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IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

No. 3AN 89-7217; 3AN 89-7218

TRIAL BY JURY
MARCH 15, 1990
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H & M Court Reporting
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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
March 15, 1990

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1 PROCEEDINGS

2 MARCH 15, 1990

3 (Tape: C-3677)

4 (0033)

5 THE CLERK: The Superior Court for the State
6 of Alaska, Third Judicial District, with the Honorable
7 Karl Johnstone presiding, is now in session.

8 THE COURT: Please be seated.

9 Mr. Chalos?

10 MR. CHALOS: The defense calls Julius Leitz to
11 the stand.

12 (Oath administered)

13 A Yes.

14 JULIUS LEITZ,

15 called as a witness in behalf of the defendant, being
16 first duly sworn upon oath, testified as follows:

17 THE CLERK: Please be seated. Sir, would you
18 please state your full name, and then spell your last
19 name?

20 A Julius Herman Leitz. L-e-i-t-z.

21 THE CLERK: And your current mailing address?

22 A 5650 Northeast Columbia Boulevard, Portland,
23 Oregon.

24 THE CLERK: And your current occupation?

25 A Heavy marine salvage.

1 THE CLERK: Thank you.
2 DIRECT EXAMINATION OF MR. LEITZ
3 BY MR. CHALOS:
4 Q Good morning, Mr. Leitz. By whom are you
5 presently employed?
6 A A company that I own, by the name of J.H.
7 Leitz and Associates, Incorporated.
8 Q What is the business of J.H. Leitz?
9 A Well, heavy marine salvage is the principal
10 interest, and I also do marine consulting,
11 usually connected with salvage or offshore
12 construction.
13 Q As a -- are you a salvor?
14 A Yes.
15 Q What do you do as a salvor?
16 A Well, we refloat sunken vessels, stranded
17 vessels, fight ship fires, anything to do with
18 marine casualties.
19 Q You salvaged the Exxon Valdez, did you not?
20 A That's correct.
21 Q Your company was hired for that purpose?
22 A Yes.
23 Q You were hired by Exxon?
24 A Yes.
25 Q When did you first go on board the Exxon

1 Valdez?

2 A On Tuesday, March 28.

3 Q Had you commenced your salvage efforts prior
4 to that?

5 A Yes.

6 Q When did you first come on to the -- when were
7 you first engaged?

8 A I was engaged on Saturday the 25th of March by
9 Exxon, and I traveled to Valdez on the 26th -- on
10 Sunday the 26th.

11 Q And -- well, before we get into what you did
12 in respect to the salvage of the Exxon Valdez,
13 let me ask you this. What is your background,
14 how long have you been a salvor?

15 A Well, this is -- this is my 31st year in the
16 marine salvage business.

17 Q How many vessels have you salvaged in that
18 period of time?

19 A Oh, something in excess of 150. Significant
20 vessels, I've worked on a lot of smaller things
21 too.

22 Q How many strandings have you salvaged?

23 A Oh, probably in the neighborhood of -- oh, 40
24 or 50.

25 Q How many vessels that went aground, that

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became stranded, did you salvage off rocks or coral?

A 17.

Q And how many of those were tankers?

A Two, before the Exxon, the Exxon made three.

Q Now, in terms of the salvage business, there's not much difference between coral and rock, is there?

A Practically none. In fact, a lot of times coral covers rocks. Once you grind the coral away, you are on the rocks.

Q Now, going back to the Exxon Valdez, you said you started your efforts when you arrived on the 26th?

A Yes.

Q What did you do in that regard?

A Well, the first thing is to become -- well, let me back up. When they initially called me on Saturday, they gave me a lot of information over the phone, like the quantity of cargo in the various tanks, and a lot of statistics about the vessel, and from that you make some rough numbers while you're riding in the airplane.

On arrival in Valdez, I met with the Exxon people in charge of the ship that were on the

1 scene, and actually interviewed them that were
2 -- you know, to find out all I could about the
3 vessel and its condition, and -- or present
4 condition, you know, cargo remaining, looked at
5 copies of the blueprints that they had available,
6 requested copies of the blueprints that I needed
7 that weren't available, and looked at soundings
8 that they had made, or -- or that had been made,
9 after the stranding, and then also looked at some
10 ...

11 Q These were while you were in Valdez?

12 A Yes.

13 Q You were given soundings while you were in
14 Valdez?

15 A Yes.

16 Q Let me show you what I've marked as
17 Defendant's Exhibits CJ and CK, and ask you, are
18 these the soundings that you were given?

19 A Yes, sir. This is one set of soundings I was
20 given.

21 Q And when did you receive those soundings?

22 A On Sunday the 26th.

23 Q And when were those soundings taken?

24 A At 0945 on March 24.

25 Q That's 9:45 in the morning on March 24?

1 A That's correct.

2 Q Do you know who took those soundings?

3 A I believe they were taken by the pilot vessel
4 at the Captain's request.

5 Q Did you rely on these soundings in your
6 salvage claim?

7 A Yes. That and a subsequent set of soundings,
8 and then also we took additional soundings later
9 on.

10 Q And you say these soundings were made at the
11 Captain's request?

12 A Yes.

13 MR. CHALOS: Your Honor, I offer Exhibits CJ
14 and CK into evidence.

15 MR. COLE: No objection.

16 THE COURT: Admitted.

17 EXHIBITS CJ AND CK ADMITTED

18 Q (Mr. Leitz by Mr. Chalos:) All right, what
19 else did you do while you were in Valdez, in
20 preparation for the salvage operation?

21 A Well, I ordered a lot of equipment to be
22 shipped in, portable salvage equipment, asked
23 that the naval architect that I use come up, you
24 know, as quick as he could.

25 Q Who is that?

1 A Donald R. Hudson (ph).
2 Q Okay. Go ahead.
3 Q Just generally evaluated the situation,
4 checked into the progress, they'd already started
5 the lightering operation, and so I asked about
6 how that was coming, and in that they are, you
7 know, professional -- lightering is their
8 business, I really didn't get involved in that
9 too much, except during the last stage of the
10 lightering, when it started affecting the
11 attitude of the vessel on the rock, so I was
12 involved in that part of the lightering, which
13 was the final step.
14 Q Well, what do you mean by affecting the
15 attitude of the vessel?
16 A Well, the port tanks were intact, and the
17 starboard slop tank was intact, so therefore if
18 you just simply pump the oil out of those tanks,
19 the vessel would jerk up.
20 Q To starboard?
21 A Yeah, the port side would rise, and so ...
22 Q Causing her to list to the starboard side?
23 A It would list to starboard. So therefore I
24 -- we continued to develop the plan so that we
25 could ballast to port side as we moved -- removed

1 the cargo, just exchanging the weights without
2 changing the attitude of the vessel.

3 Q Did you believe there was a need for you to go
4 to the vessel let's say between the 26th and the
5 29th, when you first went out to the vessel?

6 A No. There was plenty to do, the salvage plan
7 was written during this period of time, I worked
8 with some ship group coordinators of Exxon, in
9 this familiarization process about how systems
10 work, it was necessary for a salvor in a very
11 short period of time to become familiar with a
12 vessel he hasn't been on. And so you do the
13 ground work first, then go to the vessel.

14 This isn't always the case. If there wasn't a
15 crew on the vessel, and if something wasn't
16 happening by competent people, then of course I
17 would have went to the vessel right away, but
18 you've really got to do your homework before it's
19 very effective to go. I know what a tanker looks
20 like sittin' on a rock.

21 Q Did the information that you received between
22 the 26th and the 29th indicate that the vessel
23 was stable at that time?

24 A Yes, the vessel was never -- or while it was
25 sitting on a rock, it was never in danger of

1 capsizing, a vessel can't capsize sitting on the
2 bottom.

3 Q Did you do any strength calculations while you
4 were in Valdez?

5 A Yes.

6 Q What was the result of those calculations with
7 respect to the strength of the vessel while she
8 stayed on the reef?

9 (0480)

10 A There was never a serious problem with the
11 strength of the vessel.

12 Q Was there ever any danger of this vessel
13 breaking up while she was on the reef?

14 A There's always that danger of -- you know, a
15 vessel on a reef is out of its normal element,
16 but you'd actually have to try pretty hard to do
17 any serious damage to it, in this particular
18 case.

19 Q In any event, the calculations that you made
20 did not -- let me rephrase it. Based on the
21 strength calculations that you made, was there
22 any indication that the vessel wasn't strong
23 enough to stay on the reef?

24 A No.

25 Q Now, you say you arrived at the vessel on the

1 29th?

2 A 28th. It was -- I think it was Tuesday the

3 28th.

4 Q All right, what did you do when you arrived on

5 the vessel?

6 A Well, I met with several of the people on

7 board that were directing the discharge of cargo,

8 and I met with a -- two ship group, or two ship

9 superintendents of Exxon's, John McCracken (ph)

10 and Ben Schafer (ph), and the ship's chief

11 engineer, Jerzy Glowacki. And I -- they took me

12 on a tour of the vessel, so that I could actually

13 -- you know, just general walk-around, get

14 familiar with the vessel, I was interested in

15 verifying where we were gonna make connections to

16 it to inject inert gas into it, and, you know,

17 other salvage connections.

18 Q What would have been the purpose of injecting

19 inert gas?

20 A Well, eventually that was the means to refloat

21 it.

22 Q We'll get into that in a second. Did you make

23 any determinations when you got on board as to

24 how hard this vessel was aground?

25 A I actually made those -- you know,

1 calculations before I went out to the vessel, and
2 then they were -- they were all later confirmed
3 by my naval architect down here, Mr. Hudson.

4 Q And how would you describe the vessel sitting
5 on the reef?

6 A Well, it was ...

7 Q Would you say she was lightly aground, hard
8 aground?

9 A No, it was very hard aground.

10 Q Did there come a time when you made a
11 determination that she was impaled?

12 A Yes, but you can only make an assumption about
13 something like that, because there's no practical
14 way to take measurements underneath the ship.
15 You can take measurements around the ship and
16 what have you, but that still doesn't tell you
17 what's under the ship. If the ship was empty,
18 for example, you could put divers down inside of
19 it to take a look.

20 But when the ship is full of oil, which
21 usually means they can't see a thing, and you
22 don't dare put 'em in that environment, because
23 it'd be totally by feel. And even in calm water,
24 like this was in, a ship tends to wiggle, I mean
25 move a little bit, continually.

1 Q What causes her to move a little bit?

2 A Just all -- it was all of this -- a small
3 amount of surge, and it'll just very gently --
4 you have to really pay attention to feel it, but
5 anyhow, the diver goes down in there, he's
6 totally -- he can't see a thing, so he sticks his
7 fingers here and there, and he's probably gonna
8 lose a hand or something, so you just don't do
9 that.

10 Q Okay. How would you describe the salvage of
11 the Exxon Valdez in terms of a salvage job?

12 A The salvage operation was -- is actually a
13 very simple one. The sheer size of the ship made
14 it difficult, and the pollution aspects, you
15 know, compounded the matter, you know, the actual
16 physical salvage of the operation was something
17 I've done many times before, and it was pretty
18 straightforward.

19 Q Uh-huh (affirmative). What do you mean by the
20 pollution aspects?

21 A Well, obviously we didn't want to allow any
22 more oil to get out of the ship, you know, during
23 the salvage operation, and we -- eventually more
24 than four fifths of the oil on the ship was
25 recovered, and that was one of the primary

1 objectives before we attempted to move the ship.

2 Q Okay. Let me -- I have a chart -- I want to
3 show you ...

4 A Could I get a drink of water?

5 Q Yes.

6 A Please? Thank you.

7 Q Before I put this -- is there a standard
8 salvage principle that one would use with a
9 vessel aground?

10 A No, there -- there are really no standard
11 methods. Every situation is somewhat different.
12 You know, there's all sorts of things that you do
13 regularly to -- some things infrequently, but
14 there's no prescribed method of salvaging every
15 vessel, I'd say.

16 Q Well, let me show you what we marked as
17 Exhibit CL for identification, and ask you, have
18 you seen this diagram before?

19 A Yes.

20 Q What does this diagram purport to show?

21 A Well, it's just a graphic illustration of the
22 principle that was used to refloat the Exxon
23 Valdez. This illustration was made early on to
24 show the press, the media how it was going to be
25 done, this was done in Valdez.

1 Q All right, can you -- before we get into the
2 specifics of the refloating of the Exxon Valdez,
3 could you explain to the jury just the basic
4 principles that you used to get this ship off the
5 strand?

6 A Yes.

7 Q There's a pointer to your left.

8 A Well, to start off with the depth of the
9 vessel ...

10 Q Hold on, Mr. Leitz. Before you describe --
11 I'd like to offer at this time, Your Honor,
12 Exhibit CL into evidence.

13 MR. COLE: No objection.

14 THE COURT: Admitted.

15 EXHIBIT CL ADMITTED

16 Q Okay. Go ahead.

17 A All right. This is a cross-section of the
18 ship looking forward, as though you cut the ship
19 right in two with a knife, and this is what you'd
20 see. The port tanks of course were tight, that's
21 this -- this area over here. The center tanks
22 and the starboard tanks were whole, that's kind
23 of illustrated right here.

24 The deck of the vessel was all sealed up, all
25 the openings in the deck were made tight. Most

1 of the openings in the deck that we made tight,
2 we also welded in fittings so that we could
3 attach all the air hoses and gauge lines and
4 everything else we needed to monitor the
5 operation as it was going on.

6 And when the ship was sitting on the rock
7 here, the sea level shown here, and after a few
8 hours for -- or really less than that, after
9 about 35 minutes, the oil -- the head of oil in
10 the ship had already discharged out of the
11 vessel, so therefore the liquid level in the ship
12 was equal in weight to the water level outside.

13 And the reason that -- actually this
14 illustration is a little -- this would be at the
15 time we did it, because we had the oil out of it
16 and it was pure water. So therefore, in the
17 ruptured tanks, the water line would -- inside
18 these tanks would be exactly the same as outside.
19 Right after the stranding, this liquid level
20 would have been higher than that ...

21 Q Why is that?

22 A Because the specific gravity of the oil is
23 .89, which is 11 percent less than the weight of
24 water.

25 Q In other words, the oil was pushed up by the

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water?

A No, it's floating on the water. And it's 11 percent lighter than the water, so if you have a column of oil inside here, it's 11 -- would reach 11 percent over the depths outside the ship. The sea level outside the vessel.

Q Did the oil in the ship after the grounding have anything to do with the vessel's buoyancy?

A No, it really doesn't. It's a complex thing instead of a specific -- different specific gravity, but when we have no bottom in the ship, it kind of becomes null and void, you know, because you're -- to go on here, maybe it'll come clear.

Q Go ahead.

A But anyhow, so you have a liquid inside -- I think I'm gonna back up and say that, you know, that we got water in here, now the oil has been removed, you don't think we're talking about the salvage operation.

Q Right. How was the oil removed?

(0790)

A The oil was removed by pumping it over the top of the vessel with portable salvage pumps.

Q Okay, go ahead.

1 A Anyhow, so after the oil was removed, we now
2 have water inside the tank, so the level inside
3 and outside is exactly the same. The -- we used
4 the ship's IG system, and then supplemented by
5 portable salvage blowers to boost its pressure.
6 And when you force air down through the deck of
7 the ship, it -- the pressure pushes the water
8 level down, and in this illustration, it's
9 showing it being pushed down to this level, this
10 space between the water line outside and inside
11 becomes buoyancy, which lifts the ship.

12 Q And is that how the Exxon Valdez was removed
13 from the strand?

14 A Yes.

15 Q Now, were there any injuries in the process of
16 removing the vessel?

17 A None. Well, we had -- we had some minor
18 injuries, you know, scratches and bruises, but we
19 had -- in fact, we had no serious injuries at all
20 during the whole four and a half month operation,
21 through delivery into the dry dock.

22 Q Speaking about dry dock, did you have occasion
23 to view the vessel in San Diego?

24 A Yes, I did.

25 Q Were the damages that you saw in San Diego the

1 type of damages that were reported to you when
2 the vessel was at Bligh Reef? Were they
3 consistent?

4 A Well, when the ship was on Bligh Reef, there
5 -- it was impossible to do a completely
6 comprehensive survey of the bottom of the vessel,
7 'cause divers couldn't get under the area that
8 was resting on or impaled by the -- with the
9 rocks, so the field survey was done after it was
10 at Naked Island.

11 Q Okay, was the damage that you saw in San Diego
12 consistent with the damage that was surveyed at
13 Naked Island?

14 A Yes, it was.

15 Q And you looked at the damage in San Diego?

16 A Yes, I did.

17 Q Can you describe what you saw there?

18 A Well, the bottom of the ship was, you know,
19 very badly torn up, as would be expected. There
20 was -- the most probable scenario is two
21 collisions with a rock, two separate situations
22 and possibly a third, but it was less significant
23 by a long ways.

24 The first impact, that the ship's crew may not
25 even have been aware of, started pretty near the

1 center of the bow, and traveled pretty well
2 straight back, slowly moving to the right,
3 exiting in the buoyed space underneath the
4 starboard slop tank. And of course the second
5 major impact was in starboard number 1, 2, three
6 frame spaces into number 3, and part of the
7 centers in 1 and 2. That's where the, you know,
8 the main impact and the final resting position
9 came.

10 Q That's where the vessel finally came to a
11 stop.

12 A Yeah, and that offered enough resistance to
13 bring the vessel to a complete stop.

14 Q I take it -- let me start again. You didn't
15 do any calculations as to the length of time
16 between the first and second striking by this
17 vessel, did you?

18 A No, I didn't.

19 Q Okay. Now, the damage that you saw in San
20 Diego, was that all in the fore and aft
21 direction, or some other direction?

22 A It was all pretty much in the fore and aft
23 direction, with the center, or the first impact
24 traveling to the -- from the center toward the
25 right of the vessel, so that it curved 80 feet,

1 approximately, in about, oh, 700 foot of the
2 vessel's length.

3 Q All right. Do you have an opinion as to when
4 the damage that you observed was caused?

5 MR. COLE: Objection, lack of foundation.

6 THE COURT: Sustained. Mr. Chalos?

7 Q I'll rephrase it, Your Honor. Based on what
8 you saw of the damage, and based on the survey
9 that was done at Naked Island, do you have an
10 opinion as to when this particular damage
11 occurred, was it in the striking, was it
12 afterwards?

13 A I don't understand, which damage are you
14 referring to?

15 Q The damage that you saw, this fore and aft
16 damage that you describe.

17 A That was all from the collisions with the
18 rock.

19 Q Now, there's been testimony in this trial that
20 it would have been impossible for this vessel to
21 move from the grounding on the reef using the
22 vessel's engines and rudder. Do you agree or
23 disagree with that?

24 A I agree with that.

25 Q There's also been some evidence that this

1 vessel was impaled on the bottom, and there were
2 bottom plates that were hanging down also
3 interfering with the bottom. Do you agree or
4 disagree with that?

5 A That's correct.

6 Q What is the effect of this impalement and the
7 bottom plates hanging down and interfering with
8 the bottom?

9 A Well, the bottom plates hanging down would
10 offer some resistance, and it'd depend on what
11 configuration they were in, how much resistance,
12 but the impalement is the important part of it
13 all. The -- normally when a ship's aground, like
14 on sand or gravel or even fairly flat rock, you
15 have something called a friction coefficient with
16 the bottom, and that's kind of -- determines how
17 much force it's gonna take to -- to move the
18 vessel, but when you have an impalement, the ship
19 is actually around the rock, there's actually a
20 mechanical connection, so the friction
21 coefficients are just kind of out the window,
22 they don't mean a thing, you know, that -- they
23 actually -- you have a true mechanical
24 connection, and -- you know, that we just had a
25 very large pumped-up area stuck up inside the

1 ship, and it just ...

2 Q Is that the basis for you saying that it would
3 have been impossible to move this vessel using
4 the ship's engines and rudder?

5 A That's correct.

6 Q There's been some testimony here that no
7 matter what Captain Hazelwood did after the
8 grounding, this vessel was not going to move off
9 this reef. Do you agree or disagree with that?

10 (1092)

11 A I agree with that.

12 Q Do you have any opinion as to whether any
13 further damage was done to this vessel after the
14 grounding by the use of the engine and rudder?

15 A If -- when the vessel rotated, some 14 degrees
16 ...

17 Q When did that occur?

18 A After the -- the thing was grounded, and then
19 also again on Sunday there was a 70 mile an hour
20 windstorm that rotated the ship some 14 degrees,
21 and it was pushed back in position by tugs, you
22 know, held and -- this thing was straightened
23 back out and held in position by tugs. This area
24 of the impact was heavily damaged, and any
25 further aggravation of that would have been

1 absolutely insignificant. We wouldn't have been
2 able to detect it.

3 Q Do you have an opinion as to whether there was
4 any additional leakage of oil from the vessel as
5 a result of the use of the engine or rudder after
6 the grounding?

7 A No, there -- there would have been no increase
8 in anything, because the bottom was opened up
9 already, I think that's verified in Mr. Kunkel's
10 testimony.

11 Q In what way?

12 A Well, all -- when he went down to the control
13 room, all the gauges in the control room --
14 (indiscernible) gauges were all clicking off,
15 indicating flooding in the ballast tanks and the
16 fore peak, number 2 and number 4 starboard, and
17 all the cargo tanks were opened, every -- all
18 those gauges were moving, which says that the
19 bottom was opened up immediately. There's no
20 question about the fact it was opened. So ...

21 Q All right, do you have an opinion as to
22 whether or not the use of the engine or rudder
23 after the grounding would have caused this vessel
24 to break up in the condition that she was in?

25 A I don't feel that it would. The vessel didn't

1 have any structural deficiency that was gonna
2 cause a break on the rock, and this would have
3 been very minor. The amount of power that was
4 being used to hold the vessel on the rock was
5 only about 112 long tons, you know, just
6 calculated long tons.

7 Q Did you make a calculation in that regard?

8 A Yes, I did.

9 Q And is it your opinion that the power that was
10 used at 55 RPM would not have been sufficient to
11 cause this vessel any structural problems?

12 A Yeah, that's -- 55 RPM's works out to about
13 the -- about 9,000 horsepower, a little bit less
14 than that, and 9,000 horsepower using, oh,
15 general efficiency calculations for a propeller
16 translates into about 112 long tons, which is
17 just -- for a vessel that size, is insignificant,
18 it isn't anything.

19 Q Now, just turning to another subject, Mr.
20 Leitz, do you have an opinion as to whether
21 ships' crews in general and masters in particular
22 have the training or background to deal with
23 major casualties such as the grounding of the
24 Exxon Valdez?

25 A Generally not. I have seen a few crews on

1 occasion where someone had been involved in a
2 similar situation, and so that helped, but
3 actually out of all the ships that are cruising
4 around the world, very few of 'em are going to
5 ever get in trouble. A lot of people spend their
6 entire life at sea and are never involved in
7 casualties.

8 You know, the -- on the route, sometimes
9 there's, you know, minor groundings and that type
10 of thing, where they back the ship back off, or
11 get some type of assistance and get it out --
12 this happens frequently in the Mississippi River,
13 where you have the channels continually changing
14 location, so the ship runs on the mud and they
15 get it out, but if -- that's really not a true
16 salvage operation.

17 Q Well, having said that, once you have a
18 grounding such as this, what would you expect a
19 captain and a crew to rely on in terms of
20 experience to handle the situation?

21 A Well, this was a major casualty, and I don't
22 think that they had the -- the expertise to
23 really salvage it. They also didn't have the
24 equipment to salvage it. You know, they -- you
25 know, again, according to Mr. Kunkel's testimony,

1 and -- they did all the things that you would
2 normally expect them to do, like they checked the
3 condition of the vessel thoroughly, you know, the
4 -- the engine room ...

5 Q Well, I want to get into the specifics, but
6 let me ask you this. You've been on vessels that
7 stranded before.

8 A Yes.

9 Q I take it -- have you been on vessels within a
10 short period of time after the grounding?

11 A Yes.

12 Q In those situations, did you have occasion to
13 observe the vessel's -- the crew's behavior and
14 appearance, if you will?

15 A Yes, I have.

16 Q What did you find in those situations, how
17 -- what state was the crew in?

18 A Well, depends on the severity of the
19 situation, but they're generally upset and
20 uptight, there's no question about it.

21 Q Have you noticed what we would know as shock
22 in that situation?

23 A Yes.

24 Q Let me ask you then some specific questions
25 about the actions that were taken by Captain

1 Hazelwood and his crew after this grounding.

2 Have you read any testimony?

3 A Yes.

4 Q Whose testimony have you read?

5 A Chief Mate Kunkel's, the naval architect Vorus
6 (ph), and Bill Milwee.

7 Q The salvage expert that was put up here by the
8 State.

9 A Yes.

10 Q That was brought up by the State. Okay. I'd
11 like to give you some actions that we've taken
12 that are in evidence and ask you your opinion
13 based on your knowledge of these things, as to
14 whether they were prudent or imprudent maneuvers.
15 After the vessel grounded, the Captain came up to
16 the bridge, went to the bridge wing, looked over
17 the side, assessed the situation. Is that a
18 prudent or imprudent maneuver?

19 A Prudent.

20 Q He came back into the wheelhouse and ordered
21 the third mate to take a fix, and he ordered the
22 helmsman to put the rudder at amidships. Is that
23 a prudent or imprudent action?

24 A That's also prudent.

25 Q He told the third mate to go below, take the

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AV and go below and wake up the crew. Do you consider that to be prudent or imprudent?

A I think that's a wise move, yes.

Q There's been some criticism of the Captain for not at that point ringing the general alarm. Do you have an opinion as to whether that should have been done or not?

A I think under the circumstances out there that that was probably a wise move, because sending -- these ships nowadays have fairly small crews, so it's not that big a deal to go down and wake 'em up, and then if you go down and wake 'em up and tell 'em what's happening, they can get their clothes on, and -- get their cobwebs out of their head, and then they can come up and be in a condition to help, you know, to do whatever needs to be done. If you ring the general alarm, you're either gonna have all the people running up in their skivvy shorts to the fire station, or they're gonna go to the lifeboats, you know, and that isn't gonna accomplish very much.

Q So I take it you don't recommend ringing the general alarm in that situation.

MR. COLE: Objection, leading.

(1450)

1 A Not in this case, that's not ...

2 Q Let me rephrase it. I take it, then, you

3 agree with the fact that the general alarm was

4 not rung in this case.

5 A Yeah, I agree with that.

6 Q Okay. Now, there's also been testimony that

7 the Captain ordered the third mate to call -- at

8 about the same time, call the engine room and

9 shut the engines. Do you consider that prudent

10 or imprudent?

11 A To shut the engine down?

12 Q Yes.

13 A Yeah, that was -- at that particular point in

14 time that was -- that was the right thing to do

15 also.

16 Q Okay. There's also been testimony that the

17 Captain called the engine room and told the

18 engineers to sound the voids and the engine room

19 tanks. Do you consider that prudent or

20 imprudent?

21 A That's standard operating procedure on a

22 casualty.

