-Roffy:** Good afternoon Mr. Kondracki.

19 **WIT:** Good afternoon, sir.

20 **Mr. Roth-Roffy:** I'm Tom Roth-Roffy, NTSB. Does Tote, TSI have a training program
21 that requires licensed officers to complete training beyond that is required by the Coast
22 Guard? For example additional proficiency enhancement skills.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Yes, sir. They do on board training. And that on board training has various
2 different safety topics, they go over procedures, you know equipment demonstrations.
3 And they – the Captain will document when that was completed and that will be sent in
4 on a quarterly basis to the Manager of Safety and Marine Operations.

5 **Mr. Roth-Roffy:** What about the courses offered by the union schools, are those
6 required or offered to crew members aboard vessels?

7 **WIT:** We encourage them to take any additional training. But we feel there is a decent
8 level of insured training because when an officer is going to either renew or upgrade
9 their license, typically their STCW requirements enforce them to take refresher training
10 such as bridge resource management every time they do a renewal or an upgrade. So
11 the process kind of self-enforces itself to a high level to meet all of the international
12 standards. And then if there's some additional items such as the LNG training or
13 something of that nature that is not required by a STCW requirement, yes we
14 encourage it, if not required.

15 **Mr. Roth-Roffy:** If a crew member desires to, the ship's officer desires to take that
16 training are they required to do it on their vacation time or is it done on company time?

17 **WIT:** Well for instance like the LNG training for our new ships, we put their time on our
18 nickel because we're saying if you want to sail on those ships then you have to take the
19 course so we pay for them. Now if there was some other course, typically they would
20 pay for it but they could always come to us and ask us if we would consider it.

21 **Mr. Roth-Roffy:** So for example ship handling that would be on the crew member's
22 initiative to pursue that sort of training and to pay the cost of that?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Yeah, I'm, the short answer is yes, but I don't know if they actually have out of
2 pocket expenses because that's part of their union dues from what I understand, is that
3 they get certain tuition and room and board and feeding provided to them.

4 **Mr. Roth-Roffy:** You've spoken already a little bit about the performance evaluation
5 process. Is there an actual instruction procedure or directive that specifies how the
6 performance evaluation program works at Tote?

7 **WIT:** The form itself actually has the instructions on how to execute it. I'm not aware
8 located outside of that, but it's very self-explanatory. It's not open for a lot of
9 interpretation.

10 **Mr. Roth-Roffy:** We yesterday spoke about a partially completed evaluation form for
11 Captain Davidson. Do you know where that form was located that was provided to the
12 investigation team? Was it filed in a HR filing system or was it held by one of the
13 persons that was responsible for moving it along, or do you have any information about
14 that?

15 **WIT:** Not 100 percent certain, but I think it was – knowing about it, it was somewhere
16 lost on the hand off between the Port Engineer and the Director of Ship Management.
17 Because it had been executed at least by the Port Engineer.

18 **Mr. Roth-Roffy:** You say that no one person is responsible for moving these
19 evaluations through the system, that it's up to each person within the system to manage
20 the process, is that correct?

21 **WIT:** The most senior person that that's signature is on board from what I remember is
22 the Director of Ship Management. So if that person signs it I guess you could have
23 responsibility there, but at least on this, the one and only round that I have been really

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 involved in after the Director of Ship Management did execute the document it was
2 submitted to a Vice President for approval before being sent back to the crew member.
3 And I like the idea of having a single point of contact for accountability. Maybe that's
4 something we'll look at.

5 **Mr. Roth-Roffy:** And returning to the discussion about the incident that occurred
6 related to zero tolerance, you mentioned that you and the crewing manager both had
7 information that was second or third hand. And a judgement was made to put on hold
8 the selection of Captain Davidson for the Masters position. Is that correct? Did I
9 summarize that correctly?

10 **WIT:** It was pretty close, sir. We were dealing with imperfect facts. We had gotten it,
11 you know through the information from a Chief Mate. As far as I know there was no
12 alcohol test rendered. So we're really dealing with a lot of incomplete facts and there
13 was no way of going back in time trying to get them. And ----

14 **Mr. Roth-Roffy:** So did you consider speaking with Captain Davidson about the
15 incident and see, you know what information he could provide before the decision?

16 **WIT:** Yes. But I did not. That was one of those parts of the constructive dialogue to
17 have going forward.

18 **Mr. Roth-Roffy:** That's all I have for now.

