

*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 27 May 2016

4 Volume 27

5 **CAPT Neubauer:** Good morning. This hearing will come to order. Today is May 27th,  
6 2016 and the time is 9:05. We are continuing at the Prime F. Osborn Convention  
7 Center in Jacksonville, Florida. I am Captain Jason Neubauer, of the United States  
8 Coast Guard, Chief of the Coast Guard Office of 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 1<sup>st</sup>, 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 caused 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.

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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 may be advised by their counsel  
10 concerning their rights. However, such counsel may not examine or cross-examine  
11 other witnesses or otherwise participate.

12 These proceedings are open to the public and to the media. I ask for the  
13 cooperation of all persons present to minimize any disruptive influence on the  
14 proceedings in general and on the witnesses in particular. Please turn your cell phones  
15 or other electronic devices off or to silent or vibrate mode. Please minimize entry and  
16 departure from the hearing room while the hearing is in session. Photography will be  
17 permitted during this opening statement and during recess periods. The members of  
18 the press are welcome and an area has been set aside for your use during the  
19 proceedings. The news media may question witnesses concerning the testimony that  
20 they have given after I have released them from these proceedings. I ask that such  
21 interviews be conducted outside of this room. Since the date of the casualty the  
22 National Transportation Safety Board and Coast Guard have conducted substantial  
23 evidence collection activities and some of that previously collected evidence will be

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1 considered during these hearings. Should any person have or believe that he or she  
2 has information not brought forward, but which might be of direct significance, that  
3 person is urged to bring that information to my attention by emailing [elfaro@uscg.mil](mailto:elfaro@uscg.mil).

4 The Coast Guard relies on strong partnerships to execute its missions. And this Marine  
5 Board of Investigation is no exception. The NTSB has provided representatives for this  
6 hearing. Mr. Thomas Roth-Roffy, seated to my left is the Investigator in Charge for the  
7 NTSB investigation. Mr. Roth-Roffy, would you like to make a brief statement?

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

18 **CAPT Neubauer:** Thank you. We will now call our first witnesses for the day, Ms.  
19 Alyse Lisk with Tote Maritime Puerto Rico.

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

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1 **WIT:** I do.

2 **LCDR Yemma:** Thank you, be seated please. Can you please state your full name  
3 and spell your last name?

4 **WIT:** Alyse Lisk, L-I-S-K.

5 **LCDR Yemma:** And Counsel?

6 **Counsel:** Jack Fornaciari, F-O-R-N-A-C-I-A-R-I.

7 **LCDR Yemma:** Ms. Lisk can you please tell the board where you're currently employed  
8 and what your position is?

9 **WIT:** I'm currently employed at Tote Maritime Puerto Rico as Vice President of Cargo  
10 Services.

11 **LCDR Yemma:** And can you also describe some of your general responsibilities in that  
12 position please?

13 **WIT:** Sure. My responsibilities are primarily to back office functions within the  
14 organization. And those responsibilities encompass the bookings for the customers,  
15 customer service, the documentation and rating getting the invoices out to the  
16 customers as well as the business process related functions and communications  
17 internally and externally.

18 **LCDR Yemma:** Can you also describe some of your prior relevant work experience  
19 please?

20 **WIT:** Sure. Related to the industry I started in 1991 working for Maersk and I worked  
21 for Maersk until 2010. Within that period of time I worked, started in a customer service  
22 related functions, rate quoting, rating bill of lading. I then moved to Charleston, South  
23 Carolina and worked on terminal for a short period of time. And then the organization

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1 started an inland dispatch operations group. I then joined that group in the South  
2 Atlantic and then became a part of the management team of that and moved to  
3 Charlotte, North Carolina, stayed within the inland operations of Maersk for the  
4 remainder of my career at Maersk. And did various responsibilities there related to  
5 process and systems. I ran the North American equipment group for a while. I then in  
6 2010 went to work for NYK logistics which is now Yusen logistics in their transportation  
7 division. And then in 2011 I moved over to Sea Star Line which is now Tote Maritime in  
8 my current position as VP of Cargo Services.

9 **LCDR Yemma:** And what is your highest level of education completed?

10 **WIT:** A Bachelor of Arts.

11 **LCDR Yemma:** Thank you, Ms. Lisk. Mr. Fawcett is going to have questions for you  
12 now.

13 **WIT:** Thank you.

14 **Mr. Fawcett:** Good morning Ms. Lisk nice to see you again.

15 **WIT:** Good morning.

16 **Mr. Fawcett:** My name is Keith Fawcett I'm a Marine Casualty Investigator with the  
17 U.S. Coast Guard. We're going to cover one broad topic and that's your – your working  
18 responsibilities at Tote and how they may be impacted or involved the movement on  
19 ships such as the El Faro. I will ask questions and then the board will follow up.  
20 Followed by the NTSB and then the parties will have their opportunity. So this will be  
21 one segment of questions. And if you would like to take a break at any time please let  
22 us know.

23 **WIT:** Thank you.

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1 **Mr. Fawcett:** So I would like to expand on the description of what you do. You  
2 mentioned the back office operations. Could you explain that in a little more detail and  
3 how it relates to the larger scheme of moving cargo on Tote vessels?

4 **WIT:** So my department really does the customer related activities behind the scenes  
5 work. So what it is it's taking a booking for a customer then processing those bookings  
6 to a bill of lading, receiving the proper documents from the customer and then putting an  
7 invoice out to the customer. As well as there's another group that I'm responsible for in  
8 that same type of function that is the cargo support group and they do the regulatory  
9 compliance for containers and related to the customers. In addition they're responsible  
10 for the identification of what cargo we wish to load to the ship.

11 **Mr. Fawcett:** So that we can understand that process from your – from the area of your  
12 responsibility. Would you take a typical box of cargo and tell me how that customer –  
13 how the customer takes that, how it moves through your office ultimately to the vessel?  
14 In brief and general terms.

15 **WIT:** From the booking?

16 **Mr. Fawcett:** Yeah. In other words I have a box of cargo, I want to get it to Puerto  
17 Rico. Could you explain how that happens in a general sense?

18 **WIT:** Sure. So a customer would decide that they would want to ship a container and  
19 they would either call, email or make a booking on our web portal. We would take that  
20 booking, get all the pertinent information. At that time the terminal system would  
21 receive that booking knowing that that container or that shipment is going to come their  
22 way for a particular ship. And then the customer would send in documents when the  
23 ship gets closer to the ship time and they've loaded that container and it's heading to

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1 the terminal or at the terminal. And then we would take those documents from the  
2 customer, validate it, create a bill of lading and put an invoice out. That's one part of the  
3 process. Then to back up when the container comes into the terminal the terminal  
4 receives it then we receive a notification that the container has arrived on terminal. And  
5 prior to its arrival we would give a priority that box, a P1 or a P2 and then when it comes  
6 to the terminal the terminal understands that a priority 1 box is a box that we would  
7 prefer to be loaded on the ship other than a P2 box.

8 **Mr. Fawcett:** Okay. So we've heard in testimony that the volume of cargo has  
9 increased with the Horizon Line going out of business. Could you talk about the  
10 customer service area and the demands on the movement of cargo from the  
11 perspective of your customers? Like what kind of demand does that put on you to meet  
12 the cargo shipping schedule and your customers?

13 **WIT:** Not so sure I'm understanding the question.

14 **Mr. Fawcett:** Okay. So the volume of, you know at one time back in 2011 at some  
15 point when you've been with Sea Star Line, you know there was a certain demand  
16 caused by the movement of cargo. And over the course of time there's been much  
17 more cargo that has to move down to Puerto Rico. So from the customer service area  
18 could you talk about how you meet that demand in the movement of cargo? As you  
19 mentioned priority of cargo. Are there any other things that come under your  
20 consideration?

21 **WIT:** No. If you're speaking in terms of the process the process is exactly the same.  
22 So that doesn't change for group.

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1 **Mr. Fawcett:** Okay. So over the course of time as this volume has increased have you  
2 been aware of any evaluations within your organization on any impacts on safety of  
3 operations by that increased demand?

4 **WIT:** No, not – sorry, no not that I’m aware of. I mean safety is our first priority. So as  
5 any change that we make that’s always the first thing that we look at. So I’m not aware  
6 of anything in particular based on that.

7 **Mr. Fawcett:** And just to be clear you do also participate in weekly flash meetings?

8 **WIT:** Yes I do.

9 **Mr. Fawcett:** Were there any discussions prior to the accident, and all of my questions  
10 will relate to the prior – the date prior to the accident leading up to the accident and not  
11 the present time unless I say otherwise. Were there any discussions at these flash  
12 meetings or any corporate meetings that you attended about the corresponding  
13 increase in cargo volume and the need to stay on schedule that related to the safety of  
14 vessel operations?

15 **WIT:** No there was not.

16 **Mr. Fawcett:** So we’ve had discussions about the El Faro sailing out into a storm in  
17 late August and then again in Hurricane Joaquin prior to the accident voyage. Were  
18 there any discussions that you participated in on the corporate level about the safe  
19 movement of the vessel for those voyages and any cargo concerns that relate to your  
20 area of expertise like managing customer expectations?

21 **WIT:** Not that I’m aware of.

22 **Mr. Fawcett:** So if you would over the course of recent time, contracted tugs and  
23 barges have been brought in to handle the increased goods that needed to be



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1 transported to Puerto Rico. What were the discussions about bringing those contracted  
2 barges in?

3 **WIT:** The only discussions were that we needed to support the trade and the capacity  
4 that was lost. And that was our solution to do that.

5 **Mr. Fawcett:** So speaking to staffing in your office would the increase demands of  
6 cargo volume – has the management of that cargo been more complex? Like in other  
7 words meeting the schedule, balancing the priorities of the cargo and so forth?

8 **WIT:** No. It was just more volume. It's the same process.

9 **Mr. Fawcett:** So did your staff increase in size at all?

10 **WIT:** We did and honestly I don't remember how many. I think we increased by 3 or 4  
11 within the group to handle it.

12 **Mr. Fawcett:** So this additional increase in volume has it led to more interaction with  
13 your customers related to the movement of the cargo?

14 **WIT:** No I wouldn't say so.

15 **Mr. Fawcett:** And just approximately how many major customers? Do you classify,  
16 you know major customers versus you know within the group of people that ship goods  
17 on your vessels?

18 **WIT:** Not so sure I understand that, sir.

19 **Mr. Fawcett:** In other words if you have major customers, the people that move the  
20 greatest volume of cargo for your vessels, is there a group that you identified as major  
21 customers?

22 **WIT:** Yeah I mean we do have a group that are larger than others, absolutely.

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1 **Mr. Fawcett:** Do they have any, you know I'm trying not to name names just out of  
2 business concerns, but did they get a higher priority? For example you mentioned P1  
3 or P2.

4 **WIT:** It would depend on the time of year who would get priority and not get priority.

5 **Mr. Fawcett:** Okay. And can you elaborate a little bit on the description of what P1 is  
6 versus P2?

7 **WIT:** Sure. We have two priority statuses that we use. And priority 1 is the freight from  
8 the business side related to the customer that we would advise the terminal that's our  
9 first pick to go to the ship. That doesn't necessarily mean it's going to go. When the  
10 ship – when the terminal looks at the ship they'll tell us whether all of that freight can go  
11 once they look at it. And then there's priority 2 freight that can go on the ship in case  
12 we don't have all the priority 1 freight to load.

13 **Mr. Fawcett:** Do you maintain statistics on how you meet the schedule expectations for  
14 P1 cargo? In other words on a particular ship on a particular sailing we managed to get  
15 all of our P1 cargo on or we left some ashore or some kind of tracking like that?

16 **WIT:** My group does not have statistics on it.

17 **Mr. Fawcett:** Is there any consideration, if I'm going to take that box and I've talked to  
18 some customer service agent or someone within your group and I make arrangements  
19 for that particular cargo piece to be loaded on a vessel as to the weight of that particular  
20 box? Because one box could carry a very light weight load and another one could be  
21 heavier. Is weight a factor in priority?

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1 **WIT:** No. So what my team does is they put the priority together and they give it to the  
2 terminal. And then the terminal does their stability at the end. That's when they're  
3 looking at the weight.

4 **Mr. Fawcett:** Okay. So as part of the order process you don't come up with the weight  
5 of the – the anticipated weight of the container?

6 **WIT:** We receive the anticipated weight, but we don't use that to set priorities.

7 **Mr. Fawcett:** Okay. So based on your knowledge where is the weight validated for the  
8 – customer gives you a weight, where's it validated for accuracy to make sure that the  
9 terminal accounts for that when they properly load it on the vessel?

10 **WIT:** It's at the terminal. When they bring it into the terminal they weigh it.

11 **Mr. Fawcett:** Okay. So within your background and training you worked for Maersk  
12 and as part of that experience were you – did you receive a – what kind of exposure did  
13 you receive to marine transportation related to terminal OPS?

14 **WIT:** At Maersk?

15 **Mr. Fawcett:** Correct.

16 **WIT:** Very little.

17 **Mr. Fawcett:** Okay. How about other marine shipping companies?

18 **WIT:** Very little.

19 **Mr. Fawcett:** So within your office doing your job who were the other people within the  
20 Tote Maritime Puerto Rico that you interact with to get that same box on the ship?

21 **WIT:** From my perspective or my team?