23 Q There's also been testimony that the chief

24 mate came up to the bridge with some information

25 for the Captain regarding stability and the

1 amount of wall that was lost, and the number of
2 tanks that were damaged. And the Captain
3 conferred with the chief mate on that point. Do
4 you consider that prudent or imprudent?

5 A Well, it's important that the chief mate keep
6 the Captain advised of what's going on with the
7 vessel, yes.

8 Q There's been testimony that the Captain then
9 told the chief mate to go back down to the cargo
10 control room and obtain additional information
11 and keep him posted. Do you consider that to be
12 prudent or imprudent?

13 A That's prudent.

14 Q There's also been testimony that he told the
15 chief mate at that time to lower the boats, the
16 lifeboats to the embarkation deck and get the
17 fire mains ready. Is that prudent or imprudent
18 in your opinion?

19 A That's prudent.

20 Q There's also been some testimony that at some
21 point the Captain ordered the anchor to be
22 lowered to the water's edge. Is that prudent or
23 imprudent?

24 A That's also prudent.

25 Q There's been some testimony that the chief

1 mate was told by the Captain to give him some
2 options as to the possibility of ballasting down
3 if it was necessary. Is that a prudent maneuver
4 or imprudent?

5 A That's prudent also.

6 Q Do you have an opinion as to whether or not
7 soundings were necessary at the time the vessel
8 ran aground?

9 A Immediate soundings wouldn't have proved very
10 much, they would have had no means to detect the
11 real -- or determine which is the impalement of
12 the vessel on the rock. Soundings wouldn't have
13 told them that.

14 Q It would have told them where they were
15 impaled, would it?

16 A Not necessarily, no.

17 Q Okay. How about taking soundings through the
18 oil?

19 A Well, there are ways to do that, it just makes
20 it a little more complicated.

21 Q Mr. Milwee said that he would have taken
22 soundings every 10 to 15 feet, which he ...

23 MR. COLE: Objection, Your Honor, that's a
24 mischaracterization again.

25 MR. CHALOS: I think that's exactly what he

1 said.

2 MR. COLE: I disagree.

3 Q (Mr. Leitz by Mr. Chalos:) Well, assuming
4 -- let me rephrase the question. Assuming that
5 there's been testimony that soundings should have
6 been taken at a distance of, let's say, no more
7 than 20 feet between them, do you have an opinion
8 as to how long that would have taken?

9 A It would have taken -- if you had about four
10 people doin' it, you know, one guy on a sounding
11 line, and another guy writing all the stuff down,
12 moving along, they'd have been a -- that says
13 four people, two guys on each side of the ship,
14 they'd have been a couple a hours doing it.

15 Q And that's assuming that there were no
16 problems encountered, I take it?

17 A That's right.

18 Q And I take it also that that's assuming that
19 the lines don't get fouled up by the oil.

20 A Well, the only means that they would have had
21 to do it out there would have been to measure
22 from the deck edge, you know, the -- it would
23 have been -- the only way they could have taken
24 soundings around the vessel immediately would be
25 to lower a lifeboat and do it, and that wouldn't

1 have been -- all the oil in the water and
2 everything, and I think that would have been an
3 unnecessary risk of the personnel -- the people's
4 lives that had to do it. You know, I mean, you
5 got a motor lifeboat, and you put it down in a
6 puddle of oil with the fumes comin' off, I
7 seriously doubt if the people could have even
8 breathed down there.

9 Q We've put into evidence today the soundings
10 that you had, that were taken at 9:45 in the
11 morning by the pilot boat, do you consider, if
12 soundings were taken at that time, to be
13 sufficient and timely soundings under the
14 circumstances?

15 A I think -- yeah, under the circumstances I
16 think that, you know, give an hour or two, you
17 know, it's a -- it was about appropriate. I
18 think it would have been imprudent to attempt it
19 in the dark, and what have you, you know, perhaps
20 it could have been done an hour or two sooner,
21 but it didn't make any difference, 'cause it was
22 past high water.

23 And you gotta keep in mind that, too, I've
24 tried to refloat the vessel and get all its
25 information, the ship went aground something like

1 11 minutes after midnight, and high water was at
2 0157, and that's all the time you'd have to make
3 a complete evaluation, take soundings, and do
4 everything in the world. You know, it's not
5 feasible to do all that.

6 Q Because there's other things that need more
7 immediate attention?

8 A That's right, you know, I think we should
9 concentrate on the safety of the vessel and the
10 people first.

11 Q Now, based on your experience in this area, is
12 there anything else that you would have done that
13 Captain Hazelwood didn't do on that particular
14 night? Keeping in mind, of course, that you're
15 the expert on salvage matters and captains, you
16 said, don't necessarily have that kind of
17 expertise.

18 (1718)

19 A I think he did, you know, very well. Under
20 the circumstances.

21 Q Why do you say that?

22 A Well, you read off the list of all the things
23 he did, and, you know, continuing to monitor the
24 condition was very important, you know, you don't
25 know how fast it's deteriorating, I kind of have

1 the advantage of knowing -- when I got up there
2 they had -- by that time they had divers out
3 there, and they -- they had actually physically
4 looked at the bottom of the vessel, so when I got
5 there, I knew it was impaled. He didn't know any
6 of that stuff that night.

7 You know, and -- well, the best thing he could
8 do was to keep it where it was at until help
9 could come, you know, people and equipment and
10 what have you.

11 Q How would you characterize the Captain's
12 action on that particular night?

13 A I think he did very well, personally, under
14 the circumstances.

15 Q Now, there's been testimony that at about
16 12:35, 12:40 in the morning, on the 24th, the
17 Captain restarted his engines. Do you have an
18 opinion as to that?

19 A Yes, I think that he'd become aware, you know,
20 that the tide was rising, and the vessel may get
21 light and tend to want to slide off there, you
22 know, if it wasn't impaled, that was a distinct
23 possibility I think he considered, so therefore,
24 he applied enough power to the same general
25 heading as the initial striking, so therefore the

1 vessel couldn't move. We know that -- for he
2 would have known that heading in that same
3 direction, there was enough resistance to have
4 stopped the vessel at some 10 knots, so therefore
5 applying enough maneuvering power and holding
6 there, he precluded it from sliding off, if that
7 was possible. He didn't know that that wasn't
8 possible at that time.

9 Q Now, he also used the rudder in the course of
10 running the engines forward. Do you have an
11 opinion as to that?

12 A Yeah, it's necessary to use the rudder to
13 maintain a heading.

14 Q What do you mean by that?

15 A Well, you have to use a little bit of rudder
16 power to keep -- to maintain any kind of a
17 heading. A -- a big ship like that, or even
18 small ones, tend to walk sideways, if you -- if
19 you just set the rudder amidships, for example,
20 the rudder's turning ahead, it tends to make the
21 ship ...

22 Q You mean the propeller.

23 A Yeah, the propeller.

24 Q Go ahead.

25 A It tends to make the stern of the ship walk

1 one way or the other. If you're backing up, it
2 moves to the left, and if you're just sitting
3 there steady moving ahead, it moves to the right,
4 so therefore you have to use a little bit of
5 rudder to -- this is a -- true of single-screw
6 vessels, twin-screw vessels you can set on a
7 heading and pretty well hold it, but a single-
8 screw vessel tends to walk one way or the other,
9 just from the force of the propeller going
10 around.

11 Q Is the Exxon Valdez a single-screw vessel?

12 A Yes, it is.

13 Q Do you agree or disagree with the use of the
14 rudder as used by Captain Hazelwood on that
15 night?

16 A I think the use of the rudder was absolutely
17 necessary.

18 Q Now, Mr. Milwee testified that he considered
19 the use of 55 RPM's and the use of the rudder as
20 a lot of force being applied to this vessel. Do
21 you agree or disagree with that characterization?

22 A I don't think under the circumstances it's a
23 lot of force. You gotta look at the propeller
24 -- you know, you look at the propeller cruise of
25 the ship, it's less than one third of its power,

1 you know, and that's not very much, you know,
2 it's a -- like I said earlier, that's about 112
3 tons of force, and on a vessel this size, that
4 isn't an awful lot.

5 Q Now, the decisions that Captain Hazelwood made
6 were -- took place somewhere between 12:10, when
7 the vessel ran aground, and, let's say, 1:40,
8 2:00, or two hours later. Do you have an opinion
9 as to the time that Captain Hazelwood had to make
10 all these decisions?

11 A Well, it wasn't an awful lot of time.

12 Q Would you say that the decisions he made were
13 done quickly?

14 A I think -- yes. I think it was -- what he did
15 in managing the crisis was very professional. I
16 think that it reflects his training.

17 Q Now, Mr. Milwee criticized Captain Hazelwood
18 for shutting the vessel's engine down at 1:40 in
19 the morning, opining, if you will, that he should
20 have kept -- if he was trying to keep the vessel
21 on the reef, he should have kept the engines
22 running until past high water, 2:00, and then
23 perhaps even for an hour later. Do you agree or
24 disagree with that opinion?

25 A Well, I disagree with it.

1 Q Why?

2 A Well, because we are now approaching high
3 water, and if you intended to refloat the vessel,
4 you would operate the engine through high water.
5 You wouldn't stop before high water, and if you
6 were trying to hold it on the rock up to high
7 water, you know, when the vessel's getting the
8 lightest, then you want to stop. If you continue
9 to operate the engine, you may accidentally
10 refloat it.

11 Q So in your opinion, shutting the engine down
12 at 1:40 before high water was the proper move?

13 A That's right.

14 Q If he wanted to keep the vessel on the reef?

15 A That's right. If you intended to refloat the
16 vessel, then you would not only -- I mean, you
17 wouldn't be using one third power and stopping
18 before high water, you'd be using all the power
19 you've got and you'd operate the engine all the
20 way through high water.

21 Q I want to ask you about that, but before I do,
22 let me ask you this. You've gotten a lot of
23 ships off the strand before, have you not?

24 A Yes.

25 Q Have you ever backed a ship down to get it off

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the strand?

(2014)

A Almost always.

Q Is that the preferred -- if you wanted to get a ship off the reef, is that the way you would do it, back the engines?

A It depends on how hard the vessel's aground. If there's nothing wrong with the power plant and the engine, and the propeller's all right and the machinery's all right, it's just another source of force, so you use it, it's there. Usually in the type of stuff I get into, propeller power alone is not enough, I have to get, you know, a salvage vessel that has winching capacity or a lot of extra tugs, or sometimes you stream out the vessel's anchor, gear the -- you know, drag it out behind the ship and use the anchor windlass to apply additional power, or sometimes you put tackle on deck and one end goes out to apply additional power.

Q And in those situations, do you also use the engine astern?

A If the engine's operable, you generally do. It's just another source of force.

Q Okay, now you had the opportunity to examine

1 the actions that Captain Hazelwood took on that
2 particular night with respect to the use of the
3 engines and rudder, you also had an opportunity
4 to read Mr. Kunkel's testimony about the
5 information that he was giving the Captain over a
6 period of about an hour. Do you have an opinion
7 as to what Captain Hazelwood was doing, or trying
8 to do?

9 A Well, everything that he did, in my opinion,
10 was aimed at keeping the vessel on the rock,
11 which under the circumstances was a prudent thing
12 to do.

13 Q Why do you say that? On what do you base your
14 opinion that he was trying to keep it on the
15 rock?

16 A Well, the main indication, I suppose, is the
17 fact that he didn't back up at all, and you can't
18 -- the ship -- come to a dead stop in roughly,
19 you know, the direction that it was headed, and
20 so you'd keep it on the rock by working the
21 engine ahead. Nobody would think that you can
22 get the ship off by going ahead. You have to
23 back up, you have to reverse the direction that
24 it went in there to get out of there. He didn't
25 use -- he used less than a third of the power he

1 had available to attempt to get it off.

2 Q Well, what would you have done if you found
3 yourself in the same situation? I mean, if you
4 wanted to get off, what would you have done?

5 A Well, you mean if I was serious about taking
6 the ship off?

7 Q Yes.

8 A Well, to start off with, I wouldn't have
9 tried, you know, because of the severity of the
10 damage to the ship. I mean ...

11 Q To get her off.

12 A ... you're asking what I would do.

13 Q Yes.

14 A I wouldn't have tried to take it off until I
15 got some help.

16 Q And in this situation you don't believe
17 Captain Hazelwood was trying to get it off
18 either.

19 A Not a single thing he did would indicate to me
20 he was trying to get it off.

21 Q All right, suppose you did want to get it off.
22 What would you have done?

23 A All right, well, to start off with, if I was
24 trying to get it off, I'd have probably worked
25 the ship ahead a lot harder than it was, and I

1 would have swung it a lot more. And what the
2 purpose of all this is is to grind away at the
3 rock. The way ships are extracted from rocks is
4 with just sheer force, you know, not floating
5 them off like we did the Exxon Valdez, but if you
6 just try to pull 'em off, you have to remove the
7 interference, you know, get this mechanical
8 connection with the rock taken away, so you do
9 that by swinging the ship back and forth and
10 working ahead on it.

11 Q Would you -- what power would you have used to
12 do that?

13 A Oh, probably a little bit more than
14 maneuvering. You know, where -- depends on the
15 circumstances, but one thing -- to do this, you
16 should have a better idea of where the rock is
17 located and that type of thing, so that you don't
18 go ripping anything else open. You know, that's
19 -- you -- in this case, if you put a whole lot of
20 power on going forward, you're jeopardizing the
21 intact tanks under the pump room and the engine
22 room and -- and if the thing went far enough, you
23 could get -- wipe out the propeller and the
24 rudder.

25 In this case -- well, if it was me, this is

1 hypothetical, but if it was me out there, I
2 wouldn't have had any way to find out just
3 exactly where the impalement was at. So that's
4 why I said in the first place I wouldn't have
5 tried. But if you did that, you would work the
6 ship ahead, swing it back and forth to grind away
7 on the rock, you know, chip the rock away, and
8 that's what happens.

9 Then from time to time you'd back the ship up
10 -- and in this case you'd go as -- you'd use all
11 your power, and try and move the ship back, also
12 try and swing it while this is going on.

13 Swinging the ship, going astern in impalement
14 isn't very easy to do, the rudder's pretty
15 ineffective, you really need tugs to swing the
16 thing. And you just keep repeating this
17 operation, until you chip the ship away.

18 The two ways you pull a ship off a rock is
19 break the rock out from under it, or rip the
20 steel in the hull away, to release it. And real
21 life is generally a combination of both of them.
22 You know, you rip some steel away, you break a
23 lot of rock away.

24 Q Now, Captain Hazelwood didn't do those actions
25 in this case, did he?

1 MR. COLE: Objection, leading.

2 Q I'll rephrase it. Were any of the actions
3 that you described done in this particular case?

4 A They were not.

5 Q Now, the inert gas system was maintained open
6 during this period of time, is that correct?

7 A Yes.

8 Q Do you have an opinion as to the effect of
9 keeping the IG system in terms of trying to get
10 the vessel off or keeping her on the reef?

11 A Well, if you wanted to get it off, you
12 should've closed the IG system -- once the -- the
13 oil had gone out in the some 35 minutes, at that
14 point in time, the IG system should have been
15 closed, so that you could have trapped some air
16 as the high -- as the tide rose, that would give
17 you some amount of lift on the -- on the -- you
18 know, the hour and -- he'd have about an hour and
19 20 or 30 minutes of tide rise, which would have
20 started pressurizing the tanks, you know, so you
21 should -- that should have been done earlier if
22 you intended to get the thing off.

23 Q The fact that Captain Hazelwood didn't close
24 down the IG system, is that indicative to you of
25 anything?

1 A Well, that he wasn't -- also again that he
2 wasn't really trying to get it off.

3 Q Okay. Now, in this maneuver, the hypothetical
4 maneuver that you're talking about, where you
5 would go forward using power and using your
6 rudder to grind down the rock and then backing
7 up, how far back would you go in order to
8 accomplish that, or accomplish the maneuver that
9 you're talking about?

10 A What do you mean, how far back?

11 Q Well, would you go a couple hundred feet back,
12 would you go a thousand feet back, in order to do
13 what you're talking about?

14 A Well, the ship would only -- when you back up
15 on the ship, it would only move if the rock had
16 come away, you wouldn't -- you'd probably only
17 gain a little bit each time you did this, I mean,
18 it wouldn't move 100 feet, it would -- you know,
19 you'd have to go ahead and back up and then swing
20 back and forth and just wear 'em down, I had a
21 ship in -- down by Trinidad one time that took us
22 two tides to get off, and we were -- it was on
23 coral, coral and rocks, and we ground away on it,
24 swung it back and forth, tied tugs on it, beach
25 -- anchor gear out, beach gear on. We even put

1 air in the double-bottom tanks to lighten them,
2 we took 6,000 tons of bunkers and cargo off of
3 it, we did all those things to one vessel, and it
4 still took two tides.

5 (2415)

6 Q Okay, let me show you what's been marked as
7 Exhibit AK, and ask you, did you see these
8 soundings before?

9 A Yes, I directed that these soundings be taken.

10 Q They were taken at your request?

11 A That's correct.

12 Q Now, you notice the soundings astern of the
13 vessel reaching up anywhere between 180 feet and
14 150 feet?

15 A Yes.

16 Q There was plenty of water back there, was
17 there not?

18 A Yes, there was.

19 Q So if Captain Hazelwood wanted to make the
20 maneuver that you testified about, that is, go
21 forward, grind the rock down a little bit, and
22 then back up, did he have enough water behind him
23 to do that?

24 A Yeah, he would've. And he would've had enough
25 water to the south if he just swung it that

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direction.

Q Now, Mr. Leitz, you say that all the actions that you studied in this case that were taken by Captain Hazelwood led you to believe that he was trying to keep the vessel on the rock.

A That's correct.

Q On the reef. Did you have the occasion to review a transcript of a tape between Captain Hazelwood and the Coast Guard?

A Yes, I did.

Q And do you recall on the tape the Captain was telling the Coast Guard that he was ascertained that he was going to try and extract the vessel from the reef?

A Yes.

Q Do you have -- how do you square what he was telling the Coast Guard with what he was doing on that particular night, and your opinion that he was trying to keep it on the reef?

MR. COLE: Objection, speculation.

MR. CHALOS: I'm asking his opinion as to ...

(Whispered bench conference)

Q Let me pick up the thread again so I -- you've got the transcript of the transmission -- tape of the radio transmission between the vessel and the

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Coast Guard.

A Yes.

Q And I take it you read that Captain Hazelwood indicated to the Coast Guard that he was trying to extract the vessel from the shoal.

A Yes.

Q You said that based on what you observed in this situation, the testimony that you read and the actions that were taken, you believe that he was trying to keep the vessel on the reef.

A That's correct.

Q Well, how do you square the two?

A Well, the first conversation, I think at that time he really -- I think he really thought he was going to try and get the vessel off, and ...

Q Now, why would that be?

A Well, he had -- that was -- you know, not too long after the ship went aground, and I think that he thought that -- he didn't have a full evaluation of the condition of it at that time, and so I think that, you know -- a person has to remember that Captain Hazelwood is ...

THE COURT: Excuse me just a second. Counsel approach the bench please.

(Whispered bench conference)

1 Q (Mr. Leitz by Mr. Chalos:) Mr. Leitz, in
2 expressing the opinion that you're about to
3 express, that's based on your opinion and not on
4 something that you might have heard from anyone,
5 is that correct?

6 A That's correct.

7 Q Okay. Now, can you go on?

8 A Yeah. I think that, you know, you have to
9 kind of look at the Captain's seagoing
10 experience. He has a very good reputation as a
11 mariner, and he had never been ...

12 MR. COLE: Judge, I object to that. He has no
13 basis to say that.

14 THE COURT: Yeah, that's improper. You can
15 ask him his opinion, I want to make sure it's not based
16 on what Captain Hazelwood told him, what anybody else
17 told him, based on his review of the record here, and
18 what's been supplied to him. That's ...

19 MR. CHALOS: That's what I'm asking, Your
20 Honor.

21 THE COURT: But he's giving information that's
22 not based on the record.

23 Q (Mr. Leitz by Mr. Chalos:) All right, would
24 you just confine your answer to your opinion
25 based on what you reviewed in the record, that

1 is, Mr. Kunkel's testimony, the various things
2 that you reviewed as far as the engine orders and
3 the rudder orders, and your experience.

4 A Well, can I ask you a question? I spent, you
5 know, three and a half months with all the people
6 that were crew members of that ship and that have
7 worked -- do I have to ignore that?

8 Q No ...

9 MR. COLE: I'm going to object.

10 THE COURT: Okay. I'll tell you what, the way
11 we do this here is he asks questions and you give
12 answers, and I think we'll have to stick with that
13 format.

14 Q All right, let's try that one again, Mr.
15 Leitz.

16 A Okay.

17 Q Confine your answer to what you reviewed in
18 terms of testimony, exhibits, and your own
19 personal experience, either when you were on the
20 vessel and you saw with your own eyes, not what
21 somebody told you, and your experience in general
22 as a salvage master.

23 So my question to you is, Captain Hazelwood
24 is, based on your opinion, trying to keep the
25 vessel on the reef, but he's telling the Coast

1 Guard at about that same time that he's trying to
2 get the vessel off the reef. Do you have an
3 opinion as to why there's a difference between
4 the two?

5 A Yeah, well, okay. The first conversation I
6 think that he still thought that he could get the
7 thing off, I don't think he -- the severity of
8 the situation had sunk in. And by the time ...

9 Q Is that uncommon in these type of situations
10 ...

11 A No, it's not.

12 Q ... based on your experience?

13 A No, my experience, I've been on a lot of ships
14 where the masters have been very upset, in fact,
15 I was on one called the Kaptianos (ph) which was
16 a Greek ship. The captain locked himself in his
17 stateroom and wouldn't eat, and after two days we
18 had the Coast Guard come out and haul it away in
19 a basket. I mean, that's how upset he was. I
20 mean, he wasn't wild or anything, he was just
21 very, very upset. And I've seen -- that's an
22 unusual situation, but I've seen various degrees
23 of this type of trauma, if you will, many times.

24 Q All right. So go ahead with your opinion.

25 A Well, the second conversation -- he, I think,

1 mentally, in his mental state at the time, he
2 just absolutely refused to accept the fact that
3 he couldn't -- he didn't have a solution for it.
4 I don't think he'd ever been in a seagoing
5 problem before that he couldn't resolve, and here
6 he is faced with a situation that is, you know,
7 catastrophic, if you -- you know, and I don't
8 think that he wanted to announce to the world, to
9 the Coast Guard and to everybody else who was
10 listening on the radio that ...

11 (2853)

12 MR. COLE: I object to this, this is purely
13 speculation.

14 THE COURT: This has gone past the expertise
15 of this witness. Objection sustained as to relevance.
16 It's too speculative.

17 Q Okay. Now, was there anything that you
18 observed in the actions that the Captain took on
19 this particular night that would indicate that in
20 fact he was trying to get the vessel off the
21 reef?

22 A Absolutely nothing.

23 Q Did you say you read Mr. Vorus' testimony?

24 A Yes, I did.

25 Q The naval architect? Do you agree that the

1 four or five scenarios that he spoke about are
2 hypothetical?

3 A They're all hypothetical, yes.

4 Q Do you have an opinion as to -- well, let me
5 back up. Why do you say they're hypothetical?

6 A Because there was no chance in the world the
7 ship was going to come off. It would take
8 levitation to have got it off that night.

9 Q Do you agree or disagree with Mr. Vorus'
10 opinion that if the vessel came off by levitation
11 or otherwise, that she would have sunk within a
12 period of 75 to 90 minutes?

13 A I disagree.

14 Q Do you agree or disagree with Mr. Vorus'
15 opinion that the vessel's crew would have done
16 nothing if the vessel came off?

17 A I disagree with that also.

18 Q What is the basis of that?

19 A Well, the -- experienced tankermen are used to
20 changing the trim of the vessel by pumping
21 ballast from here to there, and around and what
22 have you, experienced seamen, and -- you know, I
23 can't believe that they'd sit there and let the
24 ...

25 MR. COLE: Judge, again, I'm going to object

1 as to purely speculation.

2 MR. CHALOS: This is based on his experience,
3 Your Honor, with actions of the crew.

4 THE COURT: I'm going to let it come in, Mr.
5 Cole.

6 Q (Mr. Leitz by Mr. Chalos:) Go ahead. You can
7 answer.

8 A Okay, where were we?

9 Q Well, you were saying that based on your
10 experience, the vessel's crew with the ship ...

11 A Okay.

12 Q ... starting to list would do something.

13 A Right. We've sort of evaluated the situation
14 of -- if it had levitated off the beach and was
15 floating there, the thing would have tended to go
16 down, list slightly to starboard, and go down by
17 the head. But with very minimal intervention of
18 the crew, this could have been stopped.

19 Q Well, hold on a second, let me get you a
20 model, and maybe you can explain to the jury what
21 you're talking about.

22 I'm showing you now what's been marked as
23 Exhibit 154. Let me -- all right. Now, would
24 you graphically show the jury what you're talking
25 about?

1 A Yeah.

2 Q Would you like to stand up and approach the
3 jury? Your Honor, is that all right?

4 THE COURT: Yeah.

5 A Well, anyhow, the ship had gone off of the
6 reef, and -- and this is hypothetical, it
7 couldn't possibly have done it, but if it had
8 gone off the reef out into the water, and assume
9 it was level to start with, then slowly the ship
10 would have tipped like this -- gone down at the
11 starboard side, which is this side, and down by
12 the head, so it would have tended to go like
13 that. But it would have eventually stopped at
14 about 12 degrees of list -- of list.

15 Now, if you -- pretend my arm is like a
16 teeter-totter, if you will. Anyhow, so this ship
17 was going down like this. We have buoyancy along
18 the port side, we have buoyancy back here ...

19 Q Why do you have buoyancy on the port side?

20 A Because the tanks are intact.

21 Q Okay.

22 A So now all we have to do to counteract this
23 tipping, and this is an oversimplification of it,
24 is to ballast back from here to number 4 port,
25 and also the port wing tank in the engine room,

1 or the after peak tank, which is back here, the
2 port engine room, wing tank is here, and number 4
3 port is right here. This -- what just -- very
4 little intervention, counteract this and bring
5 the thing back up, it's as simple as that. Just
6 like a teeter-totter.

7 Q And would that keep it afloat? The
8 counteraction, would that keep it afloat?

9 A Yes, it would.

10 Q How quickly could they ballast down number 4
11 port?

12 A I believe it would take about two hours to
13 completely fill it, and that would -- number 4
14 port, that's on the ballast system -- probably
15 something -- oh, an hour or so, take a little bit
16 longer to fill this port wing tank and the engine
17 room.

18 Q How about did you have occasion to look at the
19 valve system in the cargo control room?

20 A Yes, it's all electrically operated, so to do
21 any ballasting, like number 4 port, it's a matter
22 of pushing a couple of buttons. The valves are
23 operated from the control room, and the pumps are
24 operated from the control room. Ballasting the
25 engine room would -- you'd have to call the

1 engineer, and then -- that's controlled from the
2 engine room, but that's still a matter of a phone
3 call and the engine -- this is a very modern,
4 sophisticated ship, so all the stuff is really
5 automatic, not a matter of ...

