

OFFSHORE HELICOPTER SAFETY INQUIRY

February 4, 2010

Tara Place, Suite 213, 31 Peet Street

St. John's, NL

February 4, 2010

PRESENT:

**John F. Roil, Q.C./
Anne Fagan.....Inquiry Counsel**

**John Andrews/Amy Crosbie. Canada-Newfoundland and Labrador Offshore
..... Petroleum Board (C-NLOPB)**

**Cecily Strickland/Ian Wallace..... Hibernia Management and
..... Development Company (HMDC)**

Denis Mahoney/D. Blair Pritchett..... Suncor (Petro-Canada)

Stephanie Hickman.. Husky Oil Operations Ltd.

Laura Brown Laengle Government of Newfoundland and Labrador

Norman J. Whalen, Q.C./ Michael Cohen..... Cougar Helicopters Inc.

Jamie Martin..... Families of Deceased Passengers

**Kate O'Brien..... Davis Estate (Pilot) and
..... agent on behalf of Douglas A. Latta for Lanouette Estate (Co-pilot)**

**V. Randell J. Earle, Q.C. Communications, Energy and Paperworkers Union
..... Local 2121**

David F. Hurley, Q.C. Offshore Safety and Survival Centre, Marine Institute

Mark Freeman Department of Transport Canada

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1 February 4, 2010
 2 COMMISSIONER:
 3 Q. Good morning, ladies and gentlemen. Now I'm
 4 going to go through the list of counsel asking
 5 if they propose to ask questions of these
 6 three witnesses. The Inquiry counsel is
 7 finished. Counsel for the party being
 8 examined, Cougar, Mr -- would you prefer to
 9 wait until last or go now?
 10 WHALEN, Q.C.:
 11 Q. I'll wait until last.
 12 COMMISSIONER:
 13 Q. Okay, then. Counsel for the Offshore
 14 Petroleum Board?
 15 MS. CROSBIE:
 16 Q. Thank you, Mr. Commissioner, we have no
 17 questions.
 18 COMMISSIONER:
 19 Q. Okay, thank you. Counsel for Transport
 20 Canada.
 21 MR. FREEMAN:
 22 Q. No questions, Mr. Commissioner, thank you.
 23 COMMISSIONER:
 24 Q. Counsel for CAPP. Nobody here representing
 25 CAPP is there, this morning. Okay. Counsel

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1 for HMDC.
 2 MS. STRICKLAND:
 3 Q. No questions, Mr. Commissioner.
 4 COMMISSIONER:
 5 Q. Thank you. Suncor.
 6 MR. MAHONEY:
 7 Q. No questions.
 8 COMMISSIONER:
 9 Q. Thank you. Husky.
 10 MS. HICKMAN:
 11 Q. No questions, Mr. Commissioner, thank you.
 12 COMMISSIONER:
 13 Q. Sikorsky is not here. Helly Hansen is not
 14 here, no. Counsel for Memorial University,
 15 the Training Centre.
 16 HURLEY, Q.C.:
 17 Q. No questions.
 18 COMMISSIONER:
 19 Q. Thank you. Counsel for the Government of
 20 Newfoundland and Labrador, Ms. Brown.
 21 MS. BROWN LAENGLE:
 22 Q. No questions, thank you, Commissioner.
 23 COMMISSIONER:
 24 Q. Thank you. Mr. Harris is not here. Counsel
 25 for CEP, Mr. Earle.

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1 EARLE, Q.C.:
 2 Q. Thank you, Mr. Commissioner.
 3 MR. RICHARD BANKS, MR. RICK BURT, MR. HANK WILLIAMS:
 4 EXAMINATION BY RANDELL EARLE, Q.C.:
 5 EARLE, Q.C.:
 6 Q. Good morning, gentlemen.
 7 MR. BURT:
 8 A. Good morning, sir.
 9 MR. WILLIAMS:
 10 A. Good morning.
 11 MR. BANKS:
 12 A. Morning.
 13 EARLE, Q.C.:
 14 Q. I have a number of questions for you. First
 15 of all, I'd like to get something clarified
 16 because I found your presentation and you're
 17 good enough to call it presentation, not
 18 evidence, because an old trial lawyer might
 19 have a problem with videos being treated as
 20 evidence, but the thing that's not entirely
 21 clear to me is what has been implemented since
 22 March 12th, and what the situation was before.
 23 So I'd like to have from you, it doesn't
 24 really matter who answers it from my
 25 perspective, those things which are new since

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1 March 12th of 2009, and perhaps you could
 2 assist us with that?
 3 MR. BURT:
 4 A. Sure. I think as we mentioned, there are some
 5 procedures that have been amended, again based
 6 upon what we've learned, and those are some
 7 amendments to our checklist, emergency
 8 checklist, including the flow and the
 9 structure of the checklist, and some comments
 10 in that checklist. As I mentioned, we
 11 developed those together with Transport Canada
 12 and found that very useful. We have also
 13 revised, in conjunction with that checklist,
 14 our descent profile, and again that's based
 15 upon the knowledge that we learned and that
 16 has also been vetted through Transport Canada
 17 and flight tests proven in a simulator. The
 18 pilots, of course, needed to be and were
 19 trained in those procedures, as required by
 20 Transport Canada, and we've also moved the
 21 auxiliary fuel tank from the left side of the
 22 aircraft to the right side of the aircraft,
 23 and together with our customer base, we've
 24 ordered the enhanced emergency floatation
 25 device for the aircraft, and moved to even

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1 solidify our first response stance to an
 2 enhanced first response capability.
 3 EARLE, Q.C.:
 4 Q. Could you be more specific about those moves,
 5 Mr. Burt?
 6 MR. BURT:
 7 A. Right. We have added additional staff,
 8 dedicated our pilot staff and our first
 9 response staff to the first response service.
 10 There's pilots and rescue specialists that are
 11 dedicated to that service, and as I said, this
 12 was an analysis that we started in December of
 13 2008, a continuous improvement process which
 14 was --
 15 EARLE, Q.C.:
 16 Q. Well, you can appreciate, Mr Burt, from some
 17 of the evidence that I've heard before, that
 18 talking about things before March 12th doesn't
 19 always have the same impact from my
 20 perspective.
 21 MR. BURT:
 22 A. Uh-hm.
 23 EARLE, Q.C.:
 24 Q. So you moved to dedicated pilots and dedicated
 25 -- I don't know what you call them. Do you

Page 6

1 call them SAR technicians?
 2 MR. BURT:
 3 A. We call them rescue specialists.
 4 EARLE, Q.C.:
 5 Q. Rescue specialists.
 6 MR. BURT:
 7 A. The military would call them SAR techs.
 8 EARLE, Q.C.:
 9 Q. And if you could tell us, that means that
 10 before March 12th --
 11 MR. BURT:
 12 A. Yes.
 13 EARLE, Q.C.:
 14 Q. The pilots who were flying the search and
 15 rescue missions were part of your general crew
 16 of pilots?
 17 MR. BURT:
 18 A. That's correct.
 19 EARLE, Q.C.:
 20 Q. And what were the rescue specialists doing
 21 before March 12th, if they weren't dedicated?
 22 MR. BURT:
 23 A. They were dedicated, and that was all they
 24 were doing is standing by and fulfilling the
 25 role as a rescue specialist. However, we --

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1 at that time we only had one joist operator on
 2 board and one rescue swimmer. The difference
 3 is now that we have a rescue swimmer, a hoist
 4 operator, and an additional cabin attendant.
 5 EARLE, Q.C.:
 6 Q. So it went from two to three?
 7 MR. BURT:
 8 A. Correct, for an active crew. So to have it
 9 double staffed, that means we had to add two
 10 more people.
 11 EARLE, Q.C.:
 12 Q. Okay. So the rescue specialists were
 13 dedicated before?
 14 MR. BURT:
 15 A. Correct.
 16 EARLE, Q.C.:
 17 Q. Okay, what else has been changed?
 18 MR. BURT:
 19 A. We have, as you've heard from the Director of
 20 Safety and Quality, we've implemented the
 21 HEEDS, or I think the HUEBA in our flight crew
 22 organization. That training is finished
 23 today. The implementation will be on the 8th.
 24 That has happened since that event.
 25 EARLE, Q.C.:

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1 Q. Uh-hm.
 2 MR. BURT:
 3 A. We've also developed a computerized tracking
 4 system for our own personal protective
 5 equipment specifically for those crew flying
 6 offshore and the rescue specialists. For
 7 example, their helmets, life vests, the HEEDS
 8 bottles, and those things that need to be
 9 tracked for recertification.
 10 EARLE, Q.C.:
 11 Q. Uh-hm. Anything else? I thought I heard that
 12 there was an increase in the training hours?
 13 MR. BURT:
 14 A. Yes, yes, you're correct, and that's on this
 15 sheet over here. The training hours have been
 16 increased from 10 hours, was the norm, to 40
 17 hours, and that came from a recommendation
 18 from a standard that we have been developing
 19 on an international basis for the last 12 to
 20 18 months.
 21 EARLE, Q.C.:
 22 Q. And when you say 40 hours, does that mean each
 23 individual in your dedicated group undergoes
 24 40 hours training per month?
 25 MR. BURT:

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1 A. No.
 2 EARLE, Q.C.:
 3 Q. What does it mean?
 4 MR. BURT:
 5 A. If I could explain, there's a rotational basis
 6 where we have a flight crew that's on 24 hours
 7 in a two week shift. They'll come off and
 8 then there's another crew that comes on. So
 9 on a monthly basis, we have one crew change.
 10 So that 40 hours is divided between those two
 11 crew.
 12 EARLE, Q.C.:
 13 Q. So does that mean 20 hours per crew?
 14 MR. BURT:
 15 A. That's correct, yes.
 16 EARLE, Q.C.:
 17 Q. And anything else?
 18 MR. BURT:
 19 A. We have our SMS development, our Safety
 20 Management System development has been
 21 completed in that time frame as well, and I
 22 think as we heard yesterday, of course, our
 23 random alcohol and drug testing program has
 24 been completed.
 25 EARLE, Q.C.:

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1 Q. So those are the things that you have -- I'll
 2 just ask you about a few things that I thought
 3 were your changes. Previously there had been
 4 an allowance that the standby first response
 5 unit could take off if there was a helicopter
 6 returning within 30 minutes of St. John's?
 7 MR. BURT:
 8 A. Yes.
 9 EARLE, Q.C.:
 10 Q. But now that's been -- that procedure is no
 11 longer allowed?
 12 MR. BURT:
 13 A. That's been eliminated.
 14 EARLE, Q.C.:
 15 Q. That's another change?
 16 MR. BURT:
 17 A. That's correct, that's another change too.
 18 EARLE, Q.C.:
 19 Q. And a small item, but was the goggles position
 20 changed after the suit came in or with the new
 21 452 suit coming in?
 22 MR. BURT:
 23 A. Can I ask Mr. Williams to --
 24 MR. WILLIAMS:
 25 A. Yes. The goggles was a change as a

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1 recommendation by the HOTF Committee. When we
 2 went back to work on May 18th flying, that
 3 recommendation was there.
 4 EARLE, Q.C.:
 5 Q. So the goggles was after March 12th?
 6 MR. WILLIAMS:
 7 A. Correct.
 8 EARLE, Q.C.:
 9 Q. Mr. Williams, you mentioned a commitment to
 10 the customer for 24 hour report in the event
 11 of an incident?
 12 MR. WILLIAMS:
 13 A. Correct.
 14 EARLE, Q.C.:
 15 Q. I wasn't clear when that came in. Did that
 16 come in after March 12th too?
 17 MR. WILLIAMS:
 18 A. No, that's been a process that we've had for a
 19 long time through various methods. You know,
 20 the customer event form was either in the form
 21 of an e-mail. We've formalized it a little
 22 more.
 23 EARLE, Q.C.:
 24 Q. How long has that been in place?
 25 MR. WILLIAMS:

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1 A. I've been doing customer event forms for ten
 2 years here since -- you know, every event, the
 3 customer is notified in some way with a
 4 notification. We've structured a little more
 5 in the last year where now I have a 24 hour
 6 cutoff I need to get it in, and it's a form
 7 that's a standard form for all three
 8 operators. It's consistent -- the report I
 9 give is standard now for all three operators.
 10 EARLE, Q.C.:
 11 Q. So the 24 hour time period is new?
 12 MR. WILLIAMS:
 13 A. Well, it was always there, but it was never
 14 formalized. It's safe to say that --
 15 EARLE, Q.C.:
 16 Q. Formalizing of the 24 hour time period?
 17 MR. WILLIAMS:
 18 A. Correct.
 19 EARLE, Q.C.:
 20 Q. Gentlemen, that would appear to me to be a
 21 very extensive list of changes. Just a
 22 question on one or two of them to be sure we
 23 understand, you know, because there's people
 24 watching on TV --
 25 MR. BURT:

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1 A. Sure.

2 EARLE, Q.C.:

3 Q. And I heard one old lag(phonetic) allow that

4 that fellow, Earle, must be some stun because

5 he's the only fellow that has to ask questions

6 to understand what's going on, but this

7 business of the descent profile --

8 MR. BURT:

9 A. Yes.

10 EARLE, Q.C.:

11 Q. Now is that basically how low you come, and

12 when you come low when there's an indication

13 of problems, is that what we're talking about?

14 MR. BURT:

15 A. The descent profile was again developed in the

16 context of what we had learned after March

17 12th, and again, as I said, together with

18 Transport Canada, and the manufacturer was

19 involved in the development of that profile

20 and what the aircraft could do. It was

21 developed to provide guidance for the flight

22 crew to descend in a manner which we could

23 understand the timing of the descent, the

24 nature of the descent, and where the descent

25 would terminate as far as like the descent

Page 14

1 profile itself.

2 EARLE, Q.C.:

3 Q. So it's a direct response to what you learned

4 from March 12th?

5 MR. BURT:

6 A. That's correct.

7 EARLE, Q.C.:

8 Q. And, I mean, for the purposes of this Inquiry,

9 I think it's fair to say that the events of

10 March 12th and where you were on March 12th is

11 only relevant in terms of ascertaining

12 whether, in fact, there were some

13 misconceptions or problems that arose from the

14 approach to safety, and so the Transportation

15 Safety Board to determine what were the causes

16 of the crash, but what you're telling us is

17 that Cougar has learned that there would have

18 been a better approach in terms of how that

19 aircraft came down in response to the

20 information they were getting in the cockpit?

21 MR. BURT:

22 A. I mean, what I would say is that we had

23 learned obviously some things from the March

24 12th event, and those were things that the TSB

25 even announced during that public as

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1 significant findings. So I would say based

2 upon that, we wanted to provide an overarching

3 backstop, as it were, to our return to service

4 effort that would allow us to recognize any

5 event as quick as we could, the checklist

6 revision, descend in a controlled and

7 determined fashion, and understand how long

8 that would take and then effect, if required,

9 a ditching after that.

10 EARLE, Q.C.:

11 Q. So just to simplify it --

12 MR. BURT:

13 A. Sure.

14 EARLE, Q.C.:

15 Q. You're the fellow on this panel who holds a

16 licence to fly one of these things, but does

17 it mean that this revised descent profile,

18 that if we were to have a repeat of the

19 information that appeared in the cockpit on

20 that day, the way in which the pilots would

21 have tried to bring the helicopter down would

22 have been different?

23 MR. BURT:

24 A. Having the information we have today versus

25 before March 12th, taking that information, it

Page 16

1 again would assist the crew.

2 EARLE, Q.C.:

3 Q. Oh yes, I fully understand. I mean, you've

4 taken this into the simulator and -

5 MR. BURT:

6 A. Right, and we've learned things, absolutely,

7 and we use this as a, as I call it, the

8 backstop to go back to work should an event

9 like this happen again.

10 EARLE, Q.C.:

11 Q. But the bottom line on it is -

12 MR. BURT:

13 A. Right.

14 EARLE, Q.C.:

15 Q. - that the information has been taken and the

16 conclusion is -- and it's a tested conclusion

17 using the simulator and everything -

18 MR. BURT:

19 A. Um-hm.

20 EARLE, Q.C.:

21 Q. - that it would now be done differently?

22 MR. BURT:

23 A. Yes.

24 EARLE, Q.C.:

25 Q. Okay. Now this brings me to another point

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1 about where we were on March 12th, and I've,
 2 as you can appreciate, my people are out there
 3 looking at the media and looking at things
 4 that were published, and the question I have
 5 for you is on March 12th, 2009, did Cougar
 6 believe the S-92 had a 30-minute dry fly time?
 7 COMMISSIONER:
 8 Q. I think we'd better talk about that, Mr.
 9 Earle. The reason I raise it with you is
 10 that, not to prohibit you in any way from
 11 asking legitimate questions, but to raise the
 12 matter of the role of the Transportation
 13 Safety Board.
 14 EARLE, Q.C.:
 15 Q. We're all aware of the role of the
 16 Transportation Safety Board.
 17 COMMISSIONER:
 18 Q. Yes.
 19 EARLE, Q.C.:
 20 Q. But I would suggest, Mr. Commissioner, on the
 21 interface, and I must say, I for one would
 22 prefer that this Inquiry were proceeding after
 23 we had the report from the Transportation
 24 Safety Board, because then it would all be
 25 given and -

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1 COMMISSIONER:
 2 Q. Mind you, I would say as to that, you know,
 3 there is another phase and when the
 4 Transportation Safety Board has reported, I
 5 can then -- we'll have greater freedom and I
 6 would expect and hope that you're there at
 7 that time also, as with other counsel, because
 8 there are a lot of things we can go into then.
 9 EARLE, Q.C.:
 10 Q. But just as Mr. Burt has told us, you know,
 11 there's been a learning in respect of the
 12 descent profile. I think it is important for
 13 this Inquiry to understand what was the
 14 collective state of mind of Cougar on this
 15 issue and, you know, we can't pretend about
 16 it. It's all out there in the press and it's
 17 been published in a lot of aviation materials
 18 prior to March 2009 that the S-92 had this 30-
 19 minute dry fly time, and I think it is
 20 important for us to know, because we all know
 21 now that it didn't.
 22 COMMISSIONER:
 23 Q. That -
 24 EARLE, Q.C.:
 25 Q. That the S-92 did not have a 30-minute -

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1 COMMISSIONER:
 2 Q. Oh yes, we know that.
 3 EARLE, Q.C.:
 4 Q. The FAA has been very clear on that. It's
 5 important to know, did Cougar collectively
 6 have this understanding, and if it didn't,
 7 that's fine. I think that's the end of the
 8 issue really. But if it did, to know how it
 9 was, and for you as Commissioner to explore
 10 how it was that that belief maintained itself
 11 in the face of what we've seen through this
 12 Inquiry is a -- I mean, I can only use a word
 13 like huge system of audits and checking and
 14 things of this nature. So it is important,
 15 and this is really, in many ways, the same
 16 issue as you confronted with the HUEBA. It is
 17 important to know -- and the suits -- if this
 18 is an error that was out there, just like the
 19 belief that the suits were not fitting and
 20 that it was a comfort issue, and not a seal
 21 issue. It's important to know if that was out
 22 there, and then if it was out there, to follow
 23 through and determine how, in the face of this
 24 elaborate system of checks and safety
 25 management, this could happen that this belief

