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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF LOUISIANA

3
4 CORNERSTONE CHEMICAL CIVIL ACTION NO.
5 COMPANY 20-1411, C/W 20-1506
6 VERSUS C/W 20-1453, C/W 20-1902
7 M/V NOMADIC MILDE, IMO NO.
8 943554, HER ENGINES, TACKLE
9 EQUIPMENT, FURNITURE, APPURTENANCES,
10 ETC., IN RE; M/V ATLANTIC VENUS, IMO
11 NO. 9628257, HER ENGINES, TACKLE,
12 EQUIPMENT, FURNITURE, APPURTENANCES,
13 ETC., IN REM; AND CRESCENT TOWING &
14 SALVAGE, INC., IN PERSONAM

15 VIDEOTAPED REMOTE CONFERENCE DEPOSITION OF CAPTAIN
16 CHRISTOPHER BROWN, TAKEN AT THE LAW OFFICES OF PHELPS
17 DUNBAR, 365 CANAL PLACE, SUITE 2000, NEW ORLEANS,
18 LOUISIANA, ON THE 8TH DAY OF DECEMBER, 2020,
19 COMMENCING AT 9:19 A.M. AND CONCLUDING AT 3:19 P.M.

20 REPORTED BY:

21 RUBY M. WALLEN
22 CERTIFIED COURT REPORTER
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S T I P U L A T I O N

It is stipulated and agreed by and between counsel for the parties hereto that the deposition of the aforementioned witness is hereby being taken under the Federal Rules of Civil Procedure, for all purposes, in accordance with law;

That the formalities of reading and signing are specifically not waived;

That all objections, save those as to the form of the question and the responsiveness of the answer, are hereby reserved until such time as this deposition, or any part thereof, may be used or sought to be used in evidence.

* * * *

RUBY M. WALLEN, Certified Court Reporter,
in and for the Parish of Orleans, State of Louisiana,
officiated in administering the oath to the witness.

1 CAPTAIN CHRISTOPHER BROWN,
2 after having been first duly sworn by the
3 above-mentioned court reporter, did testify as
4 follows:

5 THE VIDEOGRAPHER:

6 Good morning. We are on the record.
7 And the time is now 9:19 A.M. on December 8th of
8 2020.

9 This begins the videotaped deposition
10 of Captain Chris Brown taken in the matter of
11 Cornerstone Chemical versus the M/V NOMADIC MILDE.

12 My name is Roy Perez. I'm the remote
13 videographer today, and the court reporter is Ruby
14 Wallen. We are representing Esquire Deposition
15 Solutions.

16 As a courtesy, will everyone who is
17 not speaking please mute your audio and please
18 remember to unmute your audio when you are ready to
19 speak.

20 Counsel, will you please state your
21 names and whom you represent, after which the court
22 reporter will swear in the witness.

23 MR. TOMPKINS:

24 I'm Peter Tompkins. I represent the
25 ATLANTIC VENUS interests.

1 MR. ACOSTA:

2 Colton Acosta. I represent the Tomini
3 Symphony interests and my colleague, Patrick O'Leary
4 is participating by Zoom.

5 MR. BERCAW:

6 Jim Bercaw. I'm representing
7 Cornerstone Chemical Company.

8 MR. BUTTERWORTH:

9 Mike Butterworth --

10 MR. FLOTTE:

11 David Flotte representing Crescent
12 Towing and Salvage Co., Inc.

13 MR. BUTTERWORTH:

14 Michael Butterworth and Michael Held
15 representing the NOMADIC MILDE interests.

16 MR. PIVACH:

17 Mark Pivach, along with Matthew
18 Pivach, representing Captain Chris Brown.

19 MR. SHARPE:

20 David Sharpe representing FM Global.

21 MR. PHALEN:

22 Robert Phalen representing Zurich and
23 other subrogated underwriters.

24 BY MR. TOMPKINS:

25 Q. Good morning, Captain. As I just

1 introduced myself for the record, I'm Peter Tompkins.
2 I represent the ATLANTIC VENUS interests, one of the
3 ships that was at the anchorage that we are here
4 about today.

5 A. Yes, sir.

6 Q. I'm going to ask you a series of
7 questions followed by some questions by some of these
8 other lawyers, hopefully not all of them. Try to
9 keep this moving along for you so that we won't keep
10 you here unnecessarily long, hopefully.

11 If I ask you any questions that for
12 whatever reason aren't clear to you, because I'm not
13 articulating things well enough, or using the jargon
14 correctly, please stop me and ask me to rephrase or
15 repeat the question until you understand what I'm
16 asking. Okay?

17 A. Okay.

18 Q. And then also I'm going to ask you
19 to -- and I'm sure your attorney has explained to
20 you -- give us nice verbal, out loud answers of "yes"
21 and "no" rather than "uhn-uhn" or shaking your head.
22 Even though it is videotaped, there is also a written
23 transcript. And so I may give you a hand prompt if
24 I'm looking for a verbal answer.

25 A. I'm going to try to remember to do

1 that.

2 Q. Do that.

3 The other tip is, please, even though
4 you may know exactly where I'm heading with my
5 question, please let me make sure I get it all the
6 way out, and I will try to do the same for you, to
7 let you get your answer all the way out.

8 If I don't, Mr. Pivach or Mr.
9 Butterworth or somebody will tell me to let you
10 finish. I'm not trying to cut you off at any time.
11 So I will try to make sure you are finished before I
12 proceed. Okay?

13 A. Thank you sir.

14 Q. And finally, if at any point you need
15 to take a break, whether it is to make a phone call,
16 or use the restroom or whatever, please stop me, once
17 you've answered whatever question is on the floor,
18 tell me you need to take a break and we will give you
19 a break. No questions asked. Okay?

20 A. Thank you, sir.

21 Q. Would you give us your full name and
22 your address for the record, home address?

23 A. Christopher Raymond Brown. [REDACTED]

[REDACTED]

25 Q. And what is your current occupation,

1 Captain Brown?

2 A. I'm a state-commissioned New Orleans
3 and Baton Rouge river pilot.

4 Q. And when you say New Orleans and Baton
5 Rouge, is that also known as NOBRA?

6 A. That would be the name of the
7 association I am a member of. Yes, sir.

8 Q. And how long have you been a pilot
9 associated with NOBRA?

10 A. I've been associated with NOBRA since
11 October 1995.

12 Q. And can you briefly explain the
13 process of what it takes for an individual to obtain
14 a pilot's license and work as a Mississippi River
15 pilot?

16 A. So I'm clear on your question, the
17 first part, I believe you asked what does it take to
18 obtain a pilot's license. Are you referring to a
19 United States Coast Guard first-class pilot's
20 license?

21 And then there is a second part of
22 your question, a followup, what would it take to
23 become a member of the New Orleans and Baton Rouge
24 Steamship Pilots Association.

25 Q. Yes. Probably the better breakdown of

1 the question -- first of all, what licenses do you
2 have -- or what license do you have to have to be a
3 pilot?

4 A. At the time I was elected or today?

5 Q. Both.

6 MR. PIVACH:

7 That's the easy answer when you don't
8 know.

9 THE WITNESS:

10 At the time I was elected in 1995, you
11 were required to have a minimum of a first-class U.S.
12 Coast Guard, first-class pilot's license for the
13 route from Mile 88.0 to Mile 233.9, technically the
14 bridge in Baton Rouge, the Highway 190 bridge in
15 Baton Rouge. That was the only professional
16 licensure requirement to get your admission at that
17 time.

18 We still require an individual to
19 have -- to acquire a first-class pilot's license.
20 But depending upon the route that they take, they
21 would at a minimum be required today to have a third
22 mate of oceans unrestricted license, third mate of
23 oceans, or they could possibly have, I believe, a
24 master of towing if they came from a towing industry
25 background.

1 Q. And so what licenses today do you hold
2 currently?

3 A. Currently I hold a Master of Inland
4 Steam or Motor Vessels of any gross tons. I have a
5 Master of Oceans, less than 1,600 gross tons. I have
6 a Master of Towing upon Oceans and Inland Waters. I
7 have a second mate of oceans of any gross tons. I
8 have first-class pilotage from Mile 88 to Mile 234.

9 Q. And you are the first plot that's been
10 deposited in this case. So maybe I need to, for those
11 who are not familiar with how the river works, the
12 NOBRA pilots run ships through a certain range of the
13 river, mile marker to mile maker, as you just
14 indicated. Right?

15 A. Yes, sir. We have a unique pilotage
16 is a specific geographic area. So, yes. We have
17 pilot regions.

18 Q. And the NOBRA region is 88 to --

19 A. Our limit is, yes, Mile 88.0, which
20 would be just below the Algiers Canal where it
21 intersects the Mississippi River and Mile 239.9 which
22 is the bridge, the upper bridge in Baton Rouge.

23 Q. And just for completeness, in the
24 river, who -- what pilot group would take a ship from
25 the mouth of the river and move it up north in the

1 river?

2 A. From the mouth of the river, there
3 would be a transition, a Crescent River Port pilot
4 would board in the area generally known as Pilottown,
5 and bring the vessel up towards the City of New
6 Orleans. And if it were going above Mile 105, then
7 someone from my association would relieve him and
8 continue the voyage, wherever the vessel is going,
9 anywhere up to and including Baton Rouge.

10 Q. So you've told us about the licenses
11 that you've held. And then what does it take to
12 become affiliated with the NOBRA association?

13 MR. PIVACH:

14 Well, is your question how do you get
15 in?

16 MR. TOMPKINS:

17 How do you get in. Yeah. Sorry.

18 MR. PIVACH:

19 That is fine.

20 THE WITNESS:

21 The election process is an elective
22 process. So whomever would meet the minimum
23 requirements that are established by the entity would
24 be placed on a ballot. And then the members who are
25 currently in the association would vote at that time

1 to select a specific number of people to bring in to
2 the apprenticeship program.

3 BY MR. TOMPKINS:

4 Q. And can you give me a ballpark
5 estimate of how many pilots are affiliated with
6 NOBRA?

7 A. As we speak today, I would guess
8 somewhere about 115 pilots, plus 18 in training.

9 Q. And how do you get an assignment for a
10 particular ship? How does an individual pilot get
11 that assignment?

12 A. Yes, sir. Well, our workweeks begin
13 -- we work a work schedule of one week on and one
14 week off. And that starts on Wednesday of every week
15 at 0400 -- arbitrarily we decided at 0400, that would
16 be 4:00 in the morning, is the beginning of a day.
17 So you come into turn where you were from your
18 preceding week. We just have a continuous rotation.
19 And as the association would receive, the dispatchers
20 at the association receives requests for service, we
21 have a rotating board. Whomever is at the top
22 receives the orders as they come in. And then you
23 eventually work your way up through the list. And
24 when you are first on turn, they would call you.
25 That would be the dispatchers at the association

1 would call the individual pilot and say these are
2 your orders.

3 Q. Okay. And once you receive those
4 orders, does the amount of time between when you
5 receive it and when you are expected to be onboard
6 vary sometimes or --

7 A. It can vary. The standard is a
8 three-hour notice. We request industry provide a
9 three-hour notice, because with travel circumstances
10 what they are and getting ready.

11 So in this particular case, the day in
12 question, I would've received a phone call at 10:30
13 in the morning to be at Avondale for 1:30 in the
14 afternoon. That is customary. We do request orders
15 for what we would internally just call a rush order.
16 Which means for some reason they would like a pilot
17 sooner than three hours, and if you are able to get
18 there, then you do the best you can to get there as
19 soon as you can.

20 Q. Could they possibly, if you weren't
21 available to be there quickly, could they go to the
22 next guy and say, are you available, or does it have
23 to keep that pecking order?

24 A. We keep the pecking order.

25 Q. Now, through some discovery methods we

1 got these exhibits -- some of the parties have put
2 forth in this case -- there has been a production by
3 NOBRA of numerous certificates of training related to
4 you. And I'm just randomly flipping through them.
5 Everything from leadership and business management
6 for pilots, to operational risk management, to pilot
7 communication and hurricane preparedness.

8 Are you familiar with these
9 certificates that you get. Correct?

10 A. I am. Yes, sir.

11 Q. Is that something that the association
12 requires of its affiliated pilots, to continue to be
13 trained and educated, and keep up to standards, so to
14 speak?

15 A. There are requirements. We are
16 regulated by the State Board of Examiners for New
17 Orleans and Baton Rouge Steamship Pilots, commonly
18 referred to as examiners or commissioners. It is
19 kind of used interchangeably. But in essence, if
20 someone say examiners or commissioners, that is whom
21 they are referring to, the state entity that oversees
22 the individual pilots. So they promulgate sometimes
23 rules for continuing education requirements.

24 Q. And then you are made aware of what
25 those requirements are, attend a particular course or

1 class, and then get a certificate that you turn into
2 the office so it is maintained in your file?

3 A. Yes, sir.

4 Q. Over the course of your what, 25-year
5 membership --

6 A. Yes, sir.

7 Q. -- in NOBRA -- have you held any
8 positions inside the organization?

9 A. I have. Yes, sir. I was formerly
10 secretary treasurer of the association. My term of
11 office, I believe, would have began January the 1st
12 of 2002 through March, middle of March of 2009. At
13 which time I became president of the Board of
14 Examiners for New Orleans and Baton Rouge Steamship
15 Pilots, which I would've been the president -- I was
16 the president of the Board of Examiners for a
17 two-year period.

18 Q. So until 2001 -- I mean, 2011?

19 A. Yes, sir. 2011.

20 Q. Okay. And any other positions that
21 you've held within the group?

22 A. Well, none in an official capacity.
23 There were some times, once upon a time, when we had
24 in-house committees that were formed ad hoc, I was a
25 member of a continuing -- excuse me -- a professional

1 development committee sometime back in the late
2 1990s. Other than that, I don't really recall any
3 other -- within the association, I don't recall any
4 other position.

5 Q. And would I be correct -- and I know
6 you told us about the day we are here to talk about
7 ultimately -- but when you get the call-out, and you
8 get the three-hour-or-so notice, the spot where you
9 would join the ship would be depending upon where the
10 ship would be when you are set to join it. Is that
11 right?

12 A. Yes, sir. It is just that simple.
13 Yes.

14 Q. So if the ship was upriver coming
15 down, you would have to drive up towards Baton Rouge
16 to catch a launch or go to a dock?

17 A. Yes, sir. That is correct.

18 Q. Versus one that is at the lower end,
19 Mile 88, you could go down there and ride it up.
20 Just depends on where the ship is. Correct?

21 A. Yes, sir.

22 Q. And I presume that -- strike that.
23 Do you get notice before you get
24 onboard that you are going to meet it at such and
25 such location and take it to whichever extreme, or

1 anchorage or whatever? Do you know before you get
2 there where you are going?

3 A. Yes, sir. When the office, the
4 dispatchers at the office call me and give me my
5 orders, that tells me where the vessel is currently
6 located, where I'm expected to join the vessel. If
7 the vessel is in motion or something, they may
8 mention you are going to be relieving pilot such and
9 such at this location. The order itself tells me
10 where I'm going so that I understand that.

11 Q. All right.

12 A. They don't specifically give me
13 direction on how to do that. It is just you get to
14 the ship on time. That is my responsibility.

15 Q. But sometimes you may be taking a
16 launch to the ship?

17 A. That is correct.

18 Q. Sometimes you may be just stepping
19 onboard from a dock?

20 A. Yes, sir. It is going to be one or
21 the other.

22 Q. Correct.

23 Other than the location where you are
24 to join the ship, do you get any other specifics from
25 your dispatcher, or do you get that only after you

1 boarded and get up to the bridge and speak to the
2 watch officers?

3 MR. PIVACH:

4 Why don't you --

5 MR. TOMPKINS:

6 For example, in this case.

7 MR. PIVACH:

8 Why don't you just, Chris, tell him
9 what information you have when dispatch calls you up.

10 Is that okay?

11 BY MR. TOMPKINS:

12 Q. Yeah. That is fine.

13 A. In this particular case, the orders I
14 received would be to join the vessel at Avondale
15 Shipyard, which is what I would still call it. I
16 don't know what the present name is, but I call it
17 Avondale Shipyard. And that would tell me that
18 basically that is a dockside entry from land. Come
19 through the security gate.

20 And my transportation would be able to
21 bring me directly out to the pier side. And
22 basically it is as easy getting right out of my
23 automobile and walking up the gangway of the ship.
24 But my orders were to go from Avondale to Kenner Bend
25 Anchorage, which tells me if I'm going to anchor in

1 the middle of the river, then I'm going to need a
2 launch boat when I'm finished, and then to take me to
3 the launch station and arrange for transportation to
4 get back home again. They don't give me direction on
5 how to do that.

6 Q. Is that in writing somewhere?

7 A. Not to me. I mean, I don't receive
8 it. It is a verbal telephone order. Technically, I
9 do -- I guess I would receive -- we started sending
10 out a text message also after the primary means of
11 notification is voice via telephone. They send
12 out -- "they" being the office -- dispatchers send
13 out a text message with the same information. It has
14 the name of the ship, the time I'm expected to be
15 there, the agent representing the ship.

16 And then we also send out an
17 electronic ticket that I receive that has essentially
18 the same, but printed in a format more for billing
19 purposes than for informational purposes.

20 Q. So I presume from your 25 years of
21 piloting ships through the section of the river, from
22 Mile 88 to Mile 239, roughly, that you are very
23 familiar with all of the docks and anchorages up and
24 down the river in that span. Correct?

25 A. Yes, sir.

1 Q. And so Avondale, where would that be
2 approximately from a mile marker standpoint?

3 A. Mile 107.

4 Q. And then where would Kenner Bend
5 Anchorage be roughly?

6 A. Roughly Mile 115.

7 Q. So you are talking about roughly an
8 eight-mile upriver voyage is what you were expecting.
9 Correct?

10 A. Yes, sir. Those were my orders.

11 Q. And we've talked or seen in this case
12 reference to Ama Anchorage. Are you familiar with
13 that one as well. Correct?

14 A. I am. Yes, sir.

15 Q. And where would Ama be located?

16 A. Essentially just across the river from
17 Kenner Bend Anchorage on the -- Ama Anchorage would
18 be on the east bank of the river. Kenner Bend is on
19 the west bank of the river.

20 Q. Okay. Was there any -- do you recall,
21 was there any discussion about the NOMADIC MILDE
22 possibly going to Ama versus Kenner Bend initially?

23 A. No, sir. There was no discussion.
24 The orders I had were to go to Kenner Bend Anchorage.

25 Q. And is Kenner Bend one anchorage, or

1 is there an Upper Kenner Bend or Lower Kenner Bend?

2 A. Technically there are two anchorages
3 at Kenner Bend. There is the upper anchorage, and
4 then there is a dock in the middle, and then there is
5 lower anchorage.

6 Q. And what is the dock in the middle?

7 A. I believe currently it is called
8 Cornerstone.

9 Q. Okay. Was there --

10 When you got your orders on the day in
11 question, did you get specific orders to go to upper
12 or lower, or did it not really matter?

13 A. No, sir. It specifies Kenner Bend
14 Anchorage. It doesn't specify upper anchorage or
15 lower anchorage.

16 Q. So is it -- in that situation, then,
17 is it a matter, from your standpoint as a pilot, of
18 making the approach and observing what the setup is
19 at both anchorages and choosing a spot to go anchor?

20 A. Yes, sir. It is. It is a function of
21 what is the best available at that time as to how you
22 would select. Sometimes there is only one space
23 available. So that would be where you would end up
24 going into. Sometimes there are actually, sometimes
25 no ships in the anchorage and you kind of get to pick

1 and choose where you would like to anchor.

2 But in this case there were
3 potentially -- when I began my trip, I thought
4 essentially there were potentially three places for
5 me to go.

6 Q. And where would those be?

7 A. One at the very bottom of the lower
8 anchorage. I thought there was a spot at the very
9 top of the lower anchorage, and there was a spot in
10 the upper anchorage between two ships that were
11 already anchored in the upper anchorage.

12 Q. And are you seeing that initially on
13 radar, or AIS, or some type of other --

14 A. An AIS-based product. MRTIS, I have
15 an app on my iPhone. I have --

16 Q. An app?

17 A. An app. Actually it is not an app.
18 It is web-based.

19 Q. Okay.

20 A. It is not an app. But just -- but it
21 allows me to get a general understanding of the
22 situation. It is not precise. It is not exact. But
23 it is representative of what I could expect when I
24 got there.

25 Q. So would you check MRTIS on the ride

1 up, say, to Avondale, or once you got up on the
2 bridge and were getting ready to take it underway?

3 Let's talk about --

4 MR. PIVACH:

5 Is your question when he first looked
6 at it, or your question -- could you rephrase?

7 MR. TOMPKINS:

8 I will rephrase it.

9 MR. PIVACH:

10 If you don't mind.

11 BY MR. TOMPKINS:

12 Q. Let's talk about the day of this, of
13 the NOMADIC MILDE transport. Do you remember when
14 you first looked to see what the setup was at upper
15 and lower Kenner Bend?

16 A. It would have been before I left home
17 to board the vessel. After receiving my phone call,
18 I generally would -- and I don't have any specific
19 order. It is not as if I have a checklist I go down
20 and do this, everything the same way every time. But
21 I look at the general conditions I'm experiencing.
22 If this was a Friday, I had been working for a couple
23 days. So I knew generally what the river stage was.
24 But I look at the river stage. I would look at the
25 weather conditions and forecast weather conditions.

1 And I would look at how many orders had been given
2 out to other pilots to get a sense of the general
3 traffic situation for that day, how it was going to
4 be. And then when given orders to go to a specific
5 anchorage, to an anchorage, then I would look to see
6 what the situation at the anchorage looked like to
7 get a sense before I left home. Try to get my head
8 in the game a little early --

9 Q. And --

10 A. Which would have been what I did on
11 this particular day.

12 Q. And would it have been during that
13 viewing of MRTIS shortly after receiving your orders
14 that you would have observed your options, so to
15 speak, of where you just talked about in Lower Kenner
16 Bend versus the third spot, we will call it in Upper
17 Kenner Bend?

18 A. Yes, sir.

19 Q. Are there, or is there a barge fleet
20 between the west bank and the outer edge of the
21 anchorage at Upper Kenner Bend?

22 A. Yes, sir. There is definitely a barge
23 fleet that is inside of the anchorage at the Upper
24 Kenner Bend Anchorage.

25 Q. Who -- what is the name of that barge

1 fleet, if you know?

2 A. It is an ADM facility. Now, I just
3 have to remember the name of the boat company that
4 ADM --

5 MR. PIVACH:

6 If you don't remember, that's fine.
7 Or if you want to come back to it later on, that is
8 fine, too.

9 THE WITNESS:

10 It is written on my charts. So I
11 could reflect on my -- on MRTIS's chart and it would
12 tell me. But there is certainly a barge fleet in
13 there and they do a lot of fleeting operations.
14 There is a barge-cleaning facility at the top they
15 generally refer to as the condo, because that is
16 where the fleet headquarters are, and all of the
17 personnel coming and going change in and out, and all
18 the laborers coming in to do the barge cleaning. It
19 is a very busy area located further towards the top
20 of the upper anchorage. And then there's tiers of
21 barges below that landing facility. But it is all
22 within the Upper Kenner Bend Anchorage.

23 BY MR. TOMPKINS:

24 Q. And when you say "tiers of barges,"
25 you and I think both know what we are talking about,

1 but it will be rows below that condo you are talking
2 about at the top. Correct?

3 A. There are, yes, sir, tiers of barges.
4 So there is ranks and files, if you will. But there
5 is lengths of barges. And outside of each lengths
6 there are often multiple barges, up to possibly
7 eight. And sometimes more, depending upon where they
8 are working and how they are shifting barges around
9 on a temporary basis. It could be possibly 10 barges
10 wide or so, it is not uncommon. Sometimes less.

11 Q. Sometimes less. Sometimes possibly up
12 to 10, but...

13 A. There is a lot of activity in the
14 area. So they are constantly staging barges to put
15 into another tow to -- it is a transfer facility of
16 the barges from the line boats that bring the barges
17 downriver to the facilities. So they kind of stop in
18 the area and drop them off and start changing barges
19 around.

20 Q. So is it fair that between where the
21 ships anchor at Upper Kenner Bend, or tend to anchor
22 in that area, and the outer edge, outermost width of
23 barges, that tugs may be moving barges in and out of
24 there as well?

25 A. Constantly. Yes. All the time.

1 Q. Okay. So would you call that area
2 fairly busy?

3 A. I would indeed. It certainly can be.
4 Obviously, there are times when -- like everything
5 else, there are times when nothing happens and there
6 are times when it all happens at one point in time.
7 So it is not predictable when it occurs. But there
8 is a significant amount of activity back and forth,
9 because there are also barge fleets on the other side
10 of the river. Below and within the Ama fleet there
11 is barge fleets. And the barges, they are constantly
12 going back and forth.

13 Q. Okay. I'm going to be as broad as
14 saying Upper Kenner Bend, but if I need to narrow it,
15 tell me. But what is the approximate water depth at
16 the river stage you were encountering on the day you
17 had the NOMADIC MILDE?

18 A. In the upper anchorage, the closer you
19 are to shore generally, it is less than 30 feet-plus
20 the day in question, or the date of the incident,
21 rather. There was 15 feet, 15.5 on the New Orleans
22 gauge. So you would add that to the depth of water.
23 So basically 30 feet and 15 would give you 45 feet of
24 water, more or less, would be a general.

25 It is a shelving area. The river does

1 get deeper as you leave the west bank of the river
2 and go out towards the middle. But it is a very
3 slow, gradual slope. And that bar extends out
4 significantly, almost halfway out of the river right
5 there, it goes down in decrements. But it is not a
6 significant drop-off, as you can see, where the
7 channel runs next to the banks and other locations.
8 You go up the bank and it goes into 100 feet of
9 water.

10 Q. When ships moor at the Upper Kenner
11 Bend Anchorage, are they are always facing upriver?

12 A. That's the idea. But the only other
13 -- and I'm smiling and laughing -- is that if the
14 wind would predominant --

15 Q. Right.

16 A. -- then sometimes the -- in low river
17 the wind predominates. And if you have a frontal
18 passage or if you are there for a tropical storm or
19 hurricane, then you would go in all kinds of
20 directions. And it is not totally unheard of for
21 ships to go around in circles.

22 But generally, and in a 15-foot stage
23 of river, yes, the current would predominant and the
24 ships would be facing upriver.

25 Q. And so with the Kenner Bend Anchorage

1 being on the west bank and the ships facing upriver,
2 your port anchor would be the one closer to the shore
3 or the west bank. Correct?

4 A. That is correct, sir.

5 Q. And your starboard one would be the
6 outward more towards the center of the river.

7 Correct?

8 A. That is correct.

9 Q. And what you are telling us is where
10 you would put the port anchor would be -- on this
11 day, would be roughly 45 feet, give or take?

12 A. Yes, sir. I believe that to be the
13 case.

14 Q. And then the starboard anchor would be
15 slightly deeper, because you've moved a little
16 further away from the bank, but what would be your
17 best estimate, not holding you to any --

18 A. Not appreciably difference. Anywhere
19 -- on a port anchor anywhere between 40 feet. And
20 then on the offshore anchor, probably no more than 60
21 feet of water. But I don't believe it might've been
22 that deep.

23 Q. Do you know --

24 A. There is not 40 feet of water there.
25 So it would've been less than 55 feet of water.

1 Q. On the --

2 A. On the offshore starboard anchor.

3 Q. Okay. Do you know -- I know you
4 couldn't recall as we sit here right now, at least
5 the name of the barge fleeting facility that is
6 adjacent to the Upper Kenner Bend Anchorage. But do
7 you know if it was there before Kenner Bend Anchorage
8 was created, or if it came after?