6 Q Would you agree or disagree with the opinion
7 that as soon as the valves were open, the two
8 valves down number 4 port, the vessel would start
9 righting itself?

10 A Yeah, it would do -- ballasting number 4 port,
11 that's what this indicates here, isn't it?

12 Q Yeah, right.

13 A Would tend to start tipping this thing back,
14 using the engine room tanks would be even a
15 little bit more dramatic, because you have more
16 leverage, 'cause they're further back, it's like
17 a fulcrum, you know, lever. The other thing is,
18 is ...

19 Q How about number 4 starboard?

20 A 4 starboard was pumpable. The damage to it
21 was very small, we eventually patched it up at
22 the pumps, but -- easily take the water out of
23 that and hold it.

24 Q What was the effect of that?

25 A Well, it just gives it more -- to lever this

1 thing over, you've got some positive buoyancy in
2 here.

3 Q So the ship's crew could have pumped that tank
4 out if they wanted to, to straighten her out?

5 A Yeah. And -- that's right, and it would have
6 really been -- I think the crew could have --
7 would have done it instinctively, because if you
8 start to tip 'em down here, you know, an
9 experienced tankerman knows that if you put some
10 weight back here, the thing's gonna come back up,
11 and the interesting thing when we worked it out
12 was that whether you used forced port or
13 starboard -- or the port engine room wing tank or
14 the after peak, the effect was pretty much the
15 same. So you really couldn't miss, you could use
16 -- do all three things, and the net result is the
17 bow comes back up. You know, you ...

18 (3300)

19 Q Okay. You can resume your seat. Do you agree
20 or disagree with the opinion expressed by Mr.
21 Vorus that if they had put water in number 4 port
22 and the port ballast tanks in the engine room,
23 that the vessel would have sunk?

24 A No, absolutely not.

25 Q You don't agree with that?

1 A It wouldn't have sunk.

2 Q Was the possibility of pumping air into any of
3 these tanks feasible?

4 A It's possible that they could have thought of
5 it and done it, but I think it's a little bit too
6 difficult, I don't think that that's so feasible,
7 I don't -- also don't think it was probably
8 necessary, I think if they managed to straighten
9 the ship up that far, that they probably would
10 have gotten around to doing that after the
11 immediate crisis was over with, you know, more at
12 their leisure.

13 Q Okay.

14 A But this -- now you got to remember, this is
15 all assuming the thing could leap off the rock.

16 Q Which you don't believe ...

17 A No, I don't think so.

18 Q ... would have been possible.

19 A No.

20 Q Okay, lastly, there's been testimony that at
21 least 10, possibly 11 tanks in varying degrees
22 were damaged on this vessel. Does the fact that
23 you might have 11 tanks open on the bottom mean
24 that the vessel will automatically sink?

25 A Well, it depends where the 11 tanks are

1 located, and ...

2 Q Well, how about the 11 tanks on this vessel
3 that were holed?

4 A No, it doesn't necessarily mean that.

5 Q Would you explain why not?

6 A Well, because on a tank vessel, the top of the
7 vessel's closed up, so therefore, as it goes
8 down, it tend -- it will build air -- air
9 pressure, just by the act of sinking, creates air
10 pressure. In fact, for every 2.3 feet the thing
11 would go down, you can create one pound of air
12 pressure, which creates buoyancy, just like
13 inserting the air from the top. You can do it by
14 lowering the vessel in the water, has the same
15 effect.

16 Q Okay, I have no further questions at this
17 time. Thank you.

18 THE COURT: Take a recess. Don't discuss the
19 matter among yourselves or with any other person, don't
20 form or express any opinions.

21 (3429)

22 (Off record - 9:50 a.m.)

23 (On record - 10:10 a.m.)

24 THE COURT: Mr. Cole?

25 *

1 CROSS EXAMINATION OF MR. LEITZ

2 BY MR. COLE:

3 Q Mr. Leitz, you would agree that if Captain
4 Hazelwood was attempting to remove that vessel
5 from the reef, that was the absolute wrong thing
6 to do under the situation, would you not?

7 A (No audible response)

8 Q If he was attempting to remove that vessel
9 from the reef, that was absolutely the wrong
10 thing to do given the damage that his vessel had
11 sustained.

12 A I wouldn't have -- he shouldn't have tried to
13 remove it, no.

14 Q That was absolutely the wrong thing to do,
15 correct?

16 MR. CHALOS: He answered the question, Your
17 Honor.

18 THE COURT: Objection overruled.

19 Q That was absolutely the wrong thing to do,
20 correct?

21 A I don't think it -- absolutely would have been
22 strong, but it -- it wouldn't have been the
23 proper thing to do under the circumstances.

24 Q And if I wrote your quote down correctly, you
25 said there's absolutely no evidence that would

1 lead you to believe that he was trying to remove
2 that vessel from the reef. Correct?

3 A None of his actions indicated that he was
4 trying to remove the ship from the reef.

5 Q Well, when a person speaks, that's a type of
6 action, isn't it?

7 A Well, all I can -- that's just an opinion
8 based on what he was doing. Everything he did
9 indicates to me that there was no way that he
10 wanted to remove that ship from the reef.

11 Q And you've read a statement of his
12 conversation with the Coast Guard, is that
13 correct?

14 A Yes.

15 Q Have you listened to the tape?

16 A Yes, I have.

17 Q Well, I'm going to ask you to listen to it
18 again. Judge, I would ask to play the tape at
19 this time.

20 MR. CHALOS: Your Honor, I think it's improper
21 to sit and listen to it, unless there's a question and
22 he's trying to refresh his recollection or impeach him,
23 I think it's improper.

24 THE COURT: He said he listened to the tape,
25 Mr. Cole, what's the purpose of playing it again?

1 MR. COLE: I want him to evaluate it and make
2 sure it's the same tape that he listened to before.

3 THE COURT: Objection sustained.

4 Q (Mr. Leitz by Mr. Cole:) So when Captain
5 Hazelwood said, "We're working our way off the
6 reef," he didn't mean that.

7 A I don't think he did.

8 Q You mean you think he meant, by the words,
9 "We're working our way off the reef," "We're
10 working our way on the reef"?

11 A I mean, he had -- well, he wasn't working his
12 way anywhere, he was just holding it right there,
13 I don't think he was prepared to announce to the
14 world that he couldn't handle the situation.

15 Q Sir, he didn't say, "We don't know what we've
16 got here," he didn't say, "I'm trying to keep it
17 on the reef," he didn't say, "I'm trying to
18 figure out what we're trying to do," what he said
19 is, "We're working our way off the reef," didn't
20 he?

21 A He said that in the tape, but he told Mr.
22 Kunkel that "It looks like we're going to stay
23 here," in Kunkel's deposition -- testimony, he
24 said, "Looks like we're going to stay here." And
25 ...

1 Q Sir ...

2 A ... I think that that's probably more accurate
3 than what he said on the tape.

4 Q You think ...

5 A I mean, more accurate with respect to what he
6 was doing. I can only make a judgement from what
7 he actually did. You know ...

8 (3728)

9 Q He didn't say, "We're trying to keep on the
10 reef," he said, "We're trying to work -- we are
11 working our way off the reef," didn't he?

12 A Well, he said that in the tape, yes.

13 Q And then in the next sentence he said, "Well
14 -- " no, he said, "We've, uh, the vessel's been
15 holed and we're ascertaining, right now we're
16 trying to just get her off the reef." Correct?
17 In the next sentence.

18 A I think the man was upset, distraught, and
19 what have you. None of the things he did -- if
20 he ...

21 MR. COLE: Judge, I move to strike as non-
22 responsive.

23 THE COURT: All right, the question was, "Did
24 he make that statement on the tape?"

25 A Oh, oh yes, he made the statement.

1 THE COURT: It would call for a yes or no
2 answer. The motion's granted, disregard the last
3 answer.

4 Q (Mr. Leitz by Mr. Cole:) He didn't say in the
5 next sentence, "Right now we're trying to get her
6 back on the reef," did he?

7 A No, he didn't say that.

8 Q He didn't say, "Right now we're trying to keep
9 her on the reef," did he?

10 A No.

11 Q He didn't say, "Right now she's starting to
12 slip and I'm taking action to keep her on the
13 reef," did he?

14 A No.

15 Q He said, "We're trying to just get her off the
16 reef," correct?

17 A Yes.

18 Q And then there's a conversation where Captain
19 -- or Commander McCall says something, and
20 Captain Hazelwood answers him again. And he
21 says, "We're, uh, pretty good shape right now,
22 stability-wise, we are just trying to extract her
23 off the shoal here." Correct?

24 A Yeah.

25 Q He didn't say, "We're, uh, just trying to keep

1 her on the shoal here," did he?

2 A No.

3 Q He didn't say, "We're, uh, just trying to put
4 her back on the shoal because we're starting to
5 slip," did he?

6 A He didn't say that.

7 Q He said, "We're just trying to extract her off
8 the shoal," correct?

9 A Yes.

10 Q What does "extract" mean to you, Mr. Leitz?

11 A Pull out.

12 Q Pull out, what do you mean?

13 A You know, back off, or ...

14 Q Get off, you mean?

15 A ... remove.

16 Q Remove?

17 A Like a tooth. Extract, pull out.

18 Q Get off a reef, maybe?

19 A Yeah.

20 Q And then he goes on to say, "And once we get
21 underway, I'll let you know." He didn't say,
22 "And once we get this situation stabilized, I'll
23 let you know," did he?

24 A No.

25 Q He didn't say, "Once we get this slippage

1 problem, and I'm worried about my vessel, I'll
2 get back to you." He didn't say that, did he?
3 A No.
4 Q He said, "Once we get underway, I'll get back
5 to you." Correct?
6 A That's right.
7 Q And what does "once we get underway" mean to
8 you?
9 A That means that the ship is steaming away
10 someplace.
11 Q And that's an action that would indicate he's
12 trying to get off the reef, isn't it?
13 A Well, his -- his actions indicated he wasn't
14 trying to get off the reef, no matter what he
15 said.
16 Q Well, those are words that would indicate he's
17 trying to get off the reef, right?
18 A I -- I understand that. But the things that
19 he did are not the things you would do to extract
20 the vessel from the reef.
21 Q We'll get to that. I'll let you explain that
22 ...
23 A Deeds, not words.
24 Q ... but I want to talk about these things
25 right here. I want to talk about his words

1 first. And his words were, "Once we get
2 underway, I'll let you know." Correct?

3 MR. CHALOS: He asked that twice, Judge.

4 THE COURT: Yes, let's go on, Mr. Cole.

5 Q Do you think, as the other defense witness
6 said, that Captain Hazelwood was losing his
7 senses, cracking up at this point?

8 MR. CHALOS: Objection, Your Honor, I don't
9 think that was the testimony of the other witness.

10 THE COURT: Well, it was something like that.
11 If that's your objection, objection overruled, ask the
12 question.

13 Q (Mr. Leitz by Mr. Cole:) Is that what you
14 think?

15 A I think that's probably puttin' it a little
16 strong, I think the man was highly distraught, he
17 was upset, and he just simply was not prepared to
18 announce to the world that he couldn't handle the
19 situation. The man's been going to sea, or went
20 to sea for years, and he had never been in a
21 seagoing situation that he couldn't handle, and
22 I've seen it happen to other captains, I've had
23 it happen to myself, one ...

24 Q I'm sorry, all I asked you was do you ...

25 MR. CHALOS: Judge, he invited that answer, he

1 was getting the answer, he didn't like it, so he
2 interrupted. Now, I would ask that the witness be
3 allowed to finish his answer.

4 THE COURT: I think the witness finished the
5 answer. Go on to the next question.

6 (4066)

7 Q Do you think he was trying to tell the Coast
8 Guard what they wanted to hear?

9 A I don't think it was necessarily that, even.
10 I think that he -- he just didn't want to admit
11 to himself, and to the world, that he was in a
12 situation that he can't handle. The guy's a
13 professional mariner, you know, and he'd never
14 been in a situation in his life that he couldn't
15 handle, you know, heavy weather, whatever. With
16 a ship.

17 I don't know that he had ever been involved in
18 any kind of a casualty before, you know, I don't
19 know. But I've seen other captains behave pretty
20 much the same way. You know, they just -- they
21 almost perform by rote, they do all of the right
22 things, and then their mind -- you know, they've
23 got a mindset, or a mental block against
24 admitting that situations are beyond their
25 capability, they haven't got the equipment, they

1 haven't got the personnel, you know, they can't
2 really cope with it.

3 Q He then said, "I think we've done major
4 damage, it's kind of done, we kind of rocked and
5 rolled over it, and we're just kind of hung up in
6 the stern here." Correct?

7 A Yes.

8 Q "And we're just -- we'll -- we'll -- we're
9 just -- uh, we'll drift over it." Correct?

10 A Yes.

11 Q And he didn't say, "We're gonna hang right
12 here on this reef and wait out until you guys get
13 out here," did he?

14 A No.

15 Q And he didn't say, "We're slipping and I'm
16 taking action right now to try and keep us on
17 this reef," did he?

18 (Tape 3678)

19 A No.

20 Q And he didn't say, "I'm doing everything I can
21 to save this ship and keep us on the reef," did
22 he?

23 A He didn't say that.

24 Q He said, "We're just kind of hung up in the
25 stern here, we'll just, uh, we'll drift over it."

1 Correct?

2 A Yeah.

3 Q Now, did you listen to any of the statements
4 of the crew members that were on the bridge that
5 evening?

6 A Well, the only deposition -- or the testimony
7 I read was Kunkel's, as far as crew members go.

8 Q And then you were aware that Mr. Kunkel,
9 before testifying in this case, had told the FBI
10 that he thought the Captain was trying to get it
11 off the reef, aren't you?

12 A I'm not familiar with that at all. I didn't
13 see that.

14 Q You didn't see that in his testimony. Are you
15 aware that Mr. Kagan, when he was asked prior to
16 coming to trial, told people that he was -- that
17 the Captain was trying to get it off the reef?

18 MR. CHALOS: Your Honor, I object to that,
19 they testified here, they were examined by Mr. Cole as
20 to those statements, they explained those statements, I
21 think it's improper to question this witness on a
22 statement that's already been explained in court.

23 THE COURT: I think Mr. Cole's entitled to
24 cross-examine this witness on his opinions based on the
25 information he had available, and whether he reviewed

1 it or not. Objection overruled.

2 Q Did you review any of the statements of Mr.
3 Kagan?

4 A No, I didn't.

5 Q Did you know that he said that -- in his
6 statement that Captain Hazelwood was attempting
7 to get the vessel off the reef?

8 A No, I don't know anything about what Mr. Kagan
9 said.

10 Q How about Mr. Cousins? Did you review any of
11 his statements?

12 A No.

13 Q Well, did you know that in his statements he
14 said that Captain Hazelwood was attempting to get
15 it off the reef?

16 (0090)

17 MR. CHALOS: Judge, I object, Mr. Cole's
18 mischaracterized two statements that didn't say
19 anything like that. I don't know where he's getting
20 this information.

21 THE COURT: First of all, when the witness
22 says he didn't review the statements, it's going to be
23 really unlikely that he was aware of what the statement
24 said. So I'm going to sustain the objection.

25 Q Were you aware that Captain Hazelwood gave a

1 statement to the State Troopers?

2 A No.

3 Q Well, let me let you read it. You didn't read
4 that before you gave your opinion that he was
5 trying to get on the reef?

6 A Now, let me get this straight. I am basing my
7 opinion solely on his actions, not on a single
8 word he said. Everything that he did is what a
9 prudent seaman would do to keep the thing on the
10 reef, I -- if I was in his shoes and I was out
11 there and I wanted to keep the ship ...

12 MR. COLE: I object as non-responsive.

13 THE COURT: Mr. Leitz, just answer the
14 question if you can. You're volunteering things that
15 are not responsive to the question. The question was
16 did you review Captain Hazelwood's statement before
17 giving your opinion.

18 A No.

19 Q (Mr. Leitz by Mr. Cole:) I would ask you to
20 read that paragraph right there.

21 (Pause)

22 A Well, I think that that says exactly what I'm
23 talking about. He says he tried the engines, I
24 think that ...

25 Q Excuse me, let me read this for you. It says,

1 does it not, "I tried the rudder and engines for
2 a few minutes to see if we could extract it from
3 the situation." He said "extract it," right?

4 A Yeah.

5 MR. CHALOS: Your Honor, if he's going to
6 read, I request that he read the whole thing.

7 Q I'm going to read the whole thing. I'll get
8 to the whole thing. He said "extract," right?

9 A I think, after the initial grounding, that he
10 -- he -- he did -- he had that in his mind, that
11 he thought he could get the thing off, and I'm
12 -- that's just exactly what it says, it doesn't
13 say when he said that, it said that he -- then he
14 decided that he -- that it was best not to get it
15 off, so he didn't get it off. I think that's
16 just exactly what that says.

17 Q He says, doesn't he, "I tried the rudder and
18 engines for a few minutes to see if we could
19 extract it from the situation, but then I got my
20 faculties about me, I was a little upset, of
21 course, but then I thought about it, and driving
22 her off might not be the best way to go, because
23 it just -- exacerbate the damage, so I just
24 stopped the engines."

25 A That's exactly what he did.

1 Q Okay. (Pause) And he stopped the engines at
2 1:41, correct?

3 A Yeah.

4 Q And he was maneuvering the vessel during the
5 time up to 1:41, correct? Yes or no, please.

6 A No.

7 MR. CHALOS: Your Honor, I object to that,
8 there's another indication of an engine stop, I think
9 the witness is trying to explain that.

10 THE COURT: The witness -- if he can answer
11 the question yes or no, to go ahead and answer the
12 question yes or no, if he can answer it.

13 A I forgot what you asked exactly.

14 Q He was maneuvering the vessel between 12:38,
15 when he started the vessel, and when he stopped
16 it at 1:41, wasn't he?

17 A Yes. At ...

18 Q You want to see a course recorder?

19 A I've looked at the course recorder. Yeah, he
20 was operating -- he stopped the engine at 20
21 minutes after midnight, so nine minutes after he
22 stranded, he stopped the engine, four minutes
23 -- or 16 -- he sat there with the engine stopped
24 for 16 minutes, which is about the time of the --
25 I think about the time of the first conversation

1 with the Coast Guard that said he was gonna try
2 and get it off, and then he operated the -- you
3 know, stopped for 16 minutes, he operated -- he
4 started dead slow, operated dead slow for four
5 minutes, came up to slow for four more minutes,
6 operated at half for eight minutes, you know,
7 which -- which is very very little power, and it
8 was all ahead, and I have no doubt that he -- in
9 the beginning he thought he could get it off, he
10 told the Coast Guard that ...

11 Q Do you know what time he told the Coast Guard
12 that? Do you know what time he was talking when
13 he said, "We're holed and we're ascertaining
14 right now, we're trying to get her off the reef"?
15 Do you know what time that was?

16 A In which conversation?

17 Q This conversation ...

18 A The one was at -- I think 26 minutes after
19 midnight, and the other one was at 1:07, are
20 those the conversations? 1:07. That's the
21 second conversation, I tried to explain what I
22 feel about that already, or what I think about
23 that.

24 Q And at 1:07 he's telling the Coast Guard he's
25 trying to get off the reef, correct? Correct?

1 A Yeah, he ...

2 Q Is he telling the Coast Guard?

3 A Yeah, he said that.

4 Q And his engines have been running for nearly
5 30 minutes, correct?

6 A Yes.

7 Q And they've been at full ahead for nearly 20
8 minutes, correct?

9 MR. CHALOS: Your Honor, I object. Full ahead
10 maneuvering.

11 Q Full maneuvering speed for 20 minutes,
12 correct?

13 A Yes.

14 Q And he's telling the Coast Guard that he's
15 trying to get off the reef, correct?

16 A Well ...

17 Q Correct or incorrect?

18 A He -- he couldn't have got off the reef by
19 going ahead, that's all that's to it.

20 Q But he didn't know that, did he?

21 A Well, I think he probably did, because the
22 ship was heading in that direction, and there was
23 enough interference with the bottom to completely
24 stop the ship at some 10 knots, which is one heck
25 of a lot of force. You know, full ahead

1 maneuvering will -- most of his -- quite a bit of
2 his time he was going dead slow, slow, and half,
3 which is even less power, I didn't work out the
4 actual force, but at -- at slow -- or at -- full
5 maneuvering's only 112 tons.

6 Q So you're saying only a little bit of the time
7 he was going full ahead? Is that what you're
8 saying?

9 A For about an hour. Or I think it is.

10 Q He started the engine up at 12:36, right?

11 A Dead slow.

12 Q Can you read this? This ...

13 A I've got it written right here.

14 Q Dead slow at 12:36, right?

15 A Yes.

16 Q And he goes to slow ahead at 12:40, correct?

17 A That's correct.

18 Q So he had that on for two minutes, correct?

19 A Four minutes.

20 Q Four minutes. And then he goes to half ahead
21 at 12:48, correct?

22 A That's correct. Four -- or eight more minutes
23 at half.

24 Q So he's been going 12 minutes total, correct?

25 A Yes, all working ahead.

1 Q And then, at 9:56, he goes full ahead,
2 correct?

3 A That's right.

4 Q So he's been running it for a total of 20
5 minutes, correct?

6 A Yeah, but at very low speeds, and at very low
7 power settings.

8 Q And then for the next 40 minutes, he runs it
9 at full maneuvering speed, correct?

10 A That's right. This is the most critical time
11 -- if it was gonna slip off, it would slip off
12 nearer to high water, so he just -- in my
13 opinion, was just holding it there.

14 Q Okay. You say he had to know that the vessel
15 was on a rock somehow, right?

16 A Yeah.

17 Q Now my -- not the greatest artist ... (Pause)
18 I want you to assume that this -- this is a
19 hypothetical. This is a vessel and it's on a
20 rock right there. Okay? And that rock goes to
21 this point right here. And this is what the tide
22 is. Correct? Right here, let's say it's this
23 level right here.

24 A Two inches?

25 Q Two feet. Okay? And let's say high tide is

1 going to go up to four feet. And this rock is
2 three feet. Okay? You understand the scenario
3 so far?

4 A Yes. This is a hypothetical, we're not
5 talking about the Exxon any more.

6 Q A hypothetical, right. Uh-huh (affirmative).

7 A Okay.

8 Q You understand it?

9 A Right.

10 Q And if this vessel -- when the tide goes up
11 from two to four feet, this vessel will rise.
12 Correct?

13 A That vessel would, but the Exxon Valdez
14 wouldn't.

15 Q Just this vessel right here would rise,
16 correct?

17 A Yeah -- you're talking about a hypothetical
18 vessel.

19 Q That's right. That's right.

20 (0514)

21 MR. CHALOS: Your Honor, if we're talking
22 hypothetically, it has no application to this case, I
23 object to the relevancy.

24 THE COURT: It's overruled, let him cross-
25 examine the witness.

1 Q (Mr. Leitz by Mr. Cole:) Okay? Now, I want
2 you to explain to the jury under this
3 hypothetical how going forward will keep you on
4 that rock, this three-foot rock, when it goes up
5 to four feet.

6 MR. CHALOS: Your Honor, I object, there's no
7 foundation that in this particular case, the Exxon
8 Valdez, that the Captain knew all of these factors and
9 was maneuvering the vessel forward to keep it on -- I
10 think it sets several false premises, and then it asks
11 for a conclusion as to what happened in this case.

12 THE COURT: Objection is noted, you can ask,
13 the question stands.

14 A I don't think that this has a whole lot of
15 connection with the Exxon Valdez, personally.

16 Q Sir, all I'm asking is that you answer my
17 question.

18 A Well, first -- first off, what kind of a
19 vessel is it, are these -- does this say that one
20 tank here is holed, and all the rest of the tanks
21 are intact?

22 Q That's right.

23 A Okay, in that case, the -- the ship would
24 lift. In the case of the Exxon Valdez, there was
25 no buoyancy down this side, so the vessel cannot

1 lift.

2 Q Sir, would you just tell me how going forward
3 with the rising tide under this scenario will
4 keep that ship on that rock?

5 A Well, it won't in that scenario.

6 Q Thank you. Now, you testified that according
7 to the soundings -- I'd like to talk about these
8 soundings for a minute.

9 A Uh-huh (affirmative).

10 Q These -- what's been marked as Defendant's
11 Exhibit AK is soundings that you directed be
12 taken around the vessel.

13 A That's correct.

14 Q Correct? And Exhibits CK were soundings that
15 you were told were done at 9:45 at 3/24, correct?

16 A That's right.

17 Q And when you were in Valdez, you asked them
18 for every piece of information that they had
19 concerning the vessel, correct? Where -- how it
20 was sitting, because that was important to you,
21 correct?

22 A Yes.

23 Q And did you receive any soundings that the
24 crew made itself?

25 A No.

1 Q Now, this right here, this wasn't available to
2 Captain Hazelwood when he was attempting to
3 remove the reef at 1:40 on the 24th, was it?

4 MR. CHALOS: Your Honor, I object, I don't
5 think there's been any evidence that Captain
6 Hazelwood's trying to remove the reef.

7 Q Remove the vessel from the reef.

8 THE COURT: And when you refer to the exhibit,
9 why don't you identify it for the record
10 (indiscernible) know what you're talking about?

11 Q Exhibit AK wasn't available to Captain
12 Hazelwood that evening, was it?

13 A No. No, that was done on April 2, I believe.
14 Yeah.

15 Q And you saw the chart where the vessel was
16 located, correct?

17 A Yes.

18 Q And you saw the plot where the vessel was
19 located, correct?

20 A Yes.

21 Q And that was right about there, where it's
22 marked on this photograph, which has been marked
23 for identification as Plaintiff's Exhibit Number
24 29. Correct?

25 A Yes.

1 Q And what's sitting directly behind that chart,
2 what kind of fathom marker?

3 MR. CHALOS: Your Honor, I object to the
4 characterization of directly behind it, I think the
5 evidence has shown it's between a quarter of a mile and
6 a half mile behind it.

7 THE COURT: Well, now we know that, so go
8 ahead, Mr. Cole.

9 Q What fathom marker is right behind that?

10 A Six fathoms.

11 Q That's a six right there?

12 A Are you looking at that?

13 Q That right there, right.

14 A Looks like a six to me.

15 Q Okay. Six fathoms wasn't enough to float this
16 vessel, for this vessel to float on, was it?

17 A No, but I -- the soundings we took didn't show
18 six fathoms right behind the ship.

19 Q Six fathoms is 36 feet, correct?

20 A That's right.

21 Q This vessel's drafts were over 50 feet,
22 correct?

23 A That's right.

24 Q Well, you indicated that people who are
25 grounded and want to get off the rock would go

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astern, correct?

A If they impacted going forward, it -- very unlikely that you would go forward to get off, it'd be like running a car into the side of a building and think you can get off -- get away from the building by just putting it in drive, instead of reverse, it's the same thing, even though you can't see the rock from the surface of the water.

Q Captain Hazelwood thought his vessel was aground astern, didn't he?

A Yes.

Q And you would still think that a person who thinks they're aground astern would go backward?

A Absolutely.

Q Absolutely?