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1 would be out there. Because quite frankly, it
 2 would be my submission that if it is the case
 3 that this belief was out there, and it didn't
 4 get picked up by this elaborate system, then
 5 we have got to ask ourselves is there
 6 something fundamentally wrong with the
 7 approach to checking.
 8 COMMISSIONER:
 9 Q. To?
 10 EARLE, Q.C.:
 11 Q. To checking.
 12 COMMISSIONER:
 13 Q. To checking, yes. To the audits?
 14 EARLE, Q.C.:
 15 Q. To the audits, to the safety management
 16 systems, to you name it, because you know,
 17 it's a big issue and, as I said, I've
 18 certainly seen enough out there in terms of
 19 written materials on the S-92 that were out
 20 there and, you know, seemingly respected
 21 sources. I mean, found one last evening that
 22 Janes, the military hardware and aviation
 23 people put out a respected publication. They
 24 were saying that the S-92 had a 30-minute dry
 25 fly time. So I mean, it would be

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1 understandable in some ways how it got out
 2 there. The question is why didn't it get
 3 corrected.
 4 COMMISSIONER:
 5 Q. And I agree that that is an absolutely
 6 legitimate question and I would like to know
 7 the answer, but at the appropriate time, and
 8 this is -- you see, I'm, in the Terms of
 9 Reference, as you know, required to liaise
 10 closely with the Transportation Safety Board.
 11 I have done that and I don't mind saying that
 12 our discussions centred on what was their
 13 bailiwick and what was mine, and they are the
 14 ones that examine the circumstances of a crash
 15 such as this, or any incident -
 16 EARLE, Q.C.:
 17 Q. Yeah, but I'm not asking for the circumstances
 18 of the crash.
 19 COMMISSIONER:
 20 Q. I know, but you know, they're the ones -
 21 EARLE, Q.C.:
 22 Q. And the Transportation Safety Board has said
 23 nothing in its public -
 24 COMMISSIONER:
 25 Q. Exactly, exactly.

Page 22

1 EARLE, Q.C.:
 2 Q. - about this issue, and I would remind you,
 3 Mr. Commissioner, that we talked about bolts
 4 yesterday.
 5 COMMISSIONER:
 6 Q. Yes. But give me an opportunity, if you
 7 would, to develop the theme that I'm
 8 developing, the bolts. The Transportation
 9 Safety Board very soon, way back in the
 10 beginning of the summer, put out a bulletin
 11 and they said the bolts, the titanium bolts
 12 fractured, the oil was lost and that was the
 13 proximate and immediate cause of the crash.
 14 Now there may be other causes that may come
 15 out in their report, I don't know, but at
 16 least they have spoken on that point.
 17 Yesterday, it was not an accident that
 18 Ms. Fagan asked the panel here "when did you
 19 order the bolts?" and let's go back for a
 20 moment. A directive came out that the bolts
 21 were to be changed within a year or 1200
 22 hours, which is what I'm told by someone not
 23 here. I think I learned it in Montreal at the
 24 conference, but that's about as much as an
 25 offshore helicopter flies in a year, 1200

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1 hours. So that directive came out. I don't
 2 know anything about bolts. You know, I don't
 3 know if they should be made of aluminum or
 4 steel or brass or whatever. That's not my
 5 role. But the Transportation Safety Board
 6 said that the bolts were the cause. We
 7 weren't seeking, and Ms. Fagan wasn't seeking
 8 information on the bolts. Ms. Fagan was
 9 seeking information on the culture, the safety
 10 culture of Cougar, when she said "when did you
 11 order the new bolts?" and they said "within
 12 six days" and that's fine. If they had said
 13 "well, we had a year. We'd wait for six
 14 months and maybe we'll have them in by eight
 15 months," I would have taken a very different
 16 view of their safety culture when I came to
 17 write my report.
 18 So that was the purpose of that question,
 19 and it arose really out of something that the
 20 Transportation Safety Board had already dealt
 21 with. But here they are with wide powers
 22 which concern me because I don't want to get
 23 in a position where I'm trying to preempt the
 24 Transportation Safety Board before they speak
 25 about something. After they speak, if we want

Page 24

1 more information, I'd get Cougar back and we'd
 2 all ask them whatever we wanted to ask.
 3 But you can see my concern. I am just as
 4 interested as you in knowing the answer to
 5 that, but I have another role, and that is to
 6 keep within my boundaries until the experts,
 7 namely the Transportation Safety Board, tell
 8 us what happened.
 9 EARLE, Q.C.:
 10 Q. Let me remind you of what your role is. It is
 11 to have an Inquiry into helicopter safety.
 12 COMMISSIONER:
 13 Q. Absolutely.
 14 EARLE, Q.C.:
 15 Q. And you know, it's all very well for these
 16 people to come in here and list the numbers of
 17 audits that they have. The question is not
 18 how many audits you have. The question is are
 19 audits effective.
 20 COMMISSIONER:
 21 Q. And there's nothing wrong with your asking
 22 them that.
 23 EARLE, Q.C.:
 24 Q. Well, that is in essence where I'm going with
 25 this.

Page 25

1 COMMISSIONER:
 2 Q. You can ask them about the audits, anything
 3 you want.
 4 EARLE, Q.C.:
 5 Q. Well, I'm not -- with respect, Mr.
 6 Commissioner, you can't know whether the
 7 audits are effective, and this is one of the
 8 problems with me, because audits are done on
 9 testing basis. They take samples and the fact
 10 of the matter is when something goes wrong,
 11 that's when we find out what changes need to
 12 be made.
 13 COMMISSIONER:
 14 Q. Absolutely. That I don't disagree with.
 15 EARLE, Q.C.:
 16 Q. And you've heard this morning a list of
 17 changes that have been made. Now there is out
 18 there a very real issue in the minds of
 19 everybody, people here, the public, and that
 20 is were people operating under a misconception
 21 as to the capability of that aircraft to fly
 22 without oil in the gearbox.
 23 COMMISSIONER:
 24 Q. I know that. I feel the same as you.
 25 EARLE, Q.C.:

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1 Q. Now how can we know -- how can we know if the
 2 audits were effective if we don't know what
 3 slipped through the cracks?
 4 COMMISSIONER:
 5 Q. Exactly, and we have got an organization which
 6 we're told is among the best in the world, a
 7 multi-million dollar budget, with experts of
 8 every kind, metallurgists, aviation experts,
 9 they are looking at that. When they tell us
 10 exactly what the situation was, then we can do
 11 just as you say.
 12 EARLE, Q.C.:
 13 Q. Well, Mr. Commissioner, I'm not going to take
 14 up the morning. Are you telling me I can't
 15 ask that question?
 16 COMMISSIONER:
 17 Q. No. Well, I'm telling you that I do not want
 18 to go where we do not yet belong. When the
 19 Transportation Safety Board has ruled, then we
 20 can explore all this because I have the power
 21 then to recommend legislative changes and
 22 there are only two legislatures, that's
 23 Newfoundland and Labrador and the Parliament
 24 of Canada, and that's pretty broad power, and
 25 I would not hesitate to use it, but I must

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1 hear from the people whose job it is.
 2 Now this is so important that I'm going
 3 to ask counsel, other counsel, might as well
 4 take the time to sort this out properly, their
 5 views on it. Because I value the views of all
 6 counsel in the room, and I'm going to start,
 7 if I may, not wishing to put you on the spot,
 8 but I do want to start with C-NLOPB, if that
 9 is not placing you in difficulty, as to your
 10 immediate reaction to going where Mr. Earle is
 11 suggesting that we ought to go and where I'm
 12 suggesting that it would be dangerous for us
 13 to go, because we're not the experts who are
 14 looking at this particular aspect. So would
 15 you like to say anything, Ms. Crosbie or Mr.
 16 Andrews?
 17 MS. CROSBIE:
 18 Q. I think that it's an area with a very fine
 19 line and I think that we would like some time
 20 just to consider the two positions before we
 21 give you our position.
 22 COMMISSIONER:
 23 Q. All right.
 24 MS. CROSBIE:
 25 Q. Because it is right down the middle of the

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1 line with respect to the Terms of Reference.
 2 So I'd like to think about that for a few
 3 minutes.
 4 COMMISSIONER:
 5 Q. All right. Would you like to make any comment
 6 or suggest any, Mr. Roil, way of proceeding?
 7 Or Ms. Fagan?
 8 MS. FAGAN:
 9 Q. Yes, Commissioner. I think it would be
 10 helpful for counsel if we took a 5-10 minute
 11 break. I may have some comments, but this is
 12 an important issue and it will set the
 13 direction as to where we go for the next hour
 14 or two and I think it's very careful that we
 15 approach this in the right manner. We are
 16 treading very, very close to the line. I have
 17 my own personal view on it, but I'd prefer to
 18 allow counsel to formulate their thoughts and
 19 have them speak first, if you don't mind if we
 20 take a few minutes?
 21 COMMISSIONER:
 22 Q. I think we could take ten minutes, take half
 23 an hour. You know, we have plenty of time and
 24 we don't want to make a mistake here. Okay,
 25 we'll adjourn for as long as it takes.