19 **Ms. Bell:** Good afternoon.

20 **WIT:** Good afternoon.

21 **Ms. Bell:** So just to follow up on one of the questions that Mr. Roth-Roffy mentioned. I
22 believe you mentioned earlier that in the evaluation process the senior shipboard
23 personnel evaluation process is captured in SMS? Did you say that?

1 **WIT:** It's a form inside of our safety management system, or ISM system.

2 **Ms. Bell:** Okay, but no instruction aside from that form itself?

3 **WIT:** That's correct. That's my understanding.

4 **Ms. Bell:** And I wanted to go back to one particular email, I'm sorry I don't have the
5 exhibit number in front of me, you talked about it a little bit before. The email from
6 Melissa Clark stating reasons why Captain Davidson should not be recommended for
7 the new ships. It appears as though there was a list of issues that were of concern at
8 least to Ms. Clark. Were those issues that she had previously discussed with you?

9 **WIT:** We had some discussion on it. A lot of those were just her opinion and so I take
10 into account the facts that, you know I have to work with, my own personal dealings with
11 the Captain. So I would only take that into consideration, not as a definitive direction to
12 go.

13 **Ms. Bell:** Thank you. And I didn't – I was informed that I need to identify myself. I'm
14 Carrie Bell with NTSB. So along the same lines, Mr. Greene had mentioned that he
15 characterized Captain Davidson as eminently qualified to become Master of the new
16 vessels. What is your thought on that?

17 **WIT:** I concur. Captain Davidson had been sailing as Master as far back as I know is
18 2008 with Tote, or Tote managed vessels. And then he was sailing on the Sea Star
19 Line ships since 2013. Nothing speaks better than having been there done that. When
20 I had met him I thought the Captain was very professional. I thought he did well in his
21 interview. I thought he was absolutely competent.

22 **Ms. Bell:** And he also mentioned that that content of that email was overly emotional,
23 according to Mr. Greene. Would you characterize that email as being overly emotional?

1 **WIT:** That may be a fair assessment. Like I say, I like things to be based upon facts.
2 Without seeing facts to substantiate that, you know that is more or less one person's
3 opinion.

4 **Ms. Bell:** And related to going back and reassessing the decision to not hire Captain
5 Davidson on the new ships, what were your thoughts about having – you made a
6 decision and then you went back and had to reassess that, do you have any thoughts
7 on that?

8 **WIT:** I thought he still could have been selected if it was up to me.

9 **Ms. Bell:** And you had planned for going forward with this constructive feedback?

10 **WIT:** Yeah. There's no such thing as a perfect person. What I'm looking for is
11 qualities, you know in leadership, in character, and you know he certainly had the right
12 qualities and you know if you can help somebody develop into a better leader, a better
13 manager, yeah that's part of what we do. Is try to help each other get better.

14 **Ms. Bell:** Is there a reason you wouldn't put that in some kind of a record so that you
15 have that to go back to and make a plan?

16 **WIT:** Well, I mean that kind of thing maybe would have come about during the
17 evaluation process. But no, I think sometimes verbal is the best way to go because
18 you're dealing with senior people. It's not like he's a junior guy. He's a very seasoned
19 person, so having a two way, you know professional dialogue is completely normal.

20 **Ms. Bell:** Talking about, you were talking earlier about the Chief Mate who had
21 reported the alcohol issue, incident and it was just hearsay. What are your thoughts on
22 open communication between the crew and management?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** Well I think at the time of the incident that's when it should have been addressed.

2 And that's when I'll go back to the Designated Person that would have been the proper
3 mechanism for addressing the issue real time so that way the facts could have been
4 gained then.

5 **Ms. Bell:** So was that part of the problem, was it not addressed immediately?

6 **WIT:** Yes, because there was no way of going back and doing a drug and alcohol test
7 etc.

8 **Ms. Bell:** So if there's a problem between, say there's a problem on board between the
9 crew and the Captain or various crew, how does that, if there's a complaint or
10 something like that, how does that get flowed up to you? Or does that come all the way
11 up to you?

12 **WIT:** The Designated Person would take the call, take the email, assess the situation,
13 every situation would be different, try to get the facts at hand and then depending upon
14 what the issue was he would possibly go directly to the President of the company for
15 counsel and maybe to our legal counsel, depending upon what the situation is.

16 **Ms. Bell:** I'm going to switch gears a little bit here. I don't know if there are other
17 questions from the board, so this is specifically related to right before departure, or
18 before they departed on September 29th. Did you have any contact with Captain
19 Davidson within the days prior to departure?