A Well, to go forward over a rock would destroy the remaining -- the tanks -- he knew that the tanks aft of the number 5 starboard and center were still intact, he had sounded the double-bottom tanks under the pump room, they checked the pump room bilges, the engine room, the engine room bilges, the engine room double-bottom tanks, and what have you, and all that was tight. If you drove the ship ahead, you would risk ripping

1 all that open and perhaps destroying your
2 propeller and rudder and everything else, you
3 just wouldn't do that.

4 Q You wouldn't do anything, would you? Because
5 anything you do is a risk until you assess your
6 condition, correct?

7 (0744)

8 A Well, yes, you would do a lot of things.

9 Q You'd do a lot of things, but you wouldn't
10 move your ship until you were sure of the
11 consequences of what would happen ...

12 A No.

13 Q ... if you moved your ship, correct?

14 A If -- if you know the direction that the ship
15 goes aground, and you are worried about slipping
16 back off, he had no way of knowing how impaled he
17 was, or exactly where he was impaled, but he knew
18 that there was enough resistance going forward
19 that you can't move the ship, 'cause the
20 resistance that the ship encountered stopped the
21 ship. If he -- if he really wanted to get it
22 off, he would have had to back up, and I think
23 it's completely obvious.

24 Q So what you're saying is, if this is your
25 tanker, and you think you're aground astern, back

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here ...

A No, you -- you're not -- this thing is an absolute oversimplification that has no bearing on the situation. If he -- the way that he would have thought that he was aground aft is by the damage that -- information from the cargo control room. He knew that there was no -- that there was damage back aft from the readings from the cargo control room. So it isn't clear back here on the back end like you've got that thing shown, it's quite a bit forward of that.

Q "We've just kind of hung up in the stern."
What does that mean to you, that he's hung up?

A Well, kind of hung up in the stern, I don't know, I suppose anything from about here on back you could probably say that about. The Exxon Valdez has a fathometer that hooks to a recorder on the stern, and it's a simple thing to check it. It wouldn't be back -- I don't know just exactly where the transducer's at, but that -- there was good water underneath the stern of it, and that was easily -- information easily obtainable, because it went through a recorder, so I suspect that -- and then from the other information he had, which was from Kunkel, that

1 -- you know, 5 was ruptured, you know, 4 was
2 making water, 5 was losing oil, so I suspect that
3 he thought that the vessel had come over the rock
4 and stopped about here.

5 Q Okay. Just leave your hand right there, and I
6 want you to back that vessel up over your hand.
7 Keep going.

8 A Yeah.

9 Q That's what you say -- somebody really wanted
10 to get it off the reef, that's what they'd do.

11 A That's what you'd have to do.

12 Q Now, when you got there on the 26th -- let me
13 rephrase that. You found out about this on the
14 25th, correct, on a Saturday?

15 A That's when I was hired, I knew about it from
16 the morning paper on Saturday, but I -- they
17 called me about 6:00 in the evening on Saturday.

18 Q Well, I'm sure they told you that several of
19 the tanks had been holed.

20 A They told me exactly which tanks were holed.

21 Q And when you heard that, you knew that this
22 vessel had suffered major structural damage,
23 didn't you?

24 A Yes.

25 Q You knew that this was a catastrophic event.

1 MR. CHALOS: Objection, Your Honor, to the use
2 of the word "catastrophic." It's all relative.

3 THE COURT: I think there's a better term. Go
4 ahead.

5 Q You knew that this was a catastrophic event,
6 didn't you?

7 A I knew it was a serious event.

8 Q You knew that this vessel was in bad shape.
9 Right?

10 A Yes.

11 Q You didn't have to have a computer to tell you
12 that, you knew it just from the information you
13 got on the phone, right? On how the holes were
14 tanked? How the tanks were holed, right?

15 A How -- well, that's kind of an
16 oversimplification, because I was merely told
17 which tanks were holed, I didn't know at that
18 time the size of the hole in the tanks, so that
19 would change the degree somewhat, you know, if he
20 had a giant hole on one tank and a small rip in
21 the next tank that's easily patchable, that's a
22 different situation -- course, I'm looking at it
23 from a salvage point of view.

24 Q You knew that it was major damage that had
25 been done, though, based on what you were told?

1 A Yeah, vessels that go on the rocks generally
2 have serious damage.

3 Q Tanker captains know that too, don't they?

4 A Yes.

5 Q And the operation that you were involved in
6 was the operation of salvaging this vessel,
7 correct?

8 A I directed the salvage of the vessel, that's
9 correct.

10 Q And when you -- one of the first things you
11 did when you came into town is that you ordered
12 that all the slider valves be closed, correct?

13 A I did not.

14 Q You did not.

15 A No.

16 Q When did you do that?

17 A We didn't close the slider valves until the
18 morning we refloated the vessel, and there's a
19 reason for that. While the lightering operation
20 was going on, the tanks had to be open to get the
21 pumps into 'em. And you got that reason why it
22 wouldn't do any good to -- to close the starboard
23 ballast, 'cause the tanks are opened anyway.

24 The other thing is with all the -- we didn't
25 want to move the ship until we had the lightering

1 complete. If a person, for example, would have
2 closed the slider valves and had all the
3 Butterwick (ph) openings closed, and the access
4 trunks and ullage openings and everything closed,
5 let's say you did all that at low water. The
6 ship would -- would try to float. And it'd be
7 prematurely, before you had all the -- before you
8 were ready, or had all the lightering done.

9 So I -- if you want to keep it on a reef, you
10 have to keep it ventilated so the water can
11 freely come in on the increasing tide and freely
12 go out on the ebb tide.

13 Q There's also some problems with buildup of
14 petroleum fumes, isn't there, when you close
15 those valves?

16 A Yes.

17 Q And I know that it took several days before
18 you finally compiled a plan to get this vessel
19 up, correct?

20 A No, I wrote -- I started writing the plan on
21 Sunday after I got all the basic information, it
22 was completed on Monday.

23 Q And ...

24 A And then it was a matter of taking the plan,
25 you know, step by step and walking through it,

1 you know, filling in the blank squares and doing
2 the necessary calculations, in the meantime the
3 -- the Exxon people were -- and a lot of outside
4 contractors were pumping the oil off.

5 Q And -- but it took several days in order to
6 enact your plan, correct?

7 A Well, the plan -- the actual salvage of the
8 ship could have probably been done in about five
9 days, if -- without considering the matter of
10 taking the oil off. In fact, that was my
11 recommended procedure, that we pump off enough
12 oil to establish a water block in all tanks,
13 refloat the ship, and then take the remaining oil
14 off of it afterwards, but it was Exxon's attitude
15 that they wanted to get that oil entirely out of
16 harm's way, you know, that they were -- you know,
17 afraid that if anything went wrong, that we could
18 have more spill.

19 So that was just a management decision there,
20 so it could have been done as early as five days
21 probably after the casualty, whereas actually we
22 took it off on the -- when all the oil was
23 removed, as a safety -- as a safer way to go,
24 more detrimental to the damage on the ship, but
25 safer from a pollution standpoint.

1 Q When you lifted the vessel off, basically what
2 you did is you let nature lift it off, you filled
3 it up with air and made a kind of a bubble, and
4 then the high tide came up and lifted it right
5 off the rock, right?

6 A A little more complicated than that. We ...

7 Q That's in simple terms, right? Without going
8 into a great deal, is that a simplification of
9 what you did?

10 (1108)

11 A No, we pumped gas into the various tanks to
12 minimize the stresses on the vessel. The final
13 bit of lift was done as you suggest, but all of
14 the tanks were preloaded to various degrees to
15 release stress, and the tide supplied about the
16 last pound of pressure, the final pound of
17 pressure was applied by the rising tide.

18 Q You waited till high tide, correct?

19 A No, we started the can -- an hour and a half
20 before low tide, sealing up various tanks in a
21 sequence, and prepressurizing certain tanks to
22 -- all the tanks have -- in the final analysis,
23 all the tanks have different pressures in them.
24 That was to relieve the stress on the ship. A
25 tank with higher pressure has more lift to it

1 than one at a lower pressure, so you can actually
2 adjust the stress on the ship by adjusting the
3 pressures in the tanks.

4 So the tanks that required a higher pressure
5 were preloaded to that higher pressure, and it
6 got to the point where all the tanks that needed
7 to be pressurized were automatically pressurized
8 by the tide for the final pound of pressure,
9 which come -- came upon the vessel absolutely
10 uniformly. So it was gently done, if you will.

11 Q But it was lifted up by the rising tide,
12 correct?

13 MR. CHALOS: Your Honor ...

14 A Only the final ...

15 MR. CHALOS: ... I think that answer's been
16 explained, and I think Mr. Leitz explained exactly how
17 the ship was prepared before it was lifted up, and he
18 explained also that the final pound was supplied --
19 pressure was supplied by the tide.

20 Q I'm just trying to -- I'll rephrase the
21 question. Mr. Leitz, when this vessel finally
22 left the rock, wasn't it with the rising tide,
23 correct? They weren't going -- the tide wasn't
24 going down when you were pumping the air in, or
25 when you had it ready to lift off, it was lifted

1 up with a combination of your air and the rising
2 tide.

3 A That's right, we needed the -- we needed the
4 higher water in order to get the ship to clear
5 the rock, but the plan was initiated about an
6 hour and a half before low water, and we worked
7 through low water, and -- and about 45 minutes
8 into high water, which would be about the end of
9 -- oh, I mean low water, excuse me -- about 45
10 minutes past low water, with low water, which
11 would be about the end of low water slack,
12 everything was in place and repressurized. Then
13 we waited for the tide to pick the ship up.
14 That's correct.

15 Q You waited for the tide to pick the ship up,
16 right?

17 A Yeah, it needed more water.

18 Q Okay. And that was at a high tide. When it
19 lifted off ...

20 A No, it was not.

21 Q Okay.

22 A It was about half tide.

23 Q You indicated that the damage that you
24 observed to the Exxon Valdez was mostly caused by
25 the grounding, correct?

1 A Well, it's -- there's really eventually two
2 types of damage. The major damage was caused by
3 the grounding. The turn of the bilge on the
4 starboard side was caused by the ship rocking up
5 and down on the subsequent tides, you know, the
6 tide would cause -- now this is a period between
7 the time that the ship grounded and the time we
8 eventually took it off, every -- every high
9 water, the port side would lift, and low water
10 it'd come back down, that rocked it on the other
11 side.

12 On the initial surveys by divers of the port
13 side, there was no damage to the port -- turn of
14 the bilge, the radius plate, and the corner right
15 here -- actually on 6 -- this side of the ship,
16 right up in here. This is the radius plate in
17 here -- turn of the bilge -- anyhow, the thing
18 -- this didn't start deteriorating until about
19 the fourth or fifth day, when the divers started
20 -- they wanted to watch this, because we were
21 afraid of fractures developing up the side. You
22 know, we would have had to do something earlier,
23 if we started getting in trouble with the hull
24 fracturing, you know, if this turning failed, and
25 fractures started propagating vertically ...

1 MR. COLE: Judge, I move that we strike, non-
2 responsive.

3 THE COURT: What was your question, Mr. Cole?

4 MR. COLE: My question was, major damage was
5 caused by the grounding.

6 MR. CHALOS: I think the witness was
7 explaining how the damage was caused.

8 THE COURT: I think Mr. Cole asked him if he
9 had not testified that the major damage was done by the
10 grounding, and that would call for a yes or no answer.
11 If you can't answer yes or no, you tell Mr. Cole that,
12 and maybe he'll let you explain it, but try to confine
13 your answers to the questions.

14 A I'm sorry, Your Honor. I get kind of wound
15 up, I apologize.

16 Q (Mr. Leitz by Mr. Cole:) You did not see the
17 damage that was done by the grounding itself,
18 because the only -- well, let me strike that, let
19 me rephrase it. Some crushing damage was done on
20 the first low tide on March 24 at 8:30, correct?

21 A Yes.

22 Q And no one saw the damage that was done, or
23 how the vessel looked, prior to that time.
24 Correct? That you're aware of ...

25 A Prior -- you mean prior to the following low

1 water?

2 Q Yeah.

3 A No.

4 Q Divers didn't get out there till that night,
5 on the 24th, correct?

6 A I'm not sure exactly what time the divers -- I
7 mean, there were local divers, and that's before
8 I got there, so I'm not exactly sure what time
9 for sure they would have done.

10 Q But nothing that you saw showed you any of the
11 damage that was done prior to the low tide on
12 March 24 at 8:30.

13 A No, there would be no way anybody could get
14 that information.

15 Q And that crushing -- or the initial low tide
16 did cause some crushing damage, correct?

17 A It no doubt did.

18 Q And that crushing damage would have destroyed
19 evidence of initial damage that had been done to
20 the grounding, correct -- at the grounding,
21 correct?

22 MR. CHALOS: I object, Your Honor, that calls
23 for absolute speculation.

24 THE COURT: The witness can answer that, he's
25 been qualified for these kind of judgements.

1 A Well, the -- the original collision with the
2 rock caused massive structural damage, so that
3 the whole structure is weakened, so there's no
4 question that the low water would have aggravated
5 the condition.

6 Q And would have -- and the crushing caused the
7 loss of -- crushing prevented us from seeing some
8 of the damage that was done in the initial
9 grounding, correct?

10 (1405)

11 A I kind of think the extent of damage probably
12 was still there, it -- it may -- it would be
13 pushed straight in probably further, but I think
14 as far as the major fractures and that type of
15 thing, that was probably still the same.

16 Now, you got to remember also that we cut a
17 lot of plates out of that thing, so I don't know
18 just exactly what spot you're talking about, but
19 in order to take it down the ocean, we had to
20 trim it, and then we had to trim it some more to
21 get in the dry dock and that type of thing, so I
22 don't know what you -- what exact spot you're
23 referring to.

24 Q Let's say between section 3 and 2, where it
25 was sitting on the rock. That's about where it

1 was sitting on the rock, right?

2 A No. Well -- yeah, that's -- if the major part
3 of the rock was in the way of number 2, there's
4 only three frame spaces -- I think that when
5 everyone went down and looked at it in the dry
6 dock, the plate was peeled back off of 3
7 starboard for quite a ways, but that happened at
8 sea. There were only three frame spaces, which
9 are 16-foot frame spaces, that's 48 foot at the
10 forward end, number 3 starboard was affected up
11 there. The rest of it was caused by sea action,
12 while we were underway, and we had to trim that
13 off on purpose off of San Diego.

14 Q Now, any damage that would have been caused
15 due to the rudder orders by Captain Hazelwood
16 would have been in the area of when -- where the
17 rock -- where the ship was grounded on the rock,
18 correct?

19 A That's correct.

20 Q And any damage that would have been sustained
21 at that time would have been in the area where
22 the crushing effect occurred from the low water,
23 correct?

24 A Yes.

25 Q And so any evidence of any damage that Captain

1 Hazelwood did would very possibly have been lost
2 by that crushing effect, correct?

3 MR. CHALOS: I object, Your Honor, this is all
4 speculation, there's no evidence that any damage was
5 done, or was caused by the use of the rudder or the
6 engine. Mr. Cole is asking the witness to speculate as
7 to the type of damage, the extent of damage, and what
8 might have happened to it.

9 THE COURT: Objection overruled. You can
10 answer the question.

11 A Well ...

12 Q Sir, let me ask the question again.

13 A Yeah, please.

14 Q Any evidence of damage that was caused by
15 Captain Hazelwood's rotating -- turning the
16 vessel that morning very likely would have been
17 lost by the crushing effect that occurred at 8:30
18 in the morning at low tide, correct?

19 A Yeah, as well as -- yeah -- I think the damage
20 would have been minimal, but you're right, it
21 would -- it would be obscured by the crushing
22 effect, and also it would have been obscured by
23 the fact that the ship turned some 14 degrees on
24 Sunday and was pushed back with tugs, which is
25 also a rotating effect, so I don't know how you'd

1 ever separate what caused which crack or dent.

2 Q Did you see any evidence of rotation when you
3 were in Valdez looking at it, or in San Diego
4 looking at it in dry dock?

5 A No, I didn't.

6 Q Now, you were asked a number of opinion
7 questions by Mr. Chalos about whether action
8 taken was proper by Captain Hazelwood. And you
9 indicated all these things that he did correctly.
10 You're aware, of course, I assume, that two of
11 the crew members at least weren't even woken up
12 that night, correct?

13 A No, I didn't know that. What I read was --
14 you know, I read Kunkel's testimony, and I
15 thought they were all ...

16 Q Well, you would agree that one of the first
17 things that a captain should do is make sure that
18 his crew is aware of the danger that the vessel's
19 in, correct?

20 A I would agree with that.

21 Q And it's pretty hard for a person -- and it's
22 also important to let them know how to prepare
23 for that danger and what steps to take, correct,
24 would you agree with me on that?

25 A I don't quite follow you ...

1 Q It would be important to let the crew members
2 know what steps to take in case something worse
3 happened, like the vessel started to capsize,
4 correct?

5 A Well, if the vessel started to capsize, for
6 example, I think that you'd -- in that event
7 you'd -- it'd be proper to ring the general alarm
8 and everybody would get in the boats, I mean, you
9 want to get off the thing.

10 Q Well ...

11 A Or get their survival suits on and get in the
12 boats, I think that the first order of business
13 would be to, you know, muster your crew, so you
14 got people available to do whatever needs to be
15 done, you know ...

16 Q And one way of doing that is putting them in
17 like a mess hall, you send them all into a mess
18 hall, and you keep them there, and you get a head
19 count, right?

20 A Yeah, well -- yeah, I don't know that the
21 captain would necessarily do anything like that,
22 I mean, that's -- you have to rely on your
23 officers, you have to -- a situation like that,
24 the captain or whoever's in charge has to
25 delegate authority. That's a -- you know, a very

1 large ship, and you personally can't go around
2 and do all these things.

3 Q Do you know how many crew members there were
4 on that thing?

5 A I believe 19.

6 Q That's not that many, is it?

7 A No, but you're still -- well, what I'm getting
8 at is that it is -- I think you're -- you were
9 saying that Captain Hazelwood should have done
10 all these things, I think that, you know, to
11 delegate the authority, I think Mr. Kunkel and
12 Mr. Cousins and some of the others were -- I
13 think he told them to do it, and I think that
14 that's his role, is to delegate responsibility.

15 Q So he can attempt to get the vessel off the
16 reef.

17 MR. CHALOS: Your Honor, I object.

18 MR. COLE: That's what the evidence is.

19 MR. CHALOS: Well, I don't think the ...

20 THE COURT: It's argumentative, the question
21 is argumentative.

22 Q (Mr. Leitz by Mr. Cole:) So if crew members
23 weren't woken up, you wouldn't think that would
24 be a particularly good thing, do you?

25 A Pardon?

1 Q If crew members were not woken up, you would
2 not believe that that was a particularly good
3 thing.

4 MR. CHALOS: Your Honor, I object to the
5 relevance of this. Unless he can show that Captain
6 Hazelwood had to go himself to their rooms to wake them
7 up and he didn't, then it's irrelevant. He gave the
8 right order, that's the evidence in this case.

9 THE COURT: Irrelevance objection's overruled.

10 Q So you would agree with me that if crew
11 members weren't woken up during this whole time,
12 there's something wrong with that, correct?

13 A Well, yeah, but whoever was supposed to do
14 that, you know, the third mate or the second mate
15 or the chief mate or whatever, that was -- a
16 delegated authority, that was their
17 responsibility to do that, I would think, yes,
18 and I agree with you that he shouldn't -- that
19 oversight shouldn't have happened.

20 Q So maybe Captain Hazelwood didn't completely
21 act correct that evening.

22 A Well, he gave ...

23 MR. CHALOS: Objection, Your Honor. There's
24 no foundation for that question.

25 MR. COLE: That's exactly what Mr. Chalos

1 brought out. He brought out everything that he
2 believes Captain Hazelwood did right, I'm just seeing
3 if this makes a little bit of difference with this
4 witness.

5 THE COURT: Rephrase your question, Mr. Cole.

6 MR. CHALOS: Your Honor -- never mind.

7 (1770)

8 Q (Mr. Leitz by Mr. Cole:) You don't know when
9 the anchor was put in the water, do you?

10 A Just shortly after the engine was shut down at
11 high tide, I believe.

12 Q It was after the engine had been shut down,
13 correct?

14 A That's right, you wouldn't have dropped the
15 anchor while the engine was operating.

16 Q Especially when you were going forward,
17 correct?

18 A Well, you wouldn't drop the anchor while you
19 were going anywhere.

20 Q Now, do you remember a conversation that you
21 had with me over the telephone, where there were
22 two Exxon attorneys and Mr. Milwee and Mr. Vorus
23 present -- it was a conversation?

24 A Yeah, I wasn't sure who all the people on the
25 call were, to be honest.

1 Q Well, you knew Mr. Milwee, right?
2 A I knew Milwee, I remember Vorus ...
3 Q You had a couple attorneys with you from Exxon
4 there ...
5 A No ...
6 Q One attorney?
7 A Howard Naughton was the only one that was
8 there.
9 Q And you remember that I asked you a question,
10 correct, right at the end, and the question was
11 if this vessel had come off the reef, what would
12 have happened?
13 A I said that it would heel over to the
14 starboard and go down by the head, and perhaps
15 capsize. And then I also qualified that a couple
16 -- a little bit later by saying that in -- you
17 asked me, "How could you figure that out?" and I
18 said it would -- you'd have to do some
19 calculations, and at that time I hadn't done
20 calculations. What I told you was exactly true,
21 and then after following it up with some
22 calculations, I found out that that could be
23 checked, or that was -- a demonstration a little
24 while ago that it wouldn't have gone that far.
25 That was just off the top of my head.

1 Q You said it would capsize at that time though,
2 right?

3 A Yes, but I also told you that that had to be
4 confirmed with calculations that weren't done.

5 Q But at that time you said it was capsized,
6 correct?

7 A Well, I qualified it, though, sir.

8 MR. CHALOS: Your Honor ...

9 THE COURT: It's been asked and answered three
10 times now, Mr. Cole.

11 Q You worked for Exxon Shipping Company in this
12 case, didn't you?

13 A I was an independent contractor employed for
14 -- to salvage the ship, and that's it, that's
15 right.

16 Q You were hired by Exxon Shipping Company.

17 A That's right.

18 Q And you worked with them for the whole time
19 that -- the four and a half months that you were
20 involved with this, correct?

21 A That's right.

22 Q Thank you, I have nothing further.

23 REDIRECT EXAMINATION OF MR. LEITZ

24 BY MR. CHALOS:

25 Q Mr. Leitz, you're not a professional witness,

1 are you?

2 A No.

3 Q You're a working salvor?

4 A Yes.

5 Q Now, Mr. Cole asked you about some -- about
6 your statement to him on the telephone that you
7 thought the vessel would go down by the head, and
8 list to starboard and possibly capsize, but you
9 needed to make some calculations.

10 A That's correct.

11 Q Have those calculations been made?

12 A Yes.

13 Q And what do those calculations show?

14 A It shows the same thing that I demonstrated
15 that the ship -- what -- well, what it
16 demonstrated was that with minimal intervention
17 by the crew, the tendency to roll would be --
18 could be stopped and reversed. Also it showed
19 that the thing would only go on about 12 degrees
20 and stop all by itself, which would ...

21 Q Without anything being done by the crew.

22 A Yeah.

23 Q When you say "minimal intervention by the
24 crew," what do you mean?

25 A Well, things that are reason -- that are

1 reasonably within the capability of the crew, and
2 that would be to put ballast in -- you know, pump
3 number 4 starboard, ballast number 4 port, and
4 ballast the port engine room wing tank, and
5 perhaps the after peak, or some combination
6 thereof.

7 Q In your opinion, are those maneuvers difficult
8 to do?

9 A Very easy.

10 Q And are they -- can they be done quickly?

11 A Yes.

12 Q Now, Mr. Cole asked you about the vessel
13 coming off the reef, now, it's your opinion even
14 if it came off by whatever method, whether she
15 was driven off, or she floated off, or she
16 levitated off, in your opinion she would have
17 stayed afloat?

18 A Yes. With minimal intervention.

19 Q Okay. Now, Mr. Cole went through a series of
20 questions regarding what the Captain didn't say
21 to the Coast Guard. You remember those?

22 A Yes.

23 Q With respect to the things that he did, as
24 opposed to the things that he didn't say, in your
25 opinion, were those things intended to do what?

1 That he did?

2 A To -- well, all the things he did were the
3 things you do in that circumstance, find out just
4 exactly how much trouble you're in, and what --
5 the severity of the damage to the vessel, what's
6 dry, what's flooded, you know, get the lifeboats
7 out, get your fire stations ready to go in case
8 you have a fire, I mean, he did all of those kind
9 of things. These people are so well trained,
10 it's almost by rote that a lot of the stuff gets
11 done.

12 Q Well, what's the purpose of everything that
13 was done? In your opinion.

14 A To protect the -- minimize the loss, if you
15 will, I guess, or to protect the crew.

16 Q And what about in respect to the vessel, in
17 relation to the reef?

18 A Working the engine ahead, you mean?

19 Q Yes.

20 A Well, I think that in that he didn't know
21 exactly -- I mean, he didn't know that that ship
22 was impaled in the -- for sure, or where the rock
23 was for sure, that's pretty obvious, so the thing
24 to do is not try to float it off.

25 Q How long did it take for your crew to

1 determine that this vessel was impaled?

2 A We didn't know that for sure until we
3 refloated it. The day we refloated the ship, it
4 had actually come afloat at -- I can't remember
5 what time, like 10:30, let's say, and -- you
6 know, and that's when I could feel some kind of
7 motion to it. It was an hour later before we
8 could actually clear the rock, or the ship came
9 -- floated clear of the rock, and I had the pilot
10 take the thing broadside and then out to the
11 channel.

12 Q Assuming that soundings were feasible
13 immediately after the grounding, do you have an
14 opinion as to whether they would have told --
15 those soundings would have told Captain Hazelwood
16 where and how he was impaled?

17 A Yeah, I think it would have -- if -- if it had
18 done -- if from the deck edge, and what have you,
19 you know, measuring down, it would have given an
20 indication, but it -- we -- we did that later on,
21 and it still didn't tell us if we were impaled or
22 not.

23 We have no practical way to find that out. It
24 was too dangerous to stick divers under it, they
25 went back and looked as well as they could, but

1 they couldn't go back there, we couldn't go down
2 from the top, because you're -- they were going
3 through oil, and -- even after the tanks were
4 pumped out and what have you, it was pretty -- we
5 still had a -- you know -- I should explain that,
6 I guess, when you pump the ship down with these
7 EDAPS (ph) pumps, these oil salvage pumps, you
8 can't get the last bit of oil out, all the tanks
9 have four or six to eight inches of oil still
10 floating on the water in 'em at the time we
11 refloated the ship.

12 By diver -- the time a diver gets down through
13 that and looks around, there's no visibility, you
14 know, he's all covered with oil, if he -- if he
15 goes through there, we -- so the guy just simply
16 can't get down and feel around down there, 'cause
17 he's gonna lose an arm or something, or worse.