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1 MS. FAGAN:
 2 Q. Thank you.
 3 (BREAK)
 4 COMMISSIONER:
 5 Q. Now ladies and gentlemen, I take it you've had
 6 an opportunity to consider all this. I think,
 7 Mr. Whalen, as you are counsel for Cougar, I
 8 would get your view first.
 9 WHALEN, Q.C.:
 10 Q. Thank you, Commissioner Wells. Perhaps it
 11 would be helpful if I just outlined the Terms
 12 of Reference, your mandate as set out in
 13 Section 5, and I would just like to deal with
 14 the limitations to framework factual position,
 15 which might assist you. "The Commissioner's
 16 mandate does not include an examination of any
 17 issue related to" and then there are four
 18 items listed. The first one is the
 19 airworthiness of the aircraft. Number two is
 20 the training of the flight crew. Number three
 21 is or flight procedures, and the fourth is
 22 "any other matters which are included in the
 23 Transportation Safety Board of Canada's
 24 investigation into the Cougar helicopter S-91A
 25 crash." So that is the framework that is in

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1 which you must deal, as I understand it.
 2 The other information which I think may
 3 be of assistance to you is to let you know
 4 that the witness who was asked this question
 5 was questioned by the Transportation Safety
 6 Board for over three hours on these specific
 7 issues, as were many other Cougar employees.
 8 Mr. Earle has identified a very germane and
 9 important issue. However, it is in the
 10 mandate in my view of this Commission and when
 11 that report comes back to you, it may well
 12 open the exploration of these issues to this
 13 Commission.
 14 So that is our position and I hope it's
 15 of help to you and other counsel who I think
 16 may have some views to express on this. So
 17 unless you have questions, I think succinctly
 18 that is our position.
 19 COMMISSIONER:
 20 Q. No, I understand what you're saying. It is
 21 interesting because I made the assumption that
 22 the Transportation Safety Board had gone into
 23 all this with all the players. What you have
 24 said now confirms that they have gone into it
 25 exhaustively with Cougar.

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1 WHALEN, Q.C.:
 2 Q. They have, and for all I know, they may be
 3 still doing it and there may be further
 4 questions. We won't know until they've
 5 finalized their report, which I understand
 6 will be forwarded to you as well.
 7 COMMISSIONER:
 8 Q. Okay then, thank you, Mr. Whalen.
 9 WHALEN, Q.C.:
 10 Q. Thank you.
 11 COMMISSIONER:
 12 Q. Now I'll come back to C-NLOPB. Ms. Crosbie?
 13 MS. CROSBIE:
 14 Q. Thank you, Mr. Commissioner, and I'd like to
 15 thank Mr. Whalen. His comments have clarified
 16 the issue somewhat with respect to Cougar
 17 being investigated by the Transportation
 18 Safety Board or certainly questioned on that
 19 issue, and we would mirror his comments with
 20 respect to the wording of the limitation, and
 21 even more so now that we know that Cougar has
 22 been questioned on that particular issue. I
 23 think that it clearly falls within matters
 24 being investigated by the Transportation
 25 Safety Board. But as well, under

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1 airworthiness of aircraft, training of flight
 2 crew or flight procedures, I think that that
 3 particular question would fall under that
 4 limitation.
 5 We'd also like to make a comment with
 6 respect to Mr. Earle's comments that this
 7 Inquiry should not have been held until after
 8 the Transportation Safety Board report had
 9 been tendered. The C-NLOPB feels very
 10 strongly that it was important for this
 11 Inquiry to commence as soon as possible. It's
 12 doing very important work with respect to
 13 helicopter transportation and ensuring that it
 14 is as safe as is reasonably practicable and
 15 waiting for the TSB report really was not an
 16 option. That could be years down the road,
 17 and so we just wanted to make that comment in
 18 response to Mr. Earle.
 19 COMMISSIONER:
 20 Q. Okay, thank you.
 21 MS. CROSBIE:
 22 Q. Thank you.
 23 COMMISSIONER:
 24 Q. Now I can go to the order of normal
 25 questioning. Transport Canada is not present.

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1 CAPP is not present. HMDC?
 2 MR. FREEMAN:
 3 Q. Transport Canada.
 4 COMMISSIONER:
 5 Q. Oh, I'm sorry, yes.
 6 MR. FREEMAN:
 7 Q. That's okay.
 8 COMMISSIONER:
 9 Q. Everybody moves every day, so when I look, I'm
 10 not quite sure where everybody is. Yes.
 11 MR. FREEMAN:
 12 Q. I'm content to leave it at what's already been
 13 said, Mr. Commissioner. We're not going to
 14 take a position on this issue. We're going to
 15 leave it to your discretion on the
 16 jurisdictional question.
 17 COMMISSIONER:
 18 Q. Okay, thank you. Now HMDC, Ms. Strickland?
 19 STRICKLAND, Q.C.:
 20 Q. Mr. Commissioner, I'm going to put forward the
 21 position of HMDC, Suncor and Husky. We'd like
 22 to thank Mr. Whalen for his comments. We
 23 believe that they added clarity to the issue.
 24 We have no real objection to Mr. Earle's
 25 question. However, it was our understanding

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1 that this issue would be dealt with in Phase 2
 2 of your Inquiry, after the TSB have put
 3 forward their report, and that's our position.
 4 COMMISSIONER:
 5 Q. Okay, thank you, and that's -- yes, okay then,
 6 thank you. Cougar, you've spoke, Mr. Whalen.
 7 Sikorsky, Helly Hansen, Memorial University,
 8 yes, Mr. -
 9 HURLEY, Q.C.:
 10 Q. We have no submission.
 11 COMMISSIONER:
 12 Q. No submission, all right. Government of
 13 Newfoundland and Labrador, Ms. Brown?
 14 MS. BROWN LAENGL: :
 15 Q. No specific submission. We note that HMDC and
 16 C-NLOPB and Cougar have covered the issues
 17 adequately.
 18 COMMISSIONER:
 19 Q. So now you're not before the mic. Perhaps you
 20 should go on record.
 21 MS. BROWN LAENGL: :
 22 Q. From the perspective of the Government of
 23 Newfoundland and Labrador, Mr. Whalen's
 24 comments with respect to the contact that
 25 Cougar has had with TSB on this issue, as well

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1 as your own contact, seem to indicate that it
 2 would be more appropriately considered at
 3 Phase 2, as HMDC and the operators have
 4 indicated.
 5 COMMISSIONER:
 6 Q. Thank you very much. Mr. Harris is not here.
 7 Counsel for the families, Mr. Martin?
 8 MR. MARTIN:
 9 Q. Thank you, Mr. Commissioner. I'd first of all
 10 like to thank you for the profession way
 11 you've handled this matter. I think we've all
 12 had an opportunity now to reflect on it.
 13 As you know, I represent the families and
 14 obviously the families would like to know,
 15 have questions answered. They would like to
 16 know really what happened on March the 12th,
 17 to the extent that they can. But I want to
 18 make it clear that, as counsel for the
 19 families, I in no way intend to get into the
 20 issue of liability in the questions that I
 21 will have for the witnesses later on this
 22 morning. But having said that, you know, and
 23 having heard Mr. Earle's questions, I don't
 24 think Mr. Earle's questions are crossing the
 25 line. I really don't. I don't think he's

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1 probing to get at the issue of liability. I
 2 think they're very fair questions and I think,
 3 you know, notwithstanding the Terms of
 4 Reference, I think the line has not been
 5 crossed. It's not a fine line and I would
 6 think Mr. Earle should be permitted to ask his
 7 questions.
 8 My big concern is, and the issue that I
 9 raise, is more of a procedural one. I mean,
 10 Phase 1A is an identification of issues phase.
 11 We really don't know where Phase 1B is going,
 12 other than the fact that we'll hear from you
 13 later on in the month, Mr. Commissioner, about
 14 the issues. We don't know the extent to which
 15 1B and subsequent phases will involve a role,
 16 if any, for people like my clients, the
 17 families. So there's a bit of confusion
 18 there. This may be, and I don't know the
 19 answer to the question, this may be the only
 20 opportunity for people like Mr. Earle and
 21 myself and perhaps others to ask questions of
 22 people who have information relating to the
 23 March 12th incident.
 24 So from a transparency point of view, I
 25 think, you know, the line of Mr. Earle's

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1 questions were totally consistent with the
 2 tenor of this proceedings and if it is the
 3 only opportunity for questions to be asked and
 4 for members of the families who choose to do
 5 so to actually observe and participate in
 6 those proceedings, then I think Mr. Earle
 7 should be permitted to continue his
 8 examination along the lines that he did. So
 9 it's transparency reasons that I'm looking at.
 10 It's procedural reasons. Unless there's going
 11 to be some guarantee down the road that my
 12 clients and perhaps Mr. Earle's clients are
 13 able to ask the questions that we consider
 14 important at that particular time, then you
 15 know, maybe this is the only time to do it.
 16 But I just don't think Mr. Earle has crossed
 17 the line whatsoever.

18 COMMISSIONER:
 19 Q. Well, thank you for your remarks. I would say
 20 this to you and to everyone that -- and I
 21 think I indicated this to you, Mr. Earle, that
 22 when the time comes and the Transportation
 23 Safety Board has done its work, I could
 24 certainly and wish to give everybody an
 25 undertaking that I will convene this group

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1 again and if Cougar needs to be brought back,
 2 I will bring them back. Because I agree with
 3 you, transparency. It's a question of
 4 jurisdiction at the moment under the Terms of
 5 Reference and if I allow the Terms of
 6 Reference to be breached, the Inquiry will
 7 lose credibility and be in dispute with other
 8 people and other entities who have a statutory
 9 role, and that's the Transportation Safety
 10 Board, to investigate every aspect of this
 11 matter, and that's really my point. But I say
 12 this to you and to everyone else that you and
 13 your clients will have an opportunity to
 14 pursue this, if it's necessary to pursue it,
 15 after the Transportation Safety Board reports,
 16 and also that those who have an interest in
 17 this matter will have an opportunity to advise
 18 me on the subject of what recommendations I
 19 may make in Phase 2 with respect to
 20 legislation or anything else that comes within
 21 that. I would not just go off myself and make
 22 recommendations without hearing from this
 23 group. It's important.

24 MR. MARTIN:
 25 Q. No, I appreciate that, and we, in no way, want

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1 to compromise this Inquiry or the work of any
 2 other body, such as the Transportation Safety
 3 Board.