22 **Mr. Fawcett:** Principally from your perspective.

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1       **WIT:** So I would work on a daily basis with our Vice President of Operations and our  
2 Vice President of Commercial and the President.

3       **Mr. Fawcett:** Okay. And could you identify who those people are?

4       **WIT:** Sure. That would be Jim Wagstaff, Vice President of Operations. Bill Taylor,  
5 Vice President of Commercial. And our President Tim Nolan.

6       **Mr. Fawcett:** So if there were problems with that box meeting the priorities and the  
7 shipping schedule and the bookings and so forth which one of those persons would you  
8 most likely deal with?

9       **WIT:** Priority from what perspective?

10       **Mr. Fawcett:** Well you've identified, you know P1. Let's talk about P1 cargo issues. In  
11 terms of interaction with the vessel. In other words you book it, it needs to get on the  
12 vessel, it doesn't get on the vessel. Who within those individuals would you deal with?

13       **WIT:** So when you're speaking from those terms the only group that I would deal with  
14 and my team would deal with would be the operations group for Tote Maritime Puerto  
15 Rico. So in particular it wouldn't be me in particular it would be my team that would deal  
16 directly with people on terminal that worked for Tote Maritime Puerto Rico.

17       **Mr. Fawcett:** Would there be any interaction with Mr. Wagstaff for example based on  
18 the operational title that he has?

19       **WIT:** I would work with him, yes.

20       **Mr. Fawcett:** So if you would could you describe who the manager of cargo support  
21 and regulatory compliance is?

22       **WIT:** Sure. The manager is Bob McMahon.

23       **Mr. Fawcett:** And what would Mr. McMahon's duties be with relation to Tote Maritime?

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1 **WIT:** So Bob's responsibilities are from the regulatory compliance perspective we are  
2 required to file with the Puerto Rican Government on behalf of the customers, the  
3 shipments from a tax perspective. So they would be filing those shipments on behalf of  
4 the customers. In addition to his group is responsible for liaisoning between the  
5 commercial organization as well as the operation – Tote Maritime Operations team as it  
6 relates to the priority 1's and 2's.

7 **Mr. Fawcett:** So how do you get notified so you can interact with your customers if  
8 there's a shipping delay? We'll take that one first.

9 **WIT:** You mean what would we tell them?

10 **Mr. Fawcett:** First of all how would you be notified the ship is going to either be  
11 delayed departing or the ship would be delayed arriving or some action like that?

12 **WIT:** So the operations team would notify us if there's a delay. And what kind of delay  
13 it is and what I mean by that is what time is it arriving or departing. And at that point we  
14 would make a decision whether we needed to notify our customers or not once we  
15 understand it.

16 **Mr. Fawcett:** And you would receive that notification via what means?

17 **WIT:** Typically by email.

18 **Mr. Fawcett:** And there is some sort of blog that notifies Tote customers externally  
19 about vessel delays or problems at the terminal or gate closure times and so forth. Do  
20 you know who manages that blog?

21 **WIT:** My team does.

22 **Mr. Fawcett:** And is there someone in specific?

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1 **WIT:** Yes. So just to correct that it's actually not a blog. It's an email notification that  
2 goes out to the trade to our customers. And within my team it's my supervisor of our  
3 booking team that sends those out.

4 **Mr. Fawcett:** So there's no – no website or blog where your customers could find out  
5 issues related to the shipment of their goods?

6 **WIT:** We have a web portal that they can actually go in and track a container number.  
7 But what that will give them is the last move of the box, whether it be a gate in, gate out,  
8 load or discharge. But in terms of a delay of the ship arriving that would come from this  
9 notification that we would send.

10 **Mr. Fawcett:** Okay. So if I had this box and I want to move it to Puerto Rico, do I sign  
11 a contract with you?

12 **WIT:** Typically yes.

13 **Mr. Fawcett:** In general terms do your contracts have any clauses where you are  
14 penalized in terms if the cargo is late for arrival?

15 **WIT:** Not that I'm aware of.

16 **Mr. Fawcett:** Could you describe – do different customers in general, because I know  
17 there are many customers, are most of your contracts general in nature that they like  
18 one size fits all that most of your contracts are signed by the customer are similar?

19 **WIT:** I don't manage the contracts specifically so I wouldn't actually have that answer.

20 **Mr. Fawcett:** Where does the – that same box that I'm moving to Puerto Rico, if it is  
21 damaged on board the vessel what happens next?

22 **WIT:** The customer could file a claim and if they do they would file that claim with our  
23 risk management department.

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1 **Mr. Fawcett:** Okay. As a – in your position as a Tote Executive do you know what  
2 would happen next with that damaged container after they file the claim?

3 **WIT:** When it would come off the vessel there would be a survey done to the box and  
4 the risk management team would receive that information and put it within the claim  
5 information.

6 **Mr. Fawcett:** So is there any weight given, we talked briefly in general terms about  
7 major customers, does that the fact that they're a major and a principle customer of  
8 yours effect anything related to loading those containers on the ship? Do you promise  
9 them something that other customers don't get?

10 **WIT:** No.

11 **Mr. Fawcett:** And the same major customer could have two different priorities for their  
12 cargo on the ship, correct?

13 **WIT:** Correct.

14 **Mr. Fawcett:** So in August, in early August there was a major delay with loading of  
15 cargo on board the El Yunque. And you I believe in this circumstance went to the yard  
16 and were involved?

17 **WIT:** You mean the terminal?

18 **Mr. Fawcett:** Yes. The terminal yard. Yes, on the 7<sup>th</sup> of August if that helps.

19 **WIT:** I was there, yes.

20 **Mr. Fawcett:** Could you talk about what happened?

21 **WIT:** Sure. We, I think you've heard this before. We were implementing a new  
22 terminal operating system and so the team was going from a completely manual to an  
23 automated process. A complete change. And my team started to reconcile that night

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1 the vessel and realized that there was some P1 freight still left on the ground, not on the  
2 ship. And we looked at it and realized that we probably could swap some of it and get  
3 the right freight on the ship. And I would preface this to say that this has nothing to do  
4 with putting too much freight or the weight on the ship or the safety of the ship. It's  
5 more about what my team does is getting the right freight on the ship. So we worked  
6 with the terminal to do that and rectified the situation, held the ship and swapped out as  
7 much as we could and then she sailed.

8 **Mr. Fawcett:** So just for clarity if you'll turn your attention to Exhibit 178 page 39. This  
9 is an email from you on Friday August 7<sup>th</sup>, 2015 at 8:15 p.m. What would be your  
10 typical departure time for the El Yunque?

11 **WIT:** Typically at 1900 and this was, this is the 7<sup>th</sup>, right? Yeah, this is the 7<sup>th</sup> so it's  
12 that night when we were identifying that there were P1 on the ground delaying the ship.

13 **Mr. Fawcett:** Okay. But I would like to read this just so you can clarify for me. The  
14 subject is "the ship". Tim and Jim, they have to rework multiple bays to remove P2's  
15 loaded by mistake. We're finding in RO-RO at least 6 reefers for the El Faro on  
16 Tuesday. At this point they're still looking for places for P1 cargo. Ronald is in the stow  
17 room trying to sort, excuse – trying to sort it out. Just want to let you both information  
18 as it is getting late. Do not have a sailing time yet. So had they in fact unloaded cargo  
19 on board the vessel and that cargo had to be retracted from the vessel and other cargo  
20 put on? Or was it strictly a terminal issue?

21 **WIT:** I'm trying to remember back. Based on what I wrote they had put some P2 cargo  
22 on the vessel when we would prefer P1 cargo and we were looking at it to determine  
23 could we swap out the P2 cargo and put the P1 cargo on.



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1 **Mr. Fawcett:** So would you characterize this as a terminal loaded boxes on the ship,  
2 they had to unload the ship and re-stow the ship to meet the expectations of the  
3 customers?

4 **WIT:** Not completely. So it was a handful of boxes, I don't recall the amount. So we  
5 went through the ship and determined the cargo that we wanted to go on that was not  
6 on the ship and then the terminal decided whether they could put it on or not and came  
7 back to us and said these are the ones we can swap.

8 **Mr. Fawcett:** So being on the ship that RO-RO cargo that they talk about here, would  
9 that mean that they had to get vehicles to move that cargo off the ship to clear space in  
10 the multiple lanes so they could get to that cargo and then drive other cargo on to  
11 properly load the ship?

12 **WIT:** So just to be clear to clarify this, even though I stated there was RO-RO we did  
13 not touch and of the RO-RO decks that night. The only thing we swapped was on LO-  
14 LO.

15 **Mr. Fawcett:** And LO-LO for the public?

16 **WIT:** Load on load off, sorry.

17 **Mr. Fawcett:** And ultimately the ship sailed approximately 13 hours after the departure  
18 time?

19 **WIT:** Correct.

20 **Mr. Fawcett:** So that's a significant delay. And how did you notify the customers that  
21 the ship would be delayed or was it delayed when it reached Puerto Rico?

22 **WIT:** I don't even recall how delayed it was getting San Juan. But if it was we would  
23 have sent a notification through the system and they would have gotten an email.

1 **Mr. Fawcett:** So after the – after this event the – was there a review or an evaluation of  
2 what happened to determine the impacts of your operations?

3 **WIT:** Yes. So you know part of a system implementation which you may or may not  
4 know you anticipate that you're going to have some issues when you move a data set  
5 into a new system. So for this in particular we knew that we had to understand the root  
6 cause. On that Sunday we brought in the entire team for a few hours, we white boarded  
7 the entire issue to understand what happened and put corrective actions in place that  
8 we implemented on Monday morning and the next week was much smoother.

9 **Mr. Fawcett:** Is there documentation of that white board evolution? Was there a  
10 written product produced so that you could document the issues and the corrective  
11 actions?

12 **WIT:** I believe so.

13 **Mr. Fawcett:** Did part of that include looking at the safety of operations? In other  
14 words the efforts to move cargo on and cargo off to evaluate the problem, correct the  
15 problem, took a significant amount of time involving shipboard personnel, Chief Mate,  
16 shore side personnel? Did someone evaluate the safety of that operation?

17 **WIT:** I'm sure that they did but that would not have been me.

18 **Mr. Fawcett:** Was the terminal operating system, was that related to how the cargo  
19 moves into the terminal? And did it include the actual – like if I looked at the – if you  
20 took me through the terminal operating system, would it talk about how the cargo is  
21 actually loaded onto the ship or it would be purely a terminal operating system?

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1     **WIT:** The terminal operating system implementation included the cargo coming through  
2     the gate, going through a stack in the yard and being stowed to the vessel and loaded  
3     to the vessel.

4     **Mr. Fawcett:** Do you recall who was in charge of the terminal operations that day?

5     **WIT:** Ronald Rodriguez I believe was there, yeah.

6     **Mr. Fawcett:** Did you identify where the problem – what the source of the problem  
7     was? In other words if you white boarded it was it a Tote problem, was it a PORTUS  
8     problem, was it a shipboard problem, did you identify what organization owned the  
9     problem so to speak?

10    **WIT:** So the issue related to the new process in the terminal operating system. And for  
11    this particular one it related to identifying when they're stowing the ship the P1 versus  
12    the P2's. And I would say this would not impact how much got loaded or the weight that  
13    got loaded, that would all be handled in the stability process. That is a separate  
14    process outside of this one.

15    **Mr. Fawcett:** Did that analysis or any subsequent analysis include what the ship  
16    needed to do to meet the targeted arrival time and date in Puerto Rico?

17    **WIT:** No.

18    **Mr. Fawcett:** Were there any corrective actions for Tote personnel as a result of this  
19    cargo loading issues?

20    **WIT:** Not that I recall other than what we put together on that Sunday afternoon.

21    **Mr. Fawcett:** And Captain I would like to request us get a copy of any documentation  
22    related to that evaluation please.

23    **CAPT Neubauer:** Can we get that at a later date, sir?

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1 **Counsel:** Sure.

2 **Mr. Fawcett:** So just a couple of follow up questions. So if you would explain as an  
3 Executive with Tote Maritime what Saltchuk University is? Or Saltchuk U.

4 **WIT:** I thought that's what you said. Saltchuk University is a class that's offered on  
5 Thursday's to all the organizations where people come in and they give training classes  
6 that are an hour long on various topics and throughout the year.

7 **Mr. Fawcett:** Is it mandatory for Tote Maritime employees to participate in this  
8 program?

9 **WIT:** It's mandatory for the employees to complete 12 classes a year.

10 **Mr. Fawcett:** Are some of these locally generated? In other words they may ask for an  
11 expert like yourself or someone else at Tote to provide the training and then there are  
12 other ones that are online training?

13 **WIT:** There are a couple that are online, but primarily it's a guest that comes into one of  
14 the offices and gives the training.

15 **Mr. Fawcett:** And would this be in common area such as a staff room, conference  
16 room or some other common space?

17 **WIT:** Correct, yes.

18 **Mr. Fawcett:** And have you attended the majority of these or all of these training  
19 sessions?

20 **WIT:** I don't attend all of them, but I have attended them, yes.

21 **Mr. Fawcett:** Have you ever seen the subject of them come up the safety of cargo  
22 loading operations?

23 **WIT:** I don't recall.