20 **WIT:** Not prior to departure that I can remember.

21 **Ms. Bell:** When was the last time you had contact with him?

22 **WIT:** I had – the day before the vessels was lost.

23 **Ms. Bell:** Was that a phone conversation?

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **WIT:** No, excuse me. I contacted the Captain to see if he needed time off because he
2 had backfilled – and he came back ----

3 **CAPT Neubauer:** Mr. Kondracki I recommend we take a 5 minute recess at this time.

4 **WIT:** Thank you.

5 *The hearing recessed at 1709, 17 February 2016*

6 *The hearing was called to order at 1715, 17 February 2016*

7 **CAPT Neubauer:** All right. The hearing is now back in session. Ms. Bell can you
8 continue with the line of questioning please?

9 **Ms. Bell:** Thank you. Mr. Kondracki.

10 **WIT:** Yeah, so thank you for the quick break. So my correspondence with the Captain
11 was I wanted to see if he needed to get time off and he responded to the fact that no he
12 wanted to stay on board so he could be home for his 25th wedding anniversary.

13 **Ms. Bell:** Can you just clarify for me, was this a telephone conversation?

14 **WIT:** Email.

15 **Ms. Bell:** Email, thank you.

16 **WIT:** But you know that just shows what a great guy he was.

17 **Ms. Bell:** I only have a couple more questions then I'm finished.

18 **WIT:** Sure, go ahead.

19 **Ms. Bell:** So your department handles personnel files and training records, correct?

20 **WIT:** Yes.

21 **Ms. Bell:** Are audits ever conducted on your files to ensure they're up to date?

22 **WIT:** Not that I'm aware of.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Ms. Bell:** When you look at the performance evaluations, do you use those for
2 anything?

3 **WIT:** Yes. Whenever we're looking to hire or promote somebody to a higher position,
4 one of our best ways or tools that we have at hand is looking at prior evaluations to see
5 how they scored, look at meaningful comments that are put inside there. That really
6 gives us true insight of a trend in performance.

7 **Ms. Bell:** You mentioned earlier that sometime – when you're hiring and or promoting,
8 you were talking specifically about the LNG ships you will interview or, and or review
9 performance evaluations. Do you ever hire without doing formal interviews?

10 **WIT:** Not that I'm aware of.

11 **Ms. Bell:** That's all the questions that I have.

12 **CAPT Neubauer:** Does Tote have any questions?

13 **Tote Inc:** No questions, sir.

14 **CAPT Neubauer:** Does ABS have any questions?

15 **ABS:** No questions.

16 **CAPT Neubauer:** Does Mrs. Davidson have any questions?

17 **Ms. Davidson:** No, thank you.

18 **CAPT Neubauer:** Does HEC have any questions?

19 **HEC:** No questions.

20 **CAPT Neubauer:** Good afternoon Mr. Kondracki. I just have a few questions.

21 **WIT:** Yes, sir.

22 **CAPT Neubauer:** Sir, you mentioned in July that it was decided that Captain Davidson
23 should get an interview. And the general consensus was that he would be a good

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 Master. You also mentioned at that time that you were going to provide constructive
2 criticism. Can you detail what that constructive criticism will be, was going to be?

3 **WIT:** Yes, that enforcement of the zero tolerance policy needs to be enforced real time.
4 And not to make exceptions.

5 **CAPT Neubauer:** Was that the only issue you were going to brief Captain Davidson
6 on?

7 **WIT:** Yes.

8 **CAPT Neubauer:** Sir is there an electronic method of tracking personnel evaluations at
9 Tote Services, like an excel spreadsheet for example?

10 **WIT:** I wish there was.

11 **CAPT Neubauer:** Is it all done by paper evaluations, at the time of the incident?

12 **WIT:** Yes.

13 **CAPT Neubauer:** Sir, the last communication by email that you had with Captain
14 Davidson, was that sent to the general ships email address?

15 **WIT:** No it would have gone to his email address.

16 **CAPT Neubauer:** Was that a company email address or a private email?

17 **WIT:** That was company, to the ship's Master.

18 **CAPT Neubauer:** Those are all the questions I have. Does anybody have any final
19 questions for Mr. Kondracki?

20 **Mr. Fawcett:** Yes, sir, I do.

21 **CAPT Neubauer:** Mr. Fawcett.