4 COMMISSIONER:
 5 Q. That's my concern.

6 MR. MARTIN:
 7 Q. No, I understand your concern, but we right
 8 now have a process whereby we're getting
 9 extensive media coverage. We have live
 10 coverage on Rogers every day. We have webcam
 11 access to a public process and that's why I
 12 think for people to object to the line of
 13 questioning that Mr. Earle is engaged in is
 14 inappropriate at this stage, because I just
 15 don't think Mr. Earle's questions are going
 16 down the road that they're looking at
 17 liability in any event. I think his questions
 18 are fair and given the process that we have
 19 now, which we may not have down the road, I
 20 think it's important that we allow Mr. Earle
 21 to proceed.

22 COMMISSIONER:
 23 Q. I hear your argument. I guess I should say
 24 that I'm in some disagreement with it, but
 25 that's all right, and thank you.

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1 MR. MARTIN:
 2 Q. Thank you, Mr. Commissioner.

3 COMMISSIONER:
 4 Q. Okay then. Now counsel for the pilots, Ms.
 5 O'Brien?

6 MS. O'BRIEN:
 7 Q. Thank you, Commissioner. As you know, I'm
 8 here representing today the families of two
 9 men who this line of questioning is
 10 particularly relevant to. I'm here
 11 representing the families of the captain and
 12 the first officer of Flight 491. Mr. Earle's
 13 question has been what was Cougar's general
 14 knowledge about flight procedures or flight
 15 conditions for the S-92 helicopter, and of
 16 course, the question on everyone's mind will
 17 be what was the knowledge of these two
 18 particular employees of Cougar, and while I
 19 certainly agree with Mr. Earle and Mr. Martin
 20 that transparency is important, that people,
 21 the public, have a genuine interest in what
 22 happened here today, I'd make the point that
 23 there can be -- there's no one who's more
 24 interested in what happened on March 12th than
 25 the families of my two clients. They want to

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1 know as much as anyone why their husbands,
 2 sons, fathers, did not come home that day.
 3 However, I'd like to speak a bit about
 4 the procedural fairness in how those families
 5 get that information. They have not been
 6 heavily involved with the TSB, though the TSB
 7 has had communication with them. But they
 8 haven't been involved in the questioning like
 9 Cougar has. So Cougar has knowledge here that
 10 these families yet do not. They will get that
 11 information, and my understanding to date has
 12 been that they would first get that
 13 information when the TSB does their draft
 14 report. There is a group that the draft
 15 report is circulated to in advance. So that
 16 group has knowledge of what's going to be in
 17 it and a chance to comment, and the families
 18 of the flight crew would be among that group.
 19 So that is the time that my clients are
 20 expecting to get this type of information
 21 first. They don't necessarily know what their
 22 husbands, sons, fathers knew or did not know.
 23 They're interested, but that was the -- that's
 24 the scenario that they expected to first find
 25 out and so to do it here today, which would be

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1 really, my reading of the Terms of Reference,
 2 clearly outside number six, Term No. 6 which
 3 says the limitations, would be -- it's not
 4 what they're expecting.
 5 I don't think it would be fair for those
 6 families to do it that way. It's not that
 7 they're -- they know this is going to be a
 8 public process. They understand that other
 9 people have interest as great as theirs, but I
 10 just don't think that is the appropriate way
 11 to do it. I think the appropriate way to do
 12 it is wait. We'll get the TSB report. People
 13 will know, digest the information, prepare
 14 themselves, and then we'll move back out into
 15 a public forum. So those are my comments.
 16 Thank you.
 17 COMMISSIONER:
 18 Q. Thank you. Yes, thank you, Ms. O'Brien,
 19 because you've given us a somewhat different
 20 perspective as representing the families of
 21 the deceased pilots. We've gone through the
 22 list. Any comment you'd like to make, Ms.
 23 Fagan.
 24 MS. FAGAN:
 25 Q. Commissioner, as Inquiry counsel, I would have

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1 to advise that the question that's being asked
 2 is outside the Terms of Reference. Mr.
 3 Whalen, as counsel for Cougar Helicopters, has
 4 advised that Cougar is being investigated or
 5 at least questioned and has been questioned
 6 extensively on this issue and it would be
 7 anticipated and expected that TSB would
 8 question them on this issue.
 9 Ms. O'Brien, as counsel for the pilots,
 10 has also laid out the procedure, and it's very
 11 clear that the Transportation Safety Board
 12 would be dealing with this situation in their
 13 report, and therefore questions with respect
 14 to the audit process and how the audit process
 15 and what issues the audit process deals with,
 16 that may be something that can be looked at,
 17 but the question as to what Cougar Helicopters
 18 knew and the manual and those types of
 19 questions dealing with the March 12th
 20 incident, I would have to recommend could not
 21 be answered and dealt with at this stage.
 22 They can be dealt with at the second stage,
 23 but that would be my position. Thank you.
 24 COMMISSIONER:
 25 Q. Thank you very much. Mr. Earle, I don't know

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1 if you want to comment further.
 2 EARLE, Q.C.:
 3 Q. Oh yes. Mr. Commissioner, with the greatest
 4 respect to my various colleagues, I think they
 5 make an error in understanding what determines
 6 jurisdiction. It's not the wording of a
 7 question that determines jurisdiction. It is
 8 the gravamen or importance of the question
 9 which determines jurisdiction. I find it --
 10 it's good to have a few minutes to reflect on
 11 this. We had Mr. Burt here list off, in the
 12 response to my questions, a large number of
 13 changes which Cougar has made and he talked
 14 about learnings and the basis for change with
 15 the descent profile in particular, and the
 16 clear implication, and not implication, the
 17 clear message from what he has said is "we
 18 have learned things from the experience of
 19 March 12th which has caused us to make
 20 changes."
 21 Now what is the jurisdiction of this
 22 Inquiry? The jurisdiction of this Inquiry is
 23 to inquire as to the present state of
 24 helicopter safety, helicopter transportation
 25 safety, and to learn from it what it can about

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1 necessary improvements to the system, the way
 2 that we manage safety, the things we do to
 3 make things safe and the question in no way
 4 relates to the mandate of the Transportation
 5 Safety Board, which is to identify the cause
 6 of the crash and make recommendations as to
 7 regulatory changes, equipment changes,
 8 training changes, whatever, that they might
 9 see as being beneficial to avoid a repetition
 10 of that sort of thing.

11 So there's a very narrow line, as my
 12 friend Mr. Martin said, between the areas.
 13 But what we're asking is in a question that I
 14 could have easily asked in this way "Mr. Burt,
 15 detail the basis of your learnings" and Mr.
 16 Burt, I suggest to you, if he was to answer
 17 that question, would have to have told us what
 18 they learned about that information piece. So
 19 with respect, I think that my friends are
 20 really looking at this not on the basis of
 21 where the question goes and what the gravamen
 22 of the question is and what it's all about,
 23 but on the basis of the wording alone. "Oh,
 24 this is about state of mind on March 12th,
 25 TSB." That's it. That, with respect, is a

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1 superficial analysis of the question of
 2 jurisdiction.

3 Mr. Commissioner, I would like to echo
 4 something Mr. Martin said about transparency.
 5 Tonight on the Terra Nova FPSO, the White
 6 Rose, SeaRose FPSO, and the Hibernia Platform,
 7 people will look at video discs of these
 8 proceedings and I can tell you from the e-
 9 mails and telephone calls that I have received
 10 and surely you, Mr. Commissioner, must have
 11 noticed the devoted attendance by individuals
 12 members of the workforce out there at these
 13 hearings. There is a great interest in these
 14 hearings and this is a question that people
 15 want answered. They want to know did
 16 something fall through the cracks here and
 17 what has to be done to improve the situation
 18 so things like this don't fall through the
 19 cracks any more, and I couldn't think of a
 20 simpler statement of the jurisdiction of this
 21 Inquiry, finding out what has to be done so
 22 things don't fall through the cracks. And
 23 people want this question for that reason, the
 24 go-forward reason. Not to point fingers, not
 25 to judge liability, but they want it for the

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1 go-forward reason. They want it for the -- so
 2 that they can have comfort when they walk up
 3 those steps into an S-92 or a Puma or any
 4 other aircraft that may be chosen from time to
 5 time to fly them to the offshore, and they
 6 want to see that question asked not behind
 7 closed doors, not interviews of three hours by
 8 somebody from the TSB. They want to see that
 9 question asked in a forum where they can have
 10 someone representing their interest, somebody
 11 who they can send an e-mail to, somebody who
 12 they can call on the telephone, somebody they
 13 can meet with, ask that question and probe it
 14 for those purposes.

15 So I think if you exceed to the positions
 16 of my friends other than Mr. Martin, I will be
 17 blunt, you will have to commit very clearly
 18 that this question will be asked down the road
 19 in that kind of forum, so that these people
 20 who after all are the people who have -- you
 21 know, they generate the wealth that is coming
 22 from this industry that pays the profits of
 23 the oil companies, that pays the royalties to
 24 the Province, that pays Cougar and pays
 25 themselves. But none of this happens without

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1 people and those people want to have absolute
 2 comfort, as to the degree that it is possible,
 3 that, you know, if something fell through the
 4 cracks, we find out why it fell through the
 5 cracks and do whatever is necessary to see to
 6 it that the crack is closed. They're not
 7 interested in another Ocean Ranger
 8 recommendation that's still outstanding all
 9 these years afterwards. They want to see
 10 something done about it.

11 COMMISSIONER:
 12 Q. Okay, thank you, Mr. Earle. Well, I'm going
 13 to -- you can sit down, if you wish, because
 14 I'm going to speak for a few moments on this.