9 A. It's been there since I have been
10 working on the river, and I began in 1979. So it has
11 been there a while.

12 Q. As has the anchorage?

13 A. As far as I can remember, the
14 anchorages have been there. Yes.

15 Q. All right. I'm going to go back now
16 and preface these next few questions, so I'm talking
17 generally, not necessarily the NOMADIC MILDE. Okay.
18 You've gotten your dispatcher call. You've checked
19 your AIS. You know where you got to go. And so you
20 head to go meet the ship at whatever the designated
21 spot is. Correct?

22 A. Yes, sir.

23 Q. And then once you arrive at the ship,
24 whether it is off a dock and up the accommodation
25 ladder, or whether it is on a launch boat, meeting

1 the ship in the river somewhere, once you get to the
2 ship, what do you do next as a routine?

3 A. Basically, as soon as I can see the
4 ship, I start visually looking for clues or cues.
5 I'm seeing what the draft is, if I can see it from
6 there. You know, or the radar spinning is a good
7 leading indicator as I'm coming up, the radar scanner
8 mast. If they are spinning already, that means --
9 tells me that someone is on the bridge, and that they
10 are kind of, probably be more likely ready to go than
11 not ready to go. I start looking to see if I can
12 find anything that's out of place, what condition is
13 the ship in. Basically, I'm discriminating against
14 things that I think should jump out at me, if
15 anything were to jump out at me. I'm trying to get
16 my first sense of what I'm going to see when I get
17 onto the bridge of the ship. You know, such as are
18 the lines laid out in a seaman-like fashion, or are
19 there just things thrown on deck. Are there buckets
20 of whatever around, or is it clean for the passageway
21 for the people to egress the vessel. Those types of
22 things.

23 I would casually look around and see
24 if I could see tugboats or the linemen. Whatever
25 visual cues I could find to give me an early

1 indication of what I can expect my day to look like.
2 As I'm walking up the ship, I'm seeing is it clean on
3 the inside. It is one thing to be doing cargo
4 operations on a vessel. And depending upon what type
5 of cargo, is it a dirty cargo or not. But how clean
6 is the inside of the vessel. Whether it smells on
7 the inside of the vessel. Just a general sense. I'm
8 trying to get into my environment to -- for whatever,
9 you know, I'm going to be dealing with.

10 And then when I get onto the bridge of
11 the ship, what is the general feeling when you step
12 onto the bridge of the ship. Can you feel any kind
13 of tension in the air, or is everyone pleasant and
14 joking? Oftentimes you can pick up on slight little
15 things. And so generally I'm just trying to get into
16 what my environment -- I'll get on the bridge of the
17 ship, hopefully I tell the captain good morning or
18 good afternoon. You know, I'm courteous. I should
19 be. I would like to think I am sometimes. And go
20 about general pleasantries. Oftentimes, the ship's
21 captains, depending upon where they come from, they
22 are right into the master pilot exchange while I'm
23 still huffing and puffing from lugging my bag up the
24 stairs and walking a few flights of stairs. And I'm
25 good with that.

1 It's -- you know, sometimes I unpack
2 my bag and take just a few minutes to get a sense.
3 And then ask to see a pilot card, ship's particulars.
4 So I can look at those types of things to give me a
5 sense of the actual loading conditions or the ship's
6 limitations, of what I -- you know, build up my
7 mental model of how I think a ship of this size and
8 type should handle.

9 Then I would get into a conversation
10 with the master, you know, about specific things
11 about the intended voyage. Anything out of the
12 ordinary, such as current conditions, or weather
13 conditions, or things of that nature. That is
14 generally how I try to start my day.

15 Q. So the pilot card that you referenced
16 -- and we've seen pilot cards in this case -- that
17 contains various information about the ship, from its
18 dimensions, its draft, its propulsion and etcetera.
19 Correct?

20 A. It does. Yes, sir.

21 Q. And that gives -- as a pilot, that
22 gives you information, along with the observations
23 you made as you are making your approach, to tell you
24 what the capabilities of the ship are and what you
25 are going to need to be aware of as you start giving

1 commands to get it underway. Is that right?

2 A. Yes, sir. It helps to -- I have a
3 mental model of a certain class of ship. And the
4 real only validity with that is that if something
5 starts happening that I don't understand, that
6 doesn't make sense to me, I can start asking more
7 pointed, specific questions. But the information
8 gives me the ability to fill in the blanks and try to
9 get a good sense of what I can expect.

10 Q. Is there anything, as we sit here
11 today, that stands out to you as being different or
12 unusual about the boarding of the NOMADIC MILDE and
13 the initial entry into the bridge?

14 I'm going to get into the specifics of
15 it. But just as you made your approach and got up on
16 the bridge, is there anything that sitting here today
17 stands out as being different or unusual to you?

18 A. No, sir. It was -- appeared
19 shipshape, and essentially the crew was out and
20 about. They met me as I boarded the vessel. There
21 was no debris. Or, you know, she appeared clean.
22 Everything looked real good. I was escorted to the
23 bridge of the ship and the officer met me and
24 escorted me to the bridge.

25 Q. And then, and again, talking in

1 generalities before we get into the specifics of this
2 particular voyage. Do you spend --

3 Other than a restroom break, do you
4 spend your entire time on the bridge until such time
5 as you leave, either because you've arrived at a dock
6 or an anchorage and it is just time for you to get
7 off?

8 A. Yes, sir. I never leave the bridge
9 deck except possibly for a bathroom break. I will go
10 out on the wing on occasion if it is a beautiful day
11 or if I want to see something in particular. But
12 usually I'm within the wheelhouse itself.

13 Q. And again, typically, who would be on
14 the bridge with you?

15 A. Typically -- so the question becomes
16 on initial boarding, when you are at a berth, then
17 the master is always going to be on the bridge of the
18 ship for mooring and unmooring. There is an officer
19 of the watch up there and a helmsman. Generally,
20 there would be three people, two of whom are deck
21 officers.

22 Q. Uh-uhm.

23 A. Sometimes during a transit, it may
24 only be the officer of the watch up there and a
25 helmsman. But on the river we always have a helmsman

1 on the wheel.

2 Q. Okay.

3 A. And an officer of the watch. So a
4 minimum of two, possibly three people, depending on
5 the particular day.

6 Q. And as between you as a pilot onboard
7 and then the two or three ship's crew that are up
8 there, is there a division of responsibilities of who
9 does what?

10 A. I'm sorry. Would you repeat that for
11 me, please?

12 Q. Okay. We've talked about two regular
13 ship crew members at least, an officer of the watch
14 and a helmsman. Correct?

15 A. Yes, sir.

16 Q. And then yourself as a pilot. Those
17 would be the minimum that you would typically have up
18 on a bridge at any given time. Correct?

19 A. That is correct.

20 Q. There may be more?

21 A. Yes, sir.

22 Q. But if it is those three, whose job is
23 what as you are making your transit up or down the
24 river?

25 A. Well, the easiest, I will start with

1 the helmsman. He is an unlicensed rating. Generally
2 he is required to be an able-bodied seaman. And he
3 stands at the helm and executes rudder commands as
4 given. And there is the officer of the watch, who is
5 the officer assigned for that period of time to stand
6 watch on the bridge and be in charge of navigation of
7 the vessel. Generally, in addition to tracking the
8 vessel's position, whenever I'm conning the vessel,
9 whenever I give engine commands, he executes the
10 engine commands.

11 And then there is the master who is
12 not required to be directly involved in the operation
13 of the crew, but oftentimes it is not uncommon when
14 you are in a maneuvering situation, where he is the
15 one -- I would give an order to the captain. The
16 captain would give an order to someone else to
17 execute the order. It is not uncommon for it to go
18 like that. Sometimes they simply overhear me and
19 execute the order on their own. It does vary from
20 ship to ship.

21 But if I in a maneuvering situation,
22 then I just tell the captain what I would like. You
23 know, instead of like yelling in his ear, I would
24 just tell him starboard 10, and then he would tell
25 someone starboard 10. Or if you are on a larger ship

1 and you are out on the bridge wing, there is often a
2 VHF radio they would talk into. As I have gotten
3 older, I kind of do a lot less shouting.

4 Q. Okay.

5 A. The old days, before they had a lot of
6 VHF radios up there.

7 Q. But insofar as a steering adjustment
8 or a speed adjustment, you would typically initiate
9 that request, and it would either be directly
10 undertaken by the individual assigned to that or
11 possibly the captain would relay it for you?

12 A. Yes, sir.

13 Q. There are a few other pilots that are
14 potential witnesses in this case. One is named
15 Hawthorne, one is named Shirah and one is named
16 Columbo and one is named Higgins.

17 Do you know all of those gentlemen?

18 A. Yes, sir. I do.

19 Q. Have you known all of them for several
20 years at least?

21 A. Yes, sir. At least.

22 Q. Okay. Who have you known the longest?
23 And maybe you could just kind of generally tell us
24 how long you have known these gentlemen.

25 A. I've known Captains Shirah, Hawthorne

1 and Columbo for well over 25 years. Captain Higgins,
2 less than 10.

3 Q. Do you consider them -- and I know
4 you've held positions on the board of authority, so I
5 presume these men were all NOBRA pilots while you
6 were either treasurer or president of the
7 association. Correct?

8 A. Yes, sir.

9 Q. Do you consider these gentlemen to be
10 all well-experienced pilots?

11 A. Well, certainly Captain Hathorn and
12 Captain Shirah and Captain Colombo are. They began
13 their active piloting simply just six months behind
14 me. And at this point in time, there is really not a
15 significant amount of difference in six months after
16 25 years. We've all as pilots gone through the same
17 high rivers and low river periods. We've all dealt
18 with the same changes in the industry and in the
19 traffic. So I believe them to be beyond highly
20 competent.

21 Captain Higgins is a younger pilot,
22 and I would've observed him during his training
23 period as an apprentice and had known him prior to
24 that. And so I believe him to be developing very
25 well for the point in the career where he is right

1 now. But he does not have the years of experience as
2 the other three pilots you mentioned.

3 Q. Okay. All right.

4 I want to briefly go over what
5 documents or data you may have reviewed to help
6 prepare yourself for the deposition. Okay?

7 A. Yes, sir.

8 Q. There is an extremely large volume of
9 data and documents.

10 MR. PIVACH:

11 I heard you all have lunch.

12 BY MR. TOMPKINS:

13 Q. I didn't bring that much with me. I
14 will give you the good news on that. But, for
15 example, did you listen to VDR-recorded
16 transmissions?

17 A. Very limited. I have heard some, but
18 not a lot. I haven't heard the entire time of mine,
19 time onboard the vessel.

20 Q. Okay.

21 A. I've heard several little parts of it,
22 but not --

23 Q. Do you remember which parts you were
24 kind of focused in on or were focused for you to
25 listen to?

1 A. Well --

2 Q. Generally. Generally.

3 A. Initially when I boarded the vessel,
4 and initially after we had gotten underway. And then
5 another part where I was in transit and I was having
6 a radio conversation with one of my partners going
7 downriver. And we were BS'ing about other -- after
8 we discussed the traffic situation, just BS'ing about
9 a few personal things. That is, I believe -- I
10 haven't listened too much more than that, I don't
11 believe.

12 Q. There has also been a transcript put
13 together of the VDR, you know, recorded
14 communication. Did you get a chance to look at the
15 VDR transcript?

16 A. I have read through the portions of
17 the transcript where I was onboard the vessel.

18 Q. Okay. And if you didn't listen to the
19 entirety, you may not be able to answer this. But to
20 the extent either reading this or hearing it and
21 reading it, does it appear that the words associated
22 with you are accurate, as best as you can tell?

23 MR. PIVACH:

24 Let me just place a general objection.
25 He can answer to the best of his ability.

1 THE WITNESS:

2 I thought it was plausible what I
3 read, as sounding like me. Yes. I believe it to be
4 representative of -- while it may not be verbatim
5 exact, I believe it to be representative of what
6 occurred.

7 MR. PIVACH:

8 For clarity, we did not sit down and
9 listen and read it.

10 THE WITNESS:

11 I have not done that, to listen myself
12 and verify everything that I said or didn't say was
13 included or not included.

14 BY MR. TOMPKINS:

15 Q. Right. And maybe asking it
16 differently. When you read through what words were
17 associated with you in the transcript, nothing stood
18 out to you, going that is -- there is no way I said
19 that, or that is wrong, as you read it. Is that
20 fair?

21 A. I don't think anything jumped off the
22 pages that would be a glaring error. No, sir.

23 Q. All right. And we are going to take
24 --

25 MR. BUTTERWORTH:

1 Point of clarification, Butterworth.
2 We've asked Pilot Brown after this deposition if he
3 can, you know, take the time, sit down with the VDR
4 and listen carefully. And we are going to ask that
5 of all of the pilots and all the witnesses that were
6 out there. Because no one can hear and understand
7 the voices better than they can. And so hopefully by
8 the end of this process we will have a joint, unified
9 transcript that we all agree on.

10 MR. TOMPKINS:

11 Okay. And I'm going to walk you
12 through --

13 MR. BUTTERWORTH:

14 If captain -- if A.J. is involved in
15 this, too, he could be a big help in helping us come
16 up with a unified transcript.

17 MR. TOMPKINS:

18 Sure. A lot of us don't speak Polish,
19 but other than that.

20 MR. BUTTERWORTH:

21 Well, the Polish part. Yeah. That is
22 a whole different deal.

23 MR. BERCAW:

24 Peter Tompkins. I've just been
25 advised that we are facing a potential Internet

1 outage at Place St. Charles. And so I would ask that
2 if we could schedule a break at around 10:20 so that
3 I can walk over to Phelps Dunbar, I would appreciate
4 it.

5 MR. TOMPKINS:

6 Yeah. I'll take him through the
7 things he looked at and then we will take a break.
8 How about that?

9 MR. BERCAW:

10 Yeah. That's fine. I just want to
11 make sure that I got that out so I didn't interrupt
12 your flow to the extent I already have.

13 MR. TOMPKINS:

14 Okay. No problem.

15 MR. BERCAW:

16 Thanks.

17 BY MR. TOMPKINS:

18 Q. All right, Captain. So you listened
19 to excerpts from the VDR that included your voice on
20 them. Correct?

21 A. Yes, sir.

22 Q. You looked at the transcript,
23 generally speaking, at least those portions from the
24 time you boarded until you got off?

25 A. Yes, sir.

1 Q. Did you look at any ECDIS data?

2 A. I'm sorry. E-C --

3 Q. ECDIS.

4 A. Oh. I'm sorry.

5 Q. ECDIS.

6 A. I bet I got a certificate that says I
7 have that. I apologize. That is bad. I walked
8 right into that. Excuse me.

9 Q. No problem.

10 A. I have seen some playback of ECDIS/VDR
11 data. Yes, sir. I have seen some. Not the entire
12 voyage. Once again, I looked at certain parts of it.

13 Q. All right. You gave or signed at
14 least a typewritten NOBRA pilot's statement that
15 we've seen. Correct?

16 A. Yes. I recognize the document. Yes,
17 sir.

18 Q. Is that something you also looked at
19 to help prepare for the deposition?

20 A. I did review that. Yes, sir. And I
21 guess, for the record, I have a statement in there at
22 that point in time where I thought I was speaking
23 with Captain Tony Billiot, No. 97. But after seeing
24 the voyage transcript, where I spoke with someone
25 else, it quickly told me that I was incorrect in that

1 statement on that part where it says Tony Billiot.

2 Q. Oh.

3 A. Captain Billiot.

4 Q. In here?

5 A. Yes, sir.

6 Q. It would be a different person?

7 A. Other than that, I think it is
8 representative of my statement.

9 Q. Okay. All right.

10 Any other documents, photographs,
11 videos that you recall looking at to prepare?

12 A. I've watched some MRTIS, playback on
13 MRTIS. It is, like I said, a web-based version where
14 you can go back and look at that. I have reviewed
15 the pilot card. I've reviewed the ship's
16 particulars. I have seen voyage passage planning --
17 I looked briefly at that -- that had been prepared by
18 the ship.

19 Q. Let me stop you with that.

20 On the voyage passage plan that the
21 ship had prepared, was that something you would've
22 reviewed while you were onboard the NOMADIC MILDE?

23 A. No, sir. It is not.

24 Q. Okay. That was something you were
25 provided to look at in conjunction with your

1 deposition?

2 A. That is correct. Yes, sir. I thought
3 that was the question.

4 Q. No. It is. That is. I'm just trying
5 to clarify you would've seen the pilot card when you
6 were onboard?

7 A. I would. And my conversation with the
8 master about where we were going would've been -- I
9 never look at a ship's voyage passage plan. The
10 captain has it. Sometimes -- all ships are different
11 in how detailed their pilot card is. I mean, some of
12 it looks like War and Peace and some are a front and
13 back, one-page document.

14 Q. Right.

15 A. So sometimes they include lots and
16 lots of stuff like that. In this particular case, I
17 don't believe that was the case.

18 Q. All right. I interrupted you there.
19 I'm trying to just get the scope of what you recall
20 reviewing to help refresh yourself as to events on
21 the date of this accident.

22 A. Generally I think that it is
23 representative. I may have not mentioned one thing
24 that somebody could point out that I did. But I
25 believe that is representative. The pilot card, the

1 ship's particulars, the voyage passage planning. I
2 did read the transcript. I looked at MRTIS playback.
3 And I have seen portions of the ECDIS replay, and
4 some Coast Guard Vessel Traffic Center replay, also.
5 So I've seen several versions of electronic portrayal
6 of what may have occurred.

7 Q. What about any CCTV footage from any
8 of the Crescent tugs?

9 A. No, sir. I have not seen any of that.

10 Q. And I'm sorry. The Coast Guard, what
11 did you look at, their --

12 A. The Coast Guard Vessel Traffic Center
13 New Orleans has an AIS system that I believe was
14 acquired to help with this case.

15 Q. Other than this one-page NOBRA Pilot
16 Statement that was produced to us as NOBRA 000078,
17 did you give any other written or recorded statement
18 relative to the events of May 8, 2020?

19 A. I'm unaware of any written statements
20 I would have made to anyone. I was interviewed by
21 the United States Coast Guard and I believe a
22 representative from the National Transportation
23 Safety Board pursuant to this incident. I have no
24 written documents from that, nor have I seen a
25 transcript from that hearing.

1 Q. Okay.

2 A. And I certainly did not review any of
3 those documents prior to this deposition.

4 Q. But they did not have you write out in
5 handwriting, for example, anything with respect to
6 that interview. Correct?

7 A. I don't believe so. No, sir.

8 Q. All right. Why don't we take a break
9 to allow Mr. Bercaw to mosey over from his office and
10 you can relax for a few minutes.

11 A. Thank you.

12 THE VIDEOGRAPHER:

13 The time is 10:12 A.M. We are off the
14 record.

15 (Off the record.)

16 THE VIDEOGRAPHER:

17 The time is 10:42 A.M. and we are back
18 on the record.

19 BY MR. TOMPKINS:

20 Q. Okay. Captain, we took a short break
21 and we are ready to get going if you are.

22 A. Yes, sir. Thank you.

23 Q. All right. I want to start honing in
24 now in terms of your onboard visit to the NOMADIC
25 MILDE on May 8, 2020. Okay?

1 A. Okay.

2 Q. You already established that you met
3 the ship at Avondale. Right?

4 A. That is correct.

5 Q. And then I know you said you looked at
6 the pilot card. But either from looking at the pilot
7 card, or as we sit here today using your memory,
8 could you generally describe the NOMADIC MILDE, the
9 type of ship, size? Just that kind of thing.

10 A. Yes. She would be a relatively small,
11 meaning somewheres about 453 feet length overall.
12 12,000 dead-weight ton. I don't know if you'd
13 classify her as a general cargo ship or heavy lift
14 ship. I don't know what the modern terminology is
15 for the cargo operations. But she does have two sets
16 of booms located on her starboard side. I believe
17 they are heavy-lift booms that allow her to load
18 heavy cargos.

19 She has a controllable pitch
20 propeller, conventional rudder, bow thruster forward.
21 Length-to-breadth ratio would be somewhere about 6.6.
22 And the draft on the day that I piloted her, deep
23 draft would've been, I believe, 26 feet five inches.
24 Ocean-going vessel, in class. So...

25 Q. Okay. When you say relatively small

1 at roughly 450 feet, compared to what?

2 A. Well, in today's world, that is a
3 small ship, the ones that come up and down the river.
4 So we will do ships in the NOBRA route that will go
5 just a little bit over 900 feet. Our standard
6 Aframax tankers would be in the 815-foot length
7 overall range. Capesize, or generally they call them
8 mini-capesize vessels, dry cargo would be in the
9 800-foot range, also. Our basic Panamax dry bulk
10 carriers are 738 feet, and/or the new post-Panamax
11 size vessels are about 751 feet length overall. So
12 in comparison to those vessels.

13 Then we have another set of class, we
14 will generally see tankers in the 600-foot range.
15 And then, so if anything less than 600 feet is
16 certainly small compared to the average-sized vessels
17 today.

18 Q. And again, speaking generally, is it
19 fair to say from your perspective as a pilot, that a
20 small, relatively small, 450 foot roughly in this
21 case, ship is easier to maneuver than these larger
22 categories of ships that you just read for us?

23 A. No. I wouldn't agree with that. That
24 is an assessment that I think it is easy to make,
25 thinking that it is small, that you can do whatever

1 you want. But any vessel that is loaded, close to
2 her design, is going to be operating towards the
3 upper end of her operating envelope, what she is
4 capable of doing. Meaning the size of the rudder,
5 the power, the engine combinations are designed for
6 her size. So the larger the vessel, the larger the
7 rudder, compared -- although, the ratios may change.
8 But you need to treat each vessel that is loaded as a
9 loaded vessel, or else you end up in trouble.

10 Q. Well, as we sit here today, in terms
11 of the maneuvering of the NOMADIC MILDE, did she
12 maneuver as you would've hoped and expected, the best
13 you can recall?

14 A. She did. Yes, sir. She handled well.

15 Q. And one of the Mikes, I asked could we
16 have a copy of the transcript, the VDR transcript.
17 Do you have a hard copy of this?

18 MR. BUTTERWORTH:

19 I have a hard copy he can use. I have
20 got some notes on it.

21 MR. PIVACH:

22 You want him to look at the VDR
23 transcript.

24 MR. TOMPKINS:

25 Yeah. Just I think it might speed

1 things along a bit.

2 MR. HELD:

3 Make sure you are on the same Bates
4 number.

5 MR. BUTTERWORTH:

6 Yeah. That is it.

7 MR. PIVACH:

8 If it is okay, mine is blank other
9 than some yellow tags in the front. I will give that
10 to the captain in the meantime just for convenience.

11 MR. TOMPKINS:

12 Does it start at 006237 at the bottom?

13 MR. PIVACH:

14 Yeah. Bates. Yes.

15 MR. BUTTERWORTH:

16 The Bates number is --

17 MR. PIVACH:

18 Sorry.

19 MR. TOMPKINS:

20 Yeah. Thanks. Yep.

21 BY MR. TOMPKINS:

22 Q. All right, Captain. Let's try to
23 direct you here to try to move this along.

24 Page 3, at the bottom of this
25 transcript there is an entry right near the middle of

1 the page at roughly 1324 hours attributed to you,
2 Pilot Brown.

3 Do you see that?

4 A. Yes, sir. I do.

5 Q. And that is just you coming on the
6 bridge and greeting the captain. Correct?

7 A. Yes, sir. That is correct.

8 Q. So again, subject to confirmation that
9 the time on the VDR of the NOMADIC MILDE is
10 reasonably accurate at roughly 1:24 in afternoon on
11 May 8th is when you arrived at the NOMADIC MILDE?

12 A. That's to the best of my recollection.
13 I was there just a few minutes early. So it is
14 representative of that.

15 Q. Okay. And it looks like as we proceed
16 down that page, you are checking on some things with
17 the captain. For example, does he have a bow
18 thruster, yes. And a controllable pitch propeller,
19 yes. Right?

20 A. That is correct.

21 Q. And you told us about the controllable
22 pitch propeller. For those of us reading this that
23 aren't familiar with that, what is a controllable
24 pitch propeller?

25 A. Well, on controllable pitch propeller,

1 the ship's, we call it a mickey (phonetic) engine.
2 That is one of those questions, I don't know why,
3 because there is only one. But the engine is always
4 on. It is always running and the shaft is always
5 turning. But the pitch of the blade is more like a
6 helicopter blade, where it can be adjusted to control
7 the vector, the thrust vector, either forward or
8 reverse for the ship as opposed to a conventional
9 ship, a direct-drive diesel engine, the engine is
10 actually stopped. It is not running. And then when
11 you say dead slow ahead, then they actually start the
12 engine and it's -- the engine is directly connected
13 to the shaft with a fixed pitch of the propeller.
14 The pitch determines how much thrust the engine would
15 develop, the propulsion system would develop.

16 Q. And is it true that in a controllable
17 pitch propeller, it spins in the same direction
18 constantly. It is just the pitch of the blade that
19 determines whether it is going forward or aft?

20 A. That is correct.

21 Q. And so do you know whether this is a
22 left-handed or a right-handed?

23 A. Well, certainly, the pilot card would
24 have that information that we could refer to, but...

25 Q. But at 1325 it looks like, if this is

1 accurate, the captain tells you we have a left-handed
2 wheel?

3 A. Yes, sir.

4 Q. And that is something you were
5 familiar with is operating ships with controllable
6 pitch propellers. Correct?

7 A. I am. Yes, sir.

8 Q. All right. I'm not going to take you
9 through every line. It looks like there were some
10 things they had to finish up before they were going
11 to cast off lines and get underway. Is that right?

12 A. That is my recollection. Yes, sir.

13 Q. Did you see in here where there was a
14 reference to the captain telling you that you had a
15 short trip up to Ama? Do you remember that?

16 A. Yes, sir. I do recall reading that.

17 Q. And we had talked earlier in the
18 deposition whether you thought you were going to Ama
19 or Kenner Bend. And I'm just wondering, we are
20 talking about the same thing generally, or is this
21 something different than what you recalled earlier?

22 A. Oh. There is no difference. The
23 area, Ama is on the east bank of the river.

24 Q. Right.

25 A. Well, that is not exactly accurate.

1 The launch station that we call Ama Launch is on the
2 east bank. The anchorage, which is called Ama
3 Anchorage is on the east bank. The community of Ama
4 is actually located on the west bank. And it is the
5 same with Kenner. Kenner is on the east bank. But
6 we don't have a Kenner Bend launch. We have Ama
7 Launch. Although, it is situated in between Kenner
8 Bend and Ama. But Ama Anchorage was there first and
9 took name preference, so that is what we refer to it
10 as.

11 MR. BERCAW:

12 Can you repeat that, what you refer to
13 it as?

14 THE WITNESS:

15 Ama Launch.

16 MR. BERCAW:

17 Okay. Thank you.

18 THE WITNESS:

19 The launch station is Ama.

20 MR. BERCAW:

21 Understand. Thank you.

22 BY MR. TOMPKINS:

23 Q. So but looking at the 1324 entry on
24 Page 3 there, the captain says he is still waiting
25 for the engine, I guess. A couple more minutes. But

1 we have a short voyage to Ama Anchorage. And you
2 saying, according to this, "not too far." Right?

3 A. That is correct.

4 Q. And earlier we had established it is
5 roughly eight miles, or I think we just said upriver?

6 A. Yes, sir.

7 Q. And I'm just trying to clarify, at
8 that point do you believe you are going to be
9 bringing the ship into Ama Anchorage, or Upper or
10 Lower Kenner Bend, or is it unclear where you are
11 going?

12 A. No. I knew I was going to Ama. Excuse
13 me. I knew I was specifically going to Kenner Bend
14 Anchorage. Those were my orders and that was my
15 intention. And at that time in question, we, the
16 NOBRA pilots, were not utilizing the Ama Anchorage.