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1 **Mr. Fawcett:** Have you ever seen one where shipboard operations were discussed so  
2 that people within your organization could understand, you know like the significance of  
3 stability of vessel operations or so forth? Just so you could understand that segment of  
4 your responsibilities and duties.

5 **WIT:** I don't recall but there are many sessions that are related to safety.

6 **Mr. Fawcett:** I just have a final question if you'll take a look at an exhibit we just put in  
7 this morning, it's 178 page 116. And it's an email from you dated Friday, October 2<sup>nd</sup>,  
8 2015 and it's to Tim Nolan, William Taylor and the subject is El Faro 185 South, which is  
9 the accident voyage. I'm adding that comment. And there's a list of objects that were  
10 loaded on the El Faro. Where did that come from?

11 **WIT:** The manifest.

12 **Mr. Fawcett:** Do you know if there were any subsequent discussions that you  
13 participated in whether those numbers are accurate?

14 **WIT:** I'm not sure. I don't recall.

15 **Mr. Fawcett:** Were there any discussions about the weights of those, subsequent to  
16 the accident, any discussions about the weights or accuracy that you were aware of as  
17 to the loading of the vessel?

18 **WIT:** Not that I recall, no.

19 **Mr. Fawcett:** That's all the questions I have for now. Thank you. I'll turn it over to the  
20 board.

21 **CAPT Neubauer:** Good morning Ms. Lisk.

22 **WIT:** Good morning.

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1     **CAPT Neubauer:** Just a couple follow up questions from the initial line. Thinking back  
2     to the August September 2015 time frame, I'm curious about the potential for a backlog  
3     of cargo at Tote. Can you confirm if that was case? Was there potentially more P2's  
4     stacked up than normal in your opinion?

5     **WIT:** During that time frame I honestly don't recall.

6     **CAPT Neubauer:** And maybe just to provide a couple of details there was a storm in  
7     August, Tropical Storm Erika that caused a small delay in the vessels departure and  
8     arrival. There was also a – the barge operations were trying to be integrated into the  
9     terminal. Do you remember if that, and I think it's also a busy time of year if I pre-read  
10    from the testimony for cargo, do you know if all those factors around the time were  
11    creating any kind of delays?

12    **WIT:** Not that I'm aware of, no.

13    **CAPT Neubauer:** At this time I would like to go the National Transportation Safety  
14    Board. Mr. Roth-Roffy.

15    **Mr. Roth-Roffy:** Tom Roth-Roffy, NTSB, good morning Ms. Lisk.

16    **WIT:** Good morning.

17    **Mr. Roth-Roffy:** Just a couple of questions. Can you provide more information on the  
18    criteria, specific criteria that categorizes cargo as either P1 or P2?

19    **WIT:** So when my team goes through it they – there's a certain amount of freight of  
20    course that can go on the vessel. So what they would do by size and type they know  
21    what it is and they would categorize the P1 cargo and put a profile of the ship together,  
22    discuss it with commercial, solidify it and then submit it to the terminal.

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1 **Mr. Roth-Roffy:** What criteria do they use to make that decision between whether it's a  
2 P1 or P2?

3 **WIT:** It's based on historical information on customers and how much cargo they ship  
4 and what they're going to bring into the terminal.

5 **Mr. Roth-Roffy:** Does it also, one of the criteria have to do whether it's refrigerated  
6 cargo or not?

7 **WIT:** Yes I'm sorry, of course, all fresh cargo, perishables would go as a P1 absolutely.

8 **Mr. Roth-Roffy:** And the other criteria that you can mention to us?

9 **WIT:** The main thing would be perishable, perishable reefers.

10 **Mr. Roth-Roffy:** And does P1 and P2 categorization, does that apply to only  
11 containerized lift on lift off, or do you also have to maintain the same priority  
12 categorization for rolling cargo?

13 **WIT:** It would be the entire ship.

14 **Mr. Roth-Roffy:** Thank you. That's all I have.

15 **CAPT Neubauer:** Sorry just one additional one question that I had. Do you personally  
16 field customer complaints?

17 **WIT:** Me?

18 **CAPT Neubauer:** Yes.

19 **WIT:** Almost all the complaints go through my team.

20 **CAPT Neubauer:** Do you track those?

21 **WIT:** We track them by if one comes through we wouldn't – we would track them  
22 through putting – attaching them to that shipment for that customer within the system if  
23 it's an email.

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1       **CAPT Neubauer:** Would there be a record that we could access?

2       **WIT:** It would be the entire system so they're not consolidated.

3       **CAPT Neubauer:** Can you give an idea of any complaints you received around August  
4       or September of 2015? And I'm specifically referring to like timeline issues.

5       **WIT:** What do you mean by timeline?

6       **CAPT Neubauer:** Potentially late delivery.

7       **WIT:** Not specifically.

8       **CAPT Neubauer:** Mr. Fawcett.

9       **Mr. Fawcett:** Ms. Lisk if you would turn your attention to Exhibit 178 page 112. This is  
10       an email from Mr. Taylor, William Taylor on Thursday September 3<sup>rd</sup>, 2015 and I  
11       apologize I didn't bring this up earlier, but it was – you were copied on it and the subject  
12       was current bookings 9/03/2015. It says dear all please note that we have two barges  
13       next week. TB has lost sailing this week and barges for our competition are off  
14       schedule due to storms. We are starting to see an uptick as season approaches and  
15       have some obstacles with Labor Day and missing one day of production. Please speak  
16       to your customers on next week's sailing schedule. We need some traction on next  
17       Saturday's barge. The following week we will only have one barge on that Thursday.  
18       Thank you, Bill. What's the season that's discussed in this email?

19       **WIT:** So the peak season starts around then going into the holiday time.

20       **Mr. Fawcett:** Okay. Looking at this email does it reflect your recollections as to the  
21       volume of cargo backlog during the weeks leading up to the sailing of the El Faro?

22       **WIT:** I'm sorry can you state that again?



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1 **Mr. Fawcett:** Yes. Looking at this email does it refresh your recollections about the  
2 question that the Captain asked about the volume of backlogged cargo leading up to the  
3 sailing of the El Faro?

4 **WIT:** No in the email even states that we are looking to fill the barge. So I don't recall.

5 **Mr. Fawcett:** Okay. So from your view point are the barges and the ships an  
6 interlinked system to move cargo from Jacksonville to San Juan? In other words they're  
7 dependent upon one another to move your cargo, is that correct?

8 **WIT:** From what perspective would they be dependent on one another?

9 **Mr. Fawcett:** If cargo wouldn't go on the El Faro or cargo couldn't fit on a barge, either  
10 of those vessels could be used to supplement or compliment the moving of cargo to  
11 San Juan, is that correct?

12 **WIT:** It could happen that way. But the shipments are booked directly to a voyage  
13 sailing whether it be a barge or a ship.

14 **Mr. Fawcett:** So if some – if some cargo arrived late, P1 cargo on a ship or P2 cargo  
15 and they couldn't make a barge sailing would they be put in the terminal and ultimately  
16 loaded on the next ship voyage so that you could not develop a backlog?

17 **WIT:** It would depend on how the next ship looked.

18 **Mr. Fawcett:** And what do you mean by looked?

19 **WIT:** Well if the next ship was already booked, full then they would have to go on the  
20 next barge or the next voyage after that ship.

21 **Mr. Fawcett:** Could you elaborate a little on the bookings and how the bookings go  
22 directly to a specific vessel?

23 **WIT:** When a customer calls in or emails or puts a web booking they select a voyage.

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1 **Mr. Fawcett:** Do major and principle customers put their goods on just a ship type like  
2 the El Faro or do they sometimes move that cargo by barge?

3 **WIT:** They would have put it on both.

4 **Mr. Fawcett:** So if it missed a barge for example could you expedite the missed sailing  
5 by putting it on the next ship considering they are faster vessels that may deliver the  
6 goods faster to San Juan?

7 **WIT:** You could move it from a barge to a ship if it missed it.

8 **Mr. Fawcett:** Thank you very much.

9 **CAPT Neubauer:** Before we go to the parties in interest just one last question for me.  
10 Do you have a – can your system provide you a backlog report at any time? Containers  
11 that are waiting?

12 **WIT:** Yes.

13 **CAPT Neubauer:** Can you do a backlog report historically?

14 **WIT:** I would think so, I would have to check.

15 **CAPT Neubauer:** I would like to request a backlog report for October 1<sup>st</sup>, 2015 if that  
16 can be produced.

17 **Counsel:** We'll take a look. And if it is we'll have it produced.

18 **CAPT Neubauer:** At this time I would like to go to the parties in interest. Tote?

19 **Tote Inc:** Sir, may I request a short break.

20 **CAPT Neubauer:** The hearing will recess and reconvene at 1005.

21 *The hearing recessed at 0955, 27 May 2016*

22 *The hearing was called to order at 1009, 27 May 2016*

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1       **CAPT Neubauer:** The hearing is now back in session. Tote do you have any  
2 questions?

3       **Counsel:** Captain I have one question.

4       **CAPT Neubauer:** Yes, sir.

5       **Counsel:** Alyse, you indicated that Tote ships under contract, does all the cargo get  
6 shipped under contract?

7       **WIT:** A majority of the cargo does get shipped under a contract, but we're a common  
8 carrier so some of it moves via tariff.

9       **Counsel:** That's all I have.

10       **CAPT Neubauer:** ABS?

11       **ABS:** No questions, sir.

12       **CAPT Neubauer:** Mrs. Davidson?

13       **Ms. Davidson:** No questions Captain.

14       **CAPT Neubauer:** Are there any final questions for Ms. Lisk at this time? Ms. Lisk you  
15 are now released as a witness at this Marine Board of Investigation. Thank you for your  
16 testimony and cooperation. If I later determine that this board needs additional  
17 information from you I will contact you through your counsel. If you have any questions  
18 about this investigation you may contact the Marine Board Recorder, Lieutenant  
19 Commander Damian Yemma. At this time do any of the PII's have any issues with the  
20 testimony that we just received?

21       **Ms. Davidson:** No, sir.

22       **ABS:** No, sir.

23       **CAPT Neubauer:** The hearing will now recess and reconvene at 1020.

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1            *The hearing recessed at 1011, 27 May 2016*

2            *The hearing was called to order at 1021, 27 May 2016*

3            **CAPT Neubauer:** The hearing is now back in session. We will now hear testimony  
4 from Captain Benjamin Hawkins from U.S. Coast Guard Headquarters.

5            **LCDR Yemma:** Sir would you please raise your right hand. A false statement given to  
6 an agency of the United States is punishable by a fine and or imprisonment under 18  
7 United State Code Section 1001, it may also subject you to discipline under the Uniform  
8 Code of Military Justice. Knowing this do you solemnly swear that the testimony you're  
9 about to give will be the truth, the whole truth and nothing but the truth, so help you  
10 God?

11           **WIT:** I do.

12           **LCDR Yemma:** Thank you, sir, please be seated please. Can you please state your  
13 full name and spell your last name?

14           **WIT:** Good morning, certainly. My full name is Benjamin Joseph Hawkins. My last  
15 name is H-A-W-K-I-N-S.

16           **LCDR Yemma:** Thank you. And Counsel?

17           **Counsel:** Travis Noyes, N-O-Y-E-S.

18           **LCDR Yemma:** Captain can you please tell the board where you're currently employed  
19 and what your position is?

20           **WIT:** I'm currently employed at U.S. Coast Guard Headquarters as the Office Chief for  
21 the Office of Design and Engineering Standards within the Commercial Standards and  
22 Regulations Directorate.

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1 **LCDR Yemma:** And can you tell the board please what your general responsibilities  
2 are in that position?

3 **WIT:** In general I'm responsible for guiding and leading the Office of Design and  
4 Engineering Standards. Our responsibilities include the development and promulgation  
5 of regulations and standards related to ship design and construction of ships and  
6 shipboard equipment. This includes hull and hull structures and stability, electrical and  
7 machinery equipment as well as lifesaving and fire safety equipment. We are also  
8 involved on several committees and subcommittees at the international maritime  
9 organization and involved in various standards committees. And we are also  
10 responsible for the administration of the alternate compliance program with respect to  
11 recognition, authorization, delegation and supplement approval.

12 **LCDR Yemma:** Thank you. Can you also tell the board about some of your prior  
13 relevant work experience please?

14 **WIT:** Certainly. My career about 22 years of my career has been involved in the  
15 marine safety program. In the field most of that has been involved with respect to  
16 inspections and investigation, marine investigations. My staff assignments have almost  
17 all been technical including assignments to the Marine Safety Center and a prior  
18 assignment to this office.

19 **LCDR Yemma:** And what is your highest level of education completed?

20 **WIT:** I hold Masters degrees. One in Naval Architecture Marine Engineering. And  
21 another in National Security and Strategic studies.

22 **LCDR Yemma:** Thank you Captain. Lieutenant Commander Venturella have questions  
23 for you now.

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1 **LCDR Venturella:** Good morning Captain Hawkins.

2 **WIT:** Good morning.

3 **LCDR Venturella:** So this interview will include one line of questioning. The questions  
4 will cover the details of your current position, your role within the Coast Guard's  
5 alternate compliance program and specific questions regarding the alternate  
6 compliance program. This line of questioning will not include a break, but please ask if  
7 you need one Captain. Do you have any questions before we proceed, sir?

8 **WIT:** No.