15 EARLE, Q.C.:
 16 Q. Fine.

17 COMMISSIONER:
 18 Q. We go back to the beginning. In Canada for
 19 aviation accidents and marine accidents, there
 20 is a system and the Transportation Safety
 21 Board, which is set up as an independent body,
 22 is mandated to investigate all of these
 23 accidents and tell us exactly what happened
 24 and why and how it came about, and they do
 25 that and they do it with great skill. They

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1 have the people who are internationally
 2 recognized and often called upon by other
 3 countries and these people examine accidents
 4 and give a verdict, as it were, on what
 5 happened, why it happened and they also go
 6 further and because they have wide powers,
 7 powers to say what should be done so it
 8 doesn't happen again.

9 The C-NLOPB has power under its mandate,
 10 which is the mandate of the two governments,
 11 because the two governments, the federal and
 12 the Government of the Province of Newfoundland
 13 and Labrador, and Nova Scotia which has
 14 similar legislation, delegated their powers to
 15 the offshore petroleum board, the C-NLOPB and
 16 the Board regulates all matters connected with
 17 exploration and development and how its
 18 carried on and what it does, and also, it has
 19 been given the power to call an inquiry, a
 20 public inquiry under the Public Inquiries Act
 21 of Canada and the Province of Newfoundland and
 22 Labrador, to examine various aspects which
 23 fall within the C-NLOPB's jurisdiction to make
 24 regulations and to do things, and they chose
 25 to set up an inquiry which they're entitled to

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1 do, and the inquiry has specific terms of
 2 reference, and of course, they made a point of
 3 not having their inquiry conflict with the
 4 Transportation Safety Board's inquiry.

5 But in their wisdom, they added a second
 6 part to the terms of reference which said
 7 after the Transportation Safety Board has
 8 reported, and I'll read it, "upon completion
 9 of the Transportation Safety Board of Canada
 10 investigation into Cougar Helicopter Sikorsky
 11 S92A crash, the Commissioner shall undertake a
 12 review of the report therefrom and
 13 particularly the findings and shall advise C-
 14 NLOPB: A. which findings should result in
 15 actions being recommended to be undertaken by
 16 C-NLOPB and how they should be implemented."
 17 So that's what C-NLOPB will receive
 18 recommendations on. "B. other findings which
 19 should result in actions being recommended to
 20 be undertaken by other legislative or
 21 regulatory agencies." Now there are only two
 22 other legislative bodies in this instance in
 23 Canada, and that's the Parliament of Canada
 24 and the Legislature of Newfoundland and
 25 Labrador. So this is a pretty broad mandate,

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1 or regulatory agencies as well. It's a pretty
 2 broad mandate.

3 But what they're saying to me, as
 4 Commissioner, is let the Transportation Safety
 5 Board, because there's a limitation in as to
 6 what I can do, let the Transportation Safety
 7 Board investigate the accident, come up with
 8 the causes and the reasons and everything that
 9 they're entitled to do, and recommendations as
 10 they to are, but when you get them, when their
 11 role is finished, then you can come back to
 12 these questions and see what else you ought to
 13 recommend.

14 Now it's been suggested that I give an
 15 undertaking, and I will give this undertaking.
 16 I've given it already. That when Phase 2
 17 comes, the people who want to make
 18 representations on what I ought to do after
 19 the experts have determined the cause of the
 20 crash and the surrounding circumstances, after
 21 that has been determined definitively, which
 22 the Transportation Safety Board is equipped to
 23 do, then I will ask your opinions. We'll ask
 24 for further information, if I need it, or I'm,
 25 you know, requested to from Cougar or anybody

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1 else, and then I will ask for argument, namely
 2 submissions, probably in writing and oral
 3 also, from everybody connected with this
 4 process, the players, if I may put it that
 5 way, as to what I should recommend by way of
 6 legislative changes or changes to be
 7 undertaken by regulatory agencies.

8 So that the C-NLOPB, in its wisdom, set
 9 up a process which recognized the role of the
 10 TSB and gave me, as Commissioner, the
 11 opportunity, when they have reported, along
 12 with everything else that I have learned, to
 13 factor in the TSB's findings along with
 14 everything else and make final recommendations
 15 for legislative or regulatory change.

16 Now I have -- I can appreciate that a lot
 17 of people want to know exactly what happened
 18 on that day and what the pilots knew or didn't
 19 know and what their regulations said or didn't
 20 say about the Sikorsky. But I have the value
 21 and credibility of the Inquiry to respond to
 22 and I must always watch that and I must be
 23 careful of it, because if the Inquiry gets out
 24 of its sphere and into someone else's sphere
 25 where we don't have the expertise, but they

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1 do, the Inquiry could lose credibility and
 2 even though a decision may be unpopular, I'll
 3 make it to preserve the credibility of the
 4 Inquiry.
 5 So I'm not going to permit the question,
 6 but I do give an undertaking to everyone that
 7 they will have input at the end of the day
 8 when the Transportation Safety Board has
 9 reported and we reconvene, and I would say to
 10 you gentlemen that any questions involving
 11 what is being investigated and will be
 12 reported on, I think this year, by the
 13 Transportation Safety Board are not to be
 14 answered. They will come out with their
 15 report. You may or may not, but you indeed
 16 may, be asked by this Commission again to come
 17 here and tell us what you may know about any
 18 given thing. But at this stage, questions
 19 regarding the role of the Transportation
 20 Safety Board and what they're investigating
 21 are not to be answered.
 22 MR. BURT:
 23 A. That's understood.
 24 COMMISSIONER:
 25 Q. So I don't think I can make it any clearer. I

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1 appreciate your position, Mr. Earle, but I
 2 have to think of the credibility and the Terms
 3 of Reference of the Inquiry and the fact that
 4 we can address these questions later on.
 5 EARLE, Q.C.:
 6 Q. Indeed, Mr. Commissioner, and I do hope you
 7 will reflect upon this further, so that it --
 8 because argument and input are one thing, but
 9 I will tell you that at whatever phase it is,
 10 whether it's 2 or 2A or B or C, the fact of
 11 the matter is the people who are involved want
 12 to be able to know that these questions have
 13 been asked of the people involved.
 14 COMMISSIONER:
 15 Q. Yes.
 16 EARLE, Q.C.:
 17 Q. So it's not just a matter of submissions and
 18 representations.
 19 COMMISSIONER:
 20 Q. No, no. I agree, and there's no one who
 21 believes in transparency of public processes,
 22 where they be judicial or inquiries or
 23 whatever, no one believes more deeply than I
 24 in the transparency process. The only thing
 25 is in this case, things have to follow a

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1 certain order, and I think you can appreciate
 2 that. Okay then.
 3 MR. RICHARD BANKS, MR. RICK BURT AND MR. HANK WILLIAMS,
 4 EXAMINATION BY V. RANDELL J. EARLE (CONT'D)
 5 EARLE, Q.C.:
 6 Q. Fine. We turn to another area. The
 7 codispatch system, and just again to
 8 understand it. The dispatch is for a round
 9 trip?
 10 MR. BURT:
 11 A. That's correct.
 12 EARLE, Q.C.:
 13 Q. So what happens if things change, as they do
 14 inevitably, and they inevitably change, but
 15 sometimes they change other than as predicted.
 16 What happens if weather conditions and the
 17 like change off the predicted flight plan at
 18 some point in time before the helicopter gets
 19 to the installation, but not sufficiently that
 20 they can't land? Is there a reassessment?
 21 MR. BURT:
 22 A. Yes, there's a reassessment from, let's
 23 suggest three areas. Number one, the pilot in
 24 command has the immediate and dynamic
 25 responsibility for monitoring weather.

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1 Weather in terms of what he has from
 2 instruments in the aircraft, the radar, what
 3 he visually sees in the environment that he's
 4 in. Number two is the weather he'll receive
 5 from his destination, be it the platform or
 6 other aircraft that are currently flying,
 7 reports from aircraft in the area, such as our
 8 aircraft, the PAL aircraft, and these are
 9 called pilot reports. The additional one is
 10 the overarching or the oversight from our
 11 dispatch department who has the responsibility
 12 to oversee the general conduct of that flight,
 13 understanding the area, the area forecast
 14 conditions, and they do change and they are
 15 updated. That information is to be relayed to
 16 the flight crew or passed along to his
 17 destination, should he be on a final approach,
 18 for him to pick up, and they do look for those
 19 changes and move ahead, and in some cases
 20 suggest the weather has changed at your
 21 alternate. Therefore, they will redo the
 22 flight plan, redo the fuel calculations,
 23 forward that information onto the flight crew,
 24 brief them, and the flight will be changed as
 25 required.

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1 EARLE, Q.C.:

2 Q. Is this -- is there a formal point when a unit

3 has landed on one of the installations where

4 the issue of whether there is a need for any

5 changes has to be engaged as between the pilot

6 and the dispatcher?

7 MR. BURT:

8 A. Typically what happens is that when you land

9 on a platform, it obviously puts a period in

10 that round trip event, if I could use that

11 expression. The flight crew many times will

12 go down and get the revised weather. If

13 they're notified that there's weather that has

14 changed, and a flight plan, hat will be sent

15 from the codispatch or the dispatch entity in

16 St. John's to the radio operator for the pilot

17 to pick up and review, and if necessary, then

18 speak directly to the dispatcher from the

19 radio room in the platform.

20 EARLE, Q.C.:

21 Q. So it would essentially be a pilot-driven

22 decision?

23 MR. BURT:

24 A. It would be a decision that's driven by the

25 pilot in conference with the dispatcher and

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1 again the codispatch function.

2 EARLE, Q.C.:

3 Q. Yes, but the contacting of the dispatcher -

4 MR. BURT:

5 A. Yes.

6 EARLE, Q.C.:

7 Q. - and you know, engaging a review, that would

8 -- it's the pilot who makes a decision as to

9 whether that's necessary or not?