17 Q. And why was that?

18 A. Because of high-river conditions. The
19 ships were having trouble remaining in the anchorage
20 after they were anchored.

21 Q. Okay. And you told us earlier that
22 the Carrollton gauge was 15.5. Right?

23 A. I believe so. Yes, sir.

24 Q. And that would be considered high
25 river?

1 A. It would.

2 Q. Don't things change when it gets above
3 16 feet? Is that right?

4 A. Flood stage is technically denoted as
5 17 feet on the Carrollton gauge. In the week
6 preceding this the river, I think, had gotten as high
7 recently a week or so before that, 16 feet and a
8 half, 16.5 and was on a slight fall. I wouldn't call
9 -- you know, it was at a slight fall.

10 Q. Right.

11 A. So in essence, when the river is
12 rising, the current is stronger. For a given river
13 stage, if the river is rising at 15 feet, the current
14 would be stronger than the river falling at 15 feet.

15 Q. Okay. And speaking of the current,
16 what do you estimate the current in the river to be
17 that day?

18 A. Depending upon specifically where you
19 are located. But generally between four, four to
20 five knots, specifically where you are located in the
21 river.

22 Q. It can vary, obviously?

23 A. It does vary, based upon how wide the
24 river is. And the narrower the river, the stronger
25 the current, because the same volume of water has to

1 go through. So it needs to accelerate to do that,
2 which means the current flow increases. The wider
3 the river, the slower the current.

4 Q. Okay. This is kind of as much out of
5 curiosity as anything. But if you look at the bottom
6 of Page 4, at 1834-4. It says "MARGO, Avondale, you
7 got your ears on." Who or what is MARGO?

8 A. The linemen. It is what we refer to
9 as Cooper/T. Smith linemen. Once upon a time, and
10 this predates my service on the Mississippi River,
11 they were known as MARGO. I don't know why. It is a
12 radio call sign.

13 Q. Okay.

14 A. Probably it comes from the olden days
15 when people had radio call signs issued.

16 Q. I got you.

17 A. And so they know that is who we are
18 calling. When I asked if they had their ears on, was
19 simply a vernacular, can you hear me.

20 Q. Right.

21 A. Is your radio turned on?

22 Q. Right. And they responded --

23 A. They answered, yes, they did.

24 Q. And it looks like you are basically
25 ready. You are just waiting on them to release the

1 lines so you can get underway. Is that right?

2 A. Yes, sir. They were just sitting in
3 their van right on the dock. I saw them as we drove
4 up, they were there. I just don't know if they had
5 their radio on.

6 Q. So if you look at Page 6, and we are
7 talking about, say, the 1853 to 1856 time frame, is
8 that when the NOMADIC MILDE is released from the dock
9 and getting underway?

10 A. Yes, sir. It appears to be so.

11 Q. And when I'm saying 1853, just for the
12 record, that is, I guess, Greenwich Mean Time or
13 whatever. The local time is 1353. Correct?

14 A. That is correct. Yes, sir.

15 Q. So we are still at the -- just roughly
16 30 minutes after you got onboard, or at least got to
17 the bridge. Correct?

18 A. That is correct. Yes. Essentially,
19 exactly 30 minutes it would appear.

20 Q. All right. At the 1857 mark, it looks
21 like you call out to NOBRA 53 and NOBRA 31. Is that
22 right?

23 A. I am NOBRA 31.

24 Q. Okay. So you are announcing who you
25 are and you are calling for NOBRA 53?

1 A. That is correct.

2 Q. And who is NOBRA 53?

3 A. Casey Clayton.

4 Q. And what was the reason for that call
5 to him?

6 A. She was the pilot --

7 Q. Sorry.

8 A. -- on a downbound vessel that we would
9 be meeting in the near future.

10 Q. And you could tell that based on --
11 what were you looking at to see that?

12 A. As I sit here today, I can't tell you
13 how do I remember I found out she was the pilot of
14 record on that date. What I can tell you is that
15 when I identify a ship on AIS, it is a general custom
16 of mine, a habit, to look at the pilots who have been
17 dispatched to turns, to match up the name of the ship
18 with the pilot who is dispatched to that vessel. So
19 I don't -- as I sit here today, I can't tell you how
20 I remember hearing Casey on the radio, and I called
21 her because I knew it was her, or did I look on my
22 smartphone and say that this was the pilot on that
23 ship, and she was coming down, so I called the ship
24 by her pilot number.

25 The pilots on the river, when we do

1 radio communications, we use our pilot call signs,
2 not the ships' names.

3 Q. Right. And by call sign, it is the
4 number. Right? NOBRA 31?

5 A. NOBRA. She is a NOBRA pilot and her
6 number is 53. I'm a NOBRA pilot, my number is 31.

7 Q. And I meant to ask you this earlier,
8 because I recall you testifying that when you got up
9 to the bridge, one of the things you routinely -- and
10 I assume on this day -- is unpack your stuff and get
11 kind of set up and coordinated. Correct?

12 A. I do. Yes, sir.

13 Q. And what is involved? What are you
14 unpacking? Is there a laptop or other --

15 A. What is my stuff?

16 Q. What are you unpacking to help you on
17 this voyage?

18 A. My radio would be --

19 Q. VHF?

20 A. VHF handheld. Yes, sir. And a --
21 what is commonly referred to as a PPU, portable
22 pilotage unit, which I had that day. It's a laptop
23 essentially. I will use that word not -- don't mean
24 telling you whether it is a tablet or notebook or any
25 of that. I'm not going in that direction. But it is

1 a way to depict an electronic chart and AIS contact
2 information to show you what is going on around the
3 area, and the associated connections that you need to
4 plug into the ship, to get information from the ship
5 to feed data to your PPU.

6 Q. Is the information that is on the PPU,
7 once it is activated and working on, say, the NOMADIC
8 MILDE back on May 8th, is that also recorded, or is
9 it just real time what is happening, and then it is
10 off and no recording of it?

11 A. It is real time. As far as the
12 recording capabilities, I would imagine that would
13 change from unit to unit and how they are structured.
14 It could, yeah.

15 Q. Does yours record?

16 A. The date in question I was using a
17 loaner unit to evaluate whether we would be
18 interested in acquiring new equipment. We were at
19 the end of a technology cycle, where we are looking
20 at how would we move forward to our next iteration,
21 and I was evaluating a piece of equipment I was
22 carrying for that week, to see whether I liked it or
23 not.

24 So this particular unit that I had, I
25 don't know anything about the recording of it.

1 Because at the end of that workweek, it went back to
2 the office and they distributed it to another pilot
3 for evaluation. So it was just a loaner unit. I
4 really do not have a lot of in-depth knowledge of the
5 recording capabilities, capacities, or what may have
6 been recorded or not recorded.

7 Q. And just so somebody is going to ask
8 you this, so it may as well be me. Has anybody
9 looked to see if that unit is even around and if
10 anything was recorded that day?

11 A. I'm unaware of that, whether that has
12 been -- I have been personally asked do I have it, do
13 I have access to it. I do not have it. I do not
14 have access to it. And that is the extent of my
15 knowledge.

16 Q. And so -- and I'm not familiar with
17 this, so I just need to ask you a few more questions
18 about it.

19 A. Sure.

20 Q. When it is open and you are looking at
21 it, there is a chart, and does it show the position
22 of your vessel?

23 A. It does. Yes, sir.

24 Q. And is it AIS type data that you are
25 seeing on the screen?

1 A. It also has that -- it can have that,
2 and it did in this case have that.

3 Q. Is it similar in appearance to the
4 ECDIS that we've looked at in this case, or is it
5 completely different?

6 A. Its capabilities are -- it is a
7 portable pilotage unit. So it is not an ECDIS.
8 There is a big difference here. Because an ECDIS is
9 a class requirement and it is certified and type
10 design, it has to do specific things and it can't do
11 other things. That is for the ship. That is for
12 ship's navigation.

13 A portable pilotage unit is a device
14 that is not required to be utilized, but pilots
15 across the country and across the world have found a
16 lot of utility and benefit by utilizing it. So many
17 have elected to carry a portable pilotage unit. And
18 that is more for pilot centric view of the world. It
19 may not have the level of detail you would find on an
20 official, formal ECDIS. It may have the capability
21 of doing that. But depending upon pilot preferences
22 utilizing the equipment is how it would be set up.

23 So this particular unit, someone
24 unfamiliar with its capabilities may look at it and
25 say it is rather cartoonish, because it is showing a

1 limited amount of clutter. Because the pilot, with
2 their local knowledge and years of experience with
3 the testing process to acquire a pilot's license, has
4 an intimate knowledge of the area that they are
5 working in, and really on a regular basis doesn't
6 require the display of the level of detail that is
7 required to be displayed on a ship's ECDIS system.
8 If that helps.

9 Q. Yeah. But... and I'm just trying to
10 envision it, though. You've got a chart up on the
11 screen. Is it showing other vessels and their
12 vectors and movements, that type of thing?

13 A. It can, and it did in this particular
14 case. Yes, sir.

15 Q. And that gives you some of this
16 information. For example, that there is a ship
17 coming down and it may be Pilot 53?

18 A. I knew the name of the ship. On our
19 systems that -- on the MRTIS system that information
20 is not displayed. The pilot on the vessel, that
21 information is not --

22 Q. Right.

23 A. -- displayed.

24 Q. Right. But is it on your PPU?

25 A. When I say the MRTIS system, the one I

1 was using the day in question, on that PPU system --

2 Q. Oh. Okay.

3 A. -- it was a vir- -- the PPU I was
4 using was a pilot -- it is different than the
5 commercially available website that you can
6 acquire --

7 Q. Right.

8 A. -- and watch a ship. There is a
9 system designed by the same designers, but for use by
10 a pilot as a pilot, portable pilotage unit.

11 Q. So I'm familiar with MRTIS, that I can
12 access, subscribe to, whatever. Right?

13 A. Yes.

14 Q. Does your screen look somewhat similar
15 to that?

16 A. It does look somewhat similar.

17 Q. Just some different data that is
18 available to you as pilot?

19 A. That would be correct.

20 Q. And, Captain, just to try to fast
21 forward a bit. It looks like over the next few pages
22 of this transcript you were just giving the routine
23 steering commands to keep the ship aligned where it
24 needs to be, either positionally in the river or to
25 encounter additional other traffic. Correct?

1 A. Yes, sir.

2 Q. Look at Page 8. Some of it is just
3 terminology I'm asking you to help me with. Page 8,
4 the 1908-45 entry, do you see that?

5 A. I do.

6 Q. First of all -- and take your time --
7 do you know who you are talking to here?

8 A. Well, I don't remember specifically
9 the individual. I know it was a telephone call that
10 I made to Port Ship Service in Arabi asking them to
11 send -- if it would be possible if they could send a
12 car to meet me at the Ama Launch, and I expected to
13 be ashore somewhere around 3:30 or so.

14 Q. All right. So you are just planning
15 your departure at this stage?

16 A. Coordinating my transportation
17 logistics. Yes, sir.

18 Q. All right. So when you talk about Ama
19 there, you are talking about the Ama Launch.
20 Correct?

21 A. That is where I would be coming
22 ashore. Yes, sir. That is correct. Ama Launch.

23 Q. And the "wheels" mean a car?

24 A. An automobile. Yes.

25 Q. Got you. All right.

1 Then just further down on that page,
2 1414, or 1914-5, there is just some casual
3 conversation about the ship being fully loaded. But
4 that you are going to anchorage for a cylinder, to
5 receive a cylinder and get a repair done. Correct?

6 A. That is what the captain informed me.
7 Yes. He had just -- I like to try and have a
8 conversation with the captain whenever I can. Just
9 to lighten the mood. It is part of my practice just
10 to casually engage in.

11 Q. Is it a little unusual for a fully
12 loaded ship, as you described the NOMADIC MILDE, to
13 be heading upriver instead of out and downbound?

14 A. No, sir. There could be a number of
15 reasons why they wouldn't be going to anchor prior to
16 departure. Maybe, you know, for bunkers, to be -- a
17 common thing is they need bunkers. A lot of times at
18 some facilities they are not able to get stores while
19 they are at the dock, or bring in bunkers alongside
20 for whatever reason any facilities have or
21 requirements.

22 Q. Okay.

23 A. I didn't consider repairs. But
24 obviously in this case they said they were going to
25 be making some repairs. It could be something as

1 simple as a crew change, or maybe their next berth is
2 not available. So instead of floating around in the
3 Gulf, they decided to anchor and wait inside.

4 Q. All right. Going down to near the
5 bottom of Page 8 there is the 1922-35 entry. Whoever
6 transcribed this, I guess speculates that maybe you
7 are talking on the phone.

8 Do you know if that is right, having
9 read through this?

10 A. That would be accurate. To my
11 recollection, yes, sir. That would be a phone
12 conversation I was having with Captain Steve
13 Robotham.

14 Q. And who is that?

15 A. And he was a pilot that was coming up
16 astern of me that was also headed for Kenner Bend
17 Anchorage. We were ordered at the same time. He had
18 gotten on down here at the Point, which means
19 essentially just below Algiers Point, Mile 90 or so.
20 And he was coming upriver to go to Kenner Bend
21 Anchorage.

22 MR. PIVACH:

23 Peter, if I can interrupt. There was
24 a moment before we talked about the statements that
25 Captain Brown made --

1 MR. TOMPKINS:

2 Right.

3 MR. PIVACH:

4 -- and he said that, I think it was
5 Tony Billiot, and he may have made had a correction.
6 I think this is the pilot's name would Steve
7 Robotham.

8 Did I get that right?

9 THE WITNESS:

10 That is the correction I was
11 attempting to make earlier.

12 BY MR. TOMPKINS:

13 Q. Pilot?

14 A. Yes, sir.

15 Q. So he is the pilot of the ship behind
16 you that is also northbound or upbound in the river.
17 Correct?

18 A. That is correct. Yes, sir.

19 Q. And he was also headed towards Kenner
20 Bend Anchorage?

21 A. Yes, sir.

22 Q. And your comment to him, at least
23 according to this transcript at that time was, "I am
24 going to stick this thing -- meaning the NOMADIC
25 MILDE -- at the very top of Lower Kenner Bend."

1 A. At that point in time was my intent.
2 That is where I thought there would be adequate room.
3 Which I believe I had mentioned earlier there was
4 three possible locations I was looking at. This was
5 the middle option, that subsequently I learned was
6 not really a real option.

7 Q. Okay. So originally you thought you
8 had the bottom of Lower Kenner Bend, the top of Lower
9 Kenner Bend, or the third slot, to call it that, in
10 Upper Kenner Bend?

11 A. Yes, sir. That's correct.

12 Q. Okay. So at this point you are still
13 thinking the top of Lower Kenner Bend?

14 A. Yes, sir.

15 Q. Got you.

16 And obviously the VDR is not picking
17 up the come-back from the pilot you are talking to.
18 Do you recall that? Do you recall what he said to
19 you as part of that conversation, other than he was
20 headed toward Kenner Bend?

21 A. Well, just he was going to take,
22 obviously, the lower spot. Not -- it wasn't obvious.
23 But what I thought he -- it left him better options.
24 His ship was longer, bigger than my ship.

25 MR. PIVACH:

1 If I may, I'm not sure if that is his
2 question. I think his question is, as you sit here
3 today, do you remember his response?

4 THE WITNESS:

5 No. Just an affirmative that I was
6 going to leave him a space where he could anchor.

7 MR. TOMPKINS:

8 Okay.

9 MR. BUTTERWORTH:

10 Also, point of clarification, Peter.

11 MR. TOMPKINS:

12 Yep.

13 MR. BUTTERWORTH:

14 When we were listening to it -- when I
15 was listening to it, I couldn't hear. I mean, I
16 heard noise. I heard people talking, but I couldn't
17 make it out. Several times Pilot Brown the other day
18 said, you know, wait. I can hear it. Because he is
19 there and he knows the lingo on the river, which we
20 don't know.

21 So that is one of the reasons we are
22 going to ask them, because there may be some response
23 here that he can hear or maybe Pilot Steve Robotham
24 could hear.

25 BY MR. TOMPKINS:

1 Q. And that is essentially I guess what
2 my question is: Having read all this and trying to
3 put yourself back in this time frame several months
4 ago, the gist of this conversation was, I'm going to
5 the upper spot in Lower Kenner Bend. Right?

6 A. At this point in time, that is exactly
7 where I thought I was headed. Yes.

8 Q. Right. And therefore, that is where
9 this other pilot thought you were heading, because
10 that is what you told him?

11 A. Yes. That is correct.

12 Q. But at some point -- and we are
13 probably going to get to some of this in a minute --
14 there is a change?

15 A. Yes.

16 Q. Okay. And if we go to the next page,
17 Page 9 at 1926, do you see that entry?

18 A. Yes.

19 Q. You are talking to the captain of the
20 NOMADIC MILDE at this point?

21 A. That is accurate.

22 Q. All right. And you are telling him at
23 this point you are going to take that third spot in
24 Upper Kenner Bend. Is that right?

25 A. No, sir.

1 Q. I'm sorry. Okay.

2 A. There were three ships at the time of
3 my approach. So if you were to look at MRTIS, or
4 whatever graphic depiction we use to show where the
5 location of the vessel was at this timestamp, it
6 would show that I'm still below -- I'm at the lower
7 part of the Lower Kenner Bend Anchorage.

8 Q. Okay.

9 A. And at this -- well, actually I'm well
10 below the Kenner Bend Anchorage at this point in
11 time. And at that point in time, based upon my
12 understanding of the circumstances, I was thinking I
13 could still fit into the top of the Lower Kenner Bend
14 Anchorage.

15 Q. Okay.

16 A. And I showed the captain, because you
17 could see them, where the ships were, and that we
18 would go in front of these three ships. These three
19 ships that I'm referring to at this timestamp were
20 all located in the Lower Kenner Bend Anchorage.

21 Q. All right.

22 A. And I was telling him we would anchor,
23 in essence making us the fourth ship at the Lower
24 Kenner Bend Anchorage.

25 Q. Okay. When does that change? Can you

1 take me to the part of the transcript where the
2 decision to change that?

3 MR. PIVACH:

4 You are now pointing to where Mr.
5 Butterworth said you may want to look at.

6 THE WITNESS:

7 Yeah. Thank you.

8 MR. PIVACH:

9 Okay. I was trying to put you on the
10 right page.

11 THE WITNESS:

12 It just took me awhile to find. It is
13 going to be somewhere near the end of Page 12. And
14 it certainly would be readily apparent if you put a
15 screenshot of the location of the vessel NOMADIC
16 MILDE where we were at this timestamp, it would give
17 you a very good indication of where I was when I made
18 that determination. But there was a couple of moving
19 parts all at the same time, where there was -- it is
20 right up in there.

21 BY MR. TOMPKINS:

22 Q. Okay.

23 A. Where I made that -- yep. We are
24 going to go near the bottom. Excuse me. I'm in the
25 1458-4 timestamp at the bottom of Page 12. And right

1 up in that point in time, you will see just above it,
2 the captain said we are almost stopped at 57, 1457
3 timestamp.

4 The captain and I were working
5 together to maneuver into position. And then I had
6 figured out by then looking at the space available,
7 that it was not going to work. And also coincided
8 with another communication that came in from Captain
9 Robotham that where he informed me he was definitely
10 going to take the bottom of the anchorage, which left
11 a really nice open hole in the upper anchorage, which
12 is where we decided at that point time where we would
13 be going to.

14 Q. Okay. So Steve, the other pilot, who
15 is behind -- is he still behind you at this point?

16 A. Yes, sir.

17 Q. -- is definitely going to take that
18 bottom spot of Lower Kenner Bend?

19 A. Yes, sir.

20 Q. And what was it about the upper spot
21 that caused you to want to change once got closer to
22 it?

23 A. It was a much nicer spot than where I
24 was currently located.

25 Q. The ultimate spot in Upper Kenner Bend

1 was nicer?

2 A. Yes, sir.

3 Q. Okay. Was it because there was more
4 room or --

5 A. Much more room.

6 Q. And in a high river, with other ships
7 in an anchorage, and you want to have room between
8 the ships as best as you can. Correct?

9 A. As best as you can. Yes, sir.

10 Q. Is that true because, number 1, it is
11 easier to maneuver to get into the anchorage. And
12 number two, it is safer for the ships around it if
13 there is movement between the vessels?

14 A. It's certainly easier, the more room
15 you have to maneuver, yes, sir. It makes life
16 easier. But yes. Any -- every ship causes a
17 disturbance. Essentially you have a hole in the
18 water, and the water has to go around the ship to
19 avoid where the ship is. So it is going to create
20 effects commonly known as interaction. That the
21 closer you are, the larger the ship, the more
22 interaction it would have. The more disturbance it
23 creates in the water. The faster you are going, the
24 more it creates a disturbance. So there was a really
25 nice hole in the upper anchorage, and that is where

1 we elected to go.

2 Q. Okay. Let me go back on that just a
3 little bit to cover a couple of other conversations
4 just to understand what you are talking about, even
5 though it might not be super relevant to this.

6 But in the 1429-1 conversation --

7 A. That is on which page, sir?

8 Q. Sorry. Page 9.

9 A. Thank you. 29-1.

10 Q. Is that just a personal conversation
11 going on in there, or is there something else --

12 A. Yes, sir. There was a downbound ship
13 that was coming, that I was meeting, and I was
14 chatting with the pilot on the downbound ship.

15 Q. So nothing about that conversation has
16 anything to do with where or how you are going to
17 anchor the NOMADIC MILDE. Correct?

18 A. No, sir. It had nothing at all to do
19 with that.

20 Q. I assumed that, but...

21 And at 1443, on the top of Page 11,
22 where you give the command to dead slow ahead, does
23 that mean you are making your approach and you are
24 easing it in at a dead slow ahead speed?

25 A. It was. Yes, sir. And that would --

1 that would precede the decision, at this timestamp --
2 and there again, if you put the position of the
3 vessel, you would see that I'm still thinking at this
4 point in time I'm going to try and put her into the
5 upper portion of the lower anchorage. It really
6 wasn't until I was able to get there and observe the
7 situation, that I realized it was not a good place to
8 go.

9 Q. All right. And the conversation that
10 starts at 1444-45 with the captain about letting go
11 the starboard anchor first and then the port, and
12 giving the ship, quote, a good spread, is that still
13 in anticipation of possibly going into Upper Kenner
14 Bend?

15 A. Well, I wouldn't --

16 Q. Upper portion of Lower Kenner Bend, I
17 should say.

18 A. At this point in time we were still, I
19 was still -- had not made a decision to go to the
20 other anchorage. So my practice would have been the
21 same, whether -- positioning the anchors and spread
22 the chain would have been similar whether I was in
23 the lower anchorage or the upper anchorage. It would
24 be based upon the ship I was piloting that particular
25 day, and the situation as it existed on the day, I

1 felt it would be inadequate based upon my experience
2 anchoring ships.

3 Q. But the plan, in either spot, meaning
4 the upper section of Lower Kenner Bend, or the number
5 3 slot of Upper Kenner Bend, would be to drop the
6 starboard anchor first and then the port anchor.

7 Correct?

8 A. That is correct.

9 Q. And when you say give it a good
10 spread, or we are going to do a good spread, just
11 what does that mean to the lay person that is reading
12 this?

13 A. A lateral separation between the
14 starboard anchor and the port anchor. A spread would
15 be as much separation as I could get. You could put
16 -- conceivably you could drop the starboard anchor
17 and drop the port anchor and pay out your chain and
18 their anchors would be right next to one another.

19 Q. Right.

20 A. In practice, I don't believe that is a
21 very effective methodology of anchoring. Years of
22 practice and the evolution of anchoring practices has
23 led me to believe that the further the lateral spread
24 that you can get helps to stabilize after the ship is
25 anchored, helps to stabilize the ship from developing

1 excessive yaw rate.

2 Q. And again, yaw means the swinging of
3 the ship on its anchor?

4 A. Yaw specifically would be a rotational
5 around a vertical axis of the ship on heading
6 change --

7 Q. Okay.

8 A. -- technically would be yaw.

9 Q. And so the -- by giving it a good
10 spread, meaning a wide separation between the port
11 and starboard anchor, you are trying to minimize the
12 yawing effect that the ship would encounter?

13 A. Yes, sir.

14 Q. And it is going to encounter that
15 because it high river with four to five-knot current
16 in part. Correct?

17 A. That is correct, sir.

18 Q. And you are also telling the captain
19 there could be some rough weather coming up in an
20 hour or more. Right? With some gusty winds,
21 etcetera?

22 A. Yes, sir. I believe there were
23 forecasts for severe thunderstorms that were possible
24 that evening.

25 Q. And so another reason why you wanted

1 to anchor the NOMADIC MILDE as best as you could.

2 Correct?

3 A. Yes, sir.

4 Q. All right. And going back now to the
5 bottom of Page 12, the 1458 conversation with the
6 ship behind you, Steve. Right? Right at the end
7 where you say, "Ok, we are going to do that...we are
8 going to...we will shove up." That means you are
9 going to shove up to Upper Kenner Bend?

10 A. Further upriver. Yes, sir.

11 Q. And it looks like you may increase
12 your speed a bit, to half a head, to maneuver further
13 upriver. Right?

14 A. Yes, sir.

15 Q. What is the distance approximately
16 from the top of Lower Kenner Bend to the No. 3 spot
17 of Upper Kenner Bend?

18 A. Less than half a mile.

19 Q. And then it looks like at the top of
20 the Page 13 you explain to the captain that you are
21 going to do that switch and you are going to go up
22 between two ships. Right?

23 A. Yes, sir.

24 Q. And as we sit here today, do you now
25 understand those two ships to be my client's ship,

1 the ATLANTIC VENUS, and the ship called the IONIAN
2 SEA?

3 A. That is correct, sir.

4 Q. Let me ask you just broadly. Do you
5 recall any communications whatsoever with either the
6 ATLANTIC VENUS or the IONIAN SEA?

7 A. No, sir. I did not initiate any calls
8 nor did I receive any calls from those vessels.

9 Q. And that wouldn't be typical, would
10 it?

11 A. It is not customary to do so. No,
12 sir. It's customary --

13 MR. PIVACH:

14 Clarification. Too many negatives.

15 THE WITNESS:

16 I would -- I would stipulate that I
17 have heard radio calls from ships that were anchored
18 that thought that someone else was getting too close
19 to them. I have heard radio calls of ships doing
20 that. I did not hear any on the day in question.

21 MR. TOMPKINS:

22 Right.

23 MR. PIVACH:

24 For clarification, I think there were
25 a couple of double negatives.

1 Would it be customary to go into the
2 anchorage like you did that day without calling the
3 other ships?

4 THE WITNESS:

5 Yes. It is customary.

6 BY MR. TOMPKINS:

7 Q. Right. Nothing unusual about that.
8 Correct?

9 A. That is correct. Yes, sir.

10 Q. Let's look at the 1508-20 entry.

11 A. 1508. Yes, sir. Okay. We are still
12 on Page 13.

13 Q. Yes.

14 A. I have it. Yes, sir.

15 Q. The second -- the second remark
16 attributed to you says, "Hey, Dave, see anybody up
17 there heaving anchors on the ship in front of me?"
18 Who is Dave and what is that a reference to?

19 A. David Robotham is a NOBRA pilot who
20 was on a ship that was coming downriver as we were
21 approaching the anchorage. And I called him, because
22 he would have been in a position to see if someone
23 was on the focsle of the IONIAN SEA, up there
24 working. And that is my question, do you see anyone
25 up there heaving anchors? Because I noticed the

1 vessel was moving in front of me, and I was
2 attempting to establish whether or not he saw anyone
3 up on the focsle.

4 Q. And you were trying to figure out if
5 that movement was because the anchors were coming up
6 and it might be departing versus just moving on its
7 anchors?