9 **LCDR Venturella:** Sir, can you elaborate on the specific organizational construct of the  
10 Office of Design and Engineering Standards at Coast Guard Headquarters?

11 **WIT:** Certainly. Organizationally the office is divided into 5 divisions. We're a multi-  
12 disciplinary technical office. The first division is concerned with human element and  
13 ship design. The second with Naval Architecture. The third with systems engineering.  
14 The fourth division is lifesaving and fire safety. And our fifth is hazardous materials  
15 division. We're comprised of approximately 42 personnel split fairly evenly between  
16 active duty and civilian personnel. All of them are engineers by discipline. Most hold  
17 advanced degrees including some professional licensure. And about half have a  
18 background in Coast Guard marine inspections.

19 **LCDR Venturella:** Can you give us your basic understanding of the alternate  
20 compliance program including the intent behind the program?

21 **WIT:** Well simply put I mean the alternate compliance program provides an alternative  
22 to complying with the vessel inspection and certification requirements comprised in Title  
23 46 of the Code of Federal Regulations.

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1 **LCDR Venturella:** Captain what Coast Guard offices are responsible for administering  
2 the alternate compliance program?

3 **WIT:** At the Headquarters level the responsibility for administering that program are  
4 split between my office and the Office of Commercial Vessel Compliance.

5 **LCDR Venturella:** Where does the U.S. Coast Guard derive its authority to use an  
6 alternate compliance program for the purpose of regulating U.S. flagged vessels  
7 through an authorized classification society?

8 **WIT:** That authority is derived from the U.S. Code specifically Title 46, 3316 which  
9 allows the Coast Guard to accept the reports, documents and certifications of the  
10 American Bureau of Shipping or an authorized classification society as well as to  
11 delegate inspections and examinations to those societies.

12 **LCDR Venturella:** What is the process for the U.S. Coast Guard to accept a  
13 classification society into the alternate compliance program, sir?

14 **WIT:** Well at the highest level first it involves a recognition of a classification society in  
15 accordance with the C.F.R. That's followed by authorization to issue international  
16 certificates on behalf of the Coast Guard. And that's followed subsequently by  
17 authorization to participate in the alternate compliance program.

18 **LCDR Venturella:** Sir, are you aware does the Coast Guard ever remove classification  
19 societies from the alternate compliance program?

20 **WIT:** We clearly have the authority and responsibility to remove them if necessary. To  
21 my knowledge that's never happened to date.

22 **LCDR Venturella:** Captain, what is the U.S. supplement?

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1 **WIT:** The U.S. supplement is one part of a three part formula that comprises the  
2 alternate compliance program. The premise of the alternate compliance program is that  
3 the combination of international conventions classification society rules and this U.S.  
4 supplement provide a degree a safety that is equivalent to the minimal standards set in  
5 the Code of Federal Regulations. The supplement is effectively the delta or the gap that  
6 exists between – that exists between the C.F.R. and the international conventions plus  
7 the classification rules. So it's that gap that makes the convention and the rules  
8 equivalent to the C.F.R. It also includes U.S. interpretations to international conventions  
9 as necessary.

10 **LCDR Venturella:** Captain what policy or procedure is utilized to complete the gap  
11 analysis to determine what must be covered by the U.S. supplement?

12 **WIT:** The development of the supplement is the responsibility of the classification  
13 society seeking authorization under the alternate compliance program. So there's a two  
14 part analysis if you will. The first part is carried out by the classification society seeking  
15 the authorization. So they're going to do a gap analysis between what is in the Code of  
16 Federal Regulations and what is contained in the international convention in their own  
17 rules. That is then submitted to my office and undergoes a review. And there's a – our  
18 review is a subsequent gap analysis that looks at what they presented to see if it fills the  
19 gap per se between convention and rules and the Code of Federal Regulations.

20 **LCDR Venturella:** Sir, you mentioned the gap analysis starts out as a class  
21 responsibility. Can you talk about whether it remains a class responsibility to revise the  
22 gap analysis in the U.S. supplement?



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1 **WIT:** It probably would better characterize that as a shared responsibility between the  
2 classification society and the Coast Guard. In using their supplement the classification  
3 society will be keeping track of both changes and their own classification rules as well  
4 as international conventions and the C.F.R. and tracking those to develop updates to  
5 their supplement. We should be doing the same in tracking changes in those three  
6 areas so that when the supplements come in we can conduct our review.

7 **LCDR Venturella:** Sir, can you talk about the specifics of the gap analysis and how it's  
8 actually conducted to find the gaps between class rules and international certificates  
9 and the U.S. supplement to class rules and the C.F.R.?

10 **WIT:** When the first supplement was developed when the alternate compliance  
11 program was launched that analysis to the best of my understanding was effectively  
12 almost a line by line analysis between what was contained in the Code of Federal  
13 Regulations and what was contained in the international convention and the class rules  
14 and resulted in the supplement. That was – that process was subsequently evolved  
15 through a more systems based approach based on identification of those systems  
16 that are critical to the safety of the operation of a vessel. And so now those – that gap  
17 analysis takes on more of a systems approach rather than a line by line detail of each  
18 prescriptive requirement. It looks more at the critical systems necessary for the safe  
19 operation of a vessel and looks for potential gaps there between the C.F.R. and  
20 convention and rules.

21 **LCDR Venturella:** Captain, the Coast Guard has approved U.S. supplements to ABS  
22 rules in 1997, 1999, 2003, and 2011. ABS promulgates an updated version of its steel  
23 vessel rules every year with multiple rule changes corrigenda, supplements and

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1 commentaries issued throughout the year on each version. How does the Coast Guard  
2 ensure that the most recent supplement appropriately addresses the gaps between  
3 class rules, international standard side and the Code of Federal Regulations?

4 **WIT:** When we would receive the new updated supplement for review the way we  
5 would go about ensuring that this updated supplement included all of the areas of  
6 concern you just raised it would require a fairly exhaustive review of going through what  
7 changes have taken place in international conventions, tracking the changes that took  
8 place in classification society rules as well as any changes in the Code of Federal  
9 Regulations or even our own Coast Guard policy and lining those up with the proposed  
10 changes in the supplement.

11 **LCDR Venturella:** Is that practice taking place, sir?

12 **WIT:** I'm pausing because yes it is taking place when we get to the point of reviewing  
13 updated supplements. The simple fact of the matter is that we are strained by  
14 resources to keep up with those reviews. So we have supplements that are pending  
15 review we just haven't gained a lot of ground on that. But when we do that is the  
16 process that we go through.

17 **LCDR Venturella:** Sir, there's a February 13<sup>th</sup>, 1998 Federal Register notice on critical  
18 ship safety systems. You mentioned the critical ship safety systems a minute ago. It  
19 provided that differences between class rules and international standards and Coast  
20 Guard regulations are acceptable provided that each critical ship safety system attains  
21 an equivalent level of safety. Can you tell me, sir, how this equivalent level of safety is  
22 determined?

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1     **WIT:** That's a fairly broad question and that there is no one definitive specific answer  
2     that I could give you that would articulate how we ensure an equivalent level of safety,  
3     at one end of the spectrum it might be as easy as a first principle engineering  
4     assessment. At the other end it's a much more holistic systems based risk based  
5     assessment of the systems in question. It may even involve identifying what might lead  
6     to a casualty and then what mitigating measures might take place after that. So it's a  
7     pretty broad – it's a pretty broad question with a pretty broad answer. It really depends  
8     on the case that we're being asked to look at.

9     **LCDR Venturella:** Thank you, sir. And we'll go through some specific examples  
10    shortly that might help. Sir, the U.S. Coast Guard has determined through this program  
11    that ABS rules along with the U.S. supplement when combined with international  
12    conventions and fully enforced are equivalent to the U.S. Coast Guard inspection for  
13    certification in 46 Code of Federal Regulations. Would you say that's correct?

14    **WIT:** Yes.

15    **LCDR Venturella:** Would you say that's correct based on the current state of the U.S.  
16    supplement?

17    **WIT:** Yes.

18    **LCDR Venturella:** Captain, are there any other classification societies other than ABS  
19    that can represent the Coast Guard under the alternate compliance program?

20    **WIT:** Yes there are. There is Lloyds Register, DNVGL, and Class NK.

21    **LCDR Venturella:** Sir, what is navigation vessel inspection circular 2-95 change 2 on  
22    the alternate compliance program and what role does that play in your office's  
23    supplement review?

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1       **WIT:** The NVIC as you described, 2-95 is the policy implantation of the alternate  
2       compliance program as codified in the C.F.R. There are parts of that NVIC that we  
3       would use as an office in reviewing updated supplements.

4       **LCDR Venturella:** Sir, does the marine safety manual provide guidance with regards to  
5       the alternate compliance program?

6       **WIT:** Yes it does.

7       **LCDR Venturella:** Does the Coast Guard, sir, rely on any IMO resolutions to guide it's  
8       development on oversight of the alternate compliance program? And can you comment  
9       on any specific resolutions if there are?

10      **WIT:** Yes, yes we do rely on IMO resolutions. The one that immediately comes to mind  
11      is I believe it's 739, but it has to do with recognized organizations.

12      **LCDR Venturella:** Thank you, sir. Captain please turn your attention to Exhibit 234.  
13      Exhibit 234 is a document posted publicly on the CG5 alternate compliance program  
14      website. It's dated 16 September 2002 and entitled U.S. Coast Guard alternate  
15      compliance program supplement review and revision. On page 1 this document  
16      includes some general principles of supplement review. I'm just going to read them off.  
17      Captain are you on the page?

18      **WIT:** Yes.

19      **LCDR Venturella:** Number 1 says all classification society supplements will be  
20      reviewed annually. Number 2, a holding file will be established to house changes that  
21      occur in the interim. Number 3, it will be essential to capture previous versions of the  
22      supplement and assign a date and addition number. A given addition will exist as the  
23      standard that a particular vessel was built to or presently adheres to, i.e. a vessel built

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1 to 2000 class rules in the 1999 supplement. Number 4, in addition to the supplements  
2 are to be minimized. Our intended goal is to reduce supplement items by recognition of  
3 the incorporation of U.S. interpretations of international regulations and particular U.S.  
4 regulations into classification society rules and or improvement to international  
5 standards. However, clarifications and additions that are vital to the interest of safety  
6 and security are precisely the items that must be incorporated into the supplement  
7 through a revision process. Captain, is this document an accurate portrayal of the  
8 process today?

9 **WIT:** You should preface this with the website is out of date. Those documents are still  
10 up there but they're not documents that are necessarily referred and used and  
11 regulatory occurring business of what we do. With that, I go back, so what's your  
12 specific question then?

13 **LCDR Venturella:** Obviously the document portrays some general principles which it  
14 expands upon. Having read these read these general principles Captain, would you say  
15 these general principles remain in effect?

16 **WIT:** No.

17 **LCDR Venturella:** Can you comment specifically on which principle are no longer  
18 accurate with the program?

19 **WIT:** Certainly. Take the very first one, all classification society supplements will be  
20 reviewed annually. They're not being reviewed annually. They probably haven't in  
21 quite some years. I couldn't give you a definite answer on that. But they haven't been  
22 reviewed annually for quite some time. However, just to point it out to the board you  
23 probably already realize this, but that was already – that principle was already

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1 presented in the preambles to the final rule. So that's not unique to this. But it was a  
2 stated policy intent certainly to have those reviewed annually. But the reality is, is I  
3 think over the period of time the challenge of keeping up with the annual review of those  
4 supplements proved to be much more difficult and onerous than maybe was conceived  
5 at the outset of the alternate compliance program. There is some speculation there on  
6 my part, but I believe there was a well stated intent that hasn't necessarily stood the test  
7 of time.

8 **LCDR Venturella:** Sir, can you comment on the other 3 general principles from a  
9 holding file down and whether those are accurate for today?

10 **WIT:** Well a holding file is just practice. You know we have one specific officer who is  
11 assigned as one of her duties, the administration of the alternate compliance program  
12 for the office. So included in her responsibilities is essentially a holding file, keeping  
13 track of, like I said earlier changes in international conventions, changes in rules,  
14 changes in C.F.R. that might impact a U.S. supplement and a future review and update  
15 of that supplement. So holding file. With regards to the third principle and the assigning  
16 of a date and addition number I know having looked at the supplements they're certainly  
17 dated. There, in my view there's a gap there. In that our policy is very clear that the  
18 supplement that existed when a vessel was enrolled in ACP remains applicable  
19 throughout the life of the vessel. What I don't see right now when I look at, at least with  
20 the sampling of the supplements that I reviewed in preparation is there's not a clear  
21 articulation in the supplement as to how that's delineated. Does that make sense? I'm  
22 not sure I stated that clearly enough.

23 **LCDR Venturella:** Yes, sir.

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1 **WIT:** Okay.

2 **LCDR Venturella:** Sir, the holding file is that something that would be available to the  
3 board if you have an actual file?

4 **WIT:** If we have the actual file it will certainly be available to the board. I do not know  
5 exactly how our administrator tracks those specific items that need to be considered in  
6 the supplement review.

7 **CAPT Neubauer:** Lieutenant Noyes can you provide that if the holding file is available?

8 **Counsel:** Yes, sir.

9 **CAPT Neubauer:** Captain Hawkins can I ask one follow up question from your last  
10 answer on the applicability of the supplements over time. Does that mean that the El  
11 Faro for instance being built in the 70's would be applicable to the, like a very first ABS  
12 supplement? Am I interpreting that right?