10 MR. BURT:

11 A. No, it could be the dispatcher requesting the

12 pilot to call.

13 EARLE, Q.C.:

14 Q. Okay. Now I don't think I'm going to get in

15 trouble asking this question, but you never

16 know, because it does -- it goes to March

17 12th, but it's really so we can understand the

18 sequences of what's done and we have already

19 had some information on March 12th, so it's

20 probably most efficient to work with it.

21 You had a standby aircraft on the ground

22 and at a point in time, you had your first

23 knowledge that there was an issue with Flight

24 491.

25 MR. BURT:

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1 A. Yes, sir.

2 EARLE, Q.C.:

3 Q. Did that immediately trigger the change out of

4 the standby aircraft or was it a few minutes

5 later with a mayday or something?

6 MR. BURT:

7 A. It was virtually contemporaneous with the

8 initial call to put that aircraft in a pre-

9 alert phase, as is standard in our business,

10 standard in our operation. What I mean by

11 pre-alert is to notify both the maintenance

12 flight crew and the search and rescue, the

13 first response entities, that the aircraft is

14 going into a pre-alert phase.

15 EARLE, Q.C.:

16 Q. And what is pre -- what does pre-alert mean?

17 MR. BURT:

18 A. Pre-alert means that the aircraft is being

19 prepped in anticipation which could be a full

20 SAR call out and it doesn't change how they

21 handle the preparation of the aircraft. It

22 just basically advises the crew there will be

23 a follow on commitment to leave the ground.

24 EARLE, Q.C.:

25 Q. Okay. I'll tell you where I'm going, because

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1 appreciate people report to me various

2 instances that they've had.

3 MR. BURT:

4 A. Right.

5 EARLE, Q.C.:

6 Q. And one individual has reported to me a

7 situation where he was a passenger on a flight

8 back from Terra Nova. The engine was shut

9 down -- one engine was shut down just before

10 arrival at Terra Nova and the aircraft turned

11 around because, as I understand it, there

12 wouldn't be sufficient power to land safely at

13 Terra Nova on the one engine.

14 MR. BURT:

15 A. Okay.

16 EARLE, Q.C.:

17 Q. So that the aircraft returned to St. John's

18 and landed in St. John's on the runway without

19 incident, and the question was asked, you

20 know, what was the status of the standby

21 aircraft, and it was put on -- it was told it

22 was put on fuelling alert, but not fuelled,

23 and there was a standby alert, but seats would

24 not have been removed from the aircraft.

25 Basically everybody was ready to -- it seemed

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1 like everybody was ready to start that
 2 process, but the process had not been started.
 3 Does that sound correct to you, first of all?
 4 MR. BURT:
 5 A. I mean, that's not our standard procedure, and
 6 again, that situation you speak of, I don't
 7 have the particular details of it and
 8 certainly I could get them for you. But I'm
 9 not familiar with that particular event, the
 10 details of it.
 11 EARLE, Q.C.:
 12 Q. Well, the gentleman who experienced that will
 13 be giving evidence later on.
 14 UNKNOWN SPEAKER:
 15 Q. Would you like to do it now?
 16 EARLE, Q.C.:
 17 Q. It would take too much to dig out -
 18 COMMISSIONER:
 19 Q. You may be able to help us pending getting the
 20 information by telling us what's supposed to
 21 happen in your view.
 22 MR. BURT:
 23 A. Certainly, yeah. Well, what's supposed to
 24 happen is if we have an aircraft that is in a
 25 mechanical situation or returning because of a

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1 mechanical situation in that manner, that an
 2 aircraft should be in a configuration that it
 3 can be dispatched, you know, immediately
 4 should the situation become more graver. So
 5 it gets into that standby posture.
 6 EARLE, Q.C.:
 7 Q. So what you're saying is what should happen in
 8 that situation -
 9 MR. BURT:
 10 A. Yes.
 11 EARLE, Q.C.:
 12 Q. - is that the aircraft is fuelled, the seats
 13 come out, and the SAR equipment goes on?
 14 MR. BURT:
 15 A. That's correct. It should be being
 16 reconfigured at that time.
 17 EARLE, Q.C.:
 18 Q. Yeah, the moment you get the message that
 19 you're down to one engine?
 20 MR. BURT:
 21 A. Yes.
 22 MR. WILLIAMS:
 23 A. Yes.
 24 EARLE, Q.C.:
 25 Q. Okay.

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1 MR. BURT:
 2 A. That's correct.
 3 COMMISSIONER:
 4 Q. Just to fill me in. Is Mr. Earle correct when
 5 he says that an aircraft -- a helicopter
 6 cannot land on the rig with just one engine
 7 because there wouldn't be sufficient power?
 8 Is that -
 9 MR. BURT:
 10 A. There's a number of parameters and this is
 11 what we're trained in the simulator is based
 12 upon the environmental conditions at that
 13 platform at that time. The wind conditions
 14 and the load on the aircraft, including fuel
 15 and passengers. So that all has an effect on
 16 landing on a point, a helideck with a single
 17 engine. It's quite different than landing on
 18 a full runway where you can do a very
 19 controlled manoeuvre with especially single
 20 engine. It is a critical decision point that
 21 needs to be examined when landing on a
 22 platform, and again, the platform is also
 23 assessed from the point of view of additional
 24 risk, landing in event of an emergency. So
 25 those things are all taken into consideration

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1 and it is a risk model that the captain does
 2 calculate.
 3 COMMISSIONER:
 4 Q. Okay, thank you. Yes, Mr. Earle.
 5 EARLE, Q.C.:
 6 Q. Okay. So in the circumstance of a loss of
 7 engine, you would anticipate that you would
 8 proceed to have the aircraft ready to take off
 9 in a search and rescue mode?
 10 MR. BURT:
 11 A. That's correct.
 12 EARLE, Q.C.:
 13 Q. Okay, and that would have been the process
 14 that was initiated on March 12th essentially
 15 from your first notice that there was a
 16 problem?
 17 MR. BURT:
 18 A. That I can speak of, that that was the
 19 situation on March 12th.
 20 EARLE, Q.C.:
 21 Q. Now again, looking at it in terms of what
 22 happens. I mean, Mr. Banks -- it is Banks,
 23 isn't it?
 24 MR. BANKS:
 25 A. Yes, it is.

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1 EARLE, Q.C.:

2 Q. Yeah. Said, you know, it takes three minutes

3 to extract an individual from water using the

4 hoist. Colonel Drover went through a time

5 sequence on the March 12th events and he

6 basically indicated that, as follows, and

7 these are Zulu times: 13:25 Cougar 61 first

8 SAR S-92 arrived on the scene; 13:40 the

9 second SAR S-92, that's Cougar 62, arrived on

10 the scene; and 14:25 Cougar 61 departs with

11 Mr. Decker on board; and then he indicated at

12 14:28, three minutes later, the two Cormorants

13 arrived on scene. Could you tell us what

14 would have been -- I mean, we know that Mr.

15 Decker was extracted from the water. We know

16 that another rescue specialist was put in the

17 water. Could you tell us what would have

18 taken up that hour? Because -- and I tell you

19 quite frankly where I'm coming from on this.

20 I think Colonel Drover left us with a bit of

21 an impression that once you got a helicopter

22 out there, I mean, you know, referencing sea

23 states, whether it was basically, it could be

24 a continuous operation of plucking people out

25 of the water or out of a life boat, and your

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1 first flight was there for an hour and you

2 ended up making a decision that Mr. Decker's

3 situation was critical, left a man in the

4 water with Allison Maher, and the other

5 aircraft. You know, what took up the time

6 such that you -- in that time, you only

7 recovered the one person with the one

8 aircraft?

9 MR. BANKS:

10 A. Well, the statement was made yesterday that

11 anywhere from three to five minutes is usually

12 a single hoist, you know, but you've got to

13 look at other parameters. You know, we have

14 water conditions. We have how did the

15 individual end up in the water, for one thing.

16 Did he fall over the side of the boat

17 uninjured? Can he just be pulled up? In a

18 case of an accident, if you have deceleration

19 injuries, there's a lot more critical care has

20 to go into providing to an individual,

21 figuring out what kind of physiological state

22 he's in, such as spinal injuries, neck, C-

23 spine. That has to be addressed. That takes

24 time, in the water, floating, trying to make

25 these to an incoherent victim or survivor. So

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1 you know, rapidly from three to five minutes,

2 that can turn to 15-20 minutes rather quickly.

3 Fighting sea state. Fighting somebody that is

4 really buoyant, floating on top, trying to,

5 you know, situate them in such a suit to get

6 them up into an aircraft. You know, we have

7 to look at decisions that are made at the

8 moment, in the water, whether it's going to be

9 a Stokes litter hoist, which takes a lot more

10 time, a double up. You know, the individual,

11 you need to get them out of the water, but you

12 also have to think about hypothermia state in

13 a vertical lift situation. You know, what is

14 he at right now? I know everybody wants to

15 get him out as quickly, effectively as

16 possible, but there's many more parallels to

17 that. For someone to just state three to five

18 minutes, he should be up and gone, that's very

19 easily said. To actually do it and experience

20 it, you know, plan A, B, C again goes very

21 quickly to D. So you have to do it so that

22 you maintain survivability of the victim you

23 have alive at the time.

24 Again, once he's up and it's taken a bit

25 of time, deceleration injury, any accident,

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1 force like that, you can suspect immediately

2 spinal immobilization or C-spine. Then, there

3 is also, once inside, the prep, getting him

4 the proper care for a couple of minutes.