8 A. That is correct. Yes, sir.

9 MR. BUTTERWORTH:

10 For clarification, did we know the
11 NOBRA unit number of Dave Robotham?

12 THE WITNESS:

13 That is a trick question. I used to
14 know all those numbers. I'm sorry. I don't. Dave
15 will be disappointed.

16 MR. BUTTERWORTH:

17 Can you find out for us and then
18 through your lawyer let us know later.

19 THE WITNESS:

20 I believe we could do that.

21 MR. PIVACH:

22 If you send me an E-mail I will
23 remember to do that.

24 MR. BUTTERWORTH:

25 I will send it right now.

1 MR. PIVACH:

2 Because otherwise I will certainly
3 unintentionally --

4 THE WITNESS:

5 Actually, I think David Robotham was
6 NOBRA 86 and Steve Robotham is 28.

7 BY MR. TOMPKINS:

8 Q. Are they brothers?

9 A. They are, as a matter of fact.

10 Q. I'm sorry. Steve is what number?

11 A. Two-eight.

12 Q. All right. So Dave comes back and
13 apparently says at 2009-4 that he didn't see anyone,
14 I guess, meaning at the bow end of the IONIAN SEA,
15 which tells you that there is no anchor maneuvering
16 going on at that point. Correct?

17 A. Yes, sir. He mentioned that he didn't
18 see anyone up there. That is correct. And then he
19 also told me he didn't know which one was going to be
20 shifting, going into ADM elevator.

21 Q. Okay. All right.

22 And are these next directions given to
23 you, meaning steering directions and speed, just to
24 try to start maneuvering to get in position to drop
25 the anchors?

1 A. That is correct.

2 Q. And I'm talking about at the bottom of
3 Page 13 of this transcript.

4 A. Yes, sir. That is just rudder
5 commands and sequence and -- excuse me -- rudder and
6 engine commands.

7 Q. So that continues on to the next Page
8 14, down to the 2015 entry where you give the
9 instruction to go ahead and let go the starboard
10 anchor?

11 A. That is correct.

12 Q. And you had already -- I believe you
13 had already explained to the captain that you wanted
14 to drop five shackles in. Is that right?

15 A. That is correct.

16 Q. And a shackle is what, 450 feet? I'm
17 sorry. 90 feet?

18 A. One shackle is 90 feet.

19 Q. So five is 450 feet. Correct?

20 A. Yes, sir.

21 Q. And would that be typical for the
22 water depth we talked about earlier, which is in the
23 50-some-odd foot range I think you estimated?

24 A. Well, it is typical for the manner in
25 which I maneuver a vessel, to bring it in to let go

1 of the inshore anchor, to give me enough scope of
2 chain to get a lateral separation of the anchors, to
3 let go the inshore anchor. And then I would
4 generally tighten back up a little on the offshore
5 anchor to bring the ship in between the two anchors.

6 Q. Which is what you ultimately did in
7 this case. Right?

8 A. Yes, sir. I believe so.

9 Q. And so you -- and the inshore, we are
10 talking about the port anchor on this day?

11 A. That is correct.

12 Q. And after you got the inshore one
13 dropped, then you pulled a shackle up on the
14 starboard anchor to have four shackles out. Correct?

15 A. Yes, sir.

16 Q. All right. Mike, could we pull up the
17 number 1 ECDIS still shot.

18 MR. HELD:

19 Okay. The one with the starboard
20 anchor.

21 MR. TOMPKINS:

22 Yeah.

23 BY MR. TOMPKINS:

24 Q. All right. Captain, I'm going to
25 represent to you this is just a still shot off of the

1 NOMADIC MILDE's ECDIS, and if you look up at the top
2 right after UTC you see 20:15 time entry?

3 A. Yes, sir.

4 Q. And if you look at the 20:15 time
5 entry on this transcript, that is when you say let go
6 starboard anchor. Is that right?

7 A. Yes, sir.

8 MR. PIVACH:

9 Just a question. I imagine that you
10 all have looked to see how close these are in time.

11 MR. TOMPKINS:

12 I was about to get there.

13 MR. PIVACH:

14 Sorry about that.

15 MR. TOMPKINS:

16 Okay. Michael --

17 MR. BUTTERWORTH:

18 And I think -- I think they made a
19 mark on the ECDIS with the starboard anchor.

20 MR. TOMPKINS:

21 My question is going to be much
22 broader.

23 MR. BUTTERWORTH:

24 But anyway, subject to the time
25 differences between the different units.

1 BY MR. TOMPKINS:

2 Q. All right. On this screenshot,
3 Captain, do you see the NOMADIC MILDE in this shot?

4 A. I do.

5 Q. All right. Is it the ship that is not
6 outlined in green? Whereas, the other ships are
7 outlined in green around there?

8 A. That is correct.

9 Q. Okay. And so you can barely read
10 IONIAN SEA because of another name, of another vessel
11 kind of overlapping. But do you see where it says
12 IONIAN SEA there?

13 A. I do.

14 Q. And that would be the NOMADIC MILDE
15 just above and to the right of the IONIAN SEA with
16 the vector coming down. Right?

17 A. Yes, sir.

18 Q. And then on the very right of the
19 screen, the name doesn't appear, but that is
20 presumably the ATLANTIC VENUS, the green outlined
21 vessel all the way to the top right of that still
22 shot. Correct?

23 A. Yes, sir.

24 Q. And so what you are assuming, these
25 times are reasonably close. I'm just trying to just

1 approximate it. This would be the approximate
2 position where you would be as you are dropping the
3 starboard anchor?

4 A. Yes, sir.

5 Q. And the distance that you would
6 anticipate upon completion -- and we are going to get
7 to that still shot in a minute -- you are satisfied
8 that there is plenty of room between IONIAN SEA's
9 stern and ATLANTIC VENUS's bow for you to safely get
10 the NOMADIC MILDE into that third slot. Correct?

11 A. I am. Yes, sir.

12 MR. PIVACH:

13 Okay. Do you want to make a screen
14 printout and identify it as an exhibit?

15 MR. TOMPKINS:

16 I have that. Do you want to do that?

17 MR. BUTTERWORTH:

18 We can do that, or we could also
19 reference it by the ECDIS time.

20 MR. TOMPKINS:

21 I mean, the ECDIS time is what I was
22 doing it by. I'm happy to make the still shots --

23 MR. BERCAW:

24 You are on Exhibit 1.

25 MR. TOMPKINS:

1 Yes.

2 MR. BUTTERWORTH:

3 That is 20:15 ECDIS screenshot, 20:15
4 even.

5 MR. BERCAW:

6 It looks like 15.

7 MR. TOMPKINS:

8 Yeah. 20:15:15.

9 MR. BERCAW:

10 Or 35. I can't really read it. It is
11 blurred.

12 MR. BUTTERWORTH:

13 If you could maybe highlight where the
14 times are.

15 MR. TOMPKINS:

16 Well, I'm going to attach it.

17 MR. BUTTERWORTH:

18 That is perfect.

19 (Deposition Exhibit 1 marked for
20 identification.)

21 BY MR. TOMPKINS:

22 Q. All right. Captain, going back to the
23 transcript at Page 14. Bringing you to the 2019-3
24 entry. Is that where you are explaining to the
25 captain that you are going to want to put three,

1 three shackles on the port anchor?

2 A. Yes, sir.

3 Q. All right. And at 2020, right below
4 that is where you suggest or instruct him to go ahead
5 and let go of the port anchor?

6 A. That is correct.

7 Q. So, Mike, if could bring up the next
8 screenshot. I'm just going to point out to you the
9 UTC time on the right of this screenshot from the
10 ECDIS 20:20, Do you see that?

11 A. Yes, sir.

12 Q. And you see the position of NOMADIC
13 MILDE there. Correct?

14 A. Yes, sir.

15 Q. And now we can actually read the
16 ATLANTIC VENUS name because it is a little bit
17 further perspective. Right?

18 A. That is correct.

19 Q. Would that jive with your
20 recollection, again, the rough position of the
21 NOMADIC MILDE as you were dropping the port anchor?

22 A. Yes, sir.

23 Q. And so what we are doing here, if we
24 can put these two screenshots side by side, if
25 somebody is looking later, you can see earlier when

1 you were dropping the starboard anchor, you were kind
2 of outside of where the ATLANTIC VENUS and IONIAN SEA
3 are. And now you've maneuvered further towards the
4 west bank in order to drop that port anchor and get
5 this spread you were talking about?

6 A. That is correct.

7 (Deposition Exhibit 2 marked for
8 identification.)

9 Q. All right. We will make that Brown
10 No. 2. All right.

11 And then now if you will go with me to
12 the 1523-3 entry on the transcript at the bottom of
13 Page 14. Are you with me?

14 A. Yes, sir. I see it.

15 Q. Is this the time when you would've
16 asked the captain to heave up a bit on that starboard
17 anchor?

18 A. That is correct.

19 Q. For the reasons you outlined for us
20 earlier. Correct?

21 A. Yes, sir. To get the ship -- my
22 intent was to anchor the ship in between the two
23 ships that were there. And so positioning the
24 anchors to have the ship fall out in the middle.
25 Yes, sir.

1 Q. And then if we turn the page of the
2 transcript to Page 15 -- I believe this is a typo in
3 that first entry there. I think it should say
4 2025-2. At least on mine it says 2015. Does yours?

5 MR. BUTTERWORTH:

6 Up here, I think you are right.

7 MR. TOMPKINS:

8 I think I am.

9 MR. BUTTERWORTH:

10 Yes.

11 BY MR. TOMPKINS:

12 Q. That is where you are confirming now
13 that there is four shots on the starboard anchor. Is
14 that correct?

15 A. That would be correct.

16 Q. And just to fast forward on that
17 point, that is where -- that is where everything
18 settled out, four on the starboard, three on the
19 port. Correct?

20 A. Yes.

21 Q. What do you have left to do, then,
22 essentially from a maneuvering standpoint once you've
23 pulled in that extra shackle on the starboard side --
24 and hold on. Let me go back.

25 Is a shot and shackle, is that the

1 same thing?

2 A. In my understanding of our vernacular,
3 yes. We use those two words interchangeably on the
4 river.

5 Q. Because I've seen them both in
6 different -- in different areas. And we are talking
7 about 90 feet, roughly, what you called a shot or a
8 shackle. Correct?

9 A. In our river vernacular, that is how
10 we speak. It could be a shackle. It could be a
11 shot. It's how we speak. Yes.

12 Q. All right. So going back to my
13 question.

14 Once you've got the four shots out on
15 the right on the starboard and the three on the port,
16 what do you have left to do maneuvering wise to say
17 the anchoring is done?

18 A. To just have the ship settle into her
19 chains.

20 Q. Okay. And as a pilot, is there kind
21 of a typical amount of time you will stand by on the
22 bridge after you think you've got things set out to
23 kind of make sure everything is settled down fine?

24 A. In my experience, after anchoring the
25 ship the manner in which I went about doing it, and

1 position the anchors, I was satisfied I had a good
2 spread on my chains because of the displacement of
3 the anchors and letting her settle back into the
4 chains. After -- after she settles down and we are
5 finished, generally between five and 10 minutes I
6 would say.

7 Q. Okay. Look at the 1533-1 entry.
8 Actually, I'm sorry. Go up to the previous one, the
9 1532 entry. Do you see that?

10 A. I do. Yes, sir.

11 Q. The Chris that you are referencing
12 there, who is Chris again?

13 A. Yours truly.

14 Q. Oh. There is a comma. It says
15 "Chris, Brown" here. I thought it was a different
16 Chris.

17 A. Well, I may have said Chris Brown
18 here.

19 Q. Chris Brown here.

20 A. Generally I identified myself to
21 launch station, and I called them to let them know
22 who I was and why I was calling them.

23 Q. I got you. I thought that Chris
24 was -- when they had comma, I thought that was
25 somebody else that you were calling Chris.

1 A. Sometimes I wish I was a Chris Brown.
2 But I'm not. I'm just me.

3 Q. All right. And so who were you
4 calling here?

5 A. The launch station over at Ama Launch,
6 the Port Ship Service Ama.

7 Q. So you are going to dispatch them to
8 come pick you up essentially?

9 A. Yes, sir. That would be the boat they
10 would send across to pick me up.

11 Q. Okay. And you call yourself "little
12 bitty ship," that means relative to the ships around
13 you are calling --

14 A. The one that -- yes. It was kind of
15 easy for them to pick out which one was the little
16 bitty ship.

17 Q. And the next entry in that box there,
18 is this some instructions you are leaving for the
19 captain at this point?

20 A. Yes, sir.

21 MR. PIVACH:

22 If you could, just a time.

23 MR. TOMPKINS:

24 I'm sorry. I'm saying the same box.

25 MR. PIVACH:

1 I'm sorry.

2 MR. TOMPKINS:

3 The 1532 box.

4 MR. PIVACH:

5 I didn't have the transcript, because
6 he has it. I just didn't know. Okay. Good.

7 THE WITNESS:

8 Yes, sir. Before I leave the vessel,
9 I explained to the ship's crew, the captain was up
10 there. And part of my conversation in the next
11 couple of timestamps was with the captain and with
12 the second mate.

13 BY MR. TOMPKINS:

14 Q. Okay. And part of that -- I'm sorry.
15 Part of that instruction is he can go to Channel 5 to
16 call Vessel Traffic. Is that right?

17 A. New Orleans Traffic in that sector is
18 on Channel 05. Yes, sir. That is correct.

19 Q. And is it your understanding that is
20 monitored by Coast Guard?

21 A. It is monitored by the Coast Guard
22 Vessel Traffic Center.

23 Q. And is it also monitored by a pilot?

24 A. There is a pilot advisor at the Vessel
25 Traffic Center who is up there. The pilots are all

1 ships, all vessels operating under way in the river
2 should be on Channel 05 in that sector of the river.
3 They should have a radio on Channel 05. They should
4 have a radio on Channel 67, which is bridge-to-bridge
5 navigation.

6 Q. Right. But you are telling him if he
7 has got a problem that he encounters after you leave,
8 he can call 5 where there would be a pilot that he
9 could speak with. Is that right?

10 A. That is correct.

11 Q. And then the next box, the entry at
12 1533-1 where you are apparently telling the Vessel
13 Traffic folks that you are all finished, meaning you
14 are anchored. Right?

15 A. I believe that is an incorrect
16 representation. It is a continuation of the box,
17 from the box above.

18 Q. Okay.

19 A. An explanation to ship's crew.
20 Oftentimes I do repeat myself and if I'm having a
21 conversation with the captain and somebody else steps
22 up -- and I'm not saying it is the case in this
23 particular instance -- but it is not uncommon for one
24 member of the ship's crew to speak a little better,
25 to be able to understand what I'm saying a little

1 better than possibly the master. So I will have
2 multiple con- -- I will tell the same thing to
3 multiple people.

4 And in this particular situation is
5 what occurred. The second mate had stepped over. He
6 had previously -- you know, the captain and I were
7 working, and then -- so it is just a repetition of we
8 are in Kenner Bend Anchorage. And New Orleans
9 Traffic, you know, earlier up above I tell them about
10 New Orleans Traffic. So I'm just repeating the thing
11 for --

12 Q. Okay. I think I understand. You are
13 explaining to me you are not necessarily calling VTS
14 at this point. You are just explaining to the folks
15 on the bridge what the deal is with them?

16 A. That is correct. I did not call New
17 Orleans Traffic to advise them that we were in the
18 anchorage. I was simply reiterating to the ship's
19 crew that we were anchored in Kenner Bend Anchorage,
20 and vessels in the area that are going by should be
21 on Channel 67. That New Orleans Traffic stands by on
22 Channel 05.

23 Q. All right. And then the captain asks,
24 again at the bottom of Page 15, are we finished with
25 the anchoring. And if the transcript is accurate,

1 you say "She looks good." Right?

2 A. Yes, sir. In all probability, I was
3 shaking my head in the affirmative that, yes, we are
4 finished with anchorage. She looks good.

5 Q. Okay. And you told him -- you
6 reminded him, I guess, that there is some current
7 given the river conditions and there is some
8 potential weather coming up.

9 So you say -- and I'm going to quote
10 here -- "it's a good idea to keep it on a short
11 standby." What do you mean by a short standby?

12 A. Well, I'm not a marine engineer,
13 but...so I could say the wrong words attempting to
14 explain what I think. But a short standby is to be
15 able to engage the engine in a minimal amount of time
16 should an emergency, whatever need arise, you would
17 be able to engage your equipment. In other words,
18 not have a cold plant. Not shut down the engine
19 completely. Keep operating temperatures where they
20 are supposed to be so that you can go to work real
21 quick.

22 Q. And you kind of go on and explain that
23 exactly at the top of Page 16. Right?

24 A. Yes, sir. I believe that is a
25 continuation of the same conversation and --

1 Q. If he has to maneuver for whatever
2 reason on a short time frame, if the engines are
3 ready, he can do that?

4 A. Yes, sir.

5 (Deposition Exhibit 3 marked for
6 identification.)

7 Q. Can you pull up, Mike, No. 3? All
8 right.

9 All right. We pulled a third ECDIS
10 screenshot up. You will see the UTC time is
11 20:33:30. Do you see that?

12 A. Yes, sir.

13 Q. And so that would be roughly in line
14 with the time we just talked about where we said --
15 he asked, if we are finished, she looks good and
16 stopping the engine?

17 A. It appears so. Yes, sir.

18 Q. All right. And you see the position
19 of the NOMADIC MILDE vis-a-vis the IONIAN SEA and the
20 ATLANTIC VENUS there. Correct?

21 A. She appears to be anchored in between
22 the two vessels. Yes, sir. In the same line.

23 Q. All right. And we've talked about
24 Kenner Bend Anchorage. Is the outline of the
25 anchorage depicted on this screenshot?

1 A. Yes, sir. It is.

2 Q. All right. Where -- what line is it?
3 Can you describe?

4 A. There is a magenta line that runs off
5 the port side of all of the vessels. And it is
6 readily apparent. I could walk over there and show
7 it to you.

8 Q. Well, let's --

9 A. Using my descriptive phraseology to
10 orient you to the picture.

11 Q. Well, the tan part at the very bottom
12 right of the screenshot, is that land?

13 A. It denotes land. Yes, sir.

14 Q. Okay. And so we've got the bank will
15 be where the tan turns into the blue. Correct?

16 A. Yes, sir. That is a representation of
17 the average low water reference point, which is low
18 river ground.

19 Q. So in this case the blue may be a
20 little further down, because --

21 A. Well, it would encroach probably
22 somewhere between -- it was over the top of the
23 batture, but not further than the levee.

24 Q. Got you. All right.

25 And so parallel to what we are calling

1 the bank in this still shot, the first -- you called
2 it magenta, I will call it pink -- the first dotted
3 line that is parallel, is that the outer edge of the
4 anchorage?

5 A. It is. Yes, sir.

6 Q. Okay. And you've described that the
7 port side of all three ships is just outside of that
8 dotted line. Correct?

9 A. Well, I would stipulate all four ships
10 that are in the Upper Kenner Bend Anchorage.

11 Q. All right. What is the fourth one?

12 A. Well --

13 Q. What is the name of the ship, the
14 fourth one?

15 A. GASCHEM ATLANTIC.

16 Q. Okay. So that is all the way to the
17 left-hand side of this still shot. Right?

18 A. In this picture. Yes, sir.

19 Q. Is the position of those four ships
20 relative to that dotted line, that is the outer
21 portion of Kenner Bend Anchorage, is that a typical
22 position for ships to anchor at Upper Kenner Bend
23 Anchorage?

24 A. It is typical and customary. Yes,
25 sir.

1 Q. All right. And when you say "typical
2 and customary," earlier you talked about the fact
3 that you've been going up and down the river as a
4 pilot for 25 years. Correct?

5 A. Yes, sir.

6 Q. Has it been typical and customary
7 positioning of ships at Upper Kenner Bend --

8 MR. ACOSTA:

9 Object to form. Colton Acosta.

10 BY MR. TOMPKINS:

11 Q. -- for those 25 years?

12 A. For as long as that anchorage has been
13 there and ships have been anchored there, and barge
14 fleet on the inside of it and the traffic that runs
15 up the inside of it. Yes, sir.

16 Q. And with respect to ATLANTIC VENUS, is
17 her position as depicted here, and in any of the
18 other shots, is that fairly typical position for a
19 ship at that portion of the anchorage?

20 A. I believe it would be. Yes, sir.

21 Q. And so when you came into the
22 anchorage to set NOMADIC MILDE into position, you
23 didn't consider ATLANTIC VENUS to be out of position
24 or in a dangerous spot, did you?

25 A. It appeared to me that she was in line

1 with the other vessels in front of her, and I
2 intended to anchor in between and in line with those
3 vessels, also.

4 Q. All right. My question was slightly
5 different, but I appreciate your answer.

6 But as you made the approach and you
7 saw where ATLANTIC VENUS was, you didn't consider her
8 to be out of position or in a dangerous spot, did
9 you?

10 A. No, sir. I did not.

11 Q. You considered her to be where you
12 would expect a vessel at that location, meaning the
13 lower end of Kenner Bend, to be positioned. Correct?

14 A. Yes, sir.

15 Q. Do you have -- as you look at this
16 screenshot, if it helps you, do you have an estimate
17 as to the approximate distance between your bow and
18 the stern of IONIAN SEA, and then your stern and the
19 bow of ATLANTIC VENUS?

20 And if you don't, we could measure it
21 later.

22 A. Well, it certainly would be much
23 better to measure than have me guess at a scale on
24 the chart --

25 Q. Right.

1 A. -- without a measuring device. If I
2 was using that equipment, I would have measuring
3 devices able to do that and I wouldn't have to
4 speculate on distance.

5 Q. Do you know -- and if it is unique to
6 the ECDIS and you don't, tell me -- but are we trying
7 -- does the ECDIS try to depict NOMADIC MILDE as
8 being a 450-foot long ship with that outline?

9 A. It appears as the outline is drawn for
10 the size, it is a requirement in ECDIS that the ship
11 be drawn to scale. So as I look at that, those ships
12 are drawn representative of their size on the chart,
13 scale and display at that point in time.

14 Q. And so again, just for anybody reading
15 or listening to this -- I'm not trying to be
16 precise -- but it looks like you have roughly a
17 NOMADIC MILDE boat length, 450 feet or more toward --
18 until you get to the IONIAN SEA. Would you agree
19 with me?

20 A. I would agree with that.

21 Q. And about the same boat length or so
22 until you get to the bow of the ATLANTIC VENUS. Is
23 that right?

24 A. Yes, sir.

25 Q. Okay. And that separation, 450 or

1 more feet, roughly, was that enough separation, given
2 the conditions you encounter in that anchorage over
3 the 25 years you have been going up and down the
4 river?

5 A. Well, I believe that it is. When you
6 -- it is not a specific every ship should be X feet
7 away. It is more a function of the particular ship
8 that has been anchored there, the size that she is
9 and how it would disrupt the water flow, and how the
10 hydrodynamics would interact around that vessel. And
11 then the result it would have on the vessel astern of
12 them.

13 So, for instance, if I came in and
14 anchored something right there and the ship astern of
15 me started dancing around and yawing, that would say
16 that they are receiving a lot of interference or
17 interaction caused that. Kind of like on Top Gun
18 when Maverick flies through the jet wash and goes out
19 to sea.

20 It would be the same thing. If I
21 obstructed the water flow and caused a problem for a
22 vessel astern of me, it would shortly become readily
23 apparent. And I don't believe that was the case in
24 this instance.

25 Q. Yeah. If it had been, if once you let

1 the NOMADIC MILDE settle in position, you noticed
2 ATLANTIC VENUS moving around unusually, what would
3 you have done?

4 A. Well, that would certainly be a clue
5 that something is wrong and I need to look at other
6 options.

7 Q. Possibly another location to anchor
8 you mean?

9 A. Possibly. Or attempt to reposition
10 the anchors again.

11 Q. Okay. If you look at the 1539 entry
12 up on the transcript. It is at the middle of Page
13 16.

14 A. Yes, sir.

15 Q. This is you basically telling the
16 captain that you are done and it was a pleasure to be
17 onboard and you are leaving. Correct?

18 A. Yes, sir. That is correct. Signing
19 off.

20 Q. And so --

21 A. Departing the bridge.

22 (Deposition Exhibit 4 marked for
23 identification.)

24 Q. Mike, if you can bring up No. 4.
25 Captain, I have brought up another screenshot, UTC

1 time 20:39:59 it looks like.

2 A. Yes, sir.

3 Q. Is that -- again, assuming these times
4 are roughly coinciding with the transcript, that
5 would be the time you just told the captain you were
6 going to be taking off. Correct?

7 A. Yes, sir.

8 Q. And while the -- while the NOMADIC
9 MILDE isn't exactly in the same position as it was in
10 the last screenshot, it is similar. Correct?

11 MR. BERCAW:

12 Object to form. You can answer.

13 THE WITNESS:

14 I would agree with that. Yes.

15 BY MR. TOMPKINS:

16 Q. I mean, obviously these ships are
17 going to move to some extent in the water. Correct?

18 A. They do yaw in this stage of the
19 river. And it is not uncommon when you anchor a ship
20 to initially get some yaw until the anchors dig in
21 and she settles down.

22 Q. And would you expect more or less
23 yawing with a loaded ship versus a light ship? Or is
24 that not a fair question?

25 A. Well, it's a fair question. The

1 question I would submit would be more a function of
2 the trim of the vessel, meaning the difference
3 between the draft forward and aft. Although,
4 generally that coincides with a loaded vessel is more
5 often than not on an even keel. Whereas, a vessel in
6 ballast may have more draft by the stern. So she
7 would have, what I would call trim. And so a vessel
8 that is more of an even keel would probably -- would
9 have a greater tendency to rotate the yaw.

10 Q. Looking at the screenshot that we have
11 on the computer now that is marked Exhibit Brown No.
12 4, from where you sit today, does this look to be an
13 acceptable position for the NOMADIC MILDE as you were
14 telling the captain we were finished?

15 A. Well, I believe she still looks pretty
16 good right there.

17 Q. Okay. Can you see the pilot boat in
18 that screenshot No. 4?

19 A. It is depicted there along the
20 starboard side of the vessel. It is also outlined in
21 green, etched in green.

22 Q. I think the transcript shows that the
23 communication between you and the captain established
24 that you would be going down the starboard
25 accommodation ladder to leave the ship. Correct?

1 A. There's a pilot ladder on the
2 starboard side.

3 Q. Pilot ladder. Okay.

4 And so when you called for the launch
5 to come out, you told them to come to the starboard
6 side because you would be going down that pilot
7 ladder.

8 A. That is correct.

9 Q. So as we look at Exhibit 4, that is
10 the little green triangle right on midship of the
11 NOMADIC MILDE?

12 A. That is correct.

13 Q. Thank you. Is that the LITTLE RAY?
14 Is that the name of it?

15 A. Yes, sir. The boat was the LITTLE
16 RAY.

17 Q. All right. And at 1542-20 on the
18 transcript, if it is accurate, the chief officer says
19 "pilot off."

20 Do you see that?

21 A. I do. Yes, sir.

22 Q. So presumably that is him recognizing
23 that you've now actually departed the ship.

24 A. I'm no longer onboard the vessel.

25 Q. And does that sound about right, three

1 minutes or so?

2 A. It would be for this size vessel, to
3 walk from the bridge down the ladder and --

4 Q. All right.

5 A. -- up the deck to the middle of the
6 ship and step over onto the crewboat.

7 (Deposition Exhibit 5 marked for
8 identification.)

9 Q. If you bring up Brown No. 5. All
10 right.

11 This screenshot of the ECDIS of the
12 NOMADIC MILDE is at 20:43:35. First of all, do you
13 see the LITTLE RAY with the vector heading downbound
14 away from the NOMADIC MILDE?