18 Q All right. Now, this vessel ran aground at
19 night, did it not?

20 A Yes.

21 Q In your opinion, when Captain Hazelwood told
22 the Coast Guard that he believed he was hung up
23 astern, based on whatever information he had at
24 that particular time, do you believe that he was
25 guessing at that point?

1 A I think it was -- well ...

2 MR. COLE: Objection, speculation.

3 THE COURT: Don't answer the question.

4 Q Let me withdraw that question. In your
5 opinion, was it reasonable, based on the
6 information that Captain Hazelwood had, to assume
7 that he was hung up somewhere in the after body
8 of the ship, in the areas that you pointed out?

9 MR. COLE: Objection, leading, speculation.

10 THE COURT: Rephrase your question.

11 Q Mr. Leitz, on the basis of your experience,
12 and based on the evidence that you read here,
13 with respect to the type of damage that the
14 vessel sustained, the information that Captain
15 Hazelwood had, do you have an opinion as to the
16 reasonableness of what he believed -- or where he
17 believed he was hung up?

18 (2189)

19 MR. COLE: Objection, calls for speculation.

20 MR. CHALOS: I think it's going to be based on
21 what he's read and seen and his experience, Your Honor,
22 that's what I asked him.

23 THE COURT: Objection sustained.

24 Q (Mr. Leitz by Mr. Chalos:) Now, getting back
25 to what the Captain was saying to the Coast Guard

1 and what he was doing at the time, is it your
2 opinion that everything the Captain was doing in
3 terms of the use of the rudder and the engine was
4 for the purpose of keeping the vessel on the
5 reef?

6 MR. COLE: Objection, leading.

7 THE COURT: Mr. Chalos, if you persist on
8 these questions, I'm going to sustain every objection
9 ...

10 Q Well, all right, I'll rephrase it. Mr. Leitz,
11 based on what you've read in this particular
12 case, and the evidence that you viewed, what is
13 your opinion as to the use of the engine and
14 rudder? For what purpose was it being used?

15 A To keep it on the rock.

16 Q And you say that -- described what the Captain
17 was saying to the Coast Guard ...

18 MR. COLE: Objection, leading.

19 THE COURT: Sustained.

20 Q You read, I take it, Mr. Kunkel's testimony?

21 A Yes.

22 Q Okay, do you recall Mr. Kunkel initially
23 telling the Captain that the vessel was stable?

24 A Yes.

25 Q Did that fact play any role in your opinion

1 that the Captain was attempting to keep the
2 vessel on the reef?

3 A Well, a vessel that is aground is in no danger
4 of capsizing, so the Captain would have known
5 that.

6 Q Now, you started to talk about the second
7 conversation that the Captain had with Mr.
8 Kunkel.

9 A Yes.

10 Q Do you remember that conversation, where Mr.
11 Kunkel told him that the stability was marginal?

12 A Yes.

13 Q And the Captain then told him, I think you
14 said, that "We're staying right here"?

15 A Yes.

16 Q Did that play any -- that conversation play
17 any role in your opinion that the vessel was
18 trying -- that the Captain was trying to keep the
19 vessel on the reef?

20 A I think he -- the way I understood that
21 conversation is it's not just saying that, he
22 said it was like "We're going to stay right
23 here," and I think that's what Kunkel said the
24 Captain responded. And also the stability
25 question, Mr. Kunkel was talking about a seaway

1 condition, about taking the thing out into a
2 seaway condition as opposed to a harbor
3 condition, you know.

4 Q Now, again, I think you testified that there
5 was no way using the vessel's engine or rudder
6 that this vessel was coming off.

7 MR. COLE: Objection, leading.

8 MR. CHALOS: I was just using that, Your Honor
9 ...

10 THE COURT: That's preliminary to the next
11 question, objection overruled.

12 Q (Mr. Leitz by Mr. Chalos:) Is that correct?
13 A What did you say again?

14 Q Well, let me withdraw it, I think we've made
15 it clear. You spoke in your cross-examination
16 about seeing captains perform by rote in these
17 type of situations. What do you mean by that?

18 A Well, ship crews, you know, are used to doing
19 a job, and they do it, you know, over and over
20 again, and they're very professional at it, you
21 know -- you know, let's say they strike an
22 object, you know, they're cruising along and they
23 hit a log or something, and it makes a racket
24 that somebody notices, you probably wouldn't --
25 or for instance if she was this ship, you know,

1 an ice condition, where something was pumping
2 along, you know, it would be almost automatic to
3 ask the engineers to check the bilges and check
4 the -- sound tanks or something if they thought
5 there was any serious damage, or probably a
6 better example is if a piece of ice went through
7 the propeller, that'd make quite a ruckus back
8 there, they'd go back and check that portion of
9 the ship for damage, and this is just standard
10 operating procedure.

11 And a lot of the things that he did that night
12 are standard operating procedure under -- well,
13 not only a stranding situation, but other types
14 of situations.

15 Q Did you, in your mind, equate the word "rote"
16 with instinct?

17 A No, more like training.

18 (2450)

19 Q Now, I'd like to show you the data logger
20 again, that Mr. Cole showed you. You remember
21 this?

22 A Yes.

23 Q Okay. Now, you started to list the number of
24 minutes the engine was used at various speeds?

25 A Yeah.

1 Q Taking the speeds that were used by Captain
2 Hazelwood starting, I guess, 12:35 on to 1:40,
3 what do those speeds indicate to you?

4 A Just -- daintily holding this thing in there,
5 just kind of feeling it out, I think he was also
6 trying to figure out where the pivot point was at
7 ...

8 MR. COLE: Objection, speculation.

9 THE COURT: I think that goes to Captain
10 Hazelwood's state of mind, and that's beyond this
11 witness' expertise, I'm going to sustain the objection.

12 Q All right, taking a look now at the speeds
13 that were used, do you have an opinion as to
14 whether those -- the use of the engine in that
15 manner was intended to drive the vessel over the
16 reef?

17 A Well, the engine settings used simply do not
18 have enough power to drive over the reef. He
19 couldn't be trying to drive over the reef at dead
20 slow and slow and a half, you know, and even full
21 maneuvering isn't -- it's -- it's less than a
22 third of the power that the vessel's able to
23 produce. If he was trying to drive over the
24 reef, he certainly would have used the, you know,
25 full ahead flank, or 31,000 horsepower versus

1 9,000 horsepower.

2 Q Now, Mr. Cole gave you a scenario behind that
3 data logger. Do you remember that scenario?

4 A Yeah.

5 Q You remember that?

6 A Yeah, I do, yeah.

7 Q All right. That doesn't in any way represent
8 the Exxon Valdez scenario, does it?

9 A Not even close.

10 Q In the Exxon Valdez scenario, as you found the
11 ship, do you have an opinion as to whether
12 running the engines ahead were intended -- or
13 were for the purpose of keeping it on the reef?

14 MR. COLE: Objection, leading.

15 Q Let me withdraw that question. Now, I'd like
16 to turn to a different subject; sounding. In
17 terms of things to be done in this type of
18 situation, where would you put soundings as a
19 matter of priority?

20 A I suppose about the middle of the spectrum of
21 all the things there are to do. I mean, you got
22 ship's safety, crew safety, all that stuff being
23 done on board, I think it -- it should be done at
24 the first available opportunity without risking
25 your people. In this particular case, the only

1 way he could have done soundings very soon would
2 be to launch a lifeboat and do it, and I think
3 that would be very, very imprudent.

4 Q You mean put the lifeboat in the water and ...

5 A That's right, if you're gonna ...

6 Q ... have someone go around the ship?

7 A Yeah, there's no way to get soundings that are
8 meaningful -- for soundings to be meaningful, if
9 you're worried about what direction you're gonna
10 go, they have to be away from the ship, and
11 obviously you can't do that from the ship, so you
12 have to have some means of getting out there.
13 You know, and I think the -- you know, eventually
14 the closer -- like if a paddleboat took the
15 soundings, it came out and did it for 'em, you
16 know.

17 Q Now, you've testified the soundings were taken
18 at 9:45 in the morning, do you consider that to
19 be a reasonable theory under the circumstances?

20 MR. COLE: Objection, leading.

21 Q Let me rephrase it. You stated that soundings
22 were taken at 9:45 in the morning, at the
23 instruction of the Captain. Do you have an
24 opinion as to the reasonableness of the timing?

25 A Yeah, if -- that's related to the situation,

1 and if he fully intended to refloat the ship, he
2 had to do it by one -- by high tide in the
3 morning, which was 1:57 or whatever, so it didn't
4 really make too much difference when they were
5 made. They obviously couldn't have been done in
6 time for the tide. The tide was falling and it
7 didn't make much difference when they were done
8 after that, and at this time of the year a --
9 it's first light about -- and I think it had been
10 done an hour or two earlier, it didn't make any
11 difference anymore, it was past high water, and
12 if we'd done it before the next high water, if we
13 were thinking about doing something on the next
14 high water.

15 Q Just one more question on the soundings.
16 According to the soundings that you took, there
17 was plenty of good water behind the vessel, was
18 there not?

19 A For a -- as far as that went, there was a
20 couple of -- couple of hundred foot. There was,
21 yes.

22 Q And that's enough room if he wanted to -- do
23 you have an opinion as to whether that was
24 sufficient room if the Captain wanted to back his
25 vessel down?

1 A Yeah. Yeah. Had it slid off the rock, it
2 -- you know, a ship that take -- that size takes
3 quite a lot of -- to get up momentum, also, the
4 backing power of a big ship like this is -- it's
5 poor. You don't get as much power going astern
6 as you do ahead. And so the -- if the thing slid
7 off, it isn't like it would be suddenly doing 10
8 knots, it would be -- it would take a while for
9 that thing to build up any speed, so he'd have
10 time to stop the thing, he wouldn't go any
11 further than he had to, I don't think. I mean,
12 he wouldn't be, you know, going off a mile or two
13 backwards, you know, because that's uncalled for.
14 You know, he'd probably be trying to get off to
15 the channel if he got off of there.

16 Q Now, Mr. Cole asked you whether or not this
17 vessel was in bad shape, do you remember him
18 using that term?

19 A Yes.

20 Q Was the vessel stable?

21 A Aground?

22 Q Yes.

23 A Sure.

24 Q And based on your calculations, she was also
25 unstable afloat?

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MR. COLE: Objection, leading.

Q As she came off?

THE COURT: Don't answer the question.

Q Let me rephrase it. If the vessel had come off, do you have an opinion as to stability?

(2750)

A I think it -- yeah, it would have been stable.

Q Now, did the vessel have sufficient strength aground?

MR. COLE: Objection, leading.

Q Mr. Leitz, do you have an opinion as to the vessel's strength when she was aground?

A It was adequate. There was no problem with its strength.

Q Do you agree or disagree with Mr. Vorus' testimony that had she come off the reef, there would have been no problem with her strength?

A Could you repeat that?

Q Yes. Do you agree or disagree with the testimony of Mr. Vorus, that had the vessel come off the reef, there would have been no problem with her strength?

A I agree with that.

Q Now, when you floated the vessel off, you had to take the cargo off first?

1 A We -- no, we didn't have to, but you got more
2 consideration, you know, the vessel's only one
3 consideration, minimizing pollution in this case
4 probably far outrated the value of the vessel, so
5 we took the oil out. Out of harm's way, if you
6 will. And then we refloated the vessel.

7 Q And you pressurized the tanks, it was your
8 testimony.

9 A To refloat the vessel, that's correct.

10 Q In your opinion, based on the condition of the
11 vessel at the time of the grounding, could she
12 have been floated off by the crew in the way you
13 floated it off, 10 days later?

14 A Theoretically, it could have been done, not on
15 that tide, but on some -- you'd have to go on to
16 like a minus-tide situation, seal the vessel up,
17 and then wait for the tide to come back in. This
18 wouldn't be -- this would be -- would float as
19 best it could, you know, you wouldn't be -- with
20 very much finesse, but it's conceivable you could
21 come off that way.

22 Q Did you find any evidence in this case that
23 indicated that the crew was trying to refloat the
24 vessel in the manner that you -- you floated it
25 off?

1 A No, there's no evidence of that, but it's also
2 an impossibility, because they went aground an
3 hour and 57 minutes, or even less than that,
4 before high water, and that fluctuation in the
5 tide is not enough to have done anything. Or I
6 should say it would do very little, you know, it
7 was only about an hour and 45 -- 50 minutes, 45
8 minutes before the high tide, and that's all the
9 lift you'd get.

10 Q Given your opinion in this case as to what the
11 Captain was attempting to do with respect to the
12 vessel and the reef, what is your opinion with
13 respect to the use of the rudder as part of that
14 procedure?

15 A Well, the only thing I can say about that is I
16 -- I think it was just about in line with what
17 you would expect to try and maintain a heading.

18 Q All right, now. This vessel proceeded from
19 Bligh Reef to Naked Island, and then back to San
20 Diego, am I correct?

21 A Yes.

22 Q How long was the journey?

23 A It was 30 -- we eventually were at sea 38
24 days.

25 Q And how many miles, do you remember?

1 A Not right off the top of my head, we -- we
2 towed it around backwards on up to San Diego for
3 days -- we were busy trying to get permission to
4 go someplace to trim the bottom. It was 11 -- if
5 we had gone to the (indiscernible) that was about
6 11 days planned voyage, and if we had gone to San
7 Diego and been allowed to go in, that would have
8 been about an 18-day planned voyage.

9 Q All right, now, these 38 days that you were
10 afloat, were they with the bottom of the ship
11 open in the way that she had run aground?

12 A Absolutely.

13 MR. COLE: Objection, leading, and outside the
14 scope of cross.

15 MR. CHALOS: Your Honor, this goes to the
16 question of if she came off with her bottom open, what
17 would have happened.

18 THE COURT: Now, I'll overrule the objection,
19 but refrain from leading questions, Mr. Chalos.

20 MR. CHALOS: All right, Your Honor.

21 Q (Mr. Leitz by Mr. Chalos:) Sir, in what
22 condition was the vessel on returning on down to
23 San Diego?

24 A With the bottom open.

25 Q And I take it she didn't sink.

1 A No.

2 Q Mr. Leitz, there's been testimony here that
3 the Captain ordered third mate Cousins to go
4 around and wake up the crew, and I believe you
5 testified that that was a prudent order. In your
6 opinion, would you expect a captain to leave the
7 bridge in that situation and make the wake-up
8 calls himself?

9 A Absolutely not.

10 Q Do you agree or disagree with the delegation
11 of that responsibility to one of his mates?

12 A I agree with it.

13 Q I have no further questions.

14 MR. COLE: I have one, Your Honor.

15 THE COURT: All right.

16 RECROSS EXAMINATION OF MR. LEITZ

17 BY MR. COLE:

18 Q Mr. Leitz, how much did Exxon Shipping Company
19 pay you for your work for them?

20 MR. CHALOS: Objection, Your Honor. I think
21 it's irrelevant.

22 THE COURT: Objection overruled.

23 A You mean for what?

24 Q For all your work that you did from the time
25 you left -- is it Portland, on March 24, until

1 this date for your work on resalvaging this
2 vessel.

3 A This -- what I'm doing here has absolutely
4 nothing to do with what I did there, for openers.

5 Q All I'm asking is how much they paid you.

6 MR. CHALOS: Your Honor, again, I don't see
7 the relevancy to this action.

8 THE COURT: I've ruled already, Mr. Chalos.

9 A Well, in the actual salvage operation -- you
10 asked a question.

11 Q All I want is the total. Just give us the
12 total figure, you don't have ...

13 A You gotta know where this total's going,
14 because the -- you're going to get the
15 implication that it's rolled up in my pocket, you
16 know, I hired subcontractors and paid them, I
17 personally charge \$125.00 an hour for my time,
18 and I got a \$50,000.00 bonus for successfully
19 refloating the ship. And for -- for that part,
20 the whole sum total of the stuff is probably
21 about 1.8 million.

22 Q Okay.

23 REDIRECT EXAMINATION OF MR. LEITZ

24 BY MR. CHALOS:

25 Q Mr. Leitz, of that \$1.8 million, how much of

1 it was paid to subcontractors and other people
2 you utilized on the job?

3 A Probably about -- about 80 percent.

4 Q So you made a 20 percent profit on this deal?

5 A Yeah.

6 Q Is that reasonable in your business?

7 A It's about par for the course.

8 Q No further questions.

9 THE COURT: May the witness be excused? Okay,
10 you're excused, sir. We'll take our next break at this
11 time, ladies and gentlemen, don't discuss this matter
12 among yourselves or with any other person, and don't
13 form or express any opinions.

14 (3153)

15 (Off record - 11:31 a.m.)

16 (On record - 11:50 a.m.)

17 THE COURT: Ready to call your next witness,
18 counsel?

19 MR. CHALOS: Yes, Your Honor. Your Honor, at
20 this time the Defense calls Don Hudson.

21 THE CLERK: Sir, if you would remain standing
22 and attach that microphone ...

23 (Oath administered)

24 A I do.

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DONALD R. HUDSON,
called as a witness in behalf of the Defendant, being
first duly sworn upon oath, testified as follows:

THE CLERK: Please be seated. Sir, would you
please state your full name and spell your last?

A Donald R. Hudson, H-u-d-s-o-n.

THE CLERK: And your current mailing address?

A 13084 Southwest Amber Place, and Lake Oswego,
Oregon, 97034.

THE CLERK: What was that town, please?

A Lake Oswego.

THE CLERK: And your occupation?

A I'm a naval architect.

(Side conversation)

DIRECT EXAMINATION OF MR. HUDSON

BY MR. CHALOS:

Q Mr. Hudson, by whom are you employed?

A I'm self-employed.

Q You have your own company?

A Yes.

Q You say you're a naval architect?

A Yes.

Q How long have you been a naval architect?

A Well, since about 1949.

Q Were you involved in the Exxon Valdez

1 refloating at all?

2 A Yes, I was on the ship for six weeks, a few
3 days prior to refloat, and about six weeks
4 afterwards till ...

5 Q What was your role in the refloating?

6 A Do the hull stress calculations and the
7 stability and trend calculations for getting her
8 off the reef, and then subsequently to evaluate
9 the damage as the divers would examine the
10 vessel.

11 Q All right, who hired you for that role?

12 A Nick Leitz.

13 Q You were working for him?

14 A I was.

15 Q You were a subcontractor to Mr. Leitz?

16 A Yes.

17 Q Now, with respect to this case, what were you
18 asked to do?

19 A To come and attend the proceedings while Mr.
20 Vorus and a Mr. Will -- Milwee testified, and
21 then to examine their testimony and make
22 suggestions to the Defense.

23 Q Were you asked to do anything else in this
24 matter?

25 A Yes, maybe to present another hypothesis than

1 those presented by the prosecution witnesses.

2 Q And what did you do in that regard?

3 A Well, I did calculations regarding the
4 attitude of the vessel subsequent to
5 hypothetically coming off the reef.

6 Q All right, we're going to get into that in a
7 second. Can you tell us a little bit about your
8 educational background?

9 A Yes, I graduated from the University of
10 Michigan in naval architecture and marine
11 engineering.

12 Q Do you have a degree?

13 A Yes.

14 Q What year did you graduate?

15 A 1949.

16 Q What have you done since 1949? Briefly, of
17 course.

18 A I worked for shipyards for about 10 years, and
19 ...

20 Q As a naval architect?

21 A Yes, and a project manager, and then I went
22 into business for myself.

23 Q When was that?

24 A That -- '62 or '3.

25 Q That's when you started your business?

1 A Yes.

2 Q What does your business do? What is the
3 business of your business?

4 A Marine design and engineering, and we work
5 engineering problems on all manner of floating
6 equipment.

7 Q What do you do specifically, do you design
8 vessels?

9 A Yes.

10 Q Do you do calculations when, for instance,
11 vessels are damaged?

12 A I've done a lot of that.

13 Q Similar to those you did on the Exxon Valdez?

14 A Yes, I've done that.

15 Q Have you ever been involved with grounded
16 vessels before?

17 A Yes.

18 Q How many?

19 A Oh, three or four, maybe.

20 Q Have you done stability and strength
21 calculations in those instances?

22 A Yes.

23 Q Now, what do you do with respect to
24 coordinating with salvage masters such as Mr.
25 Leitz, when you're called onto a job like the

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Exxon Valdez?

A I -- I -- giving technical back -- backup and helping work some of the problems that -- and make some of the hard decisions that have to be made.

Q Do you coordinate with the salvage master?

A Work with him real -- really close.

Q And what type of things are you working closely with?

A Oh, just mostly engineering aspects of the job.

Q What do you mean by that?

A Well, stability and strength, all sorts of physical and physics problems.

Q Are these calculations done before the vessel is taken off the ground?

A Yes. We were -- prepared the salvage plan, and -- Nick prepared the salvage plan, and I added -- filled in a lot of the details.

Q And do you also make calculations, speaking generally now, after the vessel is off the ground to see what stability and strength she might have?

A Yes. We made -- maintained a pretty close watch on the vessel as far as her hull bending

1 and hull stresses, as well as her stability --
2 mostly trim and heel problems.

3 Q You're speaking now specifically about the
4 Exxon Valdez?

5 A Yes.

6 Q Did you do calculations, strength and
7 stability calculations for this vessel prior to
8 her coming off the reef?

9 A Yes.

10 Q And did you do strength and stability
11 calculations subsequent to the vessel coming off
12 the reef?

13 A Yes.

14 Q Now, before we get into the specifics, you've
15 been called here as an expert by Captain
16 Hazelwood's defense, have you not?

17 A Yes.

18 Q What is the fee arrangement that you have with
19 the Defense?

20 A We haven't even discussed it.

21 Q What do you normally charge per hour for your
22 time?

23 A 65 an hour for time out of the office, \$50.00
24 for traveling.

25 Q Are you going to bill the Defense your normal

1 fee, your normal hourly rate?

2 A Yes.

3 Q Did you estimate how many hours you've spent
4 on this case so far?

5 A I haven't bookkept, I keep a log of what I
6 do and when I do it, but I haven't accumulated
7 anything.

8 Q Do you have an idea of how much we're talking
9 about? Generally, roughly?

10 A No. I don't. I've been up here -- oh, maybe
11 10 or 11 days prior to this time, and I was --
12 I've been here three or four this time. That's
13 -- then I was at home a week, and did a lot of
14 the work there.

15 Q So would you say you put in about 20 days
16 here?

17 A I guess.

18 Q And what do you normally charge per day?

19 A Well, it's usually by the hour, it depends on
20 what I do during the day, but I would guess that
21 -- \$650.00 a day plus expenses.

22 Q Okay. Do you estimate that your fee will
23 exceed 10 to \$15,000.00 in this case?

24 A No, I don't really.

25 Q Okay. Let's talk about the Exxon Valdez.

1 What did you specifically do in terms of strength
2 and stability calculations?

3 A Well, we -- prior to lifting her off the rock,
4 we had some preliminary surveys and discussions
5 about how much damage there was under the vessel,
6 and we tried to make an educated estimate of what
7 loss there had been to the whole structure, and
8 then -- and computing the lift-off condition,
9 both the stability and the flotation on the heel,
10 and the -- the anticipated bending moments to see
11 whether or not the hull stresses approached
12 anything critical.

13 Q The bending moments and stresses that you're
14 talking about deal with strength, do they not?

15 A Yes.

16 Q Based on the calculations that you made with
17 respect to strength, do you have an opinion as to
18 whether or not this vessel was in danger of
19 breaking up by the use of the rudder and engine
20 after the grounding?

21 A No, that was not ...

22 Q Do you have an opinion, first of all? Yes or
23 no?

24 A No, I don't think it was -- rudder and engine
25 forces are nothing compared to seaway forces, and

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I didn't really consider that part of it critical.

Q So your opinion is that the strength was sufficient after the grounding, is that correct?
(3861)

MR. COLE: Objection, leading.

THE COURT: Sustained.

Q Now, when you say you didn't consider that critical, what do you mean specifically?

A Well, the forces that are applied to a vessel are -- in a seaway and at sea, very large, and the thrust forces of which the engine was capable aren't that great. And/or rudder. They're enough to steer the vessel and move it in the water, but it -- they really aren't enough to fracture all that steel.

Q Do you have an opinion as to -- strike that. Did you view the damage on this vessel in San Diego?

A I did not.

Q You did not.

A No, I made a pretty detailed drawing of the damage reports by the divers, but that's as far as I took it.

Q Where did you make this drawing?

1 A On the ship.

2 Q Up at Bligh Reef?

3 A Naked Island.

4 Q Let me pull a chart and show you. (Pause) I
5 can't seem to locate it. Let me show you what's
6 been marked as Exhibit 103, and ask you, is this
7 the drawing you're referring to?

8 A Yes. That's a reproduction of it, and
9 reduced, but -- the drawing I did was on butcher
10 paper on a big plywood table that was about eight
11 feet long.

12 Q Okay, you didn't put in the numbers that are
13 on this exhibit?

14 A No.

15 Q See the various numbers?

16 A No, just the layer work, which details all the
17 fractures that were found, and a plate that was
18 missing, and that part of it.

19 Q Based on the information you had in the
20 drawing you made, do you have an opinion as to
21 how this damage was caused?

22 A Well, the bulk of it was done on the initial
23 stranding, and then some of the loss of the bilge
24 plating was during subsequent tides that
25 occurred, with the vessel hung up on the beach.

1 Q Do you have any opinion as to whether any
2 additional damage was done by the use of the
3 vessel's rudder or engine after the grounding?
4 A I don't think anything that was done in that
5 stage was a bit -- it was all done by then.
6 Q Now, you said that you listened to Mr.
7 Milwee's testimony?
8 A Yes.
9 Q Do you agree or disagree with his opinion that
10 no matter what Captain Hazelwood did after the
11 grounding with the ship's engine and rudder, that
12 this vessel was not going to come off the reef?
13 A Not much chance.
14 Q So you agree with his opinion?
15 A Yes.
16 Q Do you remember Mr. Milwee expressing an
17 opinion that if Captain Hazelwood wanted to keep
18 the vessel on the reef, as opposed to trying to
19 get it off, he would have used constant right
20 rudder? Do you remember that testimony?
21 A Yes.
22 Q Do you agree or disagree with that opinion?
23 A No, I wouldn't do that at all. The results
24 would be ridiculous.
25 Q Well, would you explain what you mean by that?

1 A Well, the vessel was impaled on this area
2 right in here, and right rudder, constant right
3 rudder with power would just pivot the vessel,
4 right around here, you'd just swing like a
5 pinwheel, and no telling what you could run into
6 at ...

7 Q What would you do in order to avoid that
8 pinwheel effect?

9 A Well, try to maintain a heading close to the
10 one she had coming on.

11 Q Well, what do you mean by that, try to
12 maintain a heading?

13 A Well, when she finally came to rest, she was
14 headed in a certain compass bearing, or course,
15 and you'd try to keep her there as you ran the
16 engines slowly.

17 (Tape: C-3679)

18 (0049)

19 Q In your opinion, what would have to be done
20 with the rudder in order to maintain the course
21 heading?

22 A Well, the stern of a vessel tends to walk, a
23 single-screw vessel, and you'd just have to use
24 some rudder to -- to maintain the heading, and
25 besides, the vessel is impaled on one side, and

1 -- and the forward part of the vessel with --
2 with power on would be constantly running the
3 swing, and you'd have to -- have to steer, just
4 as you would underway.