22 **Mr. Fawcett:** Yes, Mr. Kondracki, just a follow up. You know when we conduct these
23 investigations we ask for a lot of evidence to support the investigation and sometime we

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 don't use the right terms. Sometimes we're not familiar with company operations. So
2 we've seen the personnel files. Does Tote maintain some type of file system or
3 personnel investigations or, such as you mentioned where I could find the details of the
4 incident that you discussed?

5 **WIT:** I don't have any written documentation of this, but we do have a process where if
6 there's an incident we have letters of caution or warning that are written and it details
7 trying to get the facts.

8 **Mr. Fawcett:** And where would those reside? Are they in the personnel file?

9 **WIT:** The personnel file of the individual that had been reprimanded for whatever
10 reason.

11 **Mr. Fawcett:** How about the investigation itself?

12 **WIT:** The investigation as far as I know, I really didn't have to go through any real
13 investigations outside of one. And I don't know if that goes into their personnel file or
14 that's probably kept with our general counsel.

15 **Mr. Fawcett:** Is there a procedure for conducting a personnel investigation for conduct
16 matters, performance issues, or anything of the like?

17 **WIT:** Well they go through a process of fact finding and interviews.

18 **Mr. Fawcett:** Is that process documented somewhere?

19 **WIT:** Well that is part of the investigation, is conducting interviews, finding facts based
20 upon emails, interviewing different people, parties, trying to get as much information
21 about the investigation as possible.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **Mr. Fawcett:** Okay. So I understand what that process is, but is there somewhere I
2 can turn to, to find out how you conduct those investigations and is there a place where
3 the work of the investigation might be stored?

4 **WIT:** Not that I'm aware of.

5 **Mr. Fawcett:** Thank you very much, sir.

6 **CAPT Neubauer:** Are there any additional follow up questions. Ms. Bell.

7 **Ms. Bell:** Thank you. This is Carrie Bell, NTSB. Mr. Kondracki would it be fair, a fair
8 assessment to say that training in addition to what's required by their certification or
9 licensure requirements of the mariners aboard the vessel falls under your purview?

10 **WIT:** Under my purview? No, it more or less falls under the ISM, which has – which
11 goes through and says this is what the vessels at a minimum need to be training
12 towards.

13 **Ms. Bell:** So would training in general fall under your department?

14 **WIT:** No. Shipboard training would be more under the Safety and Operations.

15 **Ms. Bell:** Okay, thank you. That's all I have.

16 **WIT:** Okay, thank you.

17 **CAPT Neubauer:** Are there any additional follow up questions? Sir, I have just one
18 additional question. In relation to the other vessels that you act – serve as a Human
19 Relations Manager for, would you characterize the El Faro as having an average
20 number of complaints or more or less than the other vessels in the fleet.

21 **WIT:** Captain it's hard to say. I was only in that position for a very limited amount of
22 time. So I don't have enough breadth of time to give you an accurate answer, but it
23 certainly seemed average if not a little bit more active.

Under 46 U.S. Code §6308, no part of a report of a marine casualty investigation shall be admissible as evidence in any civil or administrative proceeding, other than an administrative proceeding initiated by the United States.

1 **CAPT Neubauer:** Yes, sir. Mr. Kondracki, we are now complete with your testimony
2 for today. However I anticipate that you may be recalled to provide additional testimony
3 at a later date. Therefore I am not releasing you from your testimony at this time and
4 you remain under oath. Please do not discuss your testimony or this case with anyone
5 other than your counsel, the National Transportation Safety Board or members of this
6 Coast Guard Marine Board Investigation. If you have any questions about this, you may
7 contact my legal advisor, Commander Jeff Bray. And I would like to thank you, sir, for
8 your testimony today.

9 **WIT:** Thank you, Captain.

10 **CAPT Neubauer:** At this time do any of the parties in interest have any issues with the
11 testimony provided by Mr. Kondracki?

12 **Tote Inc:** No, sir.

13 **Ms. Davidson:** No, sir.

14 **ABS:** No, sir.

15 **HEC:** No, sir.

16 **CAPT Neubauer:** Before we adjourn I have one announcement that our witness that
17 was scheduled for today, Mr. Fisker-Anderson will now testify on Friday morning, on the
18 19th of February. We're now adjourned and will reconvene at 9 a.m. tomorrow morning.
19 Thank you.

20 *The hearing adjourned at 1725, 17 February 2016.*

21

22

23