15 A. I do.

16 Q. All right. And the NOMADIC MILDE has
17 moved a little more towards the west bank and right
18 along that dotted line we talked about as the Kenner
19 Bend Anchorage limit. Do you see that?

20 A. Yes, sir.

21 Q. Is that still -- as we sit here today,
22 do you think that is still lined up appropriately for
23 where you would expect it to be after you left the --
24 left the ship?

25 A. Well, looking at it today, which I

1 would not have been looking at it at that point in
2 time, so she is still laterally separated between the
3 -- she has yawed a little bit to the inside, to port,
4 towards the west bank. But she is still separated
5 from the other vessels as she was placed. So I would
6 not find that to be uncommon for a ship settling into
7 her chains.

8 Q. Okay. And when you say you are
9 looking at it today, you mean looking at this
10 screenshot today?

11 A. As we sit here today, yes, sir. It is
12 nothing I would've been paying attention to at the
13 time.

14 Q. When you are on the LITTLE RAY, are
15 you still looking back to see the ship you just left,
16 or are you just kind of -- you are on your way to the
17 shore?

18 A. It's a very small environment. And I
19 was not looking over my shoulder. I had stepped onto
20 the crewboat. And then from what I understand, the
21 particular ship, it was a pretty close match to step
22 right off of the deck of the ship, maybe one rung on
23 the ladder, two. There is a flying -- I don't know
24 -- pilot transfer arrangement on top of the crewboat
25 structure, wheelhouse. So then you would walk down

1 that and -- well, not walk -- but climb down. It is
2 a ladder.

3 And so I would do that and then go
4 into the cabin onboard the LITTLE RAY. And it is a
5 relatively small space. So I would be attempting to
6 have a social interaction with the boat crew. I
7 would not be paying attention to what's behind me at
8 that point in time.

9 Q. Okay.

10 MR. HELD:

11 Peter, lunch is here.

12 MR. TOMPKINS:

13 Let's take a break.

14 THE VIDEOGRAPHER:

15 The time is 12:02 P.M. and we are off
16 the record.

17 (Off the record.)

18 THE VIDEOGRAPHER:

19 The time is 12:42 P.M. and we are back
20 on the record.

21 BY MR. TOMPKINS:

22 Q. All right. Captain, I'm going to
23 finish up hopefully my questions, and then I will
24 turn you over to these other guys. But I do have a
25 few more to run through with you and then we will let

1 the other lawyers have their chance.

2 Are you ready to go?

3 A. Yes, sir. Thank you.

4 Q. We had talked about the fact that
5 after you had let the NOMADIC MILDE settle in and
6 observed her, you got aboard the pilot boat LITTLE
7 RAY, and then went, I guess, to where the car was
8 going to pick you up, at the dock where the car was
9 going to pick up. Correct?

10 A. Well, at the landing, yes, sir. Port
11 Ship's Ama landing.

12 Q. Port Ship's Ama landing. Okay.

13 And there is a reference in your
14 statement that we will get to in a second, but that
15 when you got to the landing, or to your vehicle, you
16 you made one more check on things through MRTIS. Is
17 that right?

18 A. I did. Yes, sir. After walking up
19 the short ramp from the boat, the car was waiting at
20 the top of the ramp. So it was just a matter
21 throwing my bag and my life jacket in the back of the
22 car and getting in the front seat and taking off. So
23 we are talking just a couple minutes.

24 I would customarily, and in this case,
25 remember taking my iPhone out and looking at MRTIS

1 and where the ship was situated at that point in
2 time, and thinking that it looks pretty good.

3 Q. Okay. So I'm obviously asking for a
4 best estimate. But at 20:42, or local time 1542, was
5 your departure time where the chief officer said the
6 captain's off. And we looked at those still shots.
7 So 3:42 P.M.

8 About what time would you think you
9 had gotten to your car and turned on your MRTIS to
10 give a check on the status?

11 A. Well, it is easy to see if you played
12 the MRTIS replay back, you can follow the boat back
13 to the other side. So in this particular case,
14 possibly a three-minute run to the other side, and
15 then another, say, minute to walk up the ramp from
16 the little boat to the car, and within the next two
17 or three minutes after that timestamp. So maybe from
18 42 possibly, or whatever timestamp it would show the
19 boat coming alongside at the Ama Launch.

20 But if it took three minutes for me to
21 cross the river, that would be 45, 46, 47, between
22 48. In that time zone.

23 Q. Okay.

24 A. Forty-six, 48.

25 Q. And how did things look when you

1 checked the MRTIS as far as the positioning of the
2 NOMADIC MILDE vis-a-vis the anchorage and the two
3 vessels, the one ahead of it and the one behind it?

4 A. The last time I looked at it, I
5 thought everything looked pretty good. She was kind
6 of settled in between the two ships where I intended
7 to place her.

8 Q. So the last time you visualized the
9 setup, albeit via an AIS-type service, the three
10 ships were more or less in alignment as we saw at the
11 time of the screenshot we saw where the three ships
12 were aligned when they first settled in?

13 A. Generally, yes.

14 Q. And you were satisfied at that point,
15 not only with the position of the NOMADIC MILDE, but
16 with the positions of the ATLANTIC VENUS and IONIAN
17 SEA at that point. Correct?

18 A. I did not see anything that gave me
19 any concern.

20 Q. And certainly you didn't see anything
21 that led you to feel like you needed to call either
22 VTS, or the pilot who was standing by at VTS, or
23 anybody, about any concerns as of the last time you
24 checked on the vessel. Correct?

25 A. No, sir.

1 Q. Is that a correct statement?

2 A. That would be correct. Yes, sir. I
3 didn't see anything else.

4 Q. Thank you. I'm going to -- I will go
5 back and just hand this to you rather than -- well, I
6 guess I will put it back up.

7 Mike, if you don't mind pulling back
8 up --

9 MR. HELD:

10 Which one?

11 BY MR. TOMPKINS:

12 Q. -- Brown No. 3.

13 And, Captain, just to kind of refresh
14 ourselves, this was the 20:33 and 30 second still
15 shot where we had initially -- you know, you had
16 indicated on the transcript that things were -- the
17 anchoring operation was completed and things had
18 settled in.

19 Do you see that one?

20 A. I do. Yes, sir.

21 Q. All right. And earlier I had asked
22 you about the position of those three vessels in
23 relationship to not only each other, but being where
24 they were with respect to the edge of the Kenner Bend
25 Anchorage dotted line.

1 Do you recall that question?

2 A. I do. And I will also stipulate
3 again, that is four ships there.

4 Q. I'm sorry. Yeah. Four. Thank you.
5 This next question is slightly different.

6 Given the position of the four ships
7 that we see on Brown No. 3, in your opinion is there
8 plenty of, quote, good river, or is the river wide
9 enough on the outboard side of those four ships for
10 regular upbound and downbound river traffic,
11 including large ships, to safely maneuver past Kenner
12 Bend Anchorage and those four ships?

13 MR. ACOSTA:

14 Object to form.

15 THE WITNESS:

16 Yes, sir. I believe there was
17 adequate sea room.

18 BY MR. TOMPKINS:

19 Q. And if I told you that the ATLANTIC
20 VENUS had been positioned in the Kenner -- or in that
21 area of Kenner Bend Anchorage for eight days, that
22 wouldn't necessarily surprise you. Would it?

23 A. It would not surprise me.

24 Q. And if I told you it had been at the
25 last spot at Kenner Bend Anchorage for eight days and

1 hadn't had any problems with upbound or downbound
2 traffic, that wouldn't surprise you either. Would
3 it?

4 A. It would not.

5 Q. Captain, we talked earlier about this
6 one-page written statement. Mike, I thought you said
7 you had that handy.

8 MR. HELD:

9 The thumb drive.

10 MR. TOMPKINS:

11 No. I thought I saw you flash it up.

12 David, did you share the statement on
13 the screen earlier? David Flotte.

14 MR. BUTTERWORTH:

15 You might have to unmute his phone.

16 MR. FLOTTE:

17 Yes. I shared it with an empty
18 audience, but not on the record. But I believe here
19 -- and let me back off a little bit. I think
20 somebody observed me practicing to try to improve my
21 sharing skills.

22 MR. HELD:

23 You are in charge of the next depo,
24 David.

25 MR. FLOTTE:

1 You are in deep trouble.

2 MR. PIVACH:

3 Can I object to that in advance.

4 MR. FLOTTE:

5 Can I object to that is the question.

6 The answer is yes. Okay. I will get help. But go
7 ahead. Tell me if you need to zoom in or zoom out,
8 Peter?

9 MR. PIVACH:

10 No. He said that's fine where it is
11 right now.

12 BY MR. TOMPKINS:

13 Q. Captain, you said this is one of the
14 documents you looked at to prepare for your
15 deposition. Correct?

16 A. That is correct. Yes, sir.

17 Q. And we can scroll down in a minute,
18 but you recall signing it at the bottom?

19 A. It does appear to be the document with
20 my signature. Yes, sir.

21 Q. Do you see that there, scrolling it
22 down? You see your signature there?

23 A. Yes, sir.

24 Q. All right. And for the record, it has
25 been previously Bates labeled NOBRA 000078.

1 Just a few questions about this,
2 Captain, because it obviously speaks for itself and
3 largely repeats testimony you've given us already.
4 I'm going to take you down just above the five
5 numbered points.

6 A. Sorry. Could I ask him a question?

7 MR. PIVACH:

8 Yeah.

9 THE WITNESS:

10 My signature is on the bottom, but you
11 prepared the document for me. Because when you read
12 it, it is like third person. I didn't refer to
13 myself as Chris Brown. I do that writing --

14 MR. BERCAW:

15 The other Chris Brown refers to him in
16 the third person.

17 THE WITNESS:

18 So I just want it to be clear --

19 BY MR. TOMPKINS:

20 Q. Yeah.

21 A. -- this document is a document
22 prepared by my counsel that I signed at the bottom.
23 And I just wanted that to be clear.

24 Q. All right. But was it prepared,
25 though, based on information you gave him and that he

1 then put into the body of this statement?

2 A. Yes, sir. That is correct.

3 Q. And if anything that had been written
4 in there was inaccurate, you would have asked him to,
5 other than the name mistake, you would've asked him
6 to correct any substantive mistakes in the statement.
7 Correct?

8 A. That is correct. Other than my
9 mistake at the time of having Captain Billiot's name
10 in there, which should be Steve Robotham.

11 Q. Right.

12 Everything else, though, as far as you
13 are concerned, contained in this statement is still
14 correct as we sit here today in December of 2020.
15 Correct?

16 A. Yes, sir.

17 Q. All right. And so just above the five
18 numbered statements that you make there. It says,
19 "Captain Brown was well aware of vessels anchoring in
20 the Upper Kenner Bend Anchorage customarily anchoring
21 the vessels further away from west bank of the river
22 for several reasons, including: Number 1. "Barges
23 moored along the west bank."

24 That is a reference to the fleet and
25 the barges we were talking about earlier. Correct?

1 A. Yes, sir. That is correct.

2 Q. And then number 2 is "Fleeting
3 operations."

4 And I assume you mean by that barges
5 being maneuvered by tugs into and out of the fleet?

6 A. That is correct. Yes, sir.

7 Q. And those vessel and barge movements
8 would be between the port side of the ships at the
9 anchorage and the fleet. Correct?

10 A. It would. Yes, sir.

11 Q. Number 3 was "Tow traffic between the
12 barges and anchored ships."

13 Is that to some extent the same thing
14 as number 2?

15 A. No, sir. Northbound traffic generally
16 runs up along the west bank inside of the anchorage,
17 inside of the anchored ships, between the barge
18 fleets. They enter at the Lower Kenner Bend
19 Anchorage and proceed along the west bank, because
20 there is less current in there. It is a shorter
21 distance than going around the outside of the bend.

22 Q. Okay.

23 A. It is customary to have northbound
24 tows -- when I say a northbound tow, I'm simply
25 referring to through traffic that has no intent of

1 stopping in or near the Kenner Bend Anchorage.

2 Q. I got you. So what --

3 A. So it is transiting the river through
4 the anchorage.

5 Q. So what you are saying between 2 and
6 3, 2 is tow and barge traffic within the fleet,
7 called fleeting operations, and No. 3 is tow and
8 barge traffic just happening to pass between the
9 fleet and the moored ships?

10 A. Yes, sir.

11 Q. And en route to some other location?

12 A. That is correct, sir.

13 Q. And that is a fairly common practice
14 as well?

15 A. Yes, sir. It is.

16 Q. And then number 4, Avoidance of the
17 ships -- and I assume you are saying the ships at
18 anchorage -- right -- striking barges due to the
19 ship's yaw?

20 A. Yes, sir.

21 Q. So by that do you mean that if the
22 ships got anchored too much further toward the west
23 bank, and then they yawed as we've seen in some of
24 these still shots, it could either impede on the
25 barges that are moored in the fleet or that traffic

1 you are talking about?

2 A. That is correct.

3 Q. And that would present -- I presume in
4 your opinion, it would present a safety hazard if the
5 ships at the anchorage moored too close to the west
6 bank?

7 A. I believe it would. Yes. Decrease
8 safety.

9 Q. And then number 5, "Keeping anchored
10 ships in alignment." What do you mean by that?

11 A. Well, I think the expectation of
12 having a created anchorage in the first place is for
13 everyone to know that ships that are anchored are
14 anchored close together in proximity, so that there
15 is no ambiguity where they are going to be. So they
16 are essentially all in a line, or generally all in a
17 line when they were anchored and how they yaw while
18 in anchorage.

19 But instead of haphazardly one here,
20 one there, one -- it would create more of a slalom
21 zigzag pattern through there that would decrease the
22 safety, and I think it is moored in alignment.

23 Q. So when you say that the various
24 pilots that piloted the four vessels that we saw in
25 that ECDIS screenshot just a second ago, when they

1 anchored the four vessels, one of which was yours,
2 all put them in appropriate alignment to show that
3 they were going to be anchored as part of the Kenner
4 Bend fleet, Kenner Bend Anchorage? I'm sorry.

5 A. I believe that is the intent. Yes,
6 sir.

7 (Deposition Exhibit 6 marked for
8 identification.)

9 Q. All right. I would like to mark and
10 attach the statement as Brown No. 6.

11 Captain, I take it when you as a pilot
12 leave a ship like the NOMADIC MILDE, but any ship,
13 once you leave, there is nothing more you can do with
14 respect to that ship. Correct?

15 A. Correct.

16 Q. You assume that the captain and bridge
17 officers and other crew are going to be properly
18 trained and know how to run the ship, run the
19 operations, work the navigational aids. It is up to
20 them at that point, once it is at anchorage, to keep
21 an eye on things and maintain it as best as they can?

22 A. Yes. I mean, it is their ship. They
23 are much more familiar with their ship than I would
24 be.

25 Q. And if they do encounter a problem, as

1 you told them earlier, they are supposed to call the
2 VTS and let the pilot on watch know, so to speak,
3 that they are encountering a problem to see if he has
4 any got any advice for them?

5 A. I don't know that I would use the
6 words "supposed to." I would say it is an option
7 available should they feel it necessary to.

8 Q. Or call another captain, or call
9 another pilot out to assist them if they thought they
10 needed it at some point?

11 A. That would be an option, to contact
12 their agent, too.

13 Q. You have to assume that those crews
14 are well-trained and -- correct? Well-trained?

15 A. Well, I would expect they would meet
16 the requirements, because they are licensed personnel
17 onboard the vessel. Yes, sir. There are
18 international standards for sea-going vessels, and I
19 would assume that they meet those.

20 Q. And you would assume that they are
21 familiar with and know how to properly operate all of
22 the navigational equipment and aids available to them
23 on that ship. Is that fair?

24 A. Well, they certainly would know much
25 better than I would about their ship.

1 Q. There is nothing that you can do with
2 those things once you've left. Correct?

3 A. No, sir. There is nothing I could do.

4 Q. That is all of the questions I have
5 for you. Thank you.

6 A. Thank you, sir.

7 BY MR. BERCAW:

8 Q. I will go next if that is all right.
9 Captain Brown, my name is Jim Bercaw. We met when I
10 walked over here during a break in the deposition. I
11 represent Cornerstone Chemical Company, the owner and
12 operator of the dock that the NOMADIC MILDE struck on
13 May 8th.

14 Mr. Tompkins did his usual typical
15 thorough job, so I only have a few followup questions
16 --

17 A. Okay.

18 Q. -- for you. Let's see.

19 First off, do you keep like a short
20 notepad or any kind of handwritten notes for your
21 daily work activities when you've been called out to
22 work a ship?

23 A. No, sir. I do not.

24 Q. Okay. The written statement that has
25 been attached as Brown Exhibit 6 -- David, if you

1 could put that up for a second. Thank you very much.

2 If you could scroll to the top of the
3 page. A little bit more, please.

4 You signed -- I'm sorry.

5 You signed the document on August
6 10th, 2020. Correct?

7 A. Yes, sir. If that is the date that is
8 written --

9 Q. Yeah.

10 A. -- on the bottom, then that would be
11 the date I would've signed it.

12 Q. Okay. But the accident happened on
13 May 8, 2020.

14 A. Yes, sir.

15 Q. Is there any explanation for the delay
16 of three months, give or take, in the preparation of
17 your statement?

18 A. Well, I wasn't involved in anything.
19 My time onboard the vessel was not contributory to
20 anything that may have occurred after I was off the
21 vessel. I was never contacted by anyone to say, oh,
22 you were involved until such time this statement was
23 made, I believe, pursuant to notification from the
24 Coast Guard and the National Transportation Safety
25 Board that they would like to interview me. So at

1 that time we realized that someone wanted a
2 statement. There was no reason prior to that to
3 provide a statement.

4 Q. Okay. And who was present when the
5 report was being typed?

6 A. I don't know.

7 MR. PIVACH:

8 Objection. It was probably mailed
9 out.

10 BY MR. BERCAW:

11 Okay. Were you -- and I don't want to
12 get into the details, but basically you had a
13 conversation with your attorney and the report was
14 prepared, and you looked it over for any
15 inaccuracies, and finding none you signed it. Is
16 that basically how it went?

17 A. Yes, sir. That would be accurate.

18 Q. Okay. So there were no rough drafts
19 or anything that you read and you just said, well,
20 this just isn't right. We have to go back and do it
21 again?

22 A. I don't recall anything like that.

23 Q. Okay. During the course of preparing
24 the NOBRA Pilot Statement we've been talking about,
25 did you meet with Pilot Shirah to talk about he knew

1 about the incident?

2 A. No, sir. I never met with any of the
3 people.

4 Q. Okay.

5 A. The other one would be Captain
6 Columbo. But I did not meet with them.

7 Q. And there are two Captain Columbos in
8 the NOBRA group. Correct? There is Columbo Senior
9 and Columbo Junior?

10 A. Senior is long since retired. So at
11 the time of the incident, there was only -- there was
12 only one.

13 Q. There was only Junior?

14 A. Yes, sir.

15 Q. Okay. All right. So you didn't
16 have -- you didn't discuss any facts of the accident
17 with the other pilots that were involved once the
18 NOMADIC MILDE made contact with the ATLANTIC VENUS?

19 A. No, sir. I have not.

20 Q. Okay. And you didn't talk with the
21 pilot of the TOMINI SYMPHONY about the accident
22 either, I believe that was --

23 MR. PIVACH:

24 Higgins.

25 MR. BERCAW:

1 Yeah.

2 MR. TOMPKINS:

3 Higgins.

4 BY MR. BERCAW:

5 Q. Pilot Higgins either?

6 A. That is correct. I have not spoken
7 with him in any regard involving this.

8 Q. I wasn't quite sure about your
9 testimony concerning the record options of the loaner
10 PPU you had with you. Okay. So bear with me. I'm
11 going to ask a couple of questions about that.

12 Do you know if that loaner PPU that
13 you had with you on the NOMADIC MILDE had a record
14 function?

15 A. I do not recall.

16 Q. Okay. Does your current PPU that you
17 have in your gear bag that you use every time you are
18 on a vessel, does it have a record function?

19 MR. PIVACH:

20 Are you talking about voice or any
21 type of record --

22 MR. BERCAW:

23 I'm talking about any kind of
24 recording, any kind of recording function.

25 MR. PIVACH:

1 Meaning can it be saved?

2 THE WITNESS:

3 I'm about to cough. Excuse me one
4 second.

5 BY MR. BERCAW:

6 Q. Sure. No. Go ahead.

7 A. Thank you.

8 Q. You've been talking a while so that is
9 understandable.

10 A. The current unit that I use is a
11 Trelleborg SafePilot unit, and it does record voyages
12 that you can go back and look at. There is a big
13 difference between a recording on a PPU and a
14 recording on a ship's ECDIS. Because the PPU, the
15 way I understand it, is only recording all of the
16 data that is being recorded over the AIS. So I could
17 move away from where the ship is and go look at
18 something totally far away, not having anything to do
19 -- it doesn't show -- it doesn't show how the unit
20 was being used.

21 Q. I understand.

22 A. And I just wanted to make that clear.
23 It would not be the same as looking at an ECDIS. But
24 there is some recording of the time from when I start
25 receiving signal until I shut the signal off.

1 Q. And that was --

2 A. There is no sound recording. There is
3 no audio. It is simply all of the data that comes
4 in. And then when you replay it, you can choose to
5 look at it in different formats. But it is not
6 necessarily representative of what you did. It is
7 not an exact replay is what I'm attempting to
8 establish.

9 Q. Right.

10 A. It has data that is recorded and the
11 data will be played the way it plays, but not
12 necessarily how you used the unit.

13 Q. I understand. So one of the examples
14 you gave is if you used the PPU to go look at what
15 was upriver --

16 A. Yes.

17 Q. -- and you studied that for whatever.
18 Half a minute. Then you come back to the locale
19 where the vessel is. The PPU unit recording is still
20 going to only show what was happening in the vicinity
21 of the vessel. It is not going to show you moving
22 the screen upstream to see what is going on?

23 MR. PIVACH:

24 Let me just object. But you can
25 clarify what -- I think there is some

1 misunderstanding.

2 Just take a moment, Chris, to clarify.

3 THE WITNESS:

4 I can look at a PPU recording any way
5 I choose to look at it. It is not showing how I used
6 it at that point in time. So when you have the data
7 and turn it back on and watch a replay, and you have
8 the software, it is just not -- it is not like it is
9 just recording the screenshot as I was using it.

10 BY MR. BERCAW:

11 Q. I'm with you.

12 A. I just wanted -- and I don't know how
13 to explain that.

14 MR. PIVACH:

15 If I can just for a second. Jim, I
16 think when you said, hey, if he goes upriver for a
17 minute --

18 MR. BERCAW:

19 Right.

20 MR. PIVACH:

21 That is all saved. And you can go
22 upriver. You just don't know if Chris went upriver
23 or not. It doesn't tell you what Chris did. It just
24 collects all the data.

25 BY MR. BERCAW:

1 Q. Right.

2 A. It would not show if I did that.

3 Q. Right.

4 A. As it would on the ship's ECDIS being
5 recorded would show that they went up there and they
6 did this and then they brought the screen back. It
7 would show that. If they had a radar image, it would
8 show if I had a parallel index line, or if I did
9 something, it would show that.

10 A PPU recording just has the raw data,
11 and you could watch it any way you choose to watch
12 it. And that would not show necessarily what someone
13 who was using that equipment did with the equipment.

14 Q. I understand. Okay. And I appreciate
15 the clarification. All right.

16 You mentioned that when you are
17 considering the hydrodynamic forces that are put on a
18 ship at anchorage, or even traversing the river,
19 trim, the trim of a vessel is one of the factors you
20 consider to be significant. Correct?

21 A. Yes, sir.

22 Q. Okay. And on your pilot card that --
23 it is actually -- yeah -- it forms a checklist
24 register pilot card, ship to shore master pilot
25 exchange, it has the draft forward of 7.95 meters,

1 the draft aft of 8.0 meters, and the draft amidships
2 of 8.05 meters. And this is all on a document
3 NM-000311.

4 If that is accurate, it is fair to say
5 that the NOMADIC MILDE was fairly level trimmed?

6 A. Yes.

7 Q. Is that accurate?

8 A. Essentially for all intents and
9 purposes at even keel. Yes. You are talking 1/10th
10 of a meter.

11 Q. Right. So when a ship like that is
12 loaded to the extent that it was, with its cargo, and
13 without getting into the dimensions of the river near
14 the Kenner Bend Anchorage, are the hydrodynamic
15 forces greater on a ship at anchor ladened with cargo
16 at that trim, located towards the center of the
17 river, or the same ship with the same trim, same
18 cargo load, located towards the bank?

19 MR. PIVACH:

20 Let me just place an objection.

21 If you understand it, you can answer
22 the question.

23 THE WITNESS:

24 I would stipulate that the placement
25 location is not so relevant as the current that would

1 be experienced at one location versus another. The
2 interaction is going to be based upon the ship's
3 speed through the water. So if a ship that is
4 stationary in a four-knot current would experience
5 essentially speed through the water of four knots.
6 And if the current was five knots somewhere else,
7 then it would experience that. So it's not
8 necessarily placement as much as the current being
9 experienced.

10 BY MR. BERCAW:

11 Q. Okay. In your experience is the
12 current of the Mississippi River generally faster
13 towards the center of the river or -- and slower
14 towards the banks?

15 MR. PIVACH:

16 Let me object. Again, you can answer
17 the question.

18 THE WITNESS:

19 I think that is a fair assessment.
20 That the closer to the banks, the slower the current.

21 BY MR. BERCAW:

22 Q. And if we are nearing a point in the
23 river, which is what the geographical locale we have
24 been discussing called Kenner Bend is. Right? You
25 would agree that is a point in the river as opposed

1 to the bend itself?

2 A. It is an interesting topic of
3 conversation. I mean --

4 Q. Okay.

5 A. I'm only smiling and laughing because
6 I think you could speak with a lot of people and a
7 lot of people would have a different opinion upon
8 what constitutes a point or a bend.

9 Q. Okay.

10 A. The current, the main draft, the deep
11 draft channel, transitions from that side from
12 favoring the west bank just above the anchorage to
13 transitioning to favor the east bank straight across
14 from the Kenner Bend Anchorage. So a point --

15 What is the difference between a point
16 and a bend, I don't think there is a big dictionary
17 that explains to you exactly what that is. Algiers
18 Point, being very short radius, there is a prominent
19 projection into the stream. It appears as though
20 that is a point there. But in what is a very long
21 radius turn, yes. There is an inside of the turn,
22 but it is more of a curve. There is no one prominent
23 place on the west bank that says this is a point.

24 It is a shorter radius turn, but it is
25 almost matching the long radius turn. It is only

1 because of the distance away from where the radius of
2 the turn would be. And I'm not attempting to be
3 argumentative.

4 Q. No. No.

5 A. I'm simply stating what is a point
6 there or what is a bend -- I mean, I would -- there
7 is a slow radius turn right there. So the current is
8 changing directions, but it transitions from just
9 above the anchorage in the vicinity known as Old Ama
10 Light, to transition the current flow down towards
11 the east bank. So the stronger current would be
12 middle of the river towards the east bank.

13 Q. Right.

14 A. As opposed to middle of the river
15 towards the west bank.

16 Q. Okay.

17 A. If that helps at all.

18 Q. It does. It does.

19 The ATLANTIC ENSENADA -- did I get
20 that -- I don't know how to pronounce that vessel's
21 name -- ENSENADA. The one where the -- who was it?
22 It is not Robotham -- that Captain Robotham was on
23 that you were in communication with, as both of you
24 all were heading upriver to the Kenner Bend
25 anchorages, that vessel ultimately moored at the

1 bottom of the Lower Kenner Bend Anchorage. Is that
2 right?