5 Q Sir, could you explain to the jury what you
6 mean by "vessel having to walk"?

7 A Well, that vessel has about a -- I don't know,
8 30, 28-foot wheel, I would guess ...

9 Q You mean the size of the propeller?

10 A Yeah. And as it turns, it wants to act like a
11 wheel. The dense -- or the pressure is at the
12 lower part of the wheel, the pressure at the top
13 of the wheel is less, and they just tend to walk.
14 She would probably swing her stern to starboard.

15 Q And how does one counter this effect, this
16 walking effect, if you wanted to keep the vessel
17 on a heading?

18 A Rudder.

19 Q Now, you listened to the testimony of Mr.
20 Vorus, did you not?

21 A Yes.

22 Q And you heard him give his hypothetical
23 situations, he had four or five hypothetical
24 situations where the vessel came off the reef and
25 then sunk within a period of time.

1 A Yes.

2 Q First of all, do you have an opinion as to the
3 likelihood of any of the scenarios ever coming to
4 be?

5 A Well, some of his scenarios were off the reef
6 in deep water, I don't think that was likely.

7 Q Did you agree or disagree with his opinion
8 that had the vessel come off by whatever method,
9 I think one witness described it as levitation,
10 do you have an opinion as to whether or not the
11 vessel would have sank?

12 A The -- the hypothesis that Mr. Vorus espoused
13 was with the assumption that the crew would just
14 stand idly by and watch their vessel sink, I
15 don't think that ...

16 Q Do you have an opinion as to the likelihood of
17 that?

18 A I think that's a -- really ridiculous to think
19 they would not respond to the way the vessel's
20 -- the aspect of the vessel on -- if she came off
21 the reef.

22 Q On what basis do you say that?

23 A Well, they're a capable group of people, and
24 they're on the ship. You would think they would
25 try to do something to save the vessel first,

1 before they abandon ship, anyway. Also, the --
2 the vessel just adjacent, just -- the port of the
3 vessel was some fairly shoal water, it wouldn't
4 have sunk anyway. Or they'd gone down by the
5 head, perhaps, and taken a list to starboard.

6 Q Did you make any calculations to support your
7 conclusion that this vessel would not have sunk
8 as she came off the reef?

9 A Yes, I explored situations where the crew did
10 take action.

11 Q We'll get into that in a second, let me just
12 show you one of his -- Defendant's Exhibits CO,
13 CN, and CM for identification, and ask you, do
14 those represent the calculations you made to
15 support your conclusion?

16 A Yes, these are the ones.

17 Q Okay, what did you use for your factors and
18 your constants in those calculations?

19 A Well ...

20 Q In other words, on what is that information
21 based, if you ...

22 A Oh, well, I -- the data in the file from the
23 time we lifted it off the rock, and I used a low
24 condition for the vessel at the time, when all of
25 the oil had run out, and all of the ballast

1 spaces had been filled, and ...

2 Q Did you use any of the information from the
3 ship's computer?

4 A Yes, I used the ship's computer all the time
5 the vessel was -- not the ship's computer, but
6 the ship's loading program and my own computer,
7 all the time that the vessel was going down to
8 San Diego, so I had access to the ship's loading
9 program.

10 Q Did you use the ship's loading program in your
11 calculations that you made for this scenario?

12 A Yes, I did.

13 Q Okay. Now, you said that the condition that
14 you used in your calculations was when all the
15 oil had gone out and the water had come in at
16 that point?

17 A Yes, I established that as the initial road
18 condition for this levitated vessel.

19 Q At what time would your situation occur,
20 assuming the ship ran aground at 12:10?

21 A That's ...

22 Q Yes, at what time did you assume that this
23 vessel would have come off the reef?

24 A Oh, she stranded a little after midnight, and
25 for all of that to take place, it would've taken

1 a couple of hours or better, two and a half
2 hours.

3 Q And in your condition, then, what time do you
4 have the vessel coming off the reef?

5 A Oh, 2 to 2:30 in the morning.

6 Q Now, do you agree or disagree with Mr. Vorus'
7 testimony that all of the oil that would have
8 come out of this vessel would have come out in
9 the first, I think he said, 18 minutes?

10 A Well ...

11 MR. COLE: Your Honor, I object to that,
12 that's not what Professor Vorus said. He said that it
13 would come out -- the first batch, the first half would
14 come out in the first half an hour, and that the rest
15 of it would come out as the tide went down.

16 MR. CHALOS: Well, take ...

17 THE COURT: Why don't you rephrase your
18 question ...

19 MR. CHALOS: I will ...

20 THE COURT: ... ask him what his opinion is
21 concerning it, if you want, rather than whether he
22 disagrees or agrees with that, if you don't know
23 exactly what the evidence is.

24 (0273)

25 Q (Mr. Hudson by Mr. Chalos:) All right, do you

1 have an opinion as to how long it would have
2 taken for the -- as Mr. Cole calls it, the
3 initial batch of oil to come out of the vessel?

4 A Well, yes, I -- I made my own estimate, and it
5 was around 30 to 40 minutes. And ...

6 Q What did you use as a basis for calculating
7 the flow of oil?

8 A Well, I -- I was given the manufacturer's flow
9 data for all the pressure and relief valves on
10 all of the tanks, plus the fact that some of the
11 -- during this discharge of oil, the pressure
12 vacuum breaker, the big one, had been discharged,
13 and it was inoperative.

14 Q All right, now, you mentioned that -- strike
15 that. What did your calculations show?

16 A Well, that the oil would go out very fast, but
17 the ballast tanks aren't -- segregated ballast
18 tanks on the starboard side that were holed were
19 not vented with PV valves, they were just a four-
20 inch and a six-inch pin. And I had data for
21 those, and that filling would take much longer
22 than the loss of all the oil.

23 Q Well, what was the ultimate conclusion?

24 A Well, it would probably take over two hours
25 probably for the vessel to stabilize, at the tide

1 level that she was resting with.

2 Q You're talking now about the reef.

3 A Yes.

4 Q Okay. Now, you made certain calculations as

5 the vessel came off the reef.

6 A Yes.

7 Q All right, what did those calculations show?

8 A Well, the assumptions I made were that the

9 crew -- as soon as she began to take -- turn to

10 the bow and the starboard list, they would take

11 corrective measures, and the initial one of those

12 measures would be to get all the slider valves

13 closed.

14 Q Okay. You're talking now, the ship has come

15 off the reef.

16 A Yes.

17 Q And you said what would happen with the trim

18 and list?

19 A Well, she'd begin to go down by the bow, or

20 she would be down by the bow, because of the way

21 she was loaded with the loss of oil, she would be

22 down by the bow and have a starboard list.

23 Q Okay. You mentioned the crew closing the

24 slider valves. How many slider valves are we

25 talking about?

1 A Well, there's -- some are more critical than
2 others in this condition, I would close all the
3 forward ones first, and ...

4 Q How many slider valves ...

5 A There are eight, all together, cargo slider
6 valves.

7 Q How many are up forward?

8 A Well, maybe four.

9 Q All right. How long would it take to close
10 the slider valves, if one wanted to do just that?

11 A Oh, I would say four men could do it in 15 or
12 20 minutes.

13 Q For all the ...

14 A Yeah.

15 Q Now, was there -- did your calculations assume
16 any other action by the crew besides closing the
17 slider valves?

18 A Well, if she took a starboard list, they would
19 want to counterballast for that, and -- and aft,
20 too, if possible, because she was going down by
21 the head.

22 Q Let me get a model, and maybe we can
23 demonstrate for the jury what you're talking
24 about.

25 I'll show you what's been marked as Exhibit

1 154. Would you hold up the model, you can step
2 forward, with your permission, Your Honor, and
3 show the jury what you're talking about?

4 THE COURT: Put that little black box in your
5 pocket, and I think you can carry the cord with you.

6 Q Okay, let me help you.

7 A The vessel would be taking an aspect of --
8 down by the bow, and a -- a starboard list.
9 These four tanks are segregated ballast tanks,
10 and they would be floating with water and oil
11 that's surrounding the vessel, and all these
12 other tanks, the fore peak and everything along
13 here and back here were all holed. They would
14 have lost the oil rather quickly.

15 But these tanks here are on a different
16 venting system, where they're filled more slowly.
17 And the crew, to correct this, going down, would
18 close all the slider valves, which would inhibit
19 the sinking, slow it up considerably, and then
20 counterballasting, by that I mean there are --
21 these tanks back here, the fore port and
22 starboard, the ballast tanks, this one was pretty
23 much intact, this one was undamaged as well,
24 being on the starboard side. This would be
25 filling.

1 And with water coming in here, the first thing
2 to do is shift this seawater to the port side to
3 correct some of the list, and also start down
4 this way, and then in the control room, the cargo
5 control room, there's a button to use to execute
6 the flooding tank, the ballast tank, and they
7 would flood this tank, and that would be
8 sufficient to start the vessel on the way up
9 rather than on the way down.

10 Q What would be the effect of ballasting, let's
11 say, number 4 port, in terms of the vessel's
12 stability?

13 A Well, it would -- it would tend to correct the
14 starboard list, and the forward trim, it would
15 start bringing the bow up and the vessel to a
16 righted position.

17 Q And what would be the net result of that, in
18 terms of the oil coming out of the ship?

19 A It would come -- still come out, until --
20 well, it really wouldn't, I mean, in deeper
21 water, she would -- all of the -- she was at a
22 higher draft when she was on the rock than she
23 was off here, so the oil would float up in the
24 tanks.

25 Q Having ballasted down number 4 port, what

1 would that do with respect to the danger of
2 capsizing the vessel? Would ...

3 A Well, it -- like I say, it would start the
4 vessel back on an even trim, and keep -- list.

5 Q And what would it do with respect to her
6 remaining afloat?

7 A It would correct it.

8 Q And keep it afloat?

9 A Keep it afloat.

10 Q Okay, how long would it have taken the crew to
11 ballast down number 4 port tank?

12 A Well, first thing you would want them to do is
13 shift the flooding from one side to the other
14 with the pumping system.

15 Q How is that done?

16 A With a button in the cargo control room.

17 Q So are you saying, then, you're moving water
18 from the number 4 starboard over to the number 4
19 port?

20 A Yes.

21 Q And that's done by pressing a button?

22 A It's my understanding, that's right.

23 Q If the crew wanted to take out all the water
24 in number 4 starboard ...

25 A Yes.

1 Q ... on the starboard side, what would they
2 have to do?
3 A Well, they would continue pumping ...
4 Q Was that ...
5 A ... at the same time flooding the port side.
6 Q Was that option feasible to the crew ...
7 A Yes.
8 Q ... in your opinion?
9 A Yes.
10 Q How long would it have taken them to put a
11 sufficient amount of water in number 4 port to
12 correct the list, in your opinion?
13 A Well, the first initial shift and the
14 continued flooding would tend to bring it back,
15 it would be about an hour and 15 or 20 minutes
16 maybe.
17 Q And the vessel -- what would the vessel be
18 doing in the meantime?
19 A Correcting its aspect.
20 Q Now, based on your calculations, had those
21 maneuvers been made, what would have happened to
22 the vessel?
23 A She would -- she could have been brought to an
24 even trim.
25 Q And what would that result in?

1 A Just floating there.

2 Q Okay, you can resume your seat again. Now,
3 Mr. Hudson, the condition that you spoke about
4 just now, would it have been necessary for the
5 crew to put any water in the after peak or the
6 engine room tanks in order to achieve the stable
7 condition?

8 A It wouldn't have been necessary, but it would
9 have been advisable, and that would take a little
10 longer, but since she's on a correcting -- a
11 correcting mode, why, they would probably have
12 time to do that, it would -- another thing you're
13 counting on in this procedure is that the
14 pressure vacuum relief valves in each of the
15 tanks close at any pressure less than two and a
16 half pounds.

17 Q What would have been the feasibility of that?
18 Let me start again. What would have been the
19 feasibility of that under the situation as you
20 calculated it?

21 A Yeah, when she gets in a righted position, and
22 out of this heavy list, the pressure would be
23 reduced, and eventually drop back to something
24 that the pressure vacuum and relief valves could
25 handle.

1 Q In other words, the pressure would have fallen
2 below a certain level?

3 A Yes.

4 Q And what would that level have been?

5 A Two and a half pounds per square inch.

6 Q And what would have happened to the pressure
7 relief valves?

8 A They would have closed, and there wouldn't
9 have been any more flooding.

10 Q Does that help the buoyancy of the vessel, if
11 the valves are closed?

12 A Well, she quits sinking.

13 Q At that point.

14 A Yes.

15 Q Now, in your opinion, what would the
16 feasibility have been of the crew taking the
17 action you suggested under the circumstances?

18 A It's completely feasible and probable, really.

19 MR. CHALOS: No further questions, Your Honor.

20 (0744)

21 CROSS EXAMINATION OF MR. HUDSON

22 BY MR. COLE:

23 Q Mr. Hudson, would you agree with me, in a
24 situation where a ship has been grounded, or has
25 suffered some kind of damage, the strength and

1 stability is kind of a dynamic concept, in other
2 words, it changes over time. Would that be a
3 fair statement?

4 A As long as it's in a flooding condition, and
5 as long as it's sustaining forces that can extend
6 the damage.

7 Q That would be a fair statement?

8 A I would agree.

9 Q You were on the Exxon Valdez at some point,
10 correct?

11 A Yes.

12 Q Did you use the load -- the computer program
13 that was on board the Exxon Valdez to -- or did
14 you use another computer?

15 A I ...

16 MR. CHALOS: Excuse me, Your Honor, those are
17 two different questions, he asked if he used the
18 program, and then he asked if he used another computer.
19 Which does he mean?

20 Q Sorry, I'll return. Did you use the computer
21 on board the Exxon Valdez?

22 A I had ship personnel helping me, and I would
23 submit the loading conditions to them, and they
24 used their own computer.

25 Q It's correct, isn't it, that there was some

1 problem with that program, some people suspected
2 that there were some problems with it, and
3 computers were used -- the computers from Houston
4 were used in a lot of the work.

5 A Houston was following us on everything we did,
6 with their own computers.

7 Q And the program -- the scenario that you ran,
8 you ran with the help of a very similar
9 Loadmaster computer program, is that correct?

10 A The same one.

11 Q The same one. And that was for the scenario
12 that you did.

13 A Yes.

14 Q Okay, that computer program doesn't take into
15 consideration structural damage to the vessel,
16 does it?

17 A No, but it -- the structural damage as
18 evaluated can be applied to the answers that you
19 get from the program.

20 Q And if I understand it right, correct me if
21 I'm wrong, the way I understand it is that tells
22 you what the strength and stress of the vessel is
23 at any one particular point in time, depending on
24 what the ullages are that you place into the
25 computer.

1 A Yes.

2 Q And so a computer program that is dynamic and
3 changes over time might be a little bit better
4 than that computer program. Would you agree with
5 that?

6 A Faster, but not better.

7 Q You said you listened to the testimony of Mr.
8 Milwee about the slight right degree rudder turn?

9 A Yes.

10 Q When he was asked that question, was he asked
11 under the circumstances where a ship is impaled,
12 or was he asked that under the circumstances
13 where you believed you were sliding off, say, for
14 instance, mud, or a reef? Do you remember?

15 A I don't, no.

16 Q And -- I'm sorry, can I -- okay. It's your
17 testimony, then, that when Captain Hazelwood was
18 making these numerous turns, and after 12:30, it
19 was one, two, three, four, five, six, seven,
20 eight, nine, 10, 11, 12, 13, 14, 15, 16, that he
21 was just trying to maintain his position?

22 MR. CHALOS: Your Honor, I object to the
23 characterization that Captain Hazelwood was making
24 these turns. All that's showing is swing. It doesn't
25 necessarily have to be because of applied rudder.

1 THE COURT: Objection overruled, you may
2 answer the question.

3 Q Is it your opinion that he was just keeping it
4 going straight ahead?

5 A That's my opinion.

6 Q And in your scenarios, you assume that it
7 would take 15 to 20 minutes to close all eight
8 slider valves?

9 A That was an off-the-cuff answer, yes.

10 Q How would that have been done?

11 A Oh, put a couple of men on each side of the
12 vessel, and start forward and work aft.

13 Q How would you close them?

14 A Manually.

15 Q Well, would you explain that to the jury?

16 A Well, they're -- they're big gates, and
17 they're on a screw, and it's got a -- a wheel and
18 a crank. I think I ...

19 Q What about all the PV valves, would you be
20 able to close those in 15 to 20 minutes?

21 A No.

22 Q In your scenario, at two and a half hours --
23 I'd assume -- correct me if I'm wrong, now, you
24 assume that the vessel came off the reef at about
25 2, 2:30? In your scenario?

1 A I think it would take probably that long to
2 get the vessel in the condition that I worked
3 with.

4 Q What was its heel and trim immediately after
5 coming off the rock, in your scenario?

6 A About 12 degrees to starboard, and -- mind if
7 I look at ...

8 Q Sure, no, I don't.

9 A 12 degrees starboard, and only four degrees by
10 the head -- or four feet by the head.

11 Q Okay. If you would, I would just -- maybe you
12 could demonstrate to the jury what the vessel
13 would have looked like at that point. Let's
14 assume that this is, you know ...

15 A Well, four feet by the head in a vessel about
16 1,000 feet long is almost negligible, but 18
17 degrees is very pronounced.

18 Q It would have been 18 or 12?

19 A Or 12, excuse me.

20 Q It's very pronounced? And the crew members
21 would have been out on the deck, and been
22 expected to close the slider valves in a
23 pronounced heel like this.

24 A Yes.

25 Q You said it would have taken about an hour to

1 an hour and 15 minutes to ballast number 4?
2 Port?

3 A Completely.

4 MR. COLE: Your Honor, I have nothing further.

5 MR. CHALOS: Just a few questions, Your Honor.

6 (1097)

7 REDIRECT EXAMINATION OF MR. HUDSON

8 BY MR. CHALOS:

9 Q Would a 12-degree list on this vessel prevent
10 someone from going out on deck and doing work, in
11 your opinion?

12 A Not at all.

13 Q And you said that it would take about an hour
14 to an hour and 15 minutes to completely fill
15 number 4 port?

16 A Yes. In the meantime, you could be also
17 ballasting the -- the port engine room salt water
18 ballast tank and the aft peak, which is also a
19 step in the right direction, although slower.

20 Q What would be happening as all this was going
21 on to the trim of the vessel?

22 A The vessel would be coming back.

23 Q Now, under your scenarios, would you have to
24 close the PV valves in order to keep the vessel
25 afloat?

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MR. COLE: Objection, leading.

Q I'll rephrase it. Mr. Cole asked you about the PV valves being open?

A Yes.

Q Do you recall that? In your scenario, did you consider the PV valves?

A Yes, the fact that they would offer two and a half PSI resistance to further flooding.

Q And how did that affect your ultimate opinion that the vessel would stay afloat, the fact that they might have been open?

A Well, they would slow the righting process, certainly, but there is additional -- there is a way to blank them on the site, I don't know whether the -- they would have done that or not, but that's -- you know, if there was -- they were suffering a reversal in this process, they could take other measures.

Q Well, in your opinion, would the PV valves have to be blanked off in order to achieve the result that you got?

A No.

Q Lastly, did you consider the vessel's computer program to be accurate for the purpose of determining stability and strength?

1 A Yes, if properly applied.

2 Q I assume you properly applied it in your
3 situation.

4 A Yes.

5 Q I have no further questions.

6 RECROSS EXAMINATION OF MR. HUDSON

7 BY MR. COLE:

8 Q Just two quick questions. When you did your
9 scenario, your hypothetical, at approximately 2
10 or 2:30, how often, how many -- at what periods
11 of time did you assess the stability or the
12 strength after it came off?

13 A I -- it's a -- the thing that the interwrapped
14 (ph) computer program offers is doing the
15 iterations that you have to do rapidly, and it
16 was tedious for me to do them with this program,
17 but I took it in several steps, and I don't know
18 whether that answers the question or not.

19 Q Did you like every 15 minutes or every 20
20 minutes for every hour or every two hours after
21 ...

22 A No, I just did it in four stages.

23 Q How much did you get paid for your work in the
24 Exxon Valdez salvage?

25 MR. CHALOS: Your Honor, just for the record,

1 I would object to the relevancy.

2 THE COURT: Overruled.

3 A I don't know, about 30 to \$40,000.00 for the
4 six weeks.

5 Q And that was as a subcontractor for Exxon
6 Shipping Company.

7 MR. CHALOS: Your Honor, I object ...

8 A No, I was a subcontractor to Nick -- Nick
9 Leitz.

10 Q Okay. Nothing further, Your Honor.

11 MR. CHALOS: No questions.

12 MR. MADSON: The Defense rests, Your Honor.

13 THE COURT: The witness may be excused.

14 Counsel approach the bench, please. You may step down,
15 please, you're excused.

16 (Whispered bench conference)

17 (1324)

18 THE COURT: Ladies and gentlemen, we're going
19 to excuse you just for a couple of minutes to take up a
20 matter very briefly, but we'll call you back in in just
21 a few minutes. Don't discuss this case among
22 yourselves or with any other person, don't form or
23 express any opinions, that's just as important now as
24 it was in the beginning of the case. I'll call you
25 back in as soon as I can.

1 (Jury not present.)

2 THE COURT: All right, in a side bench
3 conference immediately after Mr. Madson stated the
4 Defense rests, Mr. Cole said there was a recent Court
5 of Appeals decision suggesting the court inquire of the
6 Defendant of his desire not to take the stand. Do you
7 happen to have that citation handy, Mr. Cole?

8 MR. COLE: Your Honor, I apologize, I do not,
9 it was brought up this afternoon by Mr. Linton, and
10 that's why. I will be happy to provide the court with
11 that. It was a post-conviction relief matter.

12 THE COURT: I wish you would get that to me
13 sometime, I'm going to inquire of Captain Hazelwood,
14 but I'd like you to, when you do make that
15 representation, be prepared to give me a cite. Any
16 objection to the court inquiring of Captain Hazelwood?

17 MR. CHALOS: No, Your Honor.

18 THE COURT: Captain Hazelwood, you have the
19 right to testify on your own behalf here, if you do
20 testify, you'll be subjected to cross-examination, and
21 if you do testify, the court would instruct the jury
22 that they're to consider your testimony, evaluate your
23 testimony the same way they would any other witness'
24 testimony. Do you understand that right, sir?

25 A Yes.

1 THE COURT: Okay, if you decline to take the
2 stand, that is your Constitutional right, and this
3 court will instruct the jury they're not to consider
4 that in any way adversely to you. Do you understand
5 that?

6 A Yes.

7 THE COURT: And is it your desire at this time
8 not to testify?

9 A That's correct.

10 THE COURT: And have you consulted with your
11 attorneys concerning this decision?

12 A I have.

13 THE COURT: And is that decision made with
14 your advice and consent, Mr. Madson?

15 MR. MADSON: It is, Your Honor.

16 THE COURT: Okay. Call the jury back in, and
17 you can get your -- let's see if your witness is
18 available for ...

19 MR. COLE: He is, Your Honor, I can go get
20 him.

21 THE COURT: Okay, let's bring the jury back in
22 then.

23 (Jury present.)

24 THE COURT: Ladies and gentlemen, the Defense
25 has rested. The State may call its rebuttal witness at

1 this time. Call the name of your witness, please.

2 REBUTTAL

3 MR. COLE: This is Captain Mackintire, Your
4 Honor.

5 THE CLERK: Sir, would you please stand, have
6 the microphone ...

7 (Oath administered)

8 A I do.

9 ROBERT W. MACKINTIRE,
10 called as a witness in behalf of the Plaintiff, being
11 first duly sworn upon oath, testified as follows:

12 THE CLERK: Please be seated. Sir, would you
13 please state your full name, and then spell your last
14 name.

15 A Robert W. Mackintire, spelled M-a-c-k-i-n-t-i-
16 r-e, all one word.

17 THE CLERK: And your current mailing address,
18 sir?

19 A Be Herseyside, H-e-r-s-e-y-s-i-d-e, Pembroke,
20 Maine, 04666.

21 THE CLERK: And your current occupation?

22 A I'm a ship's captain with Texaco.

23 MR. COLE: May I proceed, Your Honor?

24 THE COURT: Sure.

25 DIRECT EXAMINATION OF CAPTAIN MACKINTIRE

1 BY MR. COLE:

2 Q Captain Mackintire, you work for Texaco
3 presently?

4 A That's correct.

5 Q What ship are you the captain of right now?

6 A The Brooklyn, TT Brooklyn.

7 Q And how long have you been a tanker captain?

8 A Oh, about 12 years.

9 Q Would you explain how you became involved in
10 the maritime industry?

11 A I went to the Massachusetts Maritime Academy,
12 graduated in 1954, and worked for Atlantic
13 Refining Company for about a year and a half, and
14 then went ...

15 Q What were you doing for them? What were you
16 doing for them?

17 A I was an A.B. to start with, and relieving
18 third mate.

19 Q And after finishing -- how long did you work
20 there?

21 A About a year and a half.

22 Q Where did you go -- what did you do after
23 that?

24 A Went in the Navy, about three and a half
25 years.

1 Q Would you briefly describe to the jury what
2 you did while you were in the Navy?
3 A I was an officer in the Navy, an ensign and
4 lieutenant J.G., and I was first lieutenant on a
5 D.E., that is the officer in charge of the deck
6 department, and then eventually promoted to
7 gunnery officer and operation officer while I was
8 on there. That was for about two years.
9 Q What's a D.E.?
10 A Destroyer escort.
11 Q And then what did you do after that?
12 A And then I was transferred to a passenger
13 vessel, MSTS all-Navy crew operations -- MSTS is
14 the Military Sea Transportation Service --
15 vessel. And I was a navigator and operations
16 officer on that vessel.
17 Q Need some more water?
18 A That's all right.
19 Q After your service in the Navy, what did you
20 do?
21 A I left the Navy, and I returned to the
22 Merchant Marine, I went with American Trading and
23 Production Company, and was second and third mate
24 with them for about three years.
25 Q And where did you go to work after that?

1 A And then I -- I left then and I went with
2 Texaco, a job opening occurred at Texaco, went
3 with them, started sailing as third mate, and
4 then second mate, and after about two years, I
5 started sailing chief mate with them, which
6 lasted for about 12 years, and then about 12
7 years ago I was promoted to captain, I've been
8 sailing captain ever since.

9 Q How long have you worked for Texaco?

10 A It'll be 27 years.

11 Q Would you describe for the jury where you've
12 been as a tanker captain?

13 A I've worked on several of their vessels, and
14 the last one I was on was the Texaco Rhode
15 Island, which was a tanker operating primarily on
16 the West Coast, and it's about a 600 foot long
17 tanker, and then I was, about a year ago, I was
18 transferred to the Brooklyn, and ...

19 Q Where -- I'm sorry, go ahead.

20 A ... which is a much larger ship, it's about
21 1,094 feet long by 145 feet wide.

22 Q When you -- would you describe for the jury as
23 a captain for Texaco where you've been required
24 to go, what places?