13 **WIT:** No. If I misstated that I apologize. The supplement that applies to the vessel is  
14 the supplement, the most recent supplement that existed when the vessel enrolled in  
15 the program. So for the El Faro if I recall my details correctly that would have been the  
16 2003 supplement.

17 **CAPT Neubauer:** Thank you for that clarification.

18 **LCDR Venturella:** Sir, are there any other inaccuracies that you're aware of within the  
19 document we have before us?

20 **WIT:** There may be. But as I stated at the very beginning the website is outdated.  
21 These are not policies that we use. So I would be – I'm going – I'm stretching myself a  
22 bit to go and point out inaccuracies to you because they're not ones that we normally  
23 use.

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1     **LCDR Venturella:** Thank you Captain. I'm going to still have you go to the Exhibit 235  
2     which is also posted on the website just to clarify whether this is current as well or not.  
3     Exhibit 235 is also posted on the alternate compliance program website. It is dated 16  
4     January 2003 and entitled process for discrepancies with ACP supplement. Sir, it  
5     appears to be a flowchart like a process which at least in 2003 might have been  
6     accurate. Do you know if this is at all accurate today?

7     **WIT:** Yeah, just like the others the website is out of date. What's up there is not  
8     necessarily what we would adhere to and follow. In both this and the previous exhibit  
9     there are certainly elements of both documents that are true and accurate. There's  
10    parts that are not. And part of what we are currently doing is going back through things  
11    like this, documents like this and vetting them out. This one is real – very quickly I look  
12    at one that references G-MSE. Well we've reorganized to a certain degree some of  
13    those types of references may or may not be accurate.

14    **LCDR Venturella:** Yes, sir. Just in general though would you say that the two exhibits  
15    we just looked were based on the original intent of the program though?

16    **WIT:** Candidly I'm challenged to answer that question. I think to your satisfaction I was  
17    not involved in the development of either document. So I can't tell you if they align with  
18    the original intent of the program. And then I would go even further to say that even in  
19    the early stages of the program the intent was evolving. You saw the final rule came  
20    out and then in a matter of months there was a notice of policy that came out regarding  
21    the critical systems approach to the supplement. So you know trying to match these to  
22    the original intent is somewhat challenging because this program was developed fairly



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1 quickly over a 4 year time frame between the very first pilot program and that notice of  
2 policy that came out subsequent to the final rule.

3 **LCDR Venturella:** Sir, can you please turn attention to a different exhibit, Exhibit 240?

4 Exhibit 240 is a screen shot from the CG5 website. There's a link off of the page for

5 ABS's portion of the alternate compliance program. Starting on page 1 and ending on

6 page 3 there are 4 U.S. supplements listed to the ABS rules for steel vessels on

7 international voyages. We went over them before, but they're dated 2011, 2003, 1999,

8 and 1997. Additionally on page 3 I see a holding file for interim changes that includes a

9 most recent interim change of 05 January 2010 for cargo tank venting as it relates to

10 these steel vessel rules. Sir, my first question with regard to this exhibit is that we have

11 seen in the field ABS surveyors using a 2009 U. S. supplement to the ABS rules for

12 steel vessels. And I'm curious since it's not here have we lost version control with ABS

13 in the alternate compliance program on these supplements?

14 **WIT:** I'll give you a two part answer on that. To my knowledge no we haven't lost

15 version control on that. With that said, if that – if practice what you described is going

16 on then it would be incumbent on us to now go back and investigate it if that is the case.

17 So to my knowledge no, but we would have to look into it.

18 **LCDR Venturella:** Captain, does the Coast Guard have a quality management process

19 that can be used to ensure appropriate control of documents and records?

20 **WIT:** Are you talking about the Coast Guard or are you talking about my office?

21 **LCDR Venturella:** I guess the Coast Guard overall as implemented in your office, sir.

22 **WIT:** Okay. Within my office we do have some systems for tracking incoming and

23 outgoing correspondence, yes. There's much room for improvement and that's a

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1 current initiative ongoing with any office. But yes in short we do have some  
2 mechanisms for tracking ingoing and outgoing correspondence. But that is within the  
3 Office of Design and Engineering standards and not speaking for outside.

4 **LCDR Venturella:** Sir, would that be contained within a mission management system,  
5 which my understanding is the Coast Guard's quality system document of any kind?

6 **WIT:** No. These are internal systems to the office for tracking incoming and outgoing  
7 correspondence.

8 **LCDR Venturella:** Sir, as discussed on page 3 the holding file includes a most recent  
9 change of 2010 for the cargo tank venting. Is the holding file to intend to include  
10 changes that are 6 years with dates before the last update to the supplement in 2011? I  
11 was under the impression it's more of an active file for interim changes.

12 **WIT:** It's an out of date website.

13 **LCDR Venturella:** Captain, is there a better hardcopy of the holding file at your office  
14 at Coast Guard Headquarters that would have current interim changes?

15 **CAPT Neubauer:** I believe we already requested that from counsel.

16 **WIT:** Yeah. We've already cover that. And as far as this is concerned and the out of  
17 date website, just for transparency, full transparency maintaining and updating a site  
18 like this is resource intensive. Especially as we've gained more authorized classification  
19 societies enrolled in the program. And the supplements, and the number of  
20 supplements have grown. So again as in other cases good intent here that was  
21 outstripped by the available resources.

22 **LCDR Venturella:** Thank you, sir. Does ABS to your knowledge have a separate  
23 holding file and are they actively submitting recommended changes to the supplement?

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1 **WIT:** To my knowledge yes. The American Bureau of Shipping does have a holding  
2 file up there. They do – they keep track of that. They are making updates to the  
3 supplements. They are submitted to us for review. We actually have a supplement  
4 from ABS in our office right now pending review.

5 **LCDR Venturella:** Sir, can you please turn your attention to Exhibit 232? Exhibit 232  
6 is the February 13<sup>th</sup>, 1998 Federal Register notice on critical ship safety systems and  
7 components of a supplement under the alternate compliance program, 63 Federal  
8 Register 7495 that we discussed earlier. Sir, can you discuss the reasoning's behind  
9 the use of the critical ship safety system approach and it's intended fix to the  
10 supplement process?

11 **WIT:** Could you just restate the question once more for me?

12 **LCDR Venturella:** Yes, sir. I'm just trying to understand why this Federal Register was  
13 put out introducing the critical ship safety system approach and how it might help the  
14 supplement review process.

15 **WIT:** Well it's laid out clearly in the preamble to the notice of policy. Essentially what it  
16 came down to is when the very first supplement was developed with the American  
17 Bureau of Shipping they took a much more detailed line by line approach to the  
18 development of the supplement. A few things bore out in that. One it's a very labor  
19 intensive process that involves a lot of people. Still involves a lot of people. But it's a  
20 very labor intensive process to go through line by line. By this time the program was  
21 realizing that we are going to be seeing other classification societies seeking  
22 authorization under the program and that there was a proliferation of some degree to  
23 the number of supplements. And based on limited resources there was only going to be

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1 so much – that was going to – it probably was not going be attainable way forward to go  
2 through line by line every single time we had a supplement come up. So they took a  
3 risk based approach looking at systems that were in the C.F.R., determining which ones  
4 were critical to the safe operation of the vessel, determining which ones were already  
5 satisfactorily addressed by international convention and then narrowing them down to a  
6 list of critical systems that would need to be addressed in the development of  
7 supplement to ensure that convention plus rules plus supplement provided an  
8 equivalent level of safety to the minimal standards in the C.F.R. Does that answer your  
9 question?

10 **LCDR Venturella:** Yes, thank you Captain. Sir, has ABS used the critical ship safety  
11 system approach in developing their supplement?

12 **WIT:** To be honest I would have to answer I don't know. I haven't myself done a  
13 detailed review of a supplement update. That's done at the staff level. Whether or not  
14 that was done using the critical systems approach or not I don't know. It would be fair to  
15 bring out here that you can, as you look across the supplements you can see  
16 differences in the supplements in the way they're done. There's a lot reasons for that.  
17 One thing I think you will see when you look at ABS's supplements perhaps compared  
18 to other supplements is theirs is rooted in that very initial supplement that was made  
19 with the line by line approach. Subsequent classification societies that came in would  
20 have come in after the promulgation of this policy which would have affected their initial  
21 supplement that came out.

22 **LCDR Venturella:** Sir, are you aware of any authorized classification society that has  
23 used the critical ship safety system approach or not sure on that?

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1 **WIT:** I don't know exactly I can't answer your question definitively. Based on a cursory  
2 review of supplements I would opine yes they have been taking the critical systems  
3 approach. But I can give you the definitive answer that you're looking for.

4 **LCDR Venturella:** Sir, could you turn to page 3 of the exhibit, Exhibit 232, page 3?  
5 Could you try to explain for us what this table represents?

6 **WIT:** Yes. So paraphrasing the explanation that's in the preamble, or that's in the  
7 notice of policy here, the Coast Guard at the time went through the C.F.R. did a  
8 subjective and objective risk assessment and identified those systems in the C.F.R. that  
9 were critical to the safe operation of the vessel and they came up with a list. They then  
10 took that list laid it next to the international conventions to determine which of those  
11 systems were not satisfactorily addressed, to the satisfaction of the Coast Guard in  
12 those international conventions. You then ended up with this short list that was  
13 intended to help authorized classification societies to develop and update their  
14 supplements by focusing in on these critical systems because the other systems were  
15 satisfactorily addressed by international convention.

16 **LCDR Venturella:** Thank you Captain. Within this table I would like to highlight a few  
17 specifically referenced critical ship safety systems that may have been required to be  
18 looked at on El Faro. El Faro was a U.S. flagged container ship and vehicle carrier that  
19 would fall under the cargo and miscellaneous vessel subchapter I. And through  
20 subchapter I they would apply subchapter F for marine engineering and subchapter J  
21 for electrical engineering. Specifically in the table within this exhibit first in subchapter F  
22 46 C.F.R. Part 61 is identified as periodic test and inspections is a critical ship safety  
23 system. Do you see that, sir?

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1 **WIT:** Yes.

2 **LCDR Venturella:** And then moving down to subchapter I, that's page 4. In  
3 subchapter I 46 C.F.R. 90.27-1, lifesaving appliances and arrangements is referenced.  
4 Do you see that Captain?

5 **WIT:** Yes.

6 **LCDR Venturella:** And under subchapter J 46 C.F.R. 111.105, hazardous locations is  
7 also referenced. Do you see that?

8 **WIT:** Yes.

9 **LCDR Venturella:** Thank you Captain. Please turn your attention to Exhibit 199.  
10 Within Exhibit 199 please go to page 2, sir. Exhibit 199 is 46 C.F.R. 61.05-10, boilers in  
11 service. Page 2 includes a table of inspection intervals for boilers and includes  
12 hydrostatic test intervals for boilers. This would require El Faro's water tube boiler to be  
13 hydrostatically tested once in every 5 year period at 1.25 times the maximal allowable  
14 working pressure. This Federal Regulation also requires a 1.5 times maximal allowable  
15 working pressure test after extensive boiler repair. This is in Part 61. So is this  
16 considered a critical ship safety system area for the Federal Register, sir?

17 **WIT:** For the Federal Register, yes.

18 **LCDR Venturella:** Sir, are you aware that the combination of ABS rules and our  
19 supplement includes no requirements for a similar hydrostatic test for boilers in service?

20 **WIT:** Restate that please.

21 **LCDR Venturella:** When referencing the ABS steel vessel rules and the U.S.  
22 supplement either 2003 that applied to El Faro or 2011 of today there are no hydrostatic  
23 test requirements for boilers in service. Is that something you're aware of?

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1 **WIT:** No that's not something I'm personally aware of, no.

2 **LCDR Venturella:** Sir, if we could turn to Exhibit 236. Within Exhibit 236 please  
3 reference page 5. Exhibit 236 is the Coast Guard's marine safety manual volume 2.  
4 Page 5 is part of chapter 9, section B. And on this page C had inspection intervals.  
5 And so I'm just going to read this off. As a general rule for ACP vessels the frequency  
6 of survey intervals will be governed by the U.S. interpretation of international  
7 conventions or the classification society's intervals for items such as inspections of  
8 pressure vessels, stern tube, lube oil analysis, boiler safety valves, fuel tank internals,  
9 water tube boiler hydrostatic test and sea valve internal structural examinations, dry  
10 dockings, annual for passenger vessels etc. Sir, given what I just told you about the  
11 boiler and service hydrostatic test not being covered by the ABS steel vessel rules or it's  
12 supplement, if that's true, I know you said you weren't aware, if that's true can the  
13 C.F.R. that I just showed you as well that has those intervals be referenced?

14 **WIT:** I'm going to ask you to restate that question because I believe the way you  
15 phrased it is technically not applicable because the way the alternate compliance  
16 program works it says, convention, plus rules, plus supplement are equivalent to the  
17 standards established in 46 C.F.R. It does not say where you see a gap go to the  
18 C.F.R. The C.F.R. does not directly apply to a vessel enrolled in ACP. So I don't you  
19 think you've asked the question quite the way you intended.

20 **CAPT Neubauer:** For clarification, did you intend that to mean can it be referenced  
21 during compliance activities in the field?