3 A. Yes, sir. I believe that to be
4 correct.

5 Q. Okay. Was the ATLANTIC ENSENADA -- if
6 that is how you pronounce the name -- in ballast or
7 was it loaded with cargo?

8 A. I'm not certain. But what I would
9 guess is she was in ballast, because we put her into
10 Kenner Bend Anchorage. And had she been loaded, her
11 draft would've precluded her from anchoring there.

12 Q. The ATLANTIC VENUS, when you were
13 navigating in the Kenner Bend Anchorage, that vessel
14 was also in ballast. Correct?

15 A. I would use that terminology. Yes.
16 She was not loaded. She was --

17 Q. And IONIAN SEA, that vessel was in
18 ballast as well?

19 A. That is correct.

20 Q. What about the GASCHEM ATLANTIC, do
21 you recall whether that vessel was in ballast or was
22 it loaded with cargo?

23 A. I don't recall.

24 Q. Okay. All right.

25 So again, without getting into the

1 dimensions of the river at Kenner Bend Anchorage,
2 would the hydrodynamic forces be greater on a ship at
3 anchor ladened with cargo or the same ship at anchor
4 in ballast?

5 A. Loaded.

6 Q. Okay.

7 A. Ladened.

8 Q. If -- if we compare the No. 3 spot as
9 it has been identified previously in your testimony
10 at the Upper Kenner Bend Anchorage, would you expect
11 that location to have greater hydrodynamic forces
12 along the NOMADIC MILDE as she was configured on the
13 day of the incident, as compared to the rear-most or
14 the bottom-most slot of the Lower Kenner Bend
15 Anchorage, given the configuration of the river?

16 A. Similar. The depths of the water
17 involved is relatively similar, in that they are both
18 shallow -- what we would refer to as a shallow draft
19 anchorage. Which means we don't anchor anything
20 greater than 30 feet of draft in those anchorages.
21 So it is similar. There is a shelf that extends.
22 Because off of the west bank towards the middle of
23 the river, it is relatively shallow water. So I
24 would say it is relatively similar --

25 Q. Okay.

1 A. -- effects.

2 Q. Is there a reason why you decided to
3 not use the bottom of the Lower Kenner Bend Anchorage
4 to anchor the NOMADIC MILDE as opposed to the No. 3
5 slot in the Upper Kenner Bend Anchorage?

6 A. The size of my vessel, her length
7 overall being significantly smaller than the ship
8 that was coming up behind me, I thought it would be a
9 better utilization of available space to place our
10 vessel, to take up less room. Instead of taking up,
11 you could put a much larger vessel. And we anchor
12 ships in that anchorage up to 750 feet length
13 overall.

14 So my ship just being over 400, 450
15 feet, took up less space in between. It would be
16 better suited to anchor in between other vessels than
17 to put at the bottom of an anchorage.

18 Q. You mentioned that there were no
19 vessels at anchor in the Ama Anchorage at the time of
20 this May 10, May 8, 2020. Right?

21 A. Yes. That is correct.

22 Q. Okay. Was there a general provision,
23 rule, rule of thumb, if you will, that was in play
24 with the NOBRA pilots not to put vessels at anchor in
25 Ama Anchorage at this time period?

1 A. I believe there may have been a
2 Captain of the Port directive stipulating that
3 vessels not anchor in the Ama Anchorage during that
4 time period.

5 Q. Do you recall whether there were
6 similar instructions from the Captain of the Port
7 regarding the Bonnet Carré Anchorage?

8 A. There were also. Yes. Whenever the
9 spillway is open, then the anchorage disappears.

10 Q. Right.

11 If the anchorage -- if the spillway
12 was closed, though, there would be no Captain of the
13 Port or any prohibition from anchoring at the Bonnet
14 Carré with the river at 15.5 feet at the Carrollton
15 gauge. Is that accurate?

16 A. Well, there could be. I don't know if
17 one would be imposed or not. Certainly if the ships
18 were not holding anchorage. But there again, Bonnet
19 Carré Anchorage is also a shallow draft anchorage.
20 As a general rule, we don't anchor ships in there
21 greater than 30 feet of draft.

22 Q. Okay. As you were engaged in the
23 process of deciding where to anchor the NOMADIC
24 MILDE, and ultimately anchoring the NOMADIC MILDE,
25 did you feel that that vessel was in an emergency

1 situation?

2 A. The NOMADIC MILDE?

3 Q. Yes.

4 A. In an emergency situation?

5 Q. Yes.

6 A. Never at any point in time.

7 Q. Okay. Did you ever -- and I'm going
8 to talk about the separation of the anchors once you
9 decided to put the NOMADIC MILDE into slot No. 3.
10 What was the anchor spread between the port and
11 starboard anchor?

12 A. Well, we put five shackles of chain in
13 the water. So that would essentially give you a
14 maximum of 490 feet that we came over. And we can't
15 get that far, because it is not --

16 Q. Right.

17 A. -- horizontal on the bottom. So less
18 than, you know, somewhere in the neighborhood of 400
19 feet.

20 Q. Okay. And then you dropped your port
21 anchor?

22 A. Correct.

23 Q. Called in a shot on the starboard
24 anchor. And that is where you left it when you --
25 when you left the NOMADIC MILDE?

1 A. Well, yes, sir. We let go the inshore
2 anchor. Then we heaved up and she settled down.

3 Yes, sir. That is where we left her.

4 Q. Okay.

5 A. In line with the other vessels in the
6 anchorage.

7 Q. All right. Can you pass that down to
8 Mike Held, please.

9 Mike, if you could, when you get to it
10 --

11 MR. HELD:

12 I'm looking through.

13 MR. BERCAW:

14 There is not too many documents on
15 there.

16 MR. HELD:

17 It has to run through a virus scan we
18 have on your laptops. Give me a second.

19 MR. BERCAW:

20 Okay. Bear with me, Captain.

21 (Off the record.)

22 MR. HELD:

23 Which one do you want?

24 (Deposition Exhibit 7 marked for
25 identification.)

1 BY MR. BERCAW:

2 Q. All right. Thank you.

3 The one that says MRTIS 15:00 hours.

4 We are at 7. Right. Okay.

5 I know there is some differences
6 between the exact synchronization of clocks between
7 the ships and what have you. But this was taken, a
8 screenshot on May 8th, 2020 at 15:00 hours and 22
9 seconds.

10 So this would be about the time that
11 you are deciding whether you are going to park the
12 NOMADIC MILDE at the upper end of the Lower Kenner
13 Bend Anchorage or in slot 3 of the Kenner Bend
14 Anchorage. Correct?

15 A. Yes, sir. Just judging by the speed
16 on that 2.2 knots, it is right after I made the
17 decision we were not anchoring there.

18 Q. Okay. All right. I got it.

19 And if we look further downriver, we
20 see a yellow vessel, the TOMINI SYMPHONY. Correct?

21 A. Yes, sir. I do see it.

22 Q. And that vessel is located, in its
23 entirety, within the Lower Kenner Bend Anchorage.
24 Correct?

25 A. It is. Yes, sir.

1 Q. Okay. All right.

2 If you note -- I'm trying to think --
3 all right. Mike, if you could pull up the next and
4 the last -- I'm sorry.

5 We will identify this as Brown Exhibit
6 No. 7. And I have a printout for the court reporter,
7 and we will make them available to everybody at the
8 break via the Zoom dump, the data dump site. Okay?

9 So if you can pull up --

10 MR. HELD:

11 Which one do you want, Jim?

12 BY MR. BERCAW:

13 Q. The next one at 16:15 hours.

14 The one at 16:15 hours. And again,
15 there are some discrepancies with time here. But
16 this was a screenshot taken on the Time Machine of
17 the MRTIS at May 8th, 2010 at 16:15 hours and six
18 seconds.

19 Do you see that, Captain Brown?

20 A. Yes, sir.

21 Q. Okay. At this time the NOMADIC MILDE
22 is at anchor. Correct?

23 A. Yes, sir.

24 Q. All right. And if you look towards
25 where the Ama Launch is, you see the LITTLE RAY is at

1 dock. Correct?

2 A. That is correct.

3 Q. So this is clearly sometime after
4 you've left the NOMADIC MILDE. Correct?

5 A. That is correct.

6 Q. All right. We could see the TOMINI
7 SYMPHONY has just started to move upriver at 3.1
8 knots. Is that accurate?

9 A. Yes, sir.

10 MR. PIVACH:

11 Hold on one second. This is for a
12 time period for which Captain Brown was not on the
13 vessel. Is that correct?

14 MR. BERCAW:

15 We've already established that.

16 MR. PIVACH:

17 Right. And so, therefore, his
18 testimony is going to be limited for the time period
19 that he was on the vessel. Correct?

20 We are not going to make him any type
21 of expert beyond the time period for which he was on
22 the vessel or participated in that.

23 I'm not sure where you are going with
24 this, but I'm going to be objecting pretty soon.

25 MR. BERCAW:

1 Okay.

2 MR. PIVACH:

3 If I didn't already. Okay.

4 MR. BERCAW:

5 I'm happy you objected.

6 MR. PIVACH:

7 I just did.

8 If you want to know if you want to
9 ask, does -- it is irrelevant to him. But I'm just
10 -- I am going to do that with each of the pilots
11 themselves.

12 MR. BERCAW:

13 That is fine.

14 MR. PIVACH:

15 They are witnesses for the time period
16 for which they were involved. I don't want to get
17 every pilot to start talking about cross pilots.
18 Okay?

19 MR. BERCAW:

20 Okay. Thank you.

21 BY MR. BERCAW:

22 Q. The other screen shots that you have
23 been shown -- and granted they are snapshots in time
24 with their own potential inaccuracies -- that you
25 have been shown previously by Mr. Tompkins, they show

1 the NOMADIC MILDE more or less in line with the
2 IONIAN SEA and the ATLANTIC VENUS, if you recall
3 that.

4 A. Yes, sir.

5 Q. Okay. At this point in time the
6 NOMADIC MILDE is the outermost vessel in the vicinity
7 of the Kenner Bend Anchorage. Correct?

8 A. It appears so. Yes, sir.

9 Q. The one that is closest to the center
10 of the river.

11 A. That is correct.

12 Q. It is the vessel that should be
13 experiencing the greater hydrodynamic forces at that
14 --

15 MR. PIVACH:

16 Objection. That I will not allow.
17 Okay. I don't want to start cross referencing these
18 things.

19 He has answered the questions before
20 that you asked. Now you want him to interpret those
21 for what existed at this time. And I don't think
22 that is appropriate for this witness as a lay
23 witness.

24 MR. BERCAW:

25 So you are asking the witness not to

1 answer the question?

2 MR. PIVACH:

3 Correct.

4 MR. BERCAW:

5 Okay. I'm going to ask it one more
6 time for certification purposes.

7 BY MR. BERCAW:

8 Q. In the configuration that we see the
9 GASCHEM ATLANTIC, the IONIAN SEA, the NOMADIC MILDE
10 and the ATLANTIC VENUS with respect to the Kenner
11 Bend Anchorage, at the time on this Time Machine
12 snapshot, the NOMADIC MILDE would be the vessel among
13 those four that would be subjected to the greatest
14 hydrodynamic forces?

15 MR. PIVACH:

16 Note the objection.

17 And he is not going to start answering
18 questions for beyond the time for which he was not on
19 the vessel.

20 MR. BERCAW:

21 I want to make sure that you are
22 asking him not to answer the question.

23 MR. PIVACH:

24 I am.

25 MR. BERCAW:

1 Okay. That ends the certification.

2 (Deposition Exhibit 8 marked for
3 identification.)

4 BY MR. BERCAW:

5 Q. We will attach that MRTIS excerpt as
6 Brown Exhibit 8. And again, I will produce that to
7 everyone.

8 I noted that in several of your
9 certificates that you received through your years of
10 training with NOBRA and outside agencies, that you
11 have participated in at least two seminars regarding
12 the legal effects of pilotage, one was taught by
13 Leslie Lanusse of Adams and Reese and the other was
14 by Mr. Pivach. Correct?

15 A. Yes, sir.

16 Q. All right.

17 A. Well, I haven't seen the certificates
18 you are referring to. So...

19 Q. Okay. But you did attend seminars on
20 the legal effects of being a pilot?

21 A. I have attended classes on legal
22 aspects of pilotage. Yes, sir.

23 Q. Right. And did those courses cover
24 the fact that if a pilot is found to be negligent or
25 at fault in the improper navigation of a vessel, and

1 it comes into a collision or allision with another
2 object or a vessel, that while the -- that the vessel
3 itself is liable for the errors of the pilot?

4 A. I don't recall if that was discussed
5 or not.

6 Q. So you don't know that as an
7 instructor for the pilots?

8 A. I'm not -- I'm not a legal expert. So
9 I will say I don't know that.

10 Q. Okay. All right.

11 You are familiar with the anchorage
12 regulations of the Code of Federal Regulations?

13 A. I know where to find them.

14 Q. Right. I'm not asking you from a
15 memory test. But you know that there are -- that the
16 Lower Mississippi River below Baton Rouge, Louisiana
17 is a regulated waterway.

18 A. I am familiar with that aspect. Yes.

19 Q. All right. And there are certain
20 anchorages denominated within the regulations with
21 respect to various distances from shore as well as
22 miles above Head of Passes on the Mississippi River?

23 A. They are demarcated in the CFRs. Yes,
24 sir.

25 Q. Right.

1 And the ocean-going vessels that enter
2 and leave the Mississippi River, they are required by
3 law to retain a pilot to navigate the Lower
4 Mississippi River. Correct?

5 A. They are. Yes, sir.

6 Q. And they have no choice. They are not
7 going to be able to go up the river if they don't
8 have a pilot onboard. Right?

9 A. Pilotage is compulsory. That is
10 correct.

11 Q. Okay. So when you talk about what is
12 customary with respect to anchoring vessels, are the
13 anchorage regulations likewise compulsory from
14 your -- with your understanding?

15 MR. PIVACH:

16 Objection. You can answer the
17 question.

18 THE WITNESS:

19 A regulation -- I don't, you know, it
20 is compulsory.

21 BY MR. BERCAW:

22 Q. All right. So to you that means, as a
23 regulation is compulsory, does it mean that you can,
24 for example, anchor outside the anchorage, or are you
25 supposed to anchor all the time within the anchorage?

1 A. I think the intent is to have everyone
2 all the time within the anchorage.

3 Q. Okay. And where you anchored the
4 NOMADIC MILDE was outside of the demarcated
5 boundaries of the Kenner Bend Anchorage, or the Upper
6 Kenner Bend Anchorage?

7 A. It was. Yes, sir.

8 Q. Okay. I have no other questions.

9 MR. HELD:

10 Colton, do you have any questions?

11 BY MR. ACOSTA:

12 Q. Yeah. I think we have a couple of
13 questions.

14 Pilot Brown, good afternoon. My name
15 is Colton Acosta. I introduced myself earlier. I
16 represent the TOMINI SYMPHONY interests, the TOMINI
17 SYMPHONY is the vessel that is alleged to have moved
18 past the ATLANTIC VENUS and NOMADIC MILDE, thus
19 creating the wake that contributed to or caused the
20 accident allegedly.

21 I would like to, if you could, Mike,
22 pull up some of those screen shots. I have two
23 screenshots of MRTIS that I would like to go through.
24 Okay.

25 Captain, the first screenshot we are

1 looking at here it says the time of 15:30, which
2 is -- I know the times are a bit off.

3 But we have logs from the NOMADIC
4 MILDE that have -- and this is NOMADIC MILDE 178 for
5 counsel -- that show that the anchoring was about
6 done about 15:30. So we are looking at this.

7 Is that approximately the position of
8 the NOMADIC MILDE at that time, to the best of your
9 recollection?

10 A. I think her aspect, which means her
11 heading, will change a little bit back to port. I
12 believe the transcript would show somewhere around
13 timestamp 33 minutes --

14 Q. Right.

15 A. -- as opposed to 30.

16 Q. Right. And we discussed that.

17 A. So I don't think it will dislocate
18 significantly. Although, there will be a change in
19 heading of the vessel.

20 Q. And you've just spoken about this with
21 Mr. Bercaw. But the kind of gray rectangular portion
22 is the Kenner Bend Anchorage. Correct?

23 A. That is correct.

24 Q. And NOMADIC MILDE is anchored outside
25 of that?

1 A. That is correct.

2 Q. Okay. Let's go to the next one.

3 MR. BUTTERWORTH:

4 Which exhibit is this going to be?

5 MR. ACOSTA:

6 That will be -- I think we are on 7
7 now.

8 MR. BERCAW:

9 Nine.

10 MR. ACOSTA:

11 Nine.

12 (Deposition Exhibit 9 marked for
13 identification.)

14 MR. BUTTERWORTH:

15 And what are we going to call it,
16 MRTIS? It is MRTIS?

17 MR. ACOSTA:

18 It is MRTIS.

19 MR. HELD:

20 MRTIS 15:30.

21 BY MR. ACOSTA:

22 Q. And here is a screenshot from the
23 NOMADIC MILDE's ECDIS. And the timestamp there, I'm
24 going to have to pull this up, because I can't see
25 that far -- is 20:29, I think, or --

1 MR. BUTTERWORTH:

2 It is going to be 20:20 would be --

3 MR. BERCAW:

4 It looks like 20:30.

5 MR. BUTTERWORTH:

6 Can you read it, Jim?

7 MR. HELD:

8 It looks like 20:30:00 is what I --

9 MR. BERCAW:

10 Yeah. That is 15.

11 MR. BUTTERWORTH:

12 That is 15:30.

13 BY MR. ACOSTA:

14 Q. So that is pretty much the same time,
15 Captain. Is that the same, roughly the same position
16 as we were just discussing?

17 A. Yes, sir.

18 Q. Where the heading will move a little
19 bit. Okay. And we will go ahead and attach that
20 as --

21 MR. BUTTERWORTH:

22 10.

23 MR. ACOSTA:

24 10, please.

25 (Deposition Exhibit 10 marked for

1 identification.)

2 MR. ACOSTA:

3 And let's skip the next MRTIS
4 screenshot.

5 MR. HELD:

6 Keep going.

7 MR. ACOSTA:

8 Yeah. We can keep going. Oh. Wait.
9 Go back to that MRTIS.

10 BY MR. ACOSTA:

11 Q. Okay. Captain, this reading shows
12 15:42 as the timestamp. And that was, according to
13 your testimony earlier and the VDR transcript, when
14 the time approximately you left the vessel.

15 A. Yes, sir.

16 Q. Is that, to the best of your
17 recollection, the approximate position of the NOMADIC
18 MILDE at the time?

19 A. Well, I have no recollection of the
20 location at that time. I wasn't paying attention.
21 Nor was I in a position to see from where I was on
22 the vessel, or transitioning to the crewboat because
23 of obstructions in my view. I didn't have a clear
24 line of sight to pay attention to the orientation of
25 the vessel in the anchorage at that time.

1 Q. Okay. But you would say that was
2 pretty much where you wanted the vessel to be at that
3 time when you left her?

4 A. Well, I think the -- I will speak in a
5 vertical, meaning from upriver to downriver in the
6 anchorage. She appears generally in the same
7 vertical line. Although, there clearly is a rotation
8 to port.

9 Q. Right.

10 A. That the heading is significantly
11 different than from where I anchored her. Other than
12 that, in the same general vicinity.

13 Q. And, Captain, can you confirm for me
14 that the ship didn't move once you left the bridge
15 and got on the boat as far as the -- they weren't
16 allowed to turn on their engines. Right? There is a
17 rule that they -- they are not allowed to lift their
18 anchors. I'm sorry. Strike they couldn't turn on
19 their engines.

20 They could not lift their anchors
21 without a pilot being onboard. Is that correct?

22 MR. PIVACH:

23 Let me note an objection. You can
24 answer the question.

25 THE WITNESS:

1 I'm unfamiliar with any rule that
2 would prohibit them from working with their anchors.
3 I don't know of any rule. I don't know that it is a
4 common practice, but I don't know of any rule that
5 would prohibit them from doing that. Certainly I was
6 not there to hear any orders to the contrary, you
7 know, the captain instructing anyone to do so.

8 MR. ACOSTA:

9 Okay. What number are we on?

10 MR. BERCAW:

11 11.

12 MR. TOMPKINS:

13 11.

14 MR. ACOSTA:

15 Let's mark that as Brown 11.

16 (Deposition Exhibit 11 marked for
17 identification.)

18 BY MR. ACOSTA:

19 Q. And let's move to the next MRTIS
20 screenshot that is marked 15:56.

21 Now, Captain, I understand you've left
22 the vessel at this point. This is not the time you
23 were on the vessel.

24 But can you confirm for me that the
25 NOMADIC MILDE at this time is in a different position

1 and has moved further to the east bank of the river
2 than from the time you left the vessel?

3 MR. PIVACH:

4 Hold on one second. I'm going allow
5 -- it is obvious, but I'm going to allow at this
6 point -- I don't want to be an obstructionist, but --

7 MR. ACOSTA:

8 As to this image --

9 MR. PIVACH:

10 You understand. Go ahead. Go ahead.

11 MR. BERCAW:

12 You just don't like me.

13 MR. PIVACH:

14 No. Actually what I wanted you to do
15 is go back -- what I wanted you to do is to go back
16 to the time period before and say is the water just
17 -- go beyond where he is at that moment he was on the
18 vessel. That is what I was going to allow you to do.

19 MR. BERCAW:

20 And you know I'm kidding when I said
21 that.

22 THE WITNESS:

23 Clearly, it has moved to starboard.

24 MR. ACOSTA:

25 Okay.

1 MR. PIVACH:

2 I just don't want to go down any
3 rabbit holes is all I don't want.

4 BY MR. ACOSTA:

5 Q. And just to confirm further. It has
6 moved closer to the -- further away from the Kenner
7 Bend Anchorage, but closer to the east bank of the
8 river?

9 A. That is correct. Yes, sir.

10 Q. Closer to middle?

11 A. That is correct.

12 (Deposition Exhibit 12 marked for
13 identification.)

14 Q. Let's mark this as Exhibit 12.

15 And then I'd like to move to the MRTIS
16 that is marked as 16:26 at the time the TOMINI
17 SYMPHONY passed by.

18 MR. PIVACH:

19 Let me place an objection in advance.
20 Captain, don't answer it until I talk. Go ahead.

21 MR. ACOSTA:

22 That is fine.

23 BY MR. ACOSTA:

24 Q. And, Captain, is it fair to say that
25 looking at this picture, the NOMADIC MILDE had moved

1 further from the Kenner Bend Anchorage toward the
2 middle of the river from the time at which you left
3 the vessel?

4 MR. PIVACH:

5 I'm going to instruct him not to
6 answer. He doesn't need -- you can use the one you
7 did before to be consistent. Okay.

8 So don't answer the question at this
9 point.

10 MR. ACOSTA:

11 I'm just asking about this picture.
12 This picture is different than the other picture.

13 MR. PIVACH:

14 I understand. But I'm just trying to
15 be consistent. I don't want to get into other ones
16 and then I be accused of not letting them go beyond
17 his time period on the bridge. Okay. You've --

18 He answered for the previous one when
19 the vessel was not there. I think that is sufficient
20 to get you what you need.

21 BY MR. ACOSTA:

22 Q. Captain, if you wanted the vessel to
23 be in this position, you would've anchored her there.
24 Right?

25 MR. PIVACH:

1 anchor this vessel. He wanted to put them in line.
2 They are in line. They are not in line at this point
3 in time.

4 MR. ACOSTA:

5 Right. Can we ask him that? I mean,
6 Captain, the vessels, you mentioned earlier that you
7 wanted -- when you anchor a vessel and you anchored
8 this vessel in this situation -- you wanted them to
9 be roughly in line so you could see that is where
10 these vessels are anchored.

11 And here, it is correct to say that
12 they are not in line?

13 MR. PIVACH:

14 I will stipulate that they are not in
15 line form.

16 MR. ACOSTA:

17 Okay.

18 MR. PIVACH:

19 Go back to when he was onboard and use
20 those and you can ask all the questions you want and
21 since they had moved out. Then I'm okay. You just
22 have to do it a different way is all I'm asking.

23 MR. ACOSTA:

24 Okay.

25 MR. PIVACH:

1 Okay. I don't mind you asking the
2 questions, I would rather --

3 MR. ACOSTA:

4 Mark, if you stipulate to that, can he
5 say that.

6 MR. PIVACH:

7 I just stipulated to it.

8 MR. ACOSTA:

9 I know. But can he say it just so we
10 have it for the record.

11 MR. BERCAW:

12 He has been identified as his counsel.
13 So it should be binding on the person --

14 THE WITNESS:

15 Oh. My God, that's on...

16 BY MR. ACOSTA:

17 Q. Okay. Well, let's go back to one of
18 the acceptable screen shots. Let's do -- I guess,
19 let's do the 15:30, I guess. MRTIS 15:33.

20 Mark, even though you objected, can we
21 attach that exhibit?

22 MR. PIVACH:

23 I have no objection to you attaching
24 it.

25 MR. ACOSTA:

1 Let's attach it as Exhibit 13.

2 (Deposition Exhibit 13 marked for
3 identification.)

4 MR. PIVACH:

5 And you all could overlay it later on
6 when you do your exhibits for trial.

7 MR. ACOSTA:

8 That is fine. I understand where you
9 are coming from completely.

10 BY MR. ACOSTA:

11 Q. So, Captain, again, this is roughly
12 the position in which you intended to anchor the
13 NOMADIC MILDE?

14 A. Yes, sir.

15 Q. All right. And you would not have
16 wanted it to anchor out further out into the middle
17 of the river or else you would've anchored it there.
18 Correct?

19 A. Correct.

20 Q. Okay.

21 MR. PIVACH:

22 Sorry to make it so difficult.

23 MR. ACOSTA:

24 No. That is fine. That is fine.

25 MR. PIVACH:

1 And, Jim, if you want to come back and
2 say, hey, are the currents greater on the outside of
3 the middle of the river using this, I have no
4 objection to that. He anchored it at that point.

5 MR. BUTTERWORTH:

6 Well, just ask the captain why didn't
7 he anchor it there, why he anchored there.

8 MR. PIVACH:

9 I'm okay with that, too.

10 MR. BERCAW:

11 Thank you.

12 BY MR. ACOSTA:

13 Q. And, Captain, if you had seen her
14 further out towards the middle of the river when you
15 got to your transport vehicle, as you said in your
16 statement, what would you've done in that case?

17 A. Well, it would've been really easy
18 just to turn the car around and go back on the boat
19 and go right back over there and make sure everything
20 was okay.

21 Q. Because in that situation everything
22 would not have been okay?

23 A. I'm sorry.

24 MR. PIVACH:

25 I'm going to object because I didn't

1 understand your question.

2 MR. ACOSTA:

3 Sure. He is saying he would go back,
4 if it had been in that position as we saw in Exhibit
5 13.

6 BY MR. ACOSTA:

7 Q. Would you have considered that to be a
8 situation in which you need to go back and assist the
9 vessel?

10 MR. PIVACH:

11 Let me do it this way.

12 MR. ACOSTA:

13 All right.

14 MR. PIVACH:

15 Are you asking him if this vessel that
16 he was piloting were out here, when he saw it, as he
17 looked on the MRTIS when he was in his car, one of
18 the good options would have been to come back to
19 vessel and see what is going on. Is that your
20 question?

21 MR. ACOSTA:

22 Yes. That is my question.

23 MR. PIVACH:

24 Answer the question, Captain.

25 THE WITNESS:

1 I thought I did. Yes. I could have
2 simply -- because at that point in time it is not
3 like we were far away. And even if we were farther
4 away, we still would have been the closest pilot
5 around.

6 BY MR. ACOSTA:

7 Q. Right.

8 A. So it would've been a simple fact of
9 the matter just turning around and go back out to
10 make sure everything was okay.