25 A You mean -- the Brooklyn has been operating

1 -- when I first joined it, it was operating
2 between Long Beach, California, and Valdez,
3 Alaska.

4 Q Prior to joining the Brooklyn, where did you
5 travel?

6 A On the Rhode Island, we were operating
7 primarily on the West Coast between Long Beach,
8 San Francisco, Seattle area, and occasionally to
9 Anchorage, Alaska. Prior to that, the ship was
10 operating for Military Sealift Command, and we
11 were the -- operating around the world in
12 different areas, to Ascension Island, and the Far
13 East, and South America areas.

14 Q You talked a little bit about the Brooklyn.
15 How much oil can the Brooklyn carry?

16 A We carry, fully loaded, about 1.6 million
17 barrels.

18 Q And in dead weight tons, how large is it?

19 A 225,000 dead weight tons.

20 Q Would you tell the jury when you were assigned
21 to the Brooklyn?

22 A January of 1989.

23 Q And after being assigned to that, what routes
24 did you take that vessel on?

25 A We were -- as I say, we were operating between

1 Long Beach, California, and Valdez, Alaska, until
2 April of last year, and then we were transferred
3 and are operating in the Far East area.

4 Q Where have you been working in the Far East?

5 A Last summer we took a load of grain from
6 Portland, Oregon, and took it to Bangladesh, and
7 then after that we started operating out of the
8 Persian Gulf, carrying crude oil between the
9 Persian Gulf and South Korea.

10 Q South Korea?

11 A South Korea, yes.

12 Q Now, how many trips did you make in and out of
13 Prince William Sound on the Brooklyn?

14 A It'd be about seven trips, round trips.

15 Q Seven. As a captain, would you explain to the
16 jury what your most important responsibilities
17 are?

18 A Would be, primarily, is the safe navigation of
19 the vessel, and the efficient operation for the
20 carrying of the cargo.

21 Q Would your safe navigation include the safety
22 of your crew members?

23 A Yes, that's correct.

24 Q Now, when you came into Prince William Sound,
25 did you have pilotage for the Prince William

1 Sound area?

2 A No, I don't.

3 Q I'm sorry?

4 A No, I don't.

5 Q Did any of your mates on any of the crews that
6 you had during your transits have pilotage?

7 A No, they didn't.

8 Q What -- when you were asked at the three-hour
9 period outside of Cape Hinchinbrook whether you
10 had pilotage, or whether you were a pilotage
11 vessel or a non-pilotage vessel, how would you
12 respond?

13 A I would tell them that we -- I did not -- no
14 one had pilotage on board, for the transit.

15 Q What requirements, then, were you required to
16 follow?

17 A In that case, we were required to make reports
18 as we passed Cape Hinchinbrook, and every 10
19 minutes we would report the ship's position to
20 the Vessel Traffic Center. And we were required
21 to pick up a pilot at Bligh Reef for the approach
22 into Valdez Arm and Valdez Harbor.

23 Q How many officers were required to be on the
24 bridge?

25 A We were required to have two officers on the

1 bridge while we were transitting Prince William
2 Sound.

3 Q Did that stop when you got abeam of Montague?
4 A No.

5 Q What about visibility requirements?
6 A In what ...

7 Q Were there any visibility restrictions on
8 whether or not you could come in?

9 A They -- not that I know of, but they could, if
10 you -- under certain circumstances, the VTS may
11 tell us that we couldn't come in because of
12 visibility restrictions. Possibly if we got
13 radar that was broken down, we didn't have both
14 radars operating, they would restrict us for
15 possibly waiting for the weather to clear. But
16 there's nothing in writing that I know of,
17 specifically about that.

18 Q Do you have -- does Texaco have an agent in
19 Valdez?

20 A Yes, we do.

21 Q Who is that agent?
22 A Alamar, the Alaska Maritime Agency.

23 Q When your vessels were transitting Prince
24 William Sound, what was your practice as far as
25 whether or not you were on the bridge?

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1 A When I was -- I was always on the bridge for
2 transitting Prince William Sound. Usually
3 because the regular deck officers would be tired
4 from the loading and operation, give them plenty
5 of rest.

6 Q Where would you pick up the pilot?

7 A I'd pick up the pilot at Bligh Reef, in the
8 vicinity of Bligh Reef buoy.

9 Q I have a -- I think there's a pointer right
10 there next to you?

11 A Oh, yes, there is.

12 Q Would you mind pointing to the jury in the
13 area where you ...

14 A We picked up the pilot in this area here.
15 Come abeam of the buoy, and then we would
16 usually, due to prevailing winds, we would change
17 course to the right and pick up the pilot, and
18 then we'd change course, come back again, the
19 pilot would take over, and conn the ship into the
20 harbor and dock it.

21 Q Would it be the same as far as where you would
22 drop him off?

23 A Generally it would be the same idea, we'd come
24 back out, and then when we got in the vicinity of
25 Bligh Reef, the pilot would get off, and then

1 we'd continue on down and through the traffic
2 lane.

3 Q Thank you. Now, when you were transitting
4 into Prince William Sound, where did you believe
5 that you were being observed by the Vessel
6 Traffic System?

7 A My understanding was that they had limited
8 radar coverage, but it did ex -- basically it
9 extended down to Bligh Reef and that area.

10 Q Did you rely on the fact that they would tell
11 you where you were?

12 A Not really, no. No.

13 Q Why is that?

14 A We did our own navigation, and were
15 responsible for our own navigation, so that would
16 be the manner that we would determine where we
17 were, and I wouldn't be relying on the VTS to
18 tell us.

19 Q Did you ever have to leave the lanes at all,
20 while you were ...

21 A Yes, we have.

22 Q Did you contact your vessel control system
23 when you did that?

24 A Well, it was our procedure, was if we had to
25 leave, we would tell 'em that it was necessary to

1 leave the traffic -- traffic lanes, and they
2 would acknowledge that we had notified them.

3 Q Did that include not only just going from your
4 traffic lane to the separation lane, but also
5 completely outside of the lane?

6 A Yes, that's correct.

7 (2135)

8 Q Now, while you were transitting in and out of
9 Prince William Sound, what -- did you use the
10 automatic pilot in there?

11 A No, we didn't. We maintained manual steering
12 all the way.

13 Q Why is that?

14 A Primarily it's company policy, when we're in
15 restricted waters, that we should be operating
16 under manual steering.

17 Q You talked about company policy. Is there a
18 -- did Texaco have a bridge manual for you?

19 A They had an operating manual that included a
20 chapter on bridge requirements for under
21 different circumstances. Reduced visibility,
22 pilotage waters, and docking and undocking
23 procedures.

24 Q Were there -- would it be fair to say there
25 was about three different watch-type conditions?

1 A Yes, there were way -- they considered three
2 different situations that would be involved.

3 Q And would you briefly explain to the jury what
4 those were?

5 MR. MADSON: Your Honor, I'm going to object,
6 I don't see the relevance of Texaco's bridge operating
7 policy as opposed to Exxon's -- you know, it may be
8 different, it may be the same, but I don't see the
9 relevance.

10 MR. COLE: Your Honor, the relevance is the
11 type of watch scenarios that these companies put
12 together, there were guidelines that they used, they
13 were -- the purpose is to show what the standard in the
14 industry was.

15 MR. MADSON: It shows the standard by Texaco
16 and not anybody else. It isn't the standard of an
17 industry.

18 THE COURT: Objection overruled.

19 Q (Captain Mackintire by Mr. Cole:) Would you
20 briefly explain to the jury what those three
21 areas were?

22 A The first ones would be when we were at sea,
23 outside the headlands, and we would probably be
24 in the condition of reduced visibility, and it'd
25 be necessary to have additional people and watch

1 standers available on the bridge, and what we
2 would do, and having the engines on standby,
3 ready for operation, and the use of whistles for
4 fog and lookouts that would be stationed.

5 And then the next one would be when we were
6 operating in restricted waters, such as inside
7 Prince William Sound or Santa Barbara Channel or
8 places like that where there's more activity, and
9 within the headlands, and then we would ...

10 Q I'm sorry. When you say "within the
11 headlands," that may be a concept that hasn't
12 been talked about. Would you explain what you
13 mean to the jury?

14 A Well, that would be when we -- once we entered
15 into the land mass area and started going into an
16 area where we would not actually be -- have a
17 pilot on board, and the ship is doing the
18 navigating. And it would be in an area where
19 we'd have to do extensive navigation, and when
20 we're in this situation, then they would require
21 that we would have two officers on the bridge
22 -- in fact, in the first situation I mentioned,
23 too, the company policy was two officers on the
24 bridge, and one would be expected to be the
25 captain, and if for some reason he couldn't be up

1 there, then we'd use the chief mate, if the
2 captain felt he was qualified for it.

3 And then the third situation would be docking
4 the vessel, when you had a pilot on board. And
5 this would be still the same idea, only it's --
6 you also had the pilot up there, and the captain,
7 or mate on watch would be available.

8 Q If you were found to not be in compliance with
9 the bridge manual, what would happen to you as a
10 captain?

11 A If I'd -- how would that -- if it ...

12 MR. MADSON: I agree, Your Honor, I don't know
13 what it means either, I would -- confuse the witness.
14 It's irrelevant.

15 Q I'll withdraw the question. As a tanker
16 captain, would you explain -- do you get a
17 certain sense of how your ship runs after a
18 while, after being on it?

19 A Yes, you mean that -- feeling for the ship,
20 and how it operates, and maneuvering
21 characteristics, yes.

22 Q And would you describe to the jury whether or
23 not you can tell whether the engine is running
24 improperly, or things like that?

25 A Yes, there -- you could get feelings of

1 changing of conditions when the -- when the ship
2 changes course, slows down, or -- break down,
3 it's -- a lot of times we will notice this effect
4 when we're not on the bridge, and the ship will
5 change course, we feel it veer over, or the -- if
6 we lost the engines for some reason, a breakdown,
7 you feel a vibration change on the vessel, you
8 sense these things after a while, and realize
9 something's happened.

10 Q Would you -- what was the Texaco alcohol
11 policy for American ships?

12 MR. MADSON: Your Honor, I'll object to
13 Texaco's policy again, I don't see what relevance a
14 company's policy, other than Exxon, but certainly
15 Texaco's, has to do with this case.

16 THE COURT: Irrelevance objection's overruled.

17 Q What -- yes, go ahead.

18 A The policy was there was no liquor on board
19 Texaco vessels.

20 Q Were people allowed to go ashore?

21 A Yes, they were.

22 Q What would happen if somebody was drinking on
23 board?

24 A If they were drinking on board and -- they
25 would be fired. Was my policy.

1 Q Now, when you came into the situation like you
2 did on the Brooklyn where you had a new crew,
3 what steps would you take to get acquainted with
4 the crew?

5 A Oh, this did happen with the Brooklyn, I
6 joined January 1989, and I was moved to the ship,
7 I would try to get as much input from the
8 officers that were on board at that time, telling
9 me the characteristics of the ship, and how it
10 was operating, and the crew members'
11 qualifications and things I should be looking
12 for, and this would come from the officers that
13 were already on board, and I would question them
14 and determine certain things of this nature.

15 Q And as a master, are you able to place people
16 in various positions, your crew members in
17 various positions at certain times?

18 A Yes, if I found somebody was limited in their
19 abilities to handle certain jobs, I would change
20 them around, or make adjustments so that they
21 weren't there at the critical times, yes.

22 Q Now, on March 22, would you describe for the
23 jury -- of 1989, would you describe for the jury
24 when you -- approximately when you would have
25 called into the VTC Center. Do you remember

1 that?

2 A On what date?

3 Q March 22 ...

4 A That would be ...

5 Q ... 1989.

6 A That would be on arrival.

7 Q Yes.

8 (2513)

9 A Yes, well, we would have three hours before we

10 made arrival at Cape Hinchinbrook, we would call

11 in on the VHF radio and notify them that we were

12 -- our ETA at Cape Hinchinbrook. And then we

13 would give 'em the information that they

14 requested, but -- if we had anything --

15 breakdowns, any problems with the ship, and

16 whether we had a pilot on board.

17 Q And what did you indicate when they asked you

18 whether you were a pilotage or a non-pilotage?

19 A We told 'em no.

20 Q And what happened when you -- after you went

21 past Cape Hinchinbrook, would you describe that

22 -- your voyage into the Bligh Reef area?

23 A Well, as we'd start in, we would start

24 notifying the VTS when we got abeam of Cape

25 Hinchinbrook, and then every 10 minutes, all the

1 way up to Montague, we would then give them a
2 position every 10 minutes, and after that point,
3 we would -- they would release us from giving the
4 position, and then we continued on up here to
5 Bligh Reef, where we would pick up the pilot.

6 Q And while you were traveling from Montague,
7 abeam of Montague to Bligh Reef, the Bligh Reef
8 area, did you remain on the bridge?

9 A Yes, I did.

10 Q And were there any other mates on the bridge
11 with you?

12 A The watch standing mate that was on watch at
13 that time.

14 Q Would you point to where you picked up the
15 pilot? Would you point to where you picked up
16 the pilot that morning?

17 A We picked up the pilot about in this area
18 right here, at Bligh Reef.

19 Q What were the ice conditions when you went
20 through that morning?

21 A They were light ice conditions, it was quite a
22 bit of ice on the -- this side, west side, and it
23 had drifted across into the inbound traffic lane
24 through this area here, and it was necessary to
25 avoid some of the ice, and we'd gone a little bit

1 into the traffic separation zone, and -- before
2 we could pick up the pilot. And I'd make the
3 turn to the right, have to dodge some ice, make a
4 turn to the right to pick up the pilot.

5 Q And what happened from the time you picked up
6 the pilot till the time you got into port?

7 A The pilot took over, had the conn, and we made
8 our maneuvers into the dock, there was no ice
9 from that point on in.

10 Q What are your responsibilities when the pilot
11 comes aboard, as captain?

12 A Well, I'm still responsible for the vessel and
13 the safe navigation of it, I -- what I do is turn
14 over the operation of the conn, as they call it,
15 to the pilot, he gives the rudder orders and the
16 speed that the vessel has to proceed at, and he
17 does the maneuvering, and I would be supervising
18 him, and if anything -- if he did anything wrong,
19 I could take the conn away from him and take
20 control myself. If I felt he was doing something
21 wrong.

22 Q What time did you arrive in Valdez that
23 morning?

24 A Believe we docked about 9:00 in the morning.

25 Q And during -- then I assume that you went

1 through the standard unloading and loading
2 process?

3 A That's correct.

4 Q Did you go into town that day?

5 A Yes, I did.

6 Q Why did you go into town?

7 A Oh, I went to the doctor.

8 Q What was your standard practice during the
9 docking and undocking process? As far as going
10 into town or not?

11 A Oh, well, normally I didn't go into town, I
12 usually stayed with the ship, no particular
13 reason to go to town, and I felt I -- I'd stay
14 with -- stay on the ship, be available for
15 anything that might come up.

16 Q When did you leave Valdez, then, on the
17 tanker?

18 A The next morning we started preparing to get
19 underway about 0730, and we cleared the dock
20 probably about 8:30 in the morning.

21 Q Would that have been March 23 ...

22 A On the 23rd.

23 Q ... 1989?

24 A That's correct.

25 Q And where were you during the unloading -- or

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the undocking process?

A I was on the bridge.

Q And who else was on the bridge with you?

A The third mate was on the bridge, the pilot, and the quartermaster -- the helmsman -- steering.

Q And until you dropped off the pilot that morning, who stayed -- who was on the bridge?

A The same people, we had the third mate, and myself, and the pilot.

Q And that would have been through the Narrows and out to Bligh Reef.

A That's correct.

Q Would you describe what happened when you made it out into the TSS lanes, the maneuvers that you took after you went past the Narrows?

A We started coming down this area here, after passing the Narrows, and we had been informed prior to going out there that there was extensive ice out there, and the pilot and I discussed how we would maneuver at this point, particularly for getting himself off. So as we got down here, we could see the ice coming down across, close ...

Q Just a minute, I have another one.

A Might show up better, yes.

1 Q Maybe it'll be easier to see if I give you a
2 bigger ... (Pause) Go ahead.

3 A Can you see it all right? So about this
4 point, we observed the ice heading down in a
5 bridge shape down to close to Bligh Reef buoy,
6 and then we cut back across this way. The ice
7 had come out of the glacier area here and was
8 being blown across, so at this point, discussing
9 it with the pilot, we decided the best procedure
10 was to follow the edge of the ice rather than try
11 to go through it, was follow the edge of the ice
12 and by Bligh Reef, where we had an open stretch
13 of about a half a mile to six tenths of a mile,
14 in that area, even though -- there were a few
15 extra icebergs that had drifted over there, but
16 they were minor, and we were able to go around
17 'em, so that's what we decided to do, we went on
18 ahead, and about this point here, we -- the pilot
19 got off.

20 And then I continued on with the vessel, and
21 we passed about a half a mile off Bligh Reef
22 buoy, and then we turned following the edge of
23 the ice, we turned back and crossed over into the
24 outbound lane, and continued our passage.

25 Q And did you leave the bridge during the time

1 you were transitting that area?

2 A No, I didn't.

3 Q What speed was your vessel going during that
4 time?

5 A We were running at a -- probably about eight
6 to 10 knots.

7 Q And did you use autopilot during that time?

8 A No, we didn't.

9 Q Thank you, Captain Mackintire, I have nothing
10 further.

11 (2958)

12 CROSS EXAMINATION OF CAPTAIN MACKINTIRE

13 BY MR. MADSON:

14 Q Captain Mackintire, first of all, you were
15 subpoenaed here by the State of Alaska, were you
16 not, sir?

17 A That's correct.

18 Q When you subpoenaed for?

19 A I received the subpoena yesterday.

20 Q Just yesterday?

21 A Yes.

22 Q And where were you?

23 A Here in Anchorage. Here in Anchorage?

24 Q Well, how did you get here, I mean, if you
25 weren't subpoenaed to be here, I guess?

1 A My lawyer was -- Texaco's lawyer was told that
2 we were going to be subpoenaed, and for us to be
3 available, so Texaco made me available.
4 Q Where did you come from, sir?
5 A Originally?
6 Q No, just before you came to Anchorage
7 yesterday.
8 A From home.
9 Q Maine?
10 A Yes, that's correct.
11 Q And you didn't know you were going to testify
12 until just a few days ago, is that correct?
13 A For sure, yes, that's correct.
14 Q When did you first talk to the State of
15 Alaska, then, sir?
16 A Yesterday ...
17 Q Or a representative?
18 A Yesterday afternoon.
19 Q What about, do you remember talking to a
20 sergeant back in -- investigator back in
21 February?
22 A Yes, he was a police -- state police officer,
23 yes.
24 Q Was that just by phone or in person?
25 A That was on the phone.

1 Q And were you in Maine at that time also?
2 A I was in Texas.
3 Q Now, you said that you worked for Texaco for a
4 number of years, 27 years.
5 A 27 years, that's correct.
6 Q Is it true, sir, that Texaco has far fewer
7 tankers now than they did in years past?
8 A That's correct.
9 Q Their fleet is declining?
10 A Yes.
11 Q Does that mean, then, that the personnel is
12 declining also? In other words, ship captains,
13 there's fewer of them than there used to be?
14 A Yes.
15 Q Would it be fair to say, sir, that you would
16 be wanting to be -- let's say an extra, or a real
17 good captain at this stage of your career, in
18 other words, to save your job as much as you
19 could?
20 MR. COLE: Objection, argumentative.
21 MR. MADSON: I'm not going to argue, Your
22 Honor, I just asked the question.
23 THE COURT: Objection overruled.
24 Q (Captain Mackintire by Mr. Madson:) You know,
25 have you -- I do not want you to say that you're

1 in fear of your job, but certainly you want to
2 keep your job, is that fair to say? You want to
3 stay a captain?
4 A Certainly, of course, yes.
5 Q And certainly you want to do everything to be
6 sure that your employer is not unhappy with you,
7 let's put it that way. Would you say that's
8 fair?
9 A I do the best I can, that's what I -- they pay
10 me for, yes.
11 Q You don't want to rattle the corporate cage,
12 so to speak.
13 A I don't -- I don't think I can do that.
14 Q Now, the Brooklyn that you said you're captain
15 on, how long have you been the captain of the
16 Brooklyn?
17 A Since January 1959 -- '89.
18 Q January '89.
19 A (No audible response)
20 Q And you said it's 1,084 feet long and 145 feet
21 wide?
22 A That's correct.
23 Q Compared to the Exxon Valdez -- you know the
24 statistics, by the way, of the Exxon Valdez here?
25 A I think she's less than 1,000 feet, and 250

1 feet wide, and 37-foot draft, somewhere, I think
2 that's -- is that correct?

3 Q Is it -- well, I'm afraid you've got to answer
4 the questions.

5 A I think it's ...

6 Q Is it fair to say it's roughly the same, but
7 perhaps the length of the Valdez is a little
8 shorter but it's wider?

9 A Little shorter, and a little wider, yes.

10 Q Handling characteristics of ships, do they
11 vary, you know, from one to another, tankers?

12 A Yes, they do.

13 Q Have you ever been on the Exxon Valdez?

14 A No, I haven't.

15 Q So is it fair to say you don't know exactly
16 how that vessel would feel -- respond to rudder
17 orders and things like this, whether you'd feel
18 the vibrations and things?

19 A No, it would probably handle a lot -- a little
20 different than one -- the ships I've been on,
21 yes.

22 Q And Mr. Cole here asked you a number of
23 questions about where you've been in all the
24 world.

25 A Right.

1 Q You have traveled extensively as a captain and
2 all over, right?
3 A Yes, I have.
4 Q Is it fair to say, sir, that some areas are
5 much more dangerous, or more difficult to
6 navigate in, than others?
7 A Yes.
8 Q And prior to March 23, 22, 23, the trip you
9 were just testifying about to Valdez?
10 A Yes.
11 Q How many trips had you made into Valdez as
12 captain of the Brooklyn prior to March 23?
13 A It'd be about six trips, that would probably
14 be the seventh trip I have made.
15 Q How long does it take to make one trip?
16 A You mean round trip?
17 Q Round trip.
18 A In the -- in the harbor?
19 Q Well, let me rephrase that. You were
20 traveling from Valdez to where, where was your
21 harbor?
22 A Long Beach.
23 Q Long Beach?
24 A Long Beach. It's probably a two-week round
25 trip.

1 Q It would take two weeks for a round trip?
2 A Uh-huh (affirmative).
3 Q So you started in January, I presume that was
4 fairly early in January?
5 A Yes. Uh-huh (affirmative).
6 Q So you would have two -- one, two, six --
7 three trips in January?
8 A Three.
9 Q Maybe ...
10 A Well, probably -- yeah.
11 Q Another three in February or so?
12 A And part of March.
13 Q You were making this run continuously ...
14 A Yes.
15 Q ... and not going anywhere else, right?
16 A That's right.
17 Q You had been to Prince William Sound prior to
18 January, then, of 1989?
19 A I'd been to Prince William Sound but I'd never
20 been to Valdez.
21 Q Where did you go?
22 A Prior?
23 Q Yeah.
24 A I've been to Whittier, which is -- it's over
25 in this area over here.

1 Q Okay.

2 A It's on this side, we came up here ...

3 Q You have to go through Cape Hinchinbrook
4 (indiscernible) entrance, is that right?

5 A To do that, yes.

6 Q What was the purpose of going there, was that
7 a tanker also?

8 A Yes, that was a tanker, and we were taking
9 military cargo to Whittier.

10 Q And on the six or seven -- let's say six or
11 seven trips prior to March 23, you didn't have
12 pilotage, right?

13 A That's correct.

14 Q Federal endorsement, correct?

15 A Uh-huh (affirmative).

16 Q Now, you must have known something about the
17 pilotage requirements in Prince William Sound, or
18 did you, before going in?

19 A Yes.

20 Q Where did you get that information?

21 A We were supplied with letters from the Captain
22 of the Port, provided to the company, which they
23 forwarded to us, we had 'em on the ship.

24 Q Do you know if they came from via Alamar or
25 not, the American ...

1 A I ...
2 Q Alaska Maritime?
3 A ... don't know, they probably were originated
4 by them and sent to Texaco, who distributed them
5 to the ships.
6 Q Then, sir, were you aware of the fact that,
7 let's say, there was a visibility requirement?
8 A No.
9 Q You did not know that.
10 A No.
11 Q And did you ever -- well, let me ask you this.
12 Try to get done here by 1:30 if we can, sir. I
13 need Exhibit Number 2 -- B, rather -- Captain
14 Mackintire, let me hand you what's been offered
15 in evidence here as Defendant's Exhibit B, and
16 I'll ask you if you've seen that document any
17 time in the past, sir.
18 (3378)
19 A No, I haven't. No.
20 Q What does that purport to be? You've had a
21 chance to read it, is that the ...
22 MR. COLE: I object (indiscernible).
23 MR. MADSON: Well, I want to make sure that
24 the record -- what it is.
25 THE COURT: He hasn't seen B, which is the

1 Arts letter.

2 MR. MADSON: That's the Arts letter.

3 Q (Captain Mackintire by Mr. Madson:) Do you
4 know Mr. Arts, sir?

5 A No.

6 Q Alaska Maritime is the same agent for Texaco
7 as it is for Exxon, as far as you know?

8 A That's correct, yes.

9 Q So when you arrived in the wee hours prior to
10 entering Prince William Sound, you would call the
11 Coast Guard, and they would essentially ask you
12 some questions, right? Where are you, what's
13 your ETA at Cape Hinchinbrook, things like that?

14 A Yes.

15 Q And then would you -- would they ask you if
16 you had pilotage on board?

17 A Yes.

18 Q And you would respond no.

19 A Right.

20 Q You said then that you would enter
21 Hinchinbrook and from there to abeam of Montague
22 Island, you would report your position every 10
23 minutes?

24 A Yes.

25 Q Did you ever enter when visibility was less

1 than two miles?

2 A I -- no, I don't believe so.

3 Q Do you know whether or not you could have

4 entered?

5 A I have been informed up in the other areas,

6 but not at Hinchinbrook, no.

7 Q When you say "other areas," what areas are you

8 speaking of?

9 A Well, when we approached up to Bligh Reef, in

10 this area here.

11 Q You say "this area here," you're on virtually

12 a course that's pretty near straight north ...

13 A That's correct.

14 Q ... in the middle of the Sound somewhere?

15 A Yeah.

16 Q And you say you got in a fog in those areas?

17 A Yes.

18 Q And visibility would be less than two miles?

19 A Yes.

20 Q Do you know if there was any -- I guess you

21 said you didn't know that there was no

22 restrictions on non-pilotage vessels when

23 visibility was under two miles.

24 A We were not told that, no.

25 Q The Coast Guard never told you that?

1 A No. No.

2 Q Did they ever ask you what the visibility was?

3 A They had a request of the weather reports at
4 various times, and would ask us to give it to
5 them, and if we had unusual situations such as
6 ice, we spotted ice, we would report it to the
7 VTS, yes. Unusual weather conditions.