22 **LCDR Venturella:** Yes. I meant exactly what I said. But I'll explain it better. So  
23 Captain, I do definitely understand that the ACP supplement and the rules and the

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1 international conventions are all that applies. However, as this marine safety manual  
2 cite shows we're intended to rely on the inspection intervals that those sources give us  
3 for hydrostatic test on water tube boilers. What if there isn't an inspection interval for  
4 water tube boilers?

5 **WIT:** So I think that's the question you're asking. That's where there's a gap. That's  
6 where now my office has the responsibility to now look at the supplement, work with the  
7 classification society, assess the critical system and see if that truly is a gap that now  
8 needs to be closed in the supplement.

9 **LCDR Venturella:** Yes, sir. But I mean more in the interim because the process takes  
10 so long. Should we be telling our Coast Guard marine inspectors to go ahead and  
11 apply 46 C.F.R. Part 61 as a critical safety system?

12 **WIT:** No.

13 **CAPT Neubauer:** I think the question is could we do that under the process?

14 **WIT:** No. That would – that would contravene the premise behind the alternate  
15 compliance program. I understand what you're saying. If you find a gap, and we do  
16 find gaps particularly when we have marine inspectors in the field doing their oversight  
17 examinations. When those gaps are revealed they're socialized throughout the program,  
18 they're assessed, we engage with the classification society to assess that gap. In doing  
19 that there is an explicit decision as to what do we need to do to close that gap, can it  
20 wait until we update the supplement? Or if it poses an imminent safety risk do we then  
21 need to make an immediate change to the supplement and get that pushed back out to  
22 the surveyors?

23 **CAPT Neubauer:** Captain Hawkins I have a follow up question on that process.



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1 **WIT:** Another good point that comes up in that engagement when we're working with  
2 the classification society, and this is always the case when we talking about the  
3 alternate compliance program, if there's a gap in there there's different ways to close  
4 that gap. One might be the supplement. The other might just be amending class rules.  
5 And admittedly class rules evolve much more quickly than say our regulatory framework  
6 does.

7 **CAPT Neubauer:** So Captain Hawkins if we were looking at an issue for the El Faro  
8 potentially, if it were updated in the supplement, if it was a gap that we wanted to be  
9 covered, the supplement wouldn't apply, the new supplement would not apply to the El  
10 Faro, is that correct?

11 **WIT:** That goes back to our earlier conversation which policy is very clear, the  
12 supplement that applied when the vessel was enrolled is the one that applies  
13 throughout the life of the vessel. But what we have – I see a gap there in the  
14 administration of program because now we need to be able to go back, updated that  
15 particular supplement so that it remains applicable but adapts for closing gaps as  
16 they're found. But right now the way the supplements are being developed and  
17 approved, at least within the limited review I've had of those for ABS that's unclear how  
18 that's taking place.

19 **LCDR Venturella:** Captain please turn your attention to Exhibit 238. Exhibit 238 is a  
20 Coast Guard marine inspection notice 01-12 dated February 7<sup>th</sup>, 2012. This marine  
21 inspection notice is entitle ATEX certificated electrical equipment and hazardous areas  
22 on U.S. ships. I'm just going to read a little highlight out of, not the whole thing. But  
23 while conducting the oversight of vessels enrolled in the alternate compliance program

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1 or that completed plan review under NVIC 10-82 that Coast Guard discovered electrical  
2 equipment installed on hazardous areas certified by notified bodies under the European  
3 Union's ATEX directive 949EC. Equipment certified under this ATEX directive does not  
4 comply with 46 C.F.R. 111.105-7(a). Therefore the equipment is not acceptable for use  
5 within certain hazardous areas on U.S. vessels. And it goes on from there. But the two  
6 things I wanted to highlight in there is that this particular marine inspection note was for  
7 vessels in the alternate compliance program and it references 111.105 which is one of  
8 the highlight critical ship safety system regulations. Do you see that Captain?

9 **WIT:** Yes.

10 **LCDR Venturella:** Would you agree that this inspection note that when it went out was  
11 intended to apply to existing alternate compliance program vessels like the El Faro  
12 especially as it relates to any hazard electrical required for vehicle holds and around  
13 vehicles holding gasoline?

14 **WIT:** If I answered your question within the context of this inspection notice, yes, but  
15 there's parts here that I don't have knowledge of that I would have expected. I can see  
16 where this would go out and give some direction to the marine inspection workforce on  
17 how to handle this. But along with this at least with regards to the alternate compliance  
18 program my office should be engaging with the authorized classification societies with  
19 regards to either the supplement and or class rules to close this gap. Does that make  
20 sense?

21 **LCDR Venturella:** Yes, sir. And I'll actually show you that your office did. But if we  
22 could turn to Exhibit to 113 page 21. If you look at the area that says cite 4-8-3/13 it  
23 addresses the ATEX marine inspection note through the 2011 supplement.

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1 **Counsel:** What page again in that exhibit?

2 **LCDR Venturella:** I'm sorry. Exhibit 113 page 21.

3 **WIT:** Okay. We're there.

4 **LCDR Venturella:** So what I wanted to make sure you saw Captain was that page 21  
5 included a revision to the supplement for the 2011 supplement that included this ATEX  
6 electrical restriction. And this was actually a good example of using the supplement to  
7 ensure coverage of Coast Guard requirements. As we discussed earlier the El Faro  
8 was enrolled in ACP around 2006 and would have applied the 2003 supplement. Of  
9 course the 2003 supplement doesn't have these ATEX restrictions. So it's just another  
10 example, but I think you're aware of that gap. Sir, if you could turn your attention to  
11 Exhibit 237. Exhibit 237 is an Office of Design and Engineering Standards policy letter  
12 01-14 dated March 4<sup>th</sup>, 2014 and entitled life boat release mechanisms, policy on  
13 implementation of SOLAS regulation 3/1.5 and IMO circular MSC 1 circular 1392. This  
14 particular policy letter provides guidance to assist the U.S. flag ship owners and  
15 operators in complying with recent SOLAS amendments and requiring all ships subject  
16 to SOLAS regardless of build date to identify and replace existing on load release  
17 mechanisms release hooks that do not comply with specific provisions of the  
18 international lifesaving appliance code. Sir, please turn to page 22 of this exhibit. If you  
19 look at number 5 on page 22 the question is started what is the next step if my hook is  
20 non-compliant. This paragraph talks about the procedure if the life boat has non-  
21 compliant hooks and it specifically states in the last paragraph, every Coast Guard  
22 approved life boat is approved with a specific Coast Guard approved release  
23 mechanism. Therefore, when a different Coast Guard approved release mechanism

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1 than that approved with the original boat is proposed for installation on a Coast Guard  
2 approved life boat or rescue boat it constitutes a modification for the approved life boat  
3 and the change must be submitted to the Coast Guard in advance for review and  
4 approval. We have not yet determined through testimony whether El Faro was required  
5 to be re-hooked or needed to be re-hooked, but we're looking into that. However, would  
6 you agree that this ENG policy letter or engineering design standard policy letter should  
7 or should be applied to an existing vessel like the El Faro for at least a check on the  
8 requirements?

9 **WIT:** I hesitate because you're asking me to agree with you, but I'm not intimately  
10 familiar with this particular policy and all the construction details of the El Faro. So I  
11 hesitate. It appears that that's the case, but not being intimately familiar with this I  
12 hesitate to give you my professional opinion.

13 **CAPT Neubauer:** Sir, if we could just get a follow up at a later date on if this would  
14 apply to the El Faro from your office.

15 **LCDR Venturella:** Now understanding that you're not sure whether it would apply at  
16 this point, sir, would you agree that this is a critical safety item per the Federal Register  
17 as lifesaving appliances or governed by 46 C.F.R. 90.27-1?

18 **WIT:** Yes.

19 **LCDR Venturella:** Are you aware whether this particular policy might be in the holding  
20 file?

21 **WIT:** I'm not aware. I'm not aware, but I go back to my previous statements that when  
22 we take a submitted supplement for review we're going to start from the baseline and go  
23 back and look at the changes that have taken place and international convention, class

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1 rules, Code of Federal Regulations and then any other implemented policy that has  
2 been developed. So even with a critical systems approach you quickly come to the  
3 understanding that the review of an updated supplement is a significant task and  
4 resource intensive.

5 **LCDR Venturella:** Thank you Captain. Captain, if you could turn your attention to  
6 Exhibit 111. Specifically within Exhibit 111 if you could go to page 5. Exhibit 111 is the  
7 memorandum of understanding between the United States Coast Guard and the  
8 American Bureau of Shipping concerning delegation of vessel inspections and  
9 examinations and tonnage measurement and acceptance of plan review and approval  
10 dated January 12<sup>th</sup>, 1995. On page 5 if you could go to Roman Numeral V for one of  
11 ABS's responsibilities. It says submit proposed changes to the ABS rules and the  
12 associated ABS quality system procedures and process instructions related to functions  
13 delegated under this MOU to the Coast Guard for review and comment to determine  
14 that these documents read together with the U.S. supplement to the ABS rules are  
15 consistent with U.S. law, regulation and policy. Sir, we just went over a regulation for  
16 boiler hydrostatic test and a policy that may be an issue with the life boat on load  
17 releases that are not captured in the ABS rules or the U.S. supplement. Based on that  
18 do you still believe that the program is consistent with U.S. law, regulation and policy?  
19 Are you confident in that?

20 **WIT:** Restate that again one more time for me.

21 **LCDR Venturella:** Yes, sir, Captain. The question is whether after going through some  
22 of these exhibits you still have confidence that the program is consistent with U.S. law,  
23 regulation and policy?

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1 **WIT:** Yes. I believe that the program as whole is consistent. I believe that there's  
2 some gaps that need to be addressed. We know of gaps, we're working towards that.  
3 We know that the authorized classification societies are reviewing and updating  
4 supplements and they are submitting those to us for review. But as I said those are  
5 resource intensive and we're getting to them as quickly as we can within the context of  
6 the whole spectrum of work that we're responsible for.

7 **LCDR Venturella:** Sir, is your office sharing policies, ENG policies and are CVC  
8 policies being shared with ABS and other authorized classification societies to facilitate  
9 this process?

10 **WIT:** Absolutely.

11 **LCDR Venturella:** Sir, please turn your attention to Exhibit 113. In 113 if you could go  
12 to page 66. Exhibit 113 is the 2011 U.S. supplement to the ABS rules for steel vessels  
13 on international voyage. Page 66 has a check sheet for ABS statutory surveys included  
14 within the supplement. And note is included in Part 3 under life boat operational tests  
15 that states, the Coast Guard inspectors will have a crew proficiency test to conduct  
16 during their boarding. At that time the crew must operate each boat in the water and the  
17 following test will be carried out. Sir, keeping that in mind if we could turn to page 5 of  
18 the exhibit. On page 5 it states Section 4 contains the check sheets to be used during  
19 and after construction and then in parenthesis it says not U.S. Coast Guard approved.  
20 The ABS surveyors that testified during this hearing testified that this checklist was  
21 included in their survey despite its status as unapproved by the Coast Guard. Can you  
22 comment on how this unapproved checklist can be located within the approved U.S.  
23 supplement?

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1     **CAPT Neubauer:** Captain Hawkins this might be a good time for a break if you want to  
2     look at this issue, or do you want to keep going?

3     **WIT:** Yeah, we can take a break, that's fine.

4     **CAPT Neubauer:** The hearing will recess and reconvene at 1135.

5             *The hearing recessed at 1126, 27 May 2016*

6             *The hearing was called to order at 1140, 27 May 2016*

7     **CAPT Neubauer:** The hearing is now back in session. Captain Hawkins I understand  
8     that you want to clarify a point for the record before we start back.

9     **WIT:** Thank you, yes. And so I'll do my best. It harkens back to your question  
10    regarding the MOU in Subparagraph 5 on page 5.

11    **Counsel:** Again this is Exhibit 111, page 5.

12    **WIT:** In the presentation of your question you pointed to some earlier discussion that  
13    we had today in specifically that highlighted existing gaps in the program administration.  
14    Whether it's through a marine inspection note, through existing policy, the hydrostatic  
15    testing for pressure vessels and then brought that in as we looked at paragraph 5. And  
16    the approach of your question seemed to say look at these gaps that would seem to say  
17    that this program is not consistent with law, regulation and policy. My concern there is  
18    that someone may somewhat misconstrue that paragraph. Because what that  
19    paragraph says is that the onus is on the American Bureau of Shipping through their  
20    rules and the updates to their rules through their quality management system and  
21    proposed updates to the supplement to ensure that their administration of the ACP  
22    program remains consistent with law, reg and policy. So even though you have these  
23    gaps over here the part that hasn't been discussed and not prepared to get into that

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1 kind of detail today, but what changes were taking place within the American Bureau of  
2 Shipping's classification rules, their quality management system, even procedures that  
3 ensured that the program remained consistent with law, reg and policy. So hopefully  
4 that clarification kind of gets to the heart of what you were trying to ask or what I believe  
5 you were trying to ask for that question.

6 **Counsel:** And if I can add one question. Is ABS submitting changes to their  
7 classification rules for review and comment to determine that those documents read  
8 together with the supplement are in compliance?