11 Q. All right.

12 Captain, is there any way we could
13 have you draw in some way -- not making you an artist
14 or anything -- but is there some way you could show
15 us how far you would expect a vessel to move in the
16 spread of anchors in which you anchored her, on one
17 of these screen shots? And we could look at that --

18 A. I think the radius would be based on
19 the scope of chain out, the amount of chain. So if
20 you had 270 feet of chain on one side, a little more
21 than that on the other side, it would be limited by
22 the scope of chain. I wouldn't expect it to be
23 beyond that distance.

24 Q. Okay. So that is fine. I think that
25 is it for now.

1 MR. HELD:

2 David?

3 MR. FLOTTE:

4 Yes.

5 MR. BUTTERWORTH:

6 I want to see David.

7 MR. HELD:

8 David or Robert? Or --

9 MR. BUTTERWORTH:

10 It has been over an hour and I
11 think -- well, I know I have an urgent personal need.
12 So can we stop before David?

13 MR. FLOTTE:

14 I second that. But maybe we could
15 remove that MRTIS. My questions won't involve it.

16 10 minutes?

17 MR. BUTTERWORTH:

18 Five minutes. But I will go for 10
19 minutes.

20 MR. FLOTTE:

21 Whatever you choose.

22 MR. BUTTERWORTH:

23 Consensus, five minutes or 10 minutes?

24 THE VIDEOGRAPHER:

25 The time is 1:57 P.M. and we are off

1 the record.

2 (Off the record.)

3 THE VIDEOGRAPHER:

4 The time is 2:07 P.M. and we are back
5 on the record.

6 BY MR. FLOTTE:

7 Q. Captain Brown, my name is David
8 Flotte. I'm going to ask you some questions by Zoom.
9 I represent Crescent Towing and Salvage Company.

10 Can you hear me okay?

11 A. I can, David. Thank you.

12 Q. Okay. There is a little bit of a lag
13 time between my question and your answer. And some
14 of the attorneys may object to something I say. Just
15 give -- allow for a little bit of time if need be.
16 Okay?

17 A. Thank you.

18 Q. All right. Captain Brown, I'd like to
19 just touch on a few things to clarify your earlier
20 testimony.

21 Let's start with the chain of command.
22 You had explained that during the operations there is
23 typically a master pilot exchange that occurs before
24 the ship leaves the dock. Correct?

25 A. Yes, sir.

1 Q. All right. And to kind of run through
2 that, that typically involves the master of the ship.
3 Correct?

4 A. Yes, sir.

5 Q. And it may involve other ship's
6 personnel, but it also will involve you. Correct?

7 A. I'm the pilot part of the master pilot
8 exchange. Yes, sir.

9 Q. Right.

10 So during the course of the master
11 pilot exchange, is it fair to say that you will --
12 you the pilot will -- excuse me.

13 You and the master will discuss the
14 plan for whatever maneuver it is that you are doing.
15 Correct?

16 A. Yeah. I just want to preface it. In
17 the sense that the initial part of the master pilot
18 exchange is generally geared more to what are we
19 going to be doing right away. And the ending part of
20 the equation is generally not discussed -- I don't
21 generally discuss the ending until we get kind of
22 closer, because sometimes it is easy to forget in the
23 process.

24 So upon immediately boarding the
25 vessel, I ask questions more generic in nature,

1 specific of this vessel, how she is going to handle,
2 how she is laden or not, the control systems, what
3 systems I have available to me to use in handling the
4 vessel. And then we get into specifics of, in this
5 case, unmooring and then the transit of the route.
6 What type of traffic or what type of weather
7 conditions we might have. I generally do not do that
8 in all one fell swoop. Cover all your -- cross your
9 Ts and dot your Is at one point in time. It is more
10 of as needed/when needed type situation.

11 Q. Fair enough.

12 So in this situation, for example,
13 when planning to leave the dock, would you -- did you
14 discuss with the master things like letting lines go,
15 engine availability, tugboats, communication with
16 boats? Things like that?

17 A. Yes, sir. We did discuss that. You
18 know, how we would secure the tug or not. In this
19 particular case, we did not have the tug secured for
20 undocking purposes.

21 Q. Okay. And when you are talking about
22 securing the tug, you are talking about whether or
23 not the tug ALABAMA had a line up?

24 A. That is correct. The ALABAMA was the
25 tug that was there for the sailing. But undocking, I

1 would call that a sailing, undocking.

2 Q. Undocking or sailing?

3 A. Yeah. I use that interchangeably.
4 But, yes, sir. That is the tug we had, and we did
5 not secure a line.

6 Q. Okay. So... and really going back to
7 the chain of command. You had earlier talked -- and
8 I know we were talking in the context of when you
9 were underway.

10 But you had said, I think, that when
11 you had the conn, you may make suggestions,
12 recommendations or instructions that would sometimes
13 be acted upon by either the officer on watch or the
14 master. Correct?

15 A. Yes, sir. I did speak of that.

16 Q. Okay. And so what I wanted to get a
17 little bit more information on is who is the guy with
18 the ultimate say as to what happens aboard the ship
19 insofar as all the maneuvers are concerned?

20 A. Well, that is a great question. I
21 guess the ship's people would argue that under
22 compulsory pilotage they don't necessarily have a
23 tremendous amount of say. I think it is a legal
24 question. That the master, he always gets held
25 responsible for everything on his ship, no matter

1 whether it is a deck situation or not a deck
2 situation.

3 We have a shared -- we have a shared
4 responsibility in the outcome. But that is my
5 understanding. I mean --

6 Q. Okay. Fair enough.

7 A. I've read some stuff that I'm not
8 qualified to render a legal opinion on who is in
9 charge.

10 Q. I'm just talking about, you know, in
11 the normal course of operations, you know, in essence
12 are you -- you make --

13 When you have the conn, you are making
14 advice or instructions to either the master or the
15 watch officer, or both, who -- and is it fair to say
16 that, you know, you don't do -- you don't touch any
17 of the steering or navigation gear of the ship.
18 True?

19 A. I do not touch any of the steering or
20 the engine controls. I will fool with radar and
21 potentially sometimes an ECDIS. Or a whistle button
22 and the radio.

23 Q. Okay.

24 A. That would be about it.

25 Q. All right. All right.

1 So insofar as, let's just say, for
2 example, we talked a little bit about MARGO, the line
3 handlers. Do you remember that?

4 A. I do.

5 Q. So let's talk about who gives what
6 instructions and how that works. And just to recall,
7 let's talk about communication. How does the master
8 -- who communicates with the line handlers? Let's
9 start with that.

10 A. The pilot does. I did.

11 Q. Okay. So in this instance at that
12 location, at Avondale's dock, how do you communicate
13 with the line handlers?

14 A. Radio, VHF hand-held is what I believe
15 we both had.

16 Q. Sir? I apologize.

17 A. We both -- the linemen would've had
18 hand-held VHF radios, also.

19 Q. Okay. All right.

20 So what channel were you working on
21 with the linemen, if you recall?

22 A. Channel 77.

23 Q. All right. And is Channel 77 the
24 channel that you normally talk with the line handlers
25 in that region of the river by Avondale?

1 A. Yes, sir. Line handlers and tugboats,
2 generally we are all on Channel 77. It is my custom
3 to be on Channel 77.

4 Q. I'm sorry?

5 A. My custom all the time. I mean, there
6 may be some other people who use different channels.
7 But they answered on Channel 77 when I called. So
8 they were standing by on Channel 77.

9 Q. All right. And is that true of both
10 the tugs and the line handlers?

11 A. Yes, sir. That is correct.

12 Q. I say tugs. Let me rephrase that.
13 You only had one tug?

14 A. Singular. Yes, sir. One tug.

15 Q. I apologize for my mistake. Okay.
16 So insofar as the communications with
17 the tugs and the line handlers are concerned, that is
18 done by yourself as the pilot, for example, in this
19 instance when leaving the dock. Correct?

20 A. Yes. That is correct. Yes, sir.

21 Q. All right. And so in some instances
22 are there communication issues with the crews that
23 don't speak English as well as perhaps others do?

24 Let me rephrase that. That was a
25 terrible question.

1 When you as a pilot are speaking
2 directly with the line handlers and the tugs, is that
3 to avoid issues of language that might be present if
4 some of the ship's crew or its master was talking to
5 them, in some instances?

6 A. Yeah. So essentially what I do is
7 speak to the linemen, and then I speak with the
8 captain of the ship and he speaks with his ship's
9 crew to let them know we are going to work on this
10 set of lines. We are not going to let go of those
11 set of lines. We are going to hold these until last.
12 Those type of --

13 The captain and I would have a
14 conversation about that, and then I confirm with the
15 linemen. Sometimes, because depending upon
16 specifically where you are, you have two sets of
17 linemen. Meaning I can work the bow and the stern
18 simultaneously, or sometimes you only have one set of
19 linemen where you work from the stern forward.

20 In this particular case, I believe we
21 worked both ends simultaneously. So after I speak
22 with linemen to find out what's our situation, how we
23 are going to work on the dock, then I can let ship's
24 crew know through the captain. I'd speak with the
25 captain. Let him know we are going to start letting

1 these lines go and we will stop -- the last ones we
2 will let go will be those. And trying to get on the
3 same page. And then the captain gives his orders to
4 the crew as far as handling the lines.

5 I never speak with the ship's crew
6 other than the master of the vessel, or whomever is
7 conning the vessel from the ship's side. Because
8 sometimes the chief officer will be breaking in,
9 getting experience. But other than that, usually 99
10 percent of the time it is the master of the vessel.

11 Q. Okay. So you had -- insofar as the
12 decision, okay, now it's time to let go of the lines,
13 is that something that is made by somebody on the
14 ship, or is that a decision that is made by the
15 linemen on the dock?

16 A. That is a decision made by the pilot
17 on the ship.

18 Q. Okay.

19 A. Yeah.

20 Q. And you convey that, in this instance,
21 for example, on Channel 77 or --

22 A. I would call the linemen on the radio
23 and let them know, okay, go ahead and let go of these
24 lines or those lines. Yes.

25 Q. Okay.

1 A. I essentially just tell them on the
2 radio, let them go.

3 Q. They are working as directed by you.
4 Correct?

5 A. That is correct. Yes, sir.

6 Q. All right. Now, let's talk about the
7 tugboats. In this instance, the tugboat. All right.
8 So when the tugboat is -- reports, can
9 you --

10 You had earlier gone over some of the
11 recording when you checked in with the linemen. Do
12 you do the same thing with the tugboats?

13 A. I did. I would've spoken with tug and
14 given them the voyage number for the ship. Because I
15 believe that is how they do invoicing. So there
16 would be a general, hey, how are you doing this
17 afternoon. Are you all set to go? Are we ready to
18 go? How do I want to secure the tug to the ship.
19 The tug acts under the direction of the pilot.

20 Q. Okay. They likewise -- like you
21 explained before with the linemen, they work as
22 directed?

23 A. Work as directed. Yes, sir. That is
24 correct.

25 Q. Okay. During the -- you've been

1 working as a pilot for 25 years. Correct?

2 A. Yes, sir.

3 Q. During the 25 years that you have been
4 acting as a pilot between Mile 188 (verbatim) and
5 233, has the situation where tugs that come report to
6 the ship work as directed, is that -- has that been
7 pretty much the same during the whole time?

8 A. Yes, sir. That is pretty much the
9 custom and practice.

10 Q. That is all I have. Thank you.

11 BY MR. BUTTERWORTH:

12 Q. My name is Mike Butterworth and I
13 represent NOMADIC MILDE interests, the vessel you
14 were piloting that day.

15 You have been deposed now for about
16 five or six hours about the events of the 8th of May,
17 2020. The time that you first got your orders to go
18 out to the ship until the time you left the ship and
19 were going home. Correct?

20 A. Yes, sir.

21 Q. During that entire time, how many
22 times did you speak with NOMADIC MILDE's owner in
23 Bergen, Norway?

24 A. Zero.

25 Q. How many times did you speak with

1 NOMADIC MILDE's operators and managers located in
2 Cyprus?

3 A. Zero.

4 Q. Did you speak with anyone concerning
5 your navigation of the vessel and the decisions that
6 you made to anchor one place or another, except for
7 the captain and the other pilots?

8 A. No, sir.

9 MR. PIVACH:

10 Wait.

11 MR. BUTTERWORTH:

12 You spoke with the captain --

13 MR. PIVACH:

14 And the crew is what you were asking?

15 BY MR. BUTTERWORTH:

16 Q. Well, the captain and the crew. You
17 spoke with the captain and the crew about where you
18 were going to anchor. Is my understanding correct?

19 A. Yes, sir.

20 Q. And you also spoke with some pilots,
21 some brother pilots, about where you were going to
22 anchor?

23 A. Yes, sir.

24 Q. Did you speak with anyone else?

25 A. Other than the phone call asking for

1 someone to pick me up at Ama, to tell them I was
2 going to Ama. No. Not really. No one else.

3 Q. Okay. The transportation --

4 A. That's correct.

5 Q. You spoke with dispatch --

6 A. That's all.

7 Q. -- for transportation?

8 A. Yes.

9 Q. So no E-mails, no texts, no voice
10 communications, no telephone calls, no radio with the
11 owners, operators or managers of the NOMADIC MILDE?

12 A. No, sir.

13 Q. You mentioned earlier when you were
14 asked about what was your initial perception when you
15 came aboard the NOMADIC MILDE, and I think you said
16 that she was a good ship and a good crew. Is that
17 correct?

18 A. Yes, sir. That was my initial
19 impression.

20 Q. And then after -- and then you were
21 aboard the vessel for three hours. You maneuvered
22 her. The crew anchored her. The whole time that you
23 were involved and aboard, what was your impression of
24 the ship?

25 A. Favorable. When I went ashore it was

1 the same thing. I mean, throughout my duration on
2 the trip, I don't believe there were any orders that
3 were not executed as given. I think the only
4 mistakes may have been mine when I was talking about
5 heave the port anchor when I intended to say the
6 starboard anchor. Slips on my part, you know. I
7 don't have any problems. The ship was handled as I
8 expected her to be, which was well. I mean, when I
9 say handled, I mean execution of orders from the
10 pilot to the crew. Executed as ordered, as intended.

11 Q. So the vessel was shipshape and
12 seaworthy as far as you were concerned?

13 A. I would say so. Yes, sir.

14 Q. And the crew was seaman-like and
15 prompt and professional in their duties?

16 A. Yeah. I mean, the captain in
17 particular, he worked very close with me during
18 maneuvering situations. We were closely linked, you
19 know, standing in relative close proximity. And
20 advising me, for instance, when we were -- he thought
21 we were getting a little slower, almost stopped in
22 the water, he advised me of that. So I informed the
23 ship's crews where we were going so they could
24 monitor our progress. And he was actively involved
25 in that, which is good to see. So no. It was a good

1 crew. Very professional.

2 Q. Speaking about the pilotage and pilot
3 dispatch. You mentioned that you got the call at
4 10:30 and to be out there for the ship for 13:35,
5 about a three-hour call out. How long is a job --

6 When someone calls you for a pilotage
7 job, how long are you able to work out there before
8 you would leave?

9 A. If the trip is going to take less than
10 eight hours, I would complete the trip myself. If
11 the ship was going to be longer than eight hours, I
12 would get a relief after six hours onboard.

13 Q. I guess what I'm getting at, was there
14 any financial incentive, either to you or to the
15 captain, to anyone, about departing from the vessel
16 when you departed, or staying aboard for another hour
17 or two, if you had wanted to?

18 MR. PIVACH:

19 Let me just object as to his knowledge
20 as to others, to those other than himself. But you
21 can answer the question.

22 BY MR. BUTTERWORTH:

23 Q. Let me rephrase.

24 Was there any pressure on you to
25 depart the vessel when you departed?

1 A. No. There was no one throwing me off
2 of the vessel. There was no one compelling me to
3 come home. You know, I didn't have any other place
4 to go. It was a Friday night in the middle of my
5 workweek. So no. If you are asking the charges for
6 the vessel, the charges are based upon where the ship
7 is and where it is going and whatever services we do
8 along the way. So it is not necessarily tied to a
9 time component, unless the time component would
10 exceed eight hours. And then there would be a charge
11 for time. But other than that, there is no -- there
12 is no other reason -- economically there is nothing
13 to be gained one way or the other. Certainly not by
14 me. I don't get a bonus the longer I stay out there,
15 and I don't get a bonus for getting home early. I
16 mean, it is just because I only go right back in
17 rotation to get my next assigned turn.

18 Q. Was there any pressure put on you by
19 the chartering local agent, with anyone at all to
20 leave the vessel quickly, to get off of there?

21 A. No, sir.

22 Q. So if you wanted, you could have
23 stayed another two hours?

24 A. Well, I don't know if the ship's crew
25 would've been happy with that. That time of the day

1 seemed like they had things to do. But I mean, once
2 the pilot's job is finished, I mean, I think the
3 ship's crews like the pilot, but they don't mind
4 seeing him go home either. My job was complete. We
5 brought the ship to the anchorage. We anchored her
6 safely and discussed things with the ship's crew who
7 paid attention to our conversation and asked
8 questions, and we exchanged pleasantries and I went
9 on my way because my job was finished.

10 Q. And I understand, and certainly from
11 everything we've seen, from the time that you were
12 aboard until the time you disembarked, until right
13 before the time you disembarked, everything was as
14 you expected it, and the vessel had settled down for
15 about five or six minutes, seemed to be in good
16 position?

17 A. She did.

18 Q. And so when you left the vessel, you
19 left the vessel with a clean heart and happy and
20 everything was good?

21 A. I was confident she was in good shape.

22 Q. But let's say you were up on the
23 bridge at 15:30 and instead she wasn't really
24 settling down and she was yawing a lot. Since the
25 incident happened, you've had occasion to look at the

1 MRTIS and the ECDIS. Correct?

2 A. I have. Yes, sir.

3 Q. And then you saw that the NOMADIC
4 MILDE yawed back and forth and ultimately ends up
5 further out in the river than you intended I think
6 was your testimony.

7 A. Yes, sir. She did.

8 Q. Okay. If you had seen that while you
9 were still on the bridge, would you have left the
10 bridge?

11 A. I would like to think I would not have
12 left.

13 Q. And if she continued to yaw, and then
14 if she wound up settling down out where she settled
15 down, that we just saw at 16:50, is that the place
16 where you've wanted to or what would you have done?

17 MR. PIVACH:

18 Let me object. If you want to not
19 refer to a particular time period, but say had it
20 yawed such distance, I will allow it. If you are
21 going to start referring to specific time periods and
22 what it looked like I'm going to object.

23 BY MR. BUTTERWORTH:

24 Q. Fair enough.

25 I'm not asking in terms of time. Just

1 in terms of position in the river. We've seen on the
2 MRTIS and ECDIS where the vessel ultimately settled
3 down from about 16:00 hours to 16:30 hours. And you
4 got that in mind, just the position. I'm not talking
5 about the time. I'm just talking about where that
6 position is.

7 Is that where you intended to anchor
8 the NOMADIC MILDE?

9 MR. PIVACH:

10 Hold on a second. You are going to
11 have to rephrase. If you are going --

12 I don't want to -- because I'm trying
13 to be consistent to everybody. It would be totally
14 unfair to you to allow him to answer these questions.

15 MR. BUTTERWORTH:

16 I will withdraw it.

17 MR. PIVACH:

18 Rephrase it this way. If while you
19 were on the vessel, Captain, and it had yawed
20 significantly, significantly to starboard -- then
21 what is your question, Mike?

22 BY MR. BUTTERWORTH:

23 Q. And then stayed there for half an
24 hour. Is that -- I will just rephrase the whole
25 question.

1 Between 15:25, 15:30 and before you
2 left the vessel, was she where you wanted her to be?

3 A. Well, we were maneuvering all the way
4 up until after 13:30.

5 Q. No. I'm talking about 15 -- after you
6 got --

7 A. 15:30.

8 Q. And then you testified you believe you
9 settled down --

10 A. If I'm not mistaken at 15:33 is when
11 we told the captain that we were finished with the
12 anchors. So up until that point in time I was
13 maneuvering the vessel.

14 Q. Okay.

15 A. So I was very content during my period
16 of maneuvering, how I approached the anchorage, how
17 we decided to let go the anchorage and bringing her
18 in to let go of the inside anchorage. Pretty much
19 intended -- accomplished what I set out to intend to
20 do. And then heaving back the starboard chain, we
21 settled in between the ships, in a vertical and
22 horizontal line. So I was content with that.

23 When we stopped engines, when we
24 settled in, she held for the six minutes or so I was
25 on the bridge of the ship, between 33 and 39 when I

1 went off the bridge. So in that time period I will
2 stipulate that she was in good condition as far as I
3 could -- you know, I was not satisfied, but I was --
4 she was where I put her.

5 Q. I would like to ask you, during that
6 time that you are aboard, 15:33, 15:39, if she had
7 not settled down as she did, and as we've seen she
8 did at that time, but instead had yawed and had
9 climbed out to the position that we saw --

10 MR. PIVACH:

11 That is where you -- wait. Let me
12 object. That is your problem. You need to stay away
13 from that time period we saw later on.

14 MR. BUTTERWORTH:

15 Very good. Very good. I will ask it
16 this way.

17 MR. PIVACH:

18 Talking about if she had yawed
19 significantly over to port or starboard or something.

20 BY MR. BUTTERWORTH:

21 Q. Captain, why wouldn't you have wanted
22 to anchor NOMADIC MILDE 700 feet further out to
23 starboard than from where you anchored her and you
24 were content with her position?

25 A. Because that clearly would have been

1 separated from the other ships that were located in
2 the Upper Kenner Bend Anchorage.

3 Q. What other reason?

4 A. There's no other reason. I wanted to
5 anchor where all the ships were anchored. That is
6 where I anchored her.

7 Q. Is there any consideration concerning
8 water depth?

9 A. None.

10 Q. Any consideration concerning current
11 speed?

12 A. None.

13 Q. Any consideration concerning passing
14 traffic?

15 A. Well, the further away from the -- the
16 closer towards the west bank you would be, the
17 further away you would be from the main traffic
18 passing in the river. The further away from the
19 center of the river you are, the greater likelihood
20 you are going to be further away from any traffic
21 passing. Certainly deep draft traffic. As we stated
22 earlier, there is shallow draft traffic comes up
23 inside the anchorage all the time.

24 I mean, also the closer you are in,
25 closer towards the bank in general, there is a little

1 bit less current than the further out you are located
2 towards the center of the channel.

3 So for those reasons I wanted to
4 anchor in line with the other vessels that were
5 already anchored in the Upper Kenner Bend, and that's
6 where we placed the anchorage to accomplish that.

7 Q. Has there ever been a time that you
8 can recall when all four vessels were anchored in
9 line 700 feet out from where your anchored position?

10 MR. PIVACH:

11 Make sure I understand. You are
12 talking about from the time he is on the vessel.

13 MR. BUTTERWORTH:

14 The time you are on the vessel.

15 MR. PIVACH:

16 Ask your question again.

17 BY MR. BUTTERWORTH:

18 Q. The time you are on the vessel and you
19 want to anchor the NOMADIC MILDE in line with the
20 other three vessels at Upper Kenner Bend. And so you
21 did. And we've seen that you did on the ECDIS.

22 Has there ever been a time when you
23 came up to the anchorage, Upper Kenner Bend
24 Anchorage, and the river is at 15.5 feet, and all
25 four vessels, all three of the other vessels, which

1 you are going to be the fourth, were in line 700 feet
2 further out towards the middle of the river?

3 A. I don't recall anything like that.

4 Q. How often is it that they are the way
5 that they -- the way that we see them when you come
6 up? You said that was a normal and customary place
7 for a vessel to anchor?

8 MR. ACOSTA:

9 Object to form.

10 THE WITNESS:

11 I think if you review a historical
12 perspective of ships that anchored in the Upper
13 Kenner Bend Anchorage, you will see more --
14 overwhelming more often than not they are not within
15 the geographic defined limits of the Upper Kenner
16 Bend Anchorage there.

17 And I will say that in a horizontal
18 sense, meaning distance off of the west bank within
19 the 700 feet. They are in the vertical component of
20 where the markers would be, for the mile markers for
21 the anchorage. But they are further offshore than
22 within the prescribed limits.

23 MR. BUTTERWORTH:

24 What I'm talking about is when we look
25 at the -- why don't we look at 15:35.

1 Michael, I don't care if it is the
2 ECDIS or the MRTIS.

3 MR. HELD:

4 It will be Exhibit No. 9.

5 BY MR. BUTTERWORTH:

6 Q. My question is this, Captain: I'm
7 approaching the screenshot. And we are seeing the
8 vessels in line. We have the lead vessel up here,
9 the GASCHEM, the IONIAN SEA, the NOMADIC MILDE and
10 then the ATLANTIC VENUS. Do you see these three
11 vessels?

12 A. I do. Yes, sir.

13 Q. And you were aboard your ship at that
14 time. Correct?

15 A. Yes, sir.

16 Q. And your goal was to put them all in
17 line as they were. Correct?

18 A. That is correct.

19 Q. Okay. And as I'm looking at them, we
20 see the boundaries of the anchorage, and we see the
21 distance that the ships are off of the edge of the,
22 the big channel edge of the anchorage boundaries.
23 Correct?

24 A. Yes, sir. That what it appears to be.

25 Q. Okay. Has there ever been a time that

1 you came up to the anchorage and the four vessels
2 were anchored out here about 600 or 700 feet closer
3 to the mid channel? Still in parallel line with the
4 anchorage boundaries, but everyone about six or 700
5 feet further out?

6 MR. PIVACH:

7 Let me place an objection. But
8 because when he was going into there he needed to
9 know where vessels were, because I allowed that with
10 Peter kind of, I will allow that question. But let
11 me object to it.

12 THE WITNESS:

13 I think you can see that in periods of
14 low river with winds, strong winds out of the south,
15 southeast would do that.

16 BY MR. BUTTERWORTH:

17 Q. I'm talking about the conditions as
18 they were that day with the 15.5 foot river, high
19 river conditions on the Mississippi River?

20 A. No. I don't believe you would find
21 that, because that would put you really perilously
22 closely encroaching on the crossing itself at
23 Fairview.

24 Q. Okay. And using this as reference,
25 was it at any time your intention to anchor the

1 NOMADIC MILDE out here on the -- on this depth curve
2 line, that is about 700 feet out from NOMADIC MILDE's
3 present position on this exhibit?

4 A. That was not my intent. No, sir.

5 Q. And why not?

6 A. Because that in my mind would be
7 clearly outside of the -- clearly outside of the
8 expected area for ships to be anchored in at Upper
9 Kenner Bend. Ships are not expected to be anchored
10 that far out.

11 Q. You talked earlier about a short
12 standby or keeping them on a short leash, and but I
13 don't think you told us minutes.

14 How long would you expect would it
15 take -- what is in your mind the expectation when a
16 vessel has to do a cold start, from a cold engine,
17 they shut everything down completely, and how long
18 will it take for a ship to start her engines again?

19 MR. PIVACH:

20 Again, we are talking about his
21 anticipation in this case.

22 MR. BUTTERWORTH:

23 Yes.

24 MR. PIVACH:

25 In this time period, when he is

1 directing the master whether it should be a cold
2 engine or on short standby, that's your question.

3 MR. BUTTERWORTH:

4 Yes.

5 MR. PIVACH:

6 What was his expectation for a
7 shutdown the engines, how long it would possibly take
8 to bring them back up. I will allow that question.
9 If you understand it.

10 THE WITNESS:

11 I understand the question. I am not
12 an engineer and I don't know. But from a cold start,
13 it could take an hour or so to bring all the systems,
14 operating systems necessary to operate the engine up.
15 Where on a short notice, I would have an expectation
16 of less than 10 minutes of being able to call down
17 below and have the engine available for navigational
18 use on the bridge.