8 Q Would you say that the ice reporting was
9 probably the best way of notifying other vessels
10 about ice conditions because you actually saw it
11 and would go through it?

12 A Yes, that was -- I believe that was the usual
13 way for them to be -- VTS to know, VTC would know
14 that we were in ice.

15 Q And then -- in other words, radar may not be
16 the best -- the Coast Guard radar may not be the
17 best way to determine.

18 A Yes. That's correct, I will go along with
19 that, yeah.

20 Q But sir, you did on occasion, at least one
21 occasion, then, be on the vessel proceeding
22 toward Bligh Reef, in fog, with visibility less
23 than two miles at a time when no one on board the
24 vessel had federal pilotage.

25 A That's correct.

1 Q And it takes a number of trips to get the
2 pilotage endorsement, doesn't it?
3 A About 12 trips, 10 or 12.
4 Q 12? Have you applied for that since?
5 A I haven't accumulated that much, we stopped
6 going there as of last April. I started
7 collecting it, though.
8 Q I take it you plan on getting it.
9 A If the opportunity presents, yes.
10 Q Do you know -- have you got pilotage
11 endorsements for any other areas of the country?
12 A No, I don't.
13 Q Do you know what's required to get to take
14 this test, sir? Pilotage test?
15 A You have to draw a chart and answer questions
16 relative to the area that you're going through,
17 and rules of the road examination, and a few
18 other general questions they would probably ask
19 you.
20 Q They'd want to know whether you knew the area
21 or not, is that basically right?
22 A That's correct.
23 Q Do you feel you know the Prince William Sound
24 area fairly well at this point?
25 A I feel comfortable with transitting it, yes.

1 Q It's not a real difficult area to transit, is
2 it?

3 A No.

4 Q There's sufficient navigation aids, you have
5 some wide open spaces ...

6 A Yes.

7 Q ... and you have deep water.

8 A Yes.

9 Q Now, you also said that -- oh, let me ask you
10 this. When you were proceeding from Montague,
11 all the way to let's say the pilot station, where
12 you pick up the pilot, would you report your
13 position every 10 minutes?

14 A Through -- just through Cape Hinchinbrook to
15 ...

16 Q Yeah.

17 A ... Montague, yes.

18 Q Did you ever forget to do that and have the
19 Coast Guard call in and say you didn't report?

20 A No.

21 Q And you believe that to be a requirement, is
22 that right?

23 A They told us -- when we called in, they told
24 us we would have to make the report. They --
25 they would -- on the radio, they would tell us to

1 start making the reports every 10 minutes.

2 Q And of course, you didn't rely at all on the
3 letter there, Exhibit B, I think you've already
4 said you never saw that.

5 MR. COLE: Objection, asked and answered.

6 A No, I hadn't seen it.

7 Q You were relying on only what the Coast Guard
8 told you, is that fair to say?

9 A About the position? Yes.

10 Q Uh-huh (affirmative). And you believed, you
11 said that you believed that the Coast Guard was
12 monitoring you on radar at least in the area of
13 Bligh Reef, is that correct to say?

14 A Yes, I understand their radar would reach down
15 into the Valdez Arm, at least to Bligh Reef, or
16 close to it.

17 Q Now, well, I think you said you didn't rely on
18 them as a navigational aid or tool. If in fact
19 something had gone wrong with your vessel, either
20 a steering problem or the weather or something,
21 and you veered suddenly and started a course
22 heading toward a danger, do you believe the Coast
23 Guard, if they have you on radar, would notify
24 you at least?

25 (3740)

1 A You have to be -- see what the circumstances
2 were, but I don't believe they could tell us soon
3 enough, if they were plotting us, to be able to
4 determine that. It'd take 'em at least three
5 minutes for plotting, and maybe longer for them
6 to really decide something had ...

7 Q Well ...

8 A ... gone wrong before they could notify us, I
9 wouldn't rely on them to tell us they think that
10 something was going wrong.

11 Q What would you rely on them for? What was
12 their purpose there, as far as you recall?

13 A The Coast Guard required, okay, we're -- they
14 would plot the vessels in and out, primarily to
15 pass the information back and forth to the
16 different vessels, that you would meet -- be
17 meeting a ship, or something like that. But
18 primarily the service of the VTS is an
19 informational service. We still ...

20 Q What about the separation ...

21 A We still have to navigate the vessel, and take
22 -- be responsible for it.

23 Q I don't think there's any argument about that,
24 but would you agree, sir, the purpose of the
25 radar and the VTS system, that is, the separation

1 zones and the course required to make, and all
2 these sort of things, is to really prevent
3 collisions and groundings?

4 A That's correct.

5 Q And the Coast Guard function there -- let me
6 ask you this, if you got out of -- if it ever
7 happened that you got out of your assigned lane,
8 let's say, would your Coast Guard ever get on the
9 radio and call you and say, "Hey, you're not ..."

10 A No.

11 Q "... not in the place you're supposed to be"?

12 A No.

13 Q Did that ever happen, that is, you ever got
14 straight out of the lanes?

15 A Not out of the lanes, we've gone into the
16 separation zone, and they never said anything.

17 Q Well, certainly if you were out of the lanes,
18 you'd be in an area where there'd be far more
19 danger ...

20 A I -- I will disqualify that, I have -- we've
21 gone out of the lanes notifying that we're doing
22 it, but they didn't come back and tell us that we
23 were outside, no.

24 Q But from your testimony, you never
25 accidentally strayed out of the lanes at all,

1 right?

2 A No.

3 Q But would you agree, sir, that if you were out
4 of the lanes, and in -- you know, beyond the area
5 where they say you're supposed to be, that's the
6 area where you'd be in more danger as opposed to
7 being right -- in the north-southbound lanes,
8 right?

9 A That's correct, yes. Yes.

10 Q Now, you said that in Prince William Sound,
11 you stayed on the bridge, because oftentimes your
12 deck officers were tired, because they had been
13 up all night or something like that?

14 A That's correct.

15 Q So you were generally letting them rest, is
16 that fair to say?

17 A Yes.

18 Q Now, you had a -- you kept a progress chart,
19 did you not, of your transit in and out of Prince
20 William Sound on the 22nd, 23rd?

21 A Yes. 23rd.

22 Q 23rd. I may have to find that, Your Honor, I
23 don't know exactly where it is. Your Honor, it
24 may very well be that we're not going to get done
25 in five minutes. I wonder if maybe this would be

1 a time to break, I'm going to have to find the
2 chart.

3 THE COURT: Counsel approach.

4 (Whispered bench conference)

5 (Side conversation)

6 Q Captain Mackintire, let me hand you what's
7 been marked as Exhibit AE, and ask you if you can
8 recognize that copy, sir.

9 A Yes, that's a copy of my chart for when we
10 departed Valdez on March 23.

11 Q Now, there seems to be a dark line that's
12 marked on there. Is that your chart -- or that's
13 the vessel course rudder?

14 A That's -- yes, that was the track we made
15 during that departure.

16 Q And there are some numbers there, is there
17 not, one, two, three, four, five, six, seven,
18 eight?

19 A Yes.

20 Q Would you tell us please what those numbers
21 mean?

22 A Well, somebody has apparently marked the
23 various locations for clarification for -- for
24 that, and they were positions that we took for
25 the navigational aids and put on the chart, we

1 labeled it one, two, three, four, five, six,
2 seven, and eight.

3 Q And you've testified a minute or two ago that
4 that was the course you took?

5 A That's correct.

6 Q Now, where does that -- does that indicate
7 where the pilot was dropped off?

8 A Fairly closely, yes. The pilot got off at
9 1100, and we have a position at 1101.

10 Q Well, you say 11 -- the pilot is off, that'd
11 mean off the bridge or off the vessel?

12 A Off the vessel.

13 Q So he would actually leave the bridge sooner
14 than 11:00.

15 A About a minute or so before, yes.

16 Q Okay, then where, according to the chart, do
17 you believe the pilot was actually dropped off?

18 A It'd be right about -- right here.

19 Q That's before -- that's north of Bligh Reef,
20 isn't it?

21 A That's right.

22 Q Approximately how far? I think you pointed to
23 here ...

24 A Let's see -- from the buoy itself?

25 Q Yeah.

1 A About a mile, mile and a half. Mile and a
2 half.

3 (Tape: C-3680)

4 Q Well, then, sir, after the pilot was relieved
5 to be dropped off, you continued on without
6 pilotage endorsement to go around Bligh Reef, is
7 that correct?

8 A Yes, that's correct.

9 Q Now, you also testified that you had a company
10 policy, I think a Texaco policy, correct? A
11 bridge manual?

12 A Yes.

13 Q It was supplied to all masters such as
14 yourself that worked for Texaco?

15 A That's correct.

16 Q Was it ever given to Exxon?

17 A No. Not that I know of.

18 Q And have you ever seen the Exxon bridge
19 manual, sir?

20 A No.

21 Q Do you know if it's the same or similar to the
22 Texaco one?

23 A I've been informed that they used it as a
24 guide when they established ours, when they
25 revised it.

1 Q What -- I'm sorry, did I ...
2 A That's only information hearsay.
3 Q Was yours a guide, or was it something you had
4 to follow, like a rule, a rule book?
5 A It's a guide, it's minimum standards that we
6 were supposed to abide by, and if -- of course if
7 anything happened, we would have to justify not
8 using those particular guidelines.
9 Q When you say "something happened," what do you
10 mean, exactly?
11 A Well, accident, incident, grounding, or ...
12 Q Is it fair to say the company ...
13 A Collision, something like that.
14 Q I'm sorry if I'm cutting you off, I don't mean
15 to do that. But in event of an accident, is it
16 fair to say that maybe the company's looking out
17 for themselves by having this policy to protect
18 their interests a little bit?
19 A Well, I hope it's a guide to us, so that we
20 will have standards and information, what they
21 expect of us, that's what I look at it as.
22 Q At the same time, you have the discretion to
23 determine what's watch condition A, or what watch
24 condition you're under.
25 A That's correct, yes.

1 Q In fact, you have discretion at all times with
2 regard to ...

3 A Yes, I could actually, yes, not use their
4 standards at all, and use my own.

5 Q And you don't know of any particular Coast
6 Guard requirements or rules or regulations, for
7 instance, governing the use of autopilot in
8 Valdez Arm, or Prince William Sound, correct?

9 A Not specifically of that nature.
10 (0096)

11 Q And there's no Coast Guard restriction to your
12 knowledge, is there, about when a master can
13 leave the bridge, or must stay on the bridge, in
14 Prince William Sound?

15 A I don't know -- as far as the master is
16 concerned?

17 Q Uh-huh (affirmative). Yeah.

18 A No, it's not -- the restriction's not to the
19 master, must have two officers on the bridge.

20 Q For what?

21 A Must have two officers on the bridge.

22 Q Now, as a non-pilotage vessel, right?

23 A That's correct.

24 Q Now, do you know what the rules are with
25 regard to a pilotage vessel, sir?

1 A Not specifically, no.

2 Q In other words, you don't know whether or not,
3 if it's a pilotage vessel, somebody on board has
4 pilotage, whether the two people are required to
5 be on watch, on the bridge, all the time, two
6 officers.

7 A Yes. I would think they'd still have to have
8 two officers on the bridge.

9 Q You would think that but you don't know.

10 A Well, that's the way the letter's written, it
11 doesn't say whether it's pilotage or non-
12 pilotage, it says in Prince William Sound, I
13 believe, you have to have two officers on the
14 bridge.

15 Q What letter is that?

16 A Well, the original Coast Guard letter.

17 Q But you don't have that with you here, right?

18 A No.

19 Q I take it, then, sir, that if a master was
20 informed otherwise, that he didn't have to -- say
21 he had pilotage, and he didn't have to have two
22 watch officers on the deck, you could go by that
23 information as opposed to the information you
24 received. Do you understand that question?

25 A Yes, I think that's reasonable.

1 Q You also indicated that it was important to
2 get acquainted with your crew. Does Texaco --
3 are they a union company, sir?

4 MR. COLE: Objection, relevance.

5 Q Do they come and go, are they stationed on
6 that ship at all times, or the same crew, or
7 different people, or -- I want to -- I think I
8 can go into that.

9 THE COURT: Okay, I'm willing to permit you to
10 go into his knowledge of the crew.

11 Q Is it a union ...

12 A The officers are Texaco employees, the
13 unlicensed are -- crew are National Maritime
14 Union members, which Texaco hires, or they're
15 supplied from a union hall.

16 Q So you could get a variety of people at any
17 given time, right?

18 A As far as the unlicensed is concerned, yes.

19 Q Unlicensed, you mean ordinary seamen, Able
20 Seamen?

21 A That's correct.

22 Q They're not assigned to the ship as such, they
23 don't work for Texaco all the time?

24 A They become permanent members of the ship in
25 that they -- when they take the job, they come

1 back to it after leaving on vacation, so they do
2 become permanent, but they aren't employees of
3 Texaco.

4 Q They can go and work for some other ship if
5 they want.

6 A Yes, they can, right.

7 Q And you agree that it's important to know, you
8 know, the kind of crew you have, right?

9 A Yes.

10 Q Fair to say that you can tell right away some
11 people are -- some of your officers are just
12 excellent officers, they're just good?

13 A Yes.

14 Q It doesn't take years and years for you to
15 know that, right?

16 A That's correct.

17 Q Other people, is it fair to say that no matter
18 how long it takes, you're not gonna really rely
19 on them 100 percent?

20 A Well, yes, you have to understand the
21 limitations of the people involved, yes.

22 Q Sure. Now, for instance, a helmsman, some you
23 would think are better at steering than others,
24 okay?

25 A That's correct.

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1 Q Now, when we say "steering," what does that
2 mean to you, sir, if they would -- to steer a
3 vessel?

4 A I'm not sure I understand ...

5 Q Well, I'll withdraw that then. Would you say
6 there's a difference between steering a vessel to
7 a course, say changing course to come about to
8 another course, as opposed to just carrying out a
9 rudder maneuver?

10 A Yes, that's two different -- that'd be two
11 different situations.

12 Q In other words, if a person were on a course
13 of -- your ship was on a course of 180, or due
14 south, and you said, "Come to -- " told the
15 helmsman, "Come to course of 245," he'd have to
16 change, actually turn, and then kind of turn back
17 again, and, you know, keep the ship from going
18 too far, that sort of thing?

19 A He would have to apply rudder to make the ship
20 turn, and when he reached his course, the new
21 course, he would have to apply opposite rudder,
22 and stop the ship from swinging, line it up, and
23 maintain the new course, yes.

24 Q What about in a rudder order like "10 degrees
25 right rudder," is that a simple command?

1 A Yes, it is.

2 Q Do you feel that any helmsman, any A.B. could
3 be able to carry that out?

4 A If given that order, yes.

5 Q With regard to the ice, your testimony about
6 the ice, sir, when you came out of -- you were on
7 the outbound leg now, loaded, leaving Prince --
8 leaving Valdez, and I think you said you deviated
9 outside the VTS to go around the ice?

10 A Yes, that's correct.

11 Q Uh-huh (affirmative). That was in daylight,
12 wasn't it?

13 A Yes.

14 Q And in daylight, you still thought it was
15 better to go around the ice rather than going
16 through the ice.

17 A At that time, yes.

18 Q What do you base your recollection on, sir,
19 that you were going eight to 10 knots at that
20 time?

21 A Well, we were running at full ahead, we were
22 actually running at reduced RPM's, but full ahead
23 was listed on our bell book, and we had slowed
24 down for the -- letting the pilot off.

25 Q Now, does Exhibit AE there indicate in any way

1 how fast you were traveling, what your rate was
2 at that time?

3 A No, but you can check the times between the
4 two positions, but the -- I think it shows about
5 eight knots.

6 Q Have you done that just now?

7 A No, not just now.

8 Q Would you do it, take a look at it again, just
9 double-check, sir?

10 A Well, there's no way of doing it without ...

11 Q Do you need the course recorder?

12 A ... dividers, dividers and ...

13 Q Oh.

14 A ... getting the distances and -- we don't have
15 the speeds down. Previously, it was about eight
16 knots.

17 Q Uh-huh (affirmative). If someone were to
18 testify that they had checked this and it was
19 actually around 13 knots, would you say that you
20 may be mistaken?

21 A I would have to reevaluate it, and come to a
22 decision on that.

23 Q Whether it was eight to 10 knots, or 13 knots,
24 or 12 knots, would you say that was very critical
25 at that time?

1 A In this situation?

2 Q Yeah, in that situation.

3 A I'm not as concerned, the speed had nothing to
4 do with the safety here, no. And this ...

5 Q In other words, even if you're traveling -- I
6 didn't mean to cut you off. If you're traveling
7 at 12 knots, that wouldn't have affected the
8 safety of the maneuver you were doing, would it?

9 A No, not in the case -- that case.

10 (0356)

11 Q And whether you decided to go through the ice
12 at a slower speed or around the ice at a slightly
13 faster maneuvering speed, that was in your
14 discretion, was it not?

15 A That's correct.

16 MR. MADSON: That's all the questions I have,
17 Your Honor, I would ask that Exhibit AE be offered in
18 evidence, it's been identified now by the Captain.

19 THE COURT: Any objection?

20 MR. COLE: No objection.

21 THE COURT: Admitted.

22 MR. COLE: Just a couple questions, Judge.

23 THE COURT: A couple, all right.

24 REDIRECT EXAMINATION OF CAPTAIN MACKINTIRE

25 BY MR. COLE:

1 Q Captain Mackintire, why did you let the pilot
2 off where you did on March 23, 1989?
3 A Why did I do it?
4 Q Yeah, in that particular ...
5 A Well, the pilot requested that he get off
6 early, because the pilot boat was having a
7 problem keeping up, and they were concerned about
8 the ice for the pilot boat, so it was -- it was a
9 good clear shot, and had the Bligh Reef buoy on
10 the port side, and it looked like we could pass
11 through without any problem at all, so I let him
12 go.
13 Q Were you lined up past Bligh Reef before the
14 pilot got off?
15 A Yes.
16 Q And the transits that you made in and out of
17 Prince William Sound, were they in daylight
18 hours, or at night time?
19 A They would be varied, you mean all of the
20 times I've gone through the -- both.
21 Q I have nothing further.
22 RE CROSS EXAMINATION OF CAPTAIN MACKINTIRE
23 BY MR. MADSON:
24 Q Captain Mackintire, if the pilot wanted to be
25 dropped off north of Bligh Reef, and in fact was,

1 as you indicated in this condition, in this
2 situation, because the pilot boat couldn't keep
3 up and he was afraid of the ice? Or had some
4 concern about the ice?

5 A Concern about it, yes.

6 Q And you felt that was all right.

7 A Yes.

8 Q I take it you could have insisted he stay on
9 longer ...

10 A Yes, I could have.

11 Q ... if you wanted him to. You felt
12 comfortable with letting him off even though you
13 didn't have pilotage.

14 A That's correct.

15 Q And technically this might be in violation of
16 the Coast Guard's policy at that time. If they
17 required the pilot to stay on right down to Bligh
18 Reef.

19 A I don't think Bligh Reef was -- it isn't a cut
20 and dried line that you have to reach in order to
21 change, it's the general vicinity, where you can
22 maneuver the ship to ...

23 Q Sir, you had some discretion as to when the
24 pilot should get on or off, and the pilot had
25 some, right?

1 A That's correct.

2 Q Weather conditions could change it, could they
3 not?

4 A That's correct, yes.

5 Q Ice conditions.

6 A That's correct.

7 Q A number of factors.

8 A Uh-huh (affirmative).

9 Q You just kind of looked at an overall safety
10 evaluation, is that fair to say?

11 A That's correct.

12 Q I don't have any other questions.

13 A Thank you.

14 THE COURT: Counsel approach the bench,
15 please. You can step down too.

16 (Whispered bench conference)

17 THE COURT: Any further witnesses from the
18 State?

19 MR. COLE: No, Your Honor, the State rests.

20 THE COURT: Is there a rebuttal from the
21 Defendant?

22 MR. MADSON: None, Your Honor.

23 THE COURT: That completes the taking of
24 evidence in this case. That does not complete the
25 case, by any means. There will be some matters that

1 we'll have to take up outside your presence, which will
2 take a good part of tomorrow, and then the court is
3 required to prepare, with the assistance of counsel,
4 some jury instructions. This is going to take some
5 time also. They'll be fairly voluminous, because of
6 the nature of the case.

7 I imagine that'll take a good part of the day,
8 so there'll be -- it'd do no good to bring you in here
9 tomorrow, whatsoever, and it would do no good to bring
10 you in on Monday, because you'd just be sitting in that
11 jury room, and those of you who are playing cards and
12 losing would lose some more, I think.

13 So we'll bring you in on Tuesday, at 8:30 a.m.
14 That will be week eight, we've estimated this case to
15 be six to eight weeks, so we're still within our
16 estimate. In the meantime, it's particularly important
17 that you not discuss this case with any other person,
18 nor discuss it among yourselves, and it's particularly
19 important not to form or express any opinions about
20 this case. You'll have plenty of opportunity to do so
21 in the jury deliberations, to express and form opinions
22 then. And that's what jury deliberations are for.

23 And again I want to caution you about being
24 exposed to media sources of information about this
25 case. You have been given instructions to decide this

1 case based solely on the evidence presented in court,
2 in accordance with the court's instructions. Media
3 sources of information are not evidence. Avoid them at
4 -- do your best to avoid them, have people screen
5 newspapers for you, it's particularly important now,
6 because we're closing in on your -- the important
7 function, which would be your function, to decide the
8 facts of this case, and I don't want you to be tainted
9 in any way. Don't let people talk to you about the
10 case, don't watch the news, listen to the radio about
11 the case.

12 I would expect a full day on Tuesday, not a
13 half day, and I don't know how long arguments will
14 take. If they take more than one day, then I expect
15 the next day to be listening to arguments too. And
16 that's basically what'll happen, you'll listen to final
17 arguments by the parties, then I'll instruct you on the
18 law, and you'll commence your deliberations.

19 The deliberations will be at the sound
20 discretion of the jury, I'll let you deliberate full
21 days if it's necessary to deliberate for more than a
22 day, or in the evenings, that's up to you too. But
23 once you start deliberating, you'll be in the charge of
24 a bailiff, and you won't be free to go and come as you
25 please. But we will not be housing you, you'll be free

1 to go home at night. That's just giving you some
2 preliminary information about the case. In the
3 meantime, be back here Tuesday morning at 8:30. We
4 need all 14 of you back Tuesday morning at 8:30, so be
5 safe, and I'll see you then.

6 (Jury not present.)

7 (0637)

8 THE COURT: I will need tomorrow morning, and
9 consider that an order, because my suggestions don't
10 seem to be carried out very well, I need some authority
11 for your instructions, and I'll need it by tomorrow
12 morning, or I'll assume you have no authority for those
13 instructions. I've never seen some of them before, so
14 I need some assistance.

15 MR. MADSON: Do you need that in writing, Your
16 Honor, or can we just come in and ...

17 THE COURT: Yes, sir, I want you to give me a
18 citation just like you're supposed to at the bottom ...

19 MR. MADSON: Okay.

20 THE COURT: ... of the proposed instruction.

21 MR. MADSON: That's fine.

22 THE COURT: Did we have some application to
23 make tomorrow morning?

24 MR. MADSON: Yes, there would be some other
25 things we need. We have a few evidentiary matters to

1 clear up, and there's still that motion, I think, that
2 I filed, that hasn't been addressed yet with regard to
3 striking the testimony of Lieutenant Commander
4 Falkenstein.

5 THE COURT: Okay, we can argue that motion
6 tomorrow.

7 MR. MADSON: Yeah, that'd be fine.

8 THE COURT: I would like you to focus on a
9 couple of things, and one is whether or not these
10 lesser includeds you're asking for are truly lesser
11 includeds, I need some authority to establish whether
12 reckless driving and negligent driving is a lesser
13 included offense of driving while under the influence,
14 or is it a lesser included of one of the other charges
15 in information, or the -- I don't know, so maybe you
16 can do that in the form of a memorandum with points and
17 authorities.

18 Also the question of whether or not factual
19 impossibility bars the jury considering what Captain
20 Hazelwood would do in efforts to remove the vessel from
21 the -- evidence on him trying to remove the vessel from
22 the reef, and what might have happened had he been
23 successful, bars that from the jury's consideration of
24 the crime of criminal mischief in the second degree,
25 and reckless endangerment.

1 MR. MADSON: I thought we filed something on
2 that already.

3 THE COURT: Well, I need more assistance from
4 the State on that, to be frank, I haven't got anything
5 from the State on that one yet. And then the final
6 area of concern I'll need some assistance on is whether
7 or not the vessel in the condition it was on Bligh Reef
8 after Captain Hazelwood shut the engines down for the
9 final time, was a vessel that was used or capable of
10 being used for transportation or navigation.

11 So you can figure out who should be doing this
12 research, Mr. Cole, it's my inclination to give the
13 jury instructions to prevent the jury from considering
14 as evidence of recklessly creating a risk of damage,
15 Captain Hazelwood's efforts at trying to remove the
16 vessel from the reef, or what may have happened to the
17 vessel, based on factual impossibility and based on
18 those two near cases. I've found no other case law
19 that suggests something to the contrary.

20 It's also my inclination to restrict
21 consideration of the driving while under the influence,
22 of a water craft, to events up to and including the
23 moment he shut down the engine for the last time, but
24 after that, after he shut the engine down for the last
25 time, it's my inclination not to consider any action by

1 Captain Hazelwood used by the jury in determining the
2 driving while under the influence.

3 Also, the same for the reckless endangerment,
4 the factual impossibility barring that from -- barring
5 the jury from considering what Captain Hazelwood did in
6 trying to extract the vessel from the reef, or what may
7 have happened.

8 Is there anything we can do right now, before
9 we recess until tomorrow?

10 MR. MADSON: Just as a starting point, Your
11 Honor, I think I can offer some assistance to the court
12 on the lesser includeds for what it's -- it's State vs.
13 Cameau (ph), and I'm trying to find the citation, I
14 have it here ...

15 THE COURT: I don't mean to put you at some
16 burden that's difficult for you, but I need a brief
17 with points and authorities.

18 MR. MADSON: Your Honor ...

19 THE COURT: I understand you're living in
20 Fairbanks, but you got two able counsel with you, I
21 don't know how you're going to do it, but I need a
22 brief with points and authorities on it, I -- not some
23 citations or some Xerox copies, I need some argument on
24 this before ...

25 MR. MADSON: That's fine, Your Honor, but the

1 able counsel are not able to type, and we've lost our
2 support staff due to an emergency, and she's not coming
3 back till late tonight, so we'll do the best we can,
4 we'll try to find someone.

5 THE COURT: Okay, well, that's something
6 that'll be probably more meaningful on Monday morning
7 to look at than it will be tomorrow.

8 MR. MADSON: Okay, that's fine. If we have
9 till Monday, that's plenty of time, Your Honor.

10 THE COURT: Monday morning. Is there anything
11 else we can do?

12 MR. MADSON: No.

13 THE COURT: Okay, we'll stand in recess.

14 (0836)

15 (Off record - 1:50 p.m.)

16 ***CONTINUED***

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