9 **WIT:** Yes. And so the answer to that question is yes. We, the Office of Design and  
10 Engineering Standards regularly receive updates to classification rules to those  
11 societies that are enrolled in the alternate compliance program. Once more we're  
12 actually afforded an opportunity and it's actually codified in the agreements with those  
13 classification societies to participate and engage with respect to the development of  
14 those rules and the updates of those rules.

15 **CAPT Neubauer:** Since we're on the subject, do you know what the last time you  
16 received an update from ABS to review?

17 **WIT:** So I'm struggling for an exact date, but in the last two months. I mean they come  
18 in regularly from the classification societies. I can't tell you which – what rule came in  
19 and from which society. But they're regularly submitted.

20 **CAPT Neubauer:** Yes, sir. Two months is what I was looking for, recently. Lieutenant  
21 Commander Venturella can you repeat the question on the lifesaving appliances, where  
22 we left off?

23 **WIT:** And which exhibit was that?



1 **LCDR Venturella:** Sir, Captain can I do one follow up on that conversation first?

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

3 **LCDR Venturella:** Okay. Captain, just on what we just discussed I just wanted to  
4 clarify one thing. ABS is submitting changes to the supplement or recommended  
5 changes to the supplement and their rules. Are they making changes to the ones  
6 applicable to the El Faro, the 2003 for regulation and policy retroactive to existing  
7 vessels?

8 **WIT:** Quite simply that goes back to a point of discussion we've encountered a couple  
9 times today which is that's a gap in the administration of the supplements that needs to  
10 be closed through my office.

11 **LCDR Venturella:** Okay. And going back to the previous conversation it was Exhibit  
12 113 page 66. That's the 2011 U.S. supplement. And page 66 was a check sheet for  
13 ABS statutory surveys. We were talking about item 3 under life boat operational tests  
14 that indicates that there's crew proficiency test that the Coast Guard requires to conduct  
15 during the boarding with the boat in the water. And that was on an unapproved  
16 checklist. Can you discuss how this unapproved checklist is in an approved U.S.  
17 supplement?

18 **WIT:** Certainly. It's fairly straight forward. So whether through both regulation and  
19 policy what is required to be incorporated into the supplement is established. Namely  
20 interpretations to international convention and those requirements necessary to close  
21 the gap between the C.F.R. and convention plus rules. Those are the elements that  
22 have to be in the supplement and those are the elements that when they come through  
23 my office would be reviewed. There is nothing that would limit a classification society

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1 from putting more into the supplement if it served their needs to properly administer the  
2 program. But just because they've put it in there does not come with requirement on  
3 our part, commitment on our part to review and approve that. So it's fully – I think I've  
4 answered the question, thank you.

5 **LCDR Venturella:** Captain, just to understand a little bit better, understanding class  
6 can put additional expectations beyond what is required for the gap analysis of the  
7 supplement, can they also make requirements of the Coast Guard like this crew  
8 proficiency test that the Coast Guard inspectors don't typically do?

9 **WIT:** With this, in regards to this specific element that you pointed out they have not put  
10 a requirement on the Coast Guard. And certainly the fact that it explicitly says it's not  
11 Coast Guard approved would then speak to the standing of that element in the  
12 checklist.

13 **LCDR Venturella:** By placing it in the check sheet this way where it says the Coast  
14 Guard inspectors do this, is that somehow taking any expectation off the ABS surveyor?

15 **WIT:** Trying to answer your question in a little bit of an around about way. But I think  
16 you may be looking at this – another way to look at this, another perspective is that it's  
17 already codified in the program policy as to what the Coast Guard inspectors do during  
18 oversight examinations. And it's established in Coast Guard policy that as part of those  
19 examinations they're going to go on board and do drills and exercises which would  
20 include this element here.

21 **LCDR Venturella:** Captain, maybe you could help us understand that. Because we're  
22 not aware of any place in Coast Guard policy where the Coast Guard actually does  
23 require inspectors to put the boat in the water. We would do abandon ship drills and

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1 that would be part of a typical alternate compliance program exam. But to our  
2 understanding there isn't anything like this. Are you aware of something?

3 **WIT:** I guess I'll go back at you and ask you to ask your question again. And part of  
4 this, I'm going to hedge my comments a little bit because once we start going into  
5 surveys, oversight examinations that's not my program responsibility. That's  
6 Commercial Vessel of Compliance. I think all I was stating was is that under the ACP  
7 program there's a requirement, there's requirements in place for those oversight  
8 examinations which includes drills and exercises under the ACP program ABS has  
9 requirements for surveys.

10 **LCDR Venturella:** Thank you Captain.

11 **CAPT Neubauer:** I would like to rephrase the question. If it was the Office of  
12 Compliance position that the Coast Guard did not need to test life boats underway  
13 would it be inappropriate for ABS to make a policy on their own saying that we should?  
14 Or is this potentially a gap that we should address?

15 **WIT:** I guess I'm going to hedge it and say it's – I don't know the answer to that  
16 Captain. But there's potentially a gap there. I'm struggling right now to try and really  
17 articulate this clearly.

18 **CAPT Neubauer:** Captain, can I just recommend a way forward. Because it is a  
19 complex issue could we get a position from your office on what exactly the supplement  
20 requires for a life boat underway test? Or who should be conducting overseeing this?

21 **WIT:** Well I was just about to intercede and say it's a complex issue but I really believe  
22 that right now where I sit that the answer to that question is more appropriately directed  
23 at the Office of Commercial Vessel Compliance. And it may even highlight one aspect

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1 of this. I mean the review and approval of supplements is certainly the responsibility of  
2 my office, but that does not necessarily to indicate that those reviews take place within  
3 the vacuum of my office. Where appropriate and if needed we would be engaging  
4 others across our Headquarters and review and approve of that supplement.

5 **CAPT Neubauer:** Understand. Thank you.

6 **LCDR Venturella:** Captain.

7 **WIT:** Yes, yes.

8 **LCDR Venturella:** Captain, just to close out a couple other questions you mentioned  
9 that you are aware of some gaps that your office is working on. Can you comment on  
10 specific plans for improvement of the supplement process that are underway at the  
11 office?

12 **WIT:** I'll answer your question, but I don't know it's going to have the degree of  
13 specificity that you're looking for, but as a whole all of the office and directorates at  
14 Headquarters that are involved in the administration of the alternate compliance  
15 program are looking at the program right now to include supplement review and  
16 approval, delegation, authorization, even the NVIC 2-95 that you mentioned earlier.  
17 And we're doing that collaboratively and across offices to make sure that we really  
18 approach this in a holistic way that really addresses some of the underlying concerns or  
19 challenges that we have with the program. So as of yet no I can't articulate to you  
20 specifically line item, line item, line item of actions that we're going to take because  
21 we're still internally assessing the program and determining how we're best going to  
22 move forward in addressing any potential gaps in its administration.

1       **LCDR Venturella:** Captain is there anything that I didn't cover that you would like to tell  
2       the board?

3       **WIT:** I believe one point that came up in some of the previous conversation that we've  
4       had today was the challenge in administering the program with the resources available.  
5       And it came up a couple times but it's worth highlighting that. This is a program that is  
6       implemented at the deck plate in the field from an oversight perspective. But the  
7       development, implantation and management of that program happens at the  
8       Headquarters level. And it requires resources to do that. And that's an area right now  
9       that is challenging in the current environment in which we exist. Is how do you best  
10      muster those resources to administer the program while at the same time satisfying  
11      your other program responsibilities. I believe that's probably the most salient point I can  
12      put out there for you is that, you know this program takes resources. It is not – it is  
13      resource intensive from the administrative management perspective of the Coast Guard  
14      Headquarters.

15      **CAPT Neubauer:** And to follow up on that, Captain Hawkins can you expand on how  
16      many personnel have been assigned to this specific duty from the office of – your office  
17      over the last several years?

18      **WIT:** Two part answer for you. The specific responsibility is the administrator of the  
19      program for the Office of Design and Engineering Standards has been for the last  
20      several years assigned to one person. Currently right now we have two people tackling  
21      it, but historically over the last several years that's been one person. The second part of  
22      that answer and it's important to highlight is that that's the administration function.  
23      When you're looking at this type of a program it's very technical and it's multi-

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1 disciplinary. So while you have one person who is administering the program, in reality  
2 it touches on almost every aspect in almost all the people that are in my office.

3 Because to one degree or another they're all bringing some subject matter expertise that  
4 is necessary in order to properly review supplements, changes and other matters that  
5 are related to properly administering the program. Does that answer your question  
6 Captain?

7 **CAPT Neubauer:** Yes, sir. Thinking back to the question the question that was asked  
8 about how inspectors in the field can submit discrepancies that they find with the ACP  
9 supplement, you mentioned the website process is out of date, outdated. Is there a  
10 process that inspectors can reference that's current?

11 **WIT:** So I don't know that the website was ever a process for submitting those gaps. I  
12 may be wrong on that. But I don't believe that what was on the website was ever  
13 intended to be a process by which field level personnel would submit identified gaps. I  
14 could be wrong on that. But I don't believe that was the case. My recollection is there  
15 is some discussion in the marine safety manual if that's the case and how those are to  
16 be vetted. Because some of those could potentially be vetted at the local level or  
17 intermediate levels between the local and Headquarters. But more to the point, there is  
18 no identified specific process by which it would happen. At least it's not documented.  
19 The expectation is that would be communicated up the chain to either come to CVC or  
20 ENG for resolution.

21 **CAPT Neubauer:** Thank you. Mr. Fawcett.

22 **Mr. Fawcett:** Thank you Captain. Good morning Captain.

23 **WIT:** Good morning.

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1 **Mr. Fawcett:** Through this testimony we've talked about the review and updating of  
2 supplements. But I would like to turn our attention to the creation of a supplement.  
3 Tote has both state of the art dual fuel powered LNG advanced diesel fueled powered  
4 vessels and those vessels have unique systems on them. Cryogenic systems, changes  
5 and revisions to lifesaving appliances because of the type of cargo. Can you explain to  
6 me the state of a supplement that would cover that new technology?

7 **WIT:** I guess I don't understand your question. The state of a supplement that would  
8 cover that.

9 **Mr. Fawcett:** Right. In other words the management of change. This new technology  
10 for the LNG powered ships, the bunkering operations, the survival systems, the  
11 instrumentation, is there a supplement that covers those aspects of the new ships?

12 **WIT:** I think I heard you ask two question. One was how do the supplements facilitate  
13 the management of change. I guess my simple answer there would be that that's not  
14 the purpose of supplements to manage change. Supplements are there to fill the gap,  
15 or the Delta between C.F.R., the convention plus rules. With respect to the  
16 development of a supplement to address emerging technology, again that's just going to  
17 go back to the process we had discussed before where you actually have to have some  
18 regulations in place, you compare those to what's in convention and rules and look for  
19 the gap and close that. So it doesn't matter if we're talking you know 10 years ago with  
20 a conventional system or if we're talking now about an innovative system. The  
21 approach is still going to be the same.

22 **Mr. Fawcett:** Okay. So let me restate the question about the management of change.  
23 How does your office and the Coast Guard manage the change to emerging technology

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1 with regard to surveys, inspections and oversight of those systems on board those  
2 vessels?

3 **WIT:** Thank you for rephrasing but I'm still struggling with what you're getting after with  
4 your question. Because – yeah the management of change. I'm not sure where you're  
5 going with this line.

6 **Mr. Fawcett:** In other words the emerging technologies that were brought about by  
7 new fuel sources for vessels such as LNG and other potential sources. How does the  
8 Coast Guard effectively adapt to that change with policy and regulations including the  
9 supplement and the alternate compliance program.

10 **WIT:** In one hand I think you're talking about a more overarching issue which is  
11 something we deal with every day as we deal with the evolution of the maritime  
12 transportation system and the way we ship things. And so we're just constantly re-  
13 evaluating, I apologize, re-evaluating where we are and whether or not we need to bring  
14 more expertise in, where we need to grow and coming up to speed and learning about  
15 these technologies and working with the industry to understand those technologies.  
16 Again, once we delve down to the alternate compliance program by that time the  
17 standards are established. And now you're just making sure that the alternate scheme  
18 provides and equivalent level of safety to the codified scheme.

19 **Mr. Fawcett:** So are the new Tote vessels covered by the alternate compliance  
20 program?

21 **WIT:** At that point I don't know. I have no specific knowledge about that.

22 **Mr. Fawcett:** Thank you, sir.

23 **CAPT Neubauer:** Commander Odom.



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1       **CDR Odom:** Thank you Captain. Captain, good afternoon. You had stated earlier in  
2 your testimony about the shared responsibility between ABS or the authorized class  
3 societies and the Coast Guard for the development and revision of the supplement.  
4 Can you be a little bit more specific about how we share those responsibilities and more  
5 specifically to about the authority that your office has to force change in class rules if in  
6 your authority to ensure that the gaps are closed in the supplement?