19 MR. PIVACH:

20 And, Captain, for clarification, that
21 one hour is kind of a guess on your part is what you
22 appear to be -- I mean --

23 THE WITNESS:

24 It is. I'm not an engineer. I don't
25 know how long it takes to bring the systems up.

1 MR. PIVACH:

2 But the reason why I allowed it,
3 because you have to have an expectation when you are
4 telling the master what to do and what not to do.
5 And that was my reason for allowing the question.

6 BY MR. BUTTERWORTH:

7 Q. During high river periods such as
8 existed on the day of May the 8th, have you ever as a
9 pilot been called out simply to standby aboard a
10 vessel, like they call it baby-sitting?

11 A. I have done that. Yes.

12 Q. And what were the circumstances of
13 that call-out?

14 MR. PIVACH:

15 Wait. Wait. I wasn't paying close
16 enough attention. This is a general question?

17 MR. BUTTERWORTH:

18 It is just a general question.

19 MR. PIVACH:

20 What is the relevance? I don't see
21 the relevance of it. And it is not during this time
22 period. He didn't need to baby-sit. I'm not seeing
23 the relevance of it.

24 MR. BUTTERWORTH:

25 The relevance is why is it a good idea

1 to have a pilot aboard a vessel on the Mississippi
2 River during high river.

3 MR. PIVACH:

4 If you want to ask him did he think
5 that they needed to have a pilot onboard that ship,
6 and that he would have recommended that to the
7 captain at that time, I will allow it. Beyond that,
8 I'm not.

9 BY MR. BUTTERWORTH:

10 Q. I understand, Captain, that at the
11 time you anchored the vessel, the time you departed
12 the vessel, it was not your recommendation that she
13 should have a baby-sitter or pilot watch. Correct?

14 A. At the time I anchored the vessel and
15 spoke with the ship's crew, I was confident that she
16 was in good, safe position. I had anchored her such.
17 We had taken great care and worked well together. I
18 was confident we were in a good location. So I did
19 not tell him, advise the master if he should keep a
20 pilot.

21 Q. What would be the circumstances where
22 you might advise the captain to keep a pilot onboard,
23 where you would have made a different recommendation
24 to the captain?

25 MR. PIVACH:

1 I will object. Relative to this date
2 and this time while he was aboard?

3 BY MR. BUTTERWORTH:

4 Q. Yep.

5 A. Well, clearly, once the pilot brings
6 the ship into the anchorage and anchors it with both
7 anchors, and she immediately transmits feedback that
8 she is not going to stay there, then the pilot would
9 not leave the ship. So now this would transition
10 quickly into what we call special services, but
11 euphemistically referred to as baby-sitting, when you
12 are the next pilot to come out and stay onboard a
13 ship just to keep her within the anchorage.

14 Q. But that day, from everything that you
15 saw, from the vessel, from the crew, everything you
16 observed, this was just a routine normal high river
17 anchoring and you left her when everything was safe?

18 A. It was a routine anchoring process.
19 There was nothing exciting or dramatic or emergency
20 about it. The anchors were holding when I left the
21 bridge of the ship and I felt confident it would
22 continue to hold.

23 Q. I will check with my brain. I don't
24 have anymore questions.

25 MR. PIVACH:

1 Any other questions?

2 MR. HELD:

3 David Sharpe and Robert Phelan.

4 MR. BERCAW:

5 They are operating under the
6 assumption that Gary Gamble said, since we are all
7 aligned, we would get one attorney. So I'm asking
8 the questions for them. I do have some followups,
9 though.

10 MR. PIVACH:

11 That is fine. Before you start your
12 followup, I cut you off previously because you were
13 on a screenshot that was after the fact.

14 MR. BERCAW:

15 Right.

16 MR. PIVACH:

17 I told you that if you wanted to go
18 back to a screenshot during and use your pointer or
19 whatever to ask a similar question, I'm not going to
20 object -- depending how you phrase it, I will likely
21 not object. Okay.

22 MR. BERCAW:

23 So you are not going to object to my
24 next question.

25 MR. PIVACH:

1 Well, let's give it a 70/30 shot on
2 that one, okay. But just to be consistent. I gave
3 Colton a hard time. And I understand -- you know,
4 you understand my position. I'm just at least trying
5 to stay consistent.

6 MR. BERCAW:

7 No. No. I appreciate that. I'm going
8 to take another approach.

9 MR. PIVACH:

10 Okay.

11 MR. BERCAW:

12 And we will see. Okay.

13 BY MR. BERCAW:

14 Q. Hopefully I won't stray far.

15 Captain, you've said several times
16 during this deposition that you reviewed the MRTIS
17 and the ECDIS, at least portions of that.

18 What portions of the MRTIS and the
19 ECDIS displays did you watch?

20 A. The portions involving my time onboard
21 the ship.

22 Q. Okay. So curiosity didn't get --

23 MR. PIVACH:

24 But not all of them. I'm sorry. Go
25 ahead. I'm testifying for him. I didn't mean to.

1 BY MR. BERCAW:

2 Q. Okay. Curiosity didn't get the best
3 of you and you wanted to see how we got here?

4 A. Well, sir, if I am not mistaken, the
5 question is, what records did I review in preparation
6 for this deposition.

7 Q. That is correct.

8 A. So what I stated was in review for
9 this deposition, I reviewed the portions of the time
10 that I was onboard the vessel.

11 Q. Okay.

12 A. I knew of -- I learned that there was
13 an event occurring. So I kind of saw MRTIS in real
14 time as it was going on. But that would have been
15 back in May.

16 Q. I hear you.

17 A. So I may have seen or looked at it
18 since May, but not in preparation for this
19 deposition.

20 Q. I understand your answer. Okay.

21 So --

22 A. I know it is an ugly outcome.

23 Q. I'm sorry?

24 A. I know the outcome was ugly.

25 Q. Yeah.

1 So sometime during May 8th, 2020,
2 after you left the ship, word got back to you that
3 there was a problem with the NOMADIC MILDE.

4 A. Yes, sir. That is correct.

5 Q. Who told you that?

6 A. I'm not certain right offhand.

7 Q. Okay. Would that have come from pilot
8 dispatch?

9 A. No.

10 Q. Or --

11 A. It would not. Word travels fast, like
12 Motorola fast, speed-of-light fast, like...

13 Q. I get it.

14 A. So I don't -- as I'm sitting here
15 today, I simply don't recall who brought my attention
16 to it.

17 Q. Okay. But in any event, you did see
18 the incident happening in real time on the MRTIS?

19 A. When I say that, yes. That is
20 accurate. But when I say that, that doesn't
21 necessarily mean I stayed there watching for the next
22 24 hours.

23 Q. No. I get you.

24 A. It means that I saw where the ship had
25 ended up laying across the bow of the ship anchored

1 downriver of it. I know how to use MRTIS. So the
2 with the history check, I can see how it yawed back
3 and forth and subsequently rotated. I saw that.

4 Q. Right.

5 Any idea why it started yawing back
6 and forth that you saw on the MRTIS the day of the
7 incident, even after you left the ship? But you did
8 witness the movements of the ship in that widely
9 swinging fashion? Any idea what could have caused
10 that?

11 MR. PIVACH:

12 Objection. First of all, before I --
13 what specific time period are you asking for right
14 now? Or a general?

15 I'm not sure what you are asking.

16 MR. BERCAW:

17 Okay. That is fine.

18 MR. PIVACH:

19 -- is my first question. Go ahead.

20 BY MR. BERCAW:

21 Q. All right. I think we just
22 established through what you saw and what you
23 testified, that you backed up the MRTIS and saw that
24 it began swinging wildly or yawing wildly. Is that
25 correct?

1 A. Well, it showed that it didn't remain
2 where I left it.

3 Q. Right. In fact, it remained a lot of
4 places that it shouldn't have been. Correct?

5 MR. PIVACH:

6 Objection. Okay. All right.

7 THE WITNESS:

8 It yawed back and forth.

9 BY MR. BERCAW:

10 Q. Yeah.

11 Was that within the anticipated swing
12 of the vessel based upon the way you set the anchors
13 for the NOMADIC MILDE?

14 A. I think it would appear that the
15 anchors had drug to travel that distance, would
16 require the anchors to have drug.

17 Q. Right.

18 And in your experience one of the --
19 the main principal purposes of the port anchor, in
20 addition to preventing the vessel from flowing
21 downstream, is to limit the swing to the starboard of
22 the ship. Correct?

23 A. Yes.

24 Q. And conversely, one of the principal
25 purposes of the starboard anchor, in addition to

1 having the ship travel backwards, is to limit the
2 swing of the vessel to port. Correct?

3 A. That would be my expectation. Yes,
4 sir.

5 Q. And given the variation in the lateral
6 position of the NOMADIC MILDE, based upon what you
7 observed on the MRTIS on May 8th, 2020, after you got
8 word that there was a problem, do you have any
9 understanding as to why the vessel was moving from
10 side to side at such a great distance?

11 MR. PIVACH:

12 Let me object. A, I am not going to
13 make him an expert for beyond the time period for
14 which he was on the vessel. If you want to convert
15 it to when he was on the vessel, I may allow it.

16 MR. BERCAW:

17 See, I ordinarily -- we will go off
18 the record.

19 (Off the record.)

20 BY MR. BERCAW:

21 Q. We will go back on the record.

22 Captain Brown, it's true that on May
23 8th, 2020, you observed portions of this casualty on
24 the MRTIS Internet service. Correct?

25 A. Yes.

1 Q. And during that process of reviewing
2 that information you knew that you could rewind the
3 MRTIS and observe certain events that had happened in
4 the past involving the NOMADIC MILDE. Correct?

5 A. Yes, sir.

6 Q. In fact, that is what you did at
7 certain points. You did rewind the MRTIS so that you
8 could get a better understanding of what the NOMADIC
9 MILDE was doing prior to coming in contact with the
10 ATLANTIC VENUS and ultimately coming in contact with
11 the Cornerstone dock. Right?

12 MR. PIVACH:

13 Objection.

14 THE WITNESS:

15 Yes, sir.

16 MR. BERCAW:

17 Okay. Mr. Pivach, you will not allow
18 us to ask questions of his impressions of viewing the
19 MRTIS information for purposes of this discovery
20 deposition to the extent that it encompasses time
21 periods that Captain Brown was not on the NOMADIC
22 MILDE. Is that correct?

23 MR. PIVACH:

24 That is correct.

25 MR. BERCAW:

1 Okay. I also want to make sure, for
2 purposes of certification, that I was going to ask
3 questions of Captain Brown concerning his impressions
4 of the vessel movements after he had left the NOMADIC
5 MILDE, but covering the time periods for which he
6 actually viewed the MRTIS entries for May 8, 2020,
7 but that you have instructed the witness not to
8 answer those questions.

9 MR. PIVACH:

10 Okay. For clarification, I'm not sure
11 you got all this in your questioning earlier.
12 Particularly while we were off the record.

13 Be clear, though, that he was on the
14 NOMADIC. He got off the NOMADIC. Got into his
15 vehicle, checked MRTIS at that point in time, and
16 then his job was over with in your mind. Is that
17 correct, Captain?

18 THE WITNESS:

19 That is a correct.

20 MR. PIVACH:

21 Sometime after that, apparently more
22 than an hour later -- we don't know what time. You
23 haven't established that -- that he heard through the
24 grapevine that there was some contact between NOMADIC
25 MILDE and the ATLANTIC VENUS. He had heard that, and

1 at some point in time he, therefore, looked at MRTIS
2 backtracking. Is that correct?

3 THE WITNESS:

4 That is correct.

5 MR. PIVACH:

6 And whatever you looked at MRTIS
7 backtracking, you could look at the same thing today.
8 Is that correct?

9 THE WITNESS:

10 That is correct.

11 MR. PIVACH:

12 Just as any other pilot could look at
13 it the exact same way. Is that correct?

14 THE WITNESS:

15 That is correct.

16 MR. PIVACH:

17 Or any other expert. Is that correct?

18 THE WITNESS:

19 Anyone with access to MRTIS would be
20 able to go back and dial in from a historical
21 perspective whatever time they so chose.

22 MR. PIVACH:

23 So when you looked at it, after
24 hearing it, it was from an interest from your
25 standpoint as to what was happening, what may

1 happened with this vessel, and then what was going to
2 occur after that. Is that correct?

3 THE WITNESS:

4 Yes, sir.

5 BY MR. BERCAW:

6 Q. Okay. And during the process of that
7 review, did you form impressions or beliefs to what
8 caused the change in position of the NOMADIC MILDE
9 that you observed on May 8th on the MRTIS?

10 I'm not asking you what they are. I'm
11 asking you, did you form a belief or an idea?

12 A. No, sir. In the sense that when I
13 review a tape, I can see the represented motions of
14 the ship. It doesn't tell me are the anchors still
15 there. I mean, obviously if the anchors were both
16 gone, the ship would be floating fast downriver.

17 But it doesn't tell me if the anchors
18 have broken. It didn't tell me if it was simply
19 dragging. There is no way for me to know any of that
20 type of information. So my interest was merely to
21 see after I had anchored her and went ashore, would
22 show, you know, if -- how she yawed back and forth.

23 And even that necessarily wouldn't
24 tell me whether the port anchor was gone, if you
25 looked at where she subsequently ended up located

1 towards the middle of the stream. She could've been
2 holding on her starboard anchor only at that point in
3 time. The port anchor could have been completely
4 gone.

5 And I don't think we learned until
6 after the fact that the anchors were still attached
7 to the ship at the time she came off of the other
8 vessel. So when I looked at MRTIS, all anyone can
9 see from watching MRTIS, there is no way to -- it is
10 not like they are connecting sound data. You can't
11 tell from watching an AIS playback when certain
12 events occurred. You can get an idea timewise of how
13 the motion of the vessel was, but you don't
14 necessarily know what caused that motion. You can't
15 tell.

16 Q. So you don't -- you don't have an
17 opinion, one way or the other, what caused the motion
18 of the NOMADIC MILDE before she made contact with the
19 ATLANTIC VENUS? Is that what you are telling me?

20 A. The Mississippi River.

21 Q. Okay.

22 A. I hate to sound glib in that sense.
23 And that is certainly not my intent. And it may have
24 sounded that way and I apologize.

25 But the water itself is a phenomenal

1 thing. But what I'm telling you is you can't tell
2 whether the anchors gave way or whether they were
3 simply dragging and digging in again, dragging and
4 digging in again. Which is probably what occurred.
5 That is merely speculation and I can't prove
6 anything.

7 Q. Well, no one can -- no one knows,
8 because the Mississippi River is muddy and nobody
9 has, you know, a clear view of what actually was
10 happening. So that is part of the issue that we are
11 trying to solve here. Okay.

12 Now, is this the first time you've had
13 a ship that you have anchored on the Mississippi
14 River that has behaved this way a certain period of
15 time after you left the vessel?

16 A. I can't tell you I recall another one
17 doing this. I just -- I don't know.

18 Q. If another one had done something like
19 this, it probably would've stuck out in your mind,
20 though?

21 A. Well, if I would've heard about it.
22 Yeah.

23 Q. Okay. The scuttlebutt that informed
24 you of the incident involving the NOMADIC MILDE, did
25 they have any opinions as to, or thoughts that they

1 shared with you as to what was causing the casualty
2 to occur?

3 A. Well, just that an event had occurred.
4 And so I turned MRTIS on to look at what was going
5 on, what it showed. It doesn't take much to see when
6 one ship was crossways in front of the other one and
7 there is a bunch of tugboats running around, that
8 something is going on. So then it would be
9 something -- it would certainly stick out, out of the
10 ordinary and I would pay attention to. There was no
11 conversation of what caused what and how it happened
12 or anything like that.

13 Q. Okay. So there was no back and forth
14 after the incident as to, you know, you all were
15 spit-balling ideas as to what happened or coming up
16 with ideas as to how to prevent an event like this
17 from happening in the future?

18 A. No, sir. I mean, the immediate thing
19 would be to focus for how do you -- if you had to
20 deal with extricating those two from each other, how
21 would you do that. You know. It is almost like the
22 water is under the bridge. It's like closing the
23 barn door after the cows are gone. It is, you know,
24 now this is the new problem to solve.

25 Q. Right.

1 A. So that would be an area of interest
2 and thought, concern not --

3 Q. Were you consulted by Pilot Shirah --
4 I think I mispronounced his name and I did it in the
5 other case, too -- as to the best -- as to your
6 thoughts on how to extricate the NOMADIC MILDE from
7 the bow of the ATLANTIC VENUS?

8 A. No, sir.

9 Q. Okay. Did you -- did you tell the
10 Coast Guard what you thought caused the NOMADIC
11 MILDE's anchors to drag?

12 A. I don't recall telling them. I don't
13 know what -- I don't know what caused. I mean, I
14 would surmise it is the river current. I mean, that
15 is -- but other than that, no. I don't believe that I
16 told them what caused the incident.

17 Q. Same thing for the NTSB. Did you
18 discuss with the NTSB your views as to why the
19 NOMADIC MILDE was unable to hold her position at or
20 near the Kenner Bend Anchorage?

21 A. No, sir. I mean, we discussed things
22 such as depth of water and how much chain we put out.
23 Scope of the chain. Things that nature. Block
24 coefficient of the vessel. Blockage factors. Things
25 like that we discussed. But not -- there is no way I

1 can tell you this was the definitive cause of this
2 occurrence.

3 I can't tell you that and I did not --
4 I'm pretty sure I did not tell the Coast Guard or
5 NTSB that.

6 Q. People operating outside of the legal
7 profession often like to seize upon one cause.
8 People operating in the legal profession understand
9 that there can be more than one cause and oftentimes
10 there are.

11 So what do you -- as you sit here
12 today, do you have a belief as to a cause, or the
13 causes, besides the river current, as causing the
14 NOMADIC MILDE to swing in the fashion that you
15 observed on the MRTIS?

16 A. I can't explain that to you. No, sir.

17 Q. All right.

18 There has been some testimony in this
19 case from the officers of the NOMADIC MILDE, who
20 heard from another pilot that under no circumstances
21 should the NOMADIC MILDE have been anchored in
22 position 3 in the vicinity of the Kenner Bend
23 Anchorage or the Upper Kenner Bend Anchorage.

24 Do you know whether there were other
25 available anchorages in the vicinity besides the tail

1 end of the Lower Kenner Bend Anchorage, where the
2 vessel could've docked had you wanted to? Or could
3 have anchored had you wanted to?

4 MR. PIVACH:

5 Let me object because I think it is a
6 little vague as to which anchorages -- you mean in
7 the immediate area -- is the reason for my objection.

8 MR. BERCAW:

9 Within 10 statute miles of this
10 vessel, of the Upper Kenner Bend Anchorage.

11 MR. PIVACH:

12 Then let me note my objection.

13 THE WITNESS:

14 I'm unaware. It is nothing I would
15 have considered. Certainly at the time my orders
16 were to go from Avondale to Kenner Bend Anchorage.
17 There was nothing that precluded me from going to
18 Kenner Bend Anchorage. It was a good spot
19 traditionally where vessel hold. It has adequate
20 under keel clearance. There was no reason for me to
21 even suggest going somewhere else. Why did the
22 vessel go there in the first place? That is really
23 not my part of the equation.

24 Those decisions are made else where.
25 I provide a service when they call. We show up, and

1 provided it is safe to do, or assumed to be safe to
2 do, then we go ahead and do that. There was no
3 reason not to bring that ship to that anchorage.

4 MR. BERCAW:

5 Okay. All right. I will pass.

6 MR. PIVACH:

7 Let me ask a few questions now in the
8 event you attempt to certify.

9 MR. BERCAW:

10 We will talk -- we will talk after
11 this. Okay. I mean, we are not -- we are not done
12 discussing.

13 MR. PIVACH:

14 Because my reason why is I needed to
15 ask him a few questions.

16 MR. BERCAW:

17 Okay. Well, go ahead.

18 BY MR. PIVACH:

19 Q. Captain, after you got in the vehicle,
20 you looked at MRTIS and turned it off and you were
21 leaving?

22 A. Correct.

23 Q. Did you ever look at the ECDIS beyond
24 that point for this vessel or was it even available?
25 Could you have looked at the ECDIS? Did you look at

1 it beyond that point?

2 A. No. The only time I saw any portion of
3 the ECDIS from the vessel would have been Friday
4 when we met with Mr. Butterworth and he showed me.

5 Q. But --

6 MR. BERCAW:

7 This past Friday?

8 BY MR. PIVACH:

9 Q. But those were time periods while you
10 were onboard. Is that correct?

11 A. Yes. The time period we were onboard
12 the vessel.

13 Q. Same question, though. Did you look
14 at any radar shots or availability of radar for any
15 time period after you have got off the vessel and
16 looked at MRTIS when you got in the vehicle?

17 A. No. I haven't accessed anything like
18 that.

19 Q. Did you look at your PPU, the one you
20 had on your vessel at that point in time?

21 A. I did not.

22 Q. Did you have any means to hear the
23 sounds that were on this vessel, or the feel that a
24 pilot would have while he is on a vessel? Did you
25 have those opportunities to hear those sounds, those

1 feels, for the time period after you have got off the
2 vessel?

3 A. I had no opportunity to do such a
4 thing. No.

5 Q. The only thing you would've had to
6 make any determination as to what happened would have
7 been solely looking at MRTIS after the fact, after
8 the incident occurred, so to give you an idea of what
9 happened?

10 A. Yes. That is correct.

11 MR. BERCAW:

12 Okay. All right.

13 BY MR. BERCAW:

14 Q. So besides meeting with Mr. Pivach in
15 preparation for your deposition, you also met with
16 Mr. Butterworth?

17 A. I did.

18 Q. Anybody else?

19 A. Mr. Butterworth and Mr. Held.

20 Q. Okay. And how long did you meet with
21 them before, in preparation for your deposition?

22 A. Oh. Friday we were here for nine,
23 9:00 o'clock to 3:30.

24 Q. Okay.

25 A. With a short break for lunch.

1 Q. Okay. Now I will pass the witness.

2 BY MR. ACOSTA:

3 Q. I have a couple things, if it is all
4 right.

5 Captain, you discussed how you
6 reviewed the MRTIS briefly subsequently that day
7 after you left when you heard about the fact that
8 there was an incident.

9 Did it appear to you from that
10 observation that the NOMADIC MILDE had dragged on its
11 anchors prior to the timestamp we have in Exhibit 13,
12 which is 16:26 when the TOMINI SYMPHONY passed her?

13 A. I believe that it did. Yes, sir.

14 Q. Okay. And had you been involved in
15 any prior incidents, collisions, allisions,
16 groundings?

17 A. I have. Yes, sir.

18 Q. And did you make any changes after
19 those incidents to the way you anchored vessels or --

20 A. No, sir.

21 Q. I think that is it for me.

22 MR. PIVACH:

23 Anyone else?

24 Thank you very much.

25 MR. BUTTERWORTH:

1 Could I ask --

2 MR. PIVACH:

3 Yeah. I'm sorry. Anyone else?

4 MR. BUTTERWORTH:

5 I'm waiting for David Flotte. Usually
6 David has --

7 MR. FLOTTE:

8 Nothing further from Crescent.

9 MR. BUTTERWORTH:

10 Well, we all know that it is all
11 Crescent's fault.

12 BY MR. BUTTERWORTH:

13 Q. Since we have been here, Captain, do
14 you recall, now we have been thinking about it and
15 doing the deposition now for several hours, do you
16 recall what the name of that barge fleet is?

17 And, David -- actually David, David
18 Flotte, it is ADM? Wouldn't it be ADM? ARCO? Do we
19 know what the name of it is, David?

20 Are you there?

21 MR. FLOTTE:

22 Objection. Leading. After an
23 eight-hour meeting. Objection, leading.

24 MR. PIVACH:

25 We are beyond the seven-hour time

1 period.

2 MR. BUTTERWORTH:

3 Can you help us, David? Do you know
4 the name of the anchorage for the barge fleet?

5 MR. FLOTTE:

6 I don't know.

7 MR. BUTTERWORTH:

8 That is fine. That is good.

9 BY MR. BUTTERWORTH:

10 Q. Captain, Captain Brown, who knows more
11 about whether or not it is safe to proceed up to --
12 in a 15.5 foot river -- to proceed up from Avondale
13 to the Kenner Bend Anchorage area, yourself, 25 years
14 experienced NOBRA pilot, or a vessel charterer
15 sitting in Cyprus or Europe somewhere?

16 MR. PIVACH:

17 Objection. But you can answer the
18 question.

19 THE WITNESS:

20 Well, since I don't know those people,
21 I would expect they have limited experience on the
22 Mississippi River and I would like to think I have
23 some advantage in that area. So I would go ahead and
24 speculate that I might have a bit more.

25 BY MR. BUTTERWORTH:

1 Q. And what about who has more knowledge
2 about whether it is safe to proceed from Avondale up
3 to the Kenner Bend Anchorage area, you or the captain
4 of the NOMADIC MILDE, its first time on high river?

5 MR. PIVACH:

6 Same objection. You can answer the
7 question.

8 THE WITNESS:

9 I feel confident that I would have a
10 little more advantage than they would.

11 BY MR. BUTTERWORTH:

12 Q. All right. And that day, if I'm
13 understanding you correctly, that but for what
14 happened, this is just a perfectly routine normal
15 move. And when you got there it looked safe. As you
16 were proceeding upriver it looked safe, and when you
17 anchored the vessel and as you disembarked from the
18 vessel, everything was safe and secure to do that
19 move?

20 A. From my --

21 MR. BERCAW:

22 Objection to form. Go ahead.

23 THE WITNESS:

24 I mean, do you have that --

25 From my perspective, I mean, the

1 evolution went well. Everything. I had no problems
2 with the ship's crew conducting operations. The ship
3 had no mechanical failures or faults anywhere along
4 the way that I'm aware of. And we made a precise
5 approach into the anchorage. We placed the anchors
6 where we wanted to and we left her in what we
7 believed to be very good condition.

8 MR. BUTTERWORTH:

9 That is my questions.

10 MR. PIVACH:

11 Any other questions?

12 THE VIDEOGRAPHER:

13 The time is 3:19 P.M. and this
14 concludes today's videotaped deposition. Thank you.
15 (Whereupon, the taking of the testimony of the
16 witness was concluded.)

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1 ASSIGNMENT #6231300

2

3 CORNERSTONE CHEMICAL COMPANY VERSUS M/V NOMADIC

4 MILDE, ET AL

5

6

7 DECLARATION UNDER PENALTY OF PERJURY

8 I declare under penalty of perjury that I

9 have read the entire transcript of my Deposition

10 taken in the captioned matter or the same has been

11 read to me, and the same is true and accurate, save

12 and except the changes and/or corrections, if any, as

13 indicated by me on the DEPOSITION ERRATA SHEET

14 hereof, with the understanding that I offer these

15 changes as if still under oath.

16

17 Signed on the _____ day of _____, 2020.

18

19 _____

20 CAPTAIN CHRISTOPHER BROWN

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CAPTAIN CHRISTOPHER BROWN

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CAPTAIN CHRISTOPHER BROWN

DATE:

REPORTER'S CERTIFICATE

I, Ruby Wallen, Certified Court Reporter, in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that CAPTAIN CHRISTOPHER BROWN, after having been duly sworn by me upon authority of R.S. 37:2554, did testify as set forth in the foregoing pages; that this testimony was reported by me in stenotype, prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board, and that I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition services, that I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in rules and advisory opinions of the board; that I have no knowledge of any contractual relationship, direct or indirect, between a court reporting firm and any party litigant in this matter, nor is there any such relationship between myself and a party litigant in this matter. I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

RUBY M. WALLEN, CSR NO. 78022



















































































