7       **WIT:** Well first at the most fundamental level it's codified under regulations. It's the  
8 responsibility of the classification society to develop and submit the supplement for  
9 review and approval by the Coast Guard. It is then in turn our responsibility to review  
10 and approve it. Now beyond those two very discreet requirements that are established  
11 in regulation there is an engagement between both the classification society and the  
12 Coast Guard when it comes to the administration of the program. So in that regard we  
13 routinely throughout out day to day operations are discussing with them where the rules  
14 are, where the supplement might be, what's going on in international convention and  
15 that plays into this, you know this shared responsibility of they develop the supplement  
16 and we review and approve it to make sure that it fills that Delta between convention  
17 and rules and the C.F.R. Now you went on to say how do you force the classification  
18 society to change their rules. To my knowledge there's nothing there. There's no  
19 authority by which we would force a classification society to change their rules. Of  
20 course we do hold the responsibility for reviewing and approving the supplement. So if  
21 we identified a gap and it wasn't closed in the supplement, well then we wouldn't review  
22 and approve the supplement. Or we wouldn't approve it, I mean we would review it.

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1 **CDR Odom:** So if there's a disagreement between the Coast Guard and the authorized  
2 class society on the proposal, the simple authority would be just not to approve the  
3 supplement?

4 **WIT:** I'm hesitating because yes, but I think that disregards the engagement and  
5 collaboration that goes back and forth. To my knowledge we haven't gotten to a point  
6 like that. I mean we're both professional organizations committed to our intended  
7 purposes and if there's gaps in there we're going to work and dialogue with each to  
8 figure out how we're going to close those. Does that answer your question?

9 **CDR Odom:** I think so Captain, thank you. And also since there's many supplements  
10 now across, I think you identified 4 authorized class societies that are authorized to do  
11 ACP, how does your office ensure that each supplement remains fair and equitable  
12 across all the class societies? If one can have one supplement and one set of rules and  
13 another class society has a different set of rules, how do you ensure they're equitable  
14 and that one doesn't have a competitive advantage over another?

15 **WIT:** I don't know we have a specific process if you will, or approach to ensuring that  
16 one doesn't have a competitive advantage over another. I'd probably go further, in my  
17 personal opinion would say that's not an element of the program. Our responsibilities  
18 for administering ACP in this regard specifically is to make sure that this formula of  
19 convention, rules and supplement provides an equivalent level of safety to 46 C.F.R.  
20 That's our responsibility. Nowhere in that formula are we charged with ensuring that  
21 one does not necessarily have a competitive advantage over another. Having said that  
22 there is nothing that would prevent a classification society in comparing their  
23 supplement to another and identifying a requirement that may put them at a

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1 disadvantage and coming back to us and saying look what's in the supplement right  
2 now puts us at a disadvantage. We propose these changes that would maintain an  
3 equivalent level of safety and level the playing field. That puts us back where we're  
4 supposed to be which is ensuring an equivalent level of safety. Does that answer your  
5 question?

6 **CDR Odom:** I think so Captain. We might have to do some follow up on that. Also  
7 going back to the deck plate level inspector. I've been doing marine inspections since  
8 1999. I started with my steam qual in 2001. And since that time it has been very well  
9 articulated to me about the gap between the Coast Guard and Federal Regulations  
10 when it comes to inspecting propulsion boilers and the class rules. So again I'm going  
11 to ask you is there any very specific process that a Coast Guard marine inspector would  
12 have from that your office would track to ensure that it was resolved if it was identified  
13 by a marine inspector that there was a specific gap that the supplement didn't – is there  
14 a process?

15 **CAPT Neubauer:** I believe he you already testified to that point, is that correct?

16 **WIT:** Yeah. I believe I testified to that point. I believe you're asking me is it written  
17 down in policy what the process for communicating that. And I believe the answer was  
18 no. But the way the program works and our community works is through collaboration  
19 and dialogue. So if a gap is identified at the deck plate level the expectation is that it  
20 comes through the chain and to the appropriate cognizant office.

21 **CDR Odom:** I guess I'm asking how would you expect it to come up through the chain  
22 and how would you track that? How would it get captured and ensure it was resolved?  
23 Would that be through the tracker that you talked about earlier or would it get entered

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1 into that or is there a system for it? Not necessarily a policy, but just how does it get  
2 tracked? I'm kind of thinking of this like an auditor type of perspective.

3 **WIT:** No I understand what you're asking. And I believe again this is an area we've  
4 already discussed.

5 **CDR Odom:** Okay.

6 **WIT:** I mean this is eventually – whether it's the ACP administrator in CVC or the ACP  
7 administrator ENG eventually as these get vetted out they're going to go to those  
8 administrators and they're going to track those so that as the supplements come up for  
9 review and update they're taking those gaps into consideration.

10 **CDR Odom:** And also from a traveling inspector perspective do you get – are you  
11 copied on trip reports that have identified some of these gaps in the supplement? Do  
12 you get those and how do you take action on those?

13 **WIT:** Yes we do get the reports. We even get oral reports, they're right down the hall.  
14 Come down and talk to us. We take those on board and we capture them so we can  
15 consider them when we're reviewing and updating supplements.

16 **CDR Odom:** Thank you Captain. Also the Lieutenant, I think you said it was a  
17 Lieutenant that's in charge of the supplement right now in your office.

18 **WIT:** Yes.

19 **CDR Odom:** Is that a primary duty or a collateral duty that that person tracks the  
20 supplement?

21 **WIT:** Rephrase your question a little bit. I'm going to rephrase your question.

22 **CDR Odom:** That's fine.

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1     **WIT:** We have one person who is designated as the administrator for the alternate  
2     compliance program. So which – I’m rephrasing it because that role is much bigger  
3     than just reviewing and updating supplements. And in fact the review and update of a  
4     supplement involves many more people in the office to do that. So effectively we have  
5     one person who is normally delegated that role. Historically in the last several years  
6     that has been more of a collateral duty. As of recent that is almost a full time job for that  
7     Lieutenant and one other. And they spend the preponderance of their time working on  
8     that.

9     **CDR Odom:** Thank you. And also do you have any, I would imagine that the  
10    Lieutenant that you get in that position their background would be very important as to  
11    their experience. Do you have any control over the person that you have in there, have  
12    an inspections background or just an engineering background or how does that get  
13    managed?

14   **WIT:** We do have some control. To back up a little bit every person in my office is a  
15    degreed engineer. And civilians are hired specifically for their background in  
16    engineering and their subject matter expertise. The uniform personnel are actually  
17    selected from a pool of applicants sent to post-graduate school to get an advanced  
18    degree in some discipline of engineering and then they come back to the office to serve  
19    in a role in one of the 5 divisions that we have. When that pool is coming out and we’re  
20    considering how we’re assigning roles and responsibilities within the office we of course  
21    take into consideration not only their engineering discipline, but also their prior  
22    experience and qualifications that they might have. So we have that pool that we can  
23    pull from.

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1 **CDR Odom:** Thank you. Also with respect to which supplement the El Faro, which  
2 standard it was being held to, the newest supplement is what the ABS surveyors had  
3 stated that they were using for the El Faro. Since it's a newer revision would you  
4 consider that the El Faro was being held to a higher standard or just a different standard  
5 than the older supplement?

6 **WIT:** I would expect it was a higher standard than what was in 2003. But there's a bit  
7 of speculation there because I don't, you know I don't know what went in to the specifics  
8 of that update from 2003 to 2011.

9 **CDR Odom:** Thank you.

10 **WIT:** But I would expect that it would have been a higher standard.

11 **CDR Odom:** And one last question. Does your office receive any type of external audit  
12 from another Government agency or from a division outside the Coast Guard? Or is  
13 everything internal as far as process control?

14 **WIT:** So are you asking are we, the Office of Design and Engineering Standards  
15 audited?

16 **CDR Odom:** Yes, sir.

17 **WIT:** Specifically for the -----

18 **CDR Odom:** Externally audited.

19 **WIT:** Externally audited for ACP, the answers no.

20 **CDR Odom:** Thank you. I'm done Captain. Thank you very much.

21 **CAPT Neubauer:** Captain you mentioned that there's an ABS supplement currently  
22 under review by your office. Do you know when that was submitted by ABS?

23 **WIT:** No, but I can certainly find that out for you.

1     **CAPT Neubauer:** Thank you. At this time I would like to go to the NTSB. Mr. Roth-  
2     Roffy.

3     **Mr. Roth-Roffy:** Tom Roth-Roffy, NTSB. Good afternoon Captain.

4     **WIT:** Good afternoon.

5     **Mr. Roth-Roffy:** I just have a couple follow up questions. Regarding the issue of  
6     resources within your office to oversee and implement the ACP program, could you tell  
7     me more about what steps that you are taking in terms of if necessary, I believe you  
8     indicated that it is necessary for additional resources, what steps are being taken within  
9     your office to increase manning and FTE's to properly, I won't say properly but to  
10    administer the ACP program?

11    **WIT:** The answer to that is wrapped up in what I stated earlier in that, you know we are  
12    working along with other offices in Headquarters units to look at the alternate  
13    compliance program as a whole. What's its current state? What changes might need to  
14    be made and then how are we going to go about doing it. In that consideration is going  
15    to be a consideration of the resources necessary and how you might go about getting  
16    those in order to achieve the intended objective.

17    **Mr. Roth-Roffy:** And also I would like to address an issue that has been raised  
18    throughout the hearing session and that is of aging vessels. Are you aware of any  
19    program within the Coast Guard to address the issue, safety issues related to older  
20    vessels? As vessels age is it a recognized fact that the level of oversight and inspection  
21    and survey might be needed in addition to what might be needed for a newer vessel?

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1 **WIT:** To make sure I understanding you correctly, you're asking at the Headquarters  
2 level are we taking into – or do we have any specific initiative underway with regards to  
3 aging vessels and how that might affect how we conduct inspections and examinations?

4 **Mr. Roth-Roffy:** Yes, sir. That's much better than I stated.

5 **WIT:** Well the short answer is that would be the responsibility of the Commercial Vessel  
6 Compliance office. That's not within the purview of my office. My office is focused on  
7 standards and regulations related to the design and constructions of ships and  
8 shipboard equipment. So the actual inspections and program and how that might differ  
9 from vessel type is the purview of Commercial Vessel Compliance.

10 **Mr. Roth-Roffy:** Thank you very much. That's all I have. Captain.

11 **CAPT Neubauer:** Thank you. At this time we'll go to the parties in interest. Tote?

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

13 **CAPT Neubauer:** ABS?

14 **ABS:** Good afternoon Captain, Jerry White I represent ABS.

15 **WIT:** Good afternoon.

16 **ABS:** Captain with regard to the ACP supplement I understand some suggested  
17 revisions were submit to ABS – or submitted by ABS and they are currently being  
18 reviewed by your office. Is that correct?

19 **WIT:** Yes we currently have a draft supplement update in our office for review.

20 **ABS:** Okay. And as a matter of procedure or for implementation those changes would  
21 need to be approved by the Coast Guard in order to go into effect, isn't it so?

22 **WIT:** Yes.

23 **ABS:** Thank you. Nothing further.



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1     **CAPT Neubauer:** Mrs. Davidson?

2     **Ms. Davidson:** No questions Captain.

3     **CAPT Neubauer:** Are there any final questions for Captain Hawkins before we  
4     adjourn? Captain Hawkins you are now released as a witness at this Marine Board of  
5     Investigation. Thank you for your testimony and cooperation. I appreciate you coming  
6     down from Coast Guard Headquarters. If I later determine that this board needs  
7     additional information from you I will contact you through your counsel. If you have any  
8     questions about this investigation you may contact the Marine Board Recorder,  
9     Lieutenant Commander Damian Yemma. At this time do any of the PII's have any  
10    issues with the testimony that we just received?

11    **Ms. Davidson:** No, sir.

12    **ABS:** No, sir.

13    **CAPT Neubauer:** This hearing is now adjourned. Actually, correction. Before we  
14    adjourn Mr. Roth-Roffy would like to make a statement.

15    **Mr. Roth-Roffy:** Thank you Captain. With your permission I would like to make a  
16    comment regarding one of the questions I posed yesterday to Tote Executive Vice  
17    President Mr. Peter Keller. My intent to give Mr. Keller an opportunity to express his  
18    views on the role of Tote management in the accident and what may have happened  
19    relating to the cause of the accident. It was not to accuse the Tote companies of  
20    management system errors. In hindsight I believe my question could have been better  
21    phrased because it has been mischaracterized by some as drawing a conclusion  
22    regarding the causal factors involved in this accident. Specifically the NTSB has not yet  
23    made any conclusions regarding the role of Tote management, the crew of the El Faro

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1 or other entities related to the cause of the accident. Therefore, I would like to  
2 apologize to Tote if my question was stated – as stated was misinterpreted by some as  
3 imputing the reputation of Tote and it's Executives. That was not my intent. This  
4 accident is still under investigation and the NTSB is still engaged in collecting factual  
5 information. I would like to ensure the public and the families of the El Faro crew  
6 members that the NTSB will continue to conduct a thorough and unbiased investigation  
7 of this accident and to the best of its ability identify the causal factors that led to the  
8 accident. Thank you Captain.

9 **CAPT Neubauer:** Thank you, sir. Before we adjourn just a note for the record that  
10 there will be a third hearing session and a date has not been determined yet. With that  
11 the hearing is adjourned.

12 **Tote Inc:** Captain.

13 **CAPT Neubauer:** I'm sorry.

14 **Tote Inc:** On behalf of Tote I want to thank Mr. Roth-Roffy for his comment. Thank  
15 you.

16 **CAPT Neubauer:** Thank you, sir. Are there any final comments before we adjourn?  
17 This hearing is now adjourned.

18 *The hearing adjourned at 1224, 27 May 2016.*

19