5 Getting him stretched out, you know, maybe

6 getting the suit off. I wasn't there, but you

7 know, I heard basically how it was entailed

8 inside the aircraft. Ready at the same

9 time for a second individual to get in the

10 water for a known, another victim in the

11 water. So you know, now you have calls that

12 have to be pulled around while they're working

13 on one in the back. That takes up another two

14 bodies. One guy is now working on the victim

15 that you have alive, the survivor. So a

16 couple of more minutes pass in just relocating

17 the aircraft in the wind over another

18 position.

19 Now you have to make decisions whether

20 it's going to be a front door entry or a hoist

21 down into the water. Certainly with the

22 thought of criticality of an injured

23 individual in the back, this is still

24 communication back and forth up front, what

25 are we doing? How are going? Where are we

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1 going? Have you got -- you know, are you set
 2 for the second hoist? Are you set for the
 3 second entry? Let's get in. Get somebody in
 4 with her. But we're certainly not going to
 5 leave our individual out there by himself in
 6 the water in the ocean when we could wait a
 7 couple of minutes for another aircraft to be
 8 on scene. We're not going to add potential
 9 harm to another individual in such a case.
 10 So as much as people see three to five
 11 minutes, that can pass rather quickly to an
 12 hour. So, you know.
 13 EARLE, Q.C.:
 14 Q. That's very helpful, Mr. Banks.
 15 MR. BANKS:
 16 A. Okay.
 17 EARLE, Q.C.:
 18 Q. I must say it's more in accord with what --
 19 the impression that I had of the kind of time
 20 that a rescue task like this would take.
 21 Would it be fair to say then that it's not
 22 unreasonable, if you've got people in the
 23 water, that getting, say, two people out of
 24 the water could take an hour?
 25 MR. BANKS:

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1 A. It possibly could, yes. Now, you know, we're
 2 into a life raft situation, as you mentioned
 3 earlier, that's a guideline situation where
 4 the rescue man would stay in the life raft and
 5 up and down would rapidly occur and you could
 6 get many individuals out. Again, sea state,
 7 you know, there's all these things
 8 environmentally we have to look at. Sea
 9 state, the lift, the hypothermia state, again
 10 the injury. So yeah, there's -- you know,
 11 there's so many variances that you can't just
 12 limit a number on it.
 13 EARLE, Q.C.:
 14 Q. So would it be fair to say that really three
 15 to five minutes on a repetitive basis, that's
 16 really a best case scenario? You've got the
 17 people -
 18 MR. BANKS:
 19 A. That's a very, very best case scenario.
 20 EARLE, Q.C.:
 21 Q. Yeah, okay. Thank you. And the fuel
 22 considerations?
 23 MR. BANKS:
 24 A. Certainly.
 25 EARLE, Q.C.:

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1 Q. And the weight you have on board, and the
 2 weather conditions, they all limit how long
 3 you can stay out there?
 4 MR. BANKS:
 5 A. That's true.
 6 EARLE, Q.C.:
 7 Q. Now I'm interested in auto hover. I've done a
 8 little bit of looking around on this and it
 9 seems to me that the S-92, when it was
 10 marketed by Sikorsky, came or was presented in
 11 two configurations. There was a search and
 12 rescue configuration and a transport, for want
 13 of a better word, configuration, and Mr. Burt,
 14 you probably were more intimately involved
 15 with this than any of the others.
 16 MR. BURT:
 17 A. Um-hm.
 18 EARLE, Q.C.:
 19 Q. Is that generally correct?
 20 MR. BURT:
 21 A. It was presented in a number of marketing
 22 configurations, SAR, VIP, passenger
 23 configurations, yes.
 24 EARLE, Q.C.:
 25 Q. Yeah, and the unit was, as I understand it,

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1 and I understand that you bought it in this
 2 fashion, the unit was put out there as having
 3 an auto hover capacity.
 4 MR. BURT:
 5 A. No. When we purchased the aircraft, it did
 6 not have auto hover, but what we did do is
 7 purchase it with provisions that would allow
 8 it to -- when the auto hover was certified, to
 9 complete.
 10 EARLE, Q.C.:
 11 Q. But that's not my question. I'm talking about
 12 how Cougar marketed the thing.
 13 MR. BURT:
 14 A. No, we never marketed it with auto hover.
 15 EARLE, Q.C.:
 16 Q. What do you call auto hover in the trade?
 17 I'll just read you a description. "The sun
 18 strand automatic flight control system
 19 featuring three access stability augmentation
 20 system and fully coupled dual digital auto
 21 pilot with automatic approach to hover
 22 option."
 23 MR. BURT:
 24 A. Yes. That's a basic auto pilot system, auto
 25 stability system.

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1 EARLE, Q.C.:

2 Q. So it's an auto stability system?

3 MR. BURT:

4 A. Correct.

5 EARLE, Q.C.:

6 Q. It's not auto pilot?

7 MR. BURT:

8 A. No, it's an auto pilot, so three axes would be

9 heading, altitude, and air speed.

10 EARLE, Q.C.:

11 Q. Uh-hm.

12 MR. BURT:

13 A. And that's within the parameters of that level

14 of auto pilot certification, and that's --

15 when we talked about these minimum instrument

16 speeds, they're all subject to that basic auto

17 pilot. So you're not allowed to go any slower

18 than the 55 knots.

19 EARLE, Q.C.:

20 Q. Okay, well, you've indicated that the aircraft

21 is going to auto pilot -- auto hover --

22 MR. BURT:

23 A. Auto hover, yes.

24 EARLE, Q.C.:

25 Q. By virtue of the addition of software?

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1 MR. BURT:

2 A. Correct.

3 EARLE, Q.C.:

4 Q. So I take it that the aircraft came with

5 mechanics or the electronics to accommodate

6 auto hover software?

7 MR. BURT:

8 A. Right, some of -- some of our fleet, to be

9 clear, had all of the mechanics to do auto

10 hover, some of them needed a couple minor

11 upgrades, and I can be specific about those,

12 if you wish. It was the addition of a second

13 radar altimeter which shows our height and

14 also some wiring to one of the control devices

15 in the cockpit.

16 EARLE, Q.C.:

17 Q. Uh-hm, but, I mean, as you said, some of them?

18 MR. BURT:

19 A. Yes.

20 EARLE, Q.C.:

21 Q. And did you fellows buy aircraft frame number

22 one?

23 MR. BURT:

24 A. No.

25 EARLE, Q.C.:

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1 Q. I noticed you're described as the launch

2 customer for the S-92.

3 MR. BURT:

4 A. Right, we actually brought serial number 10.

5 We were number 10, and there were five

6 development aircraft.

7 EARLE, Q.C.:

8 Q. So there were four went elsewhere in the

9 market?

10 MR. BURT:

11 A. Correct, yes.

12 EARLE, Q.C.:

13 Q. You got yours first, but at least some of your

14 aircraft came to you with everything but the

15 software?

16 MR. BURT:

17 A. Pretty well, yes.

18 EARLE, Q.C.:

19 Q. Yeah, now -- and you say the software has got

20 to be certified?

21 MR. BURT:

22 A. Correct.

23 EARLE, Q.C.:

24 Q. Auto hover was not a new thing when you bought

25 these aircraft?

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1 MR. BURT:

2 A. Auto hover, in general you mean was not a new

3 thing, or auto hover specifically to the S-92?

4 EARLE, Q.C.:

5 Q. Auto hover, generally?

6 MR. BURT:

7 A. No, it was a well known capability in search

8 and rescue circles.

9 EARLE, Q.C.:

10 Q. So if the operators had spec'd auto hover, you

11 could have gone out and gotten it, maybe not

12 on the S-92, but you could have gone out and

13 gotten it?

14 MR. BURT:

15 A. Speaking with the S-92, the auto hover was not

16 certified when we purchased that aircraft, so

17 that would have been a process of

18 certification as we're in right now. Auto

19 hover with other types of aircraft such as the

20 EC225, I'm not sure at that point whether it

21 was certified or not. I can't confirm that.

22 EARLE, Q.C.:

23 Q. And, you know, sometimes what you find in the

24 internet is not overly reliable, but --

25 MR. BURT:

1 A. I'll back that one up.
 2 EARLE, Q.C.:
 3 Q. I've seen a promotion for one of your
 4 helicopter competitors who provides search and
 5 rescue services in Ireland, so you know who
 6 that is.
 7 MR. BURT:
 8 A. Yes.
 9 EARLE, Q.C.:
 10 Q. And claiming to have, and have had for a
 11 number of years now --
 12 MR. BURT:
 13 A. Yes.
 14 EARLE, Q.C.:
 15 Q. Four aircraft with auto hover.
 16 MR. BURT:
 17 A. This is the 61s?
 18 EARLE, Q.C.:
 19 Q. Yeah.
 20 MR. BURT:
 21 A. Yeah, and they've been there a lot longer than
 22 four years. They've had auto hover -- auto
 23 hover has been in Sikorsky products in the
 24 Hong Kong Police Force since the 80s.
 25 EARLE, Q.C.:

1 EARLE, Q.C.:
 2 Q. Okay, that's the ones here?
 3 MR. BURT:
 4 A. Correct.
 5 EARLE, Q.C.:
 6 Q. But you actually bought then for Nova Scotia
 7 as well?
 8 MR. BURT:
 9 A. We have an aircraft in Nova Scotia, that's
 10 correct, and that implemented last year.
 11 EARLE, Q.C.:
 12 Q. The PR from Sikorsky said you ordered five?
 13 MR. BURT:
 14 A. Yes. We have another aircraft, S-92, in the
 15 Gulf of Mexico.
 16 EARLE, Q.C.:
 17 Q. Yeah, okay. So was the one that came here in
 18 2005 your first acquisition?
 19 MR. BURT:
 20 A. That's correct.
 21 EARLE, Q.C.:
 22 Q. At least then -- I take it then, your 2006 was
 23 one that was fully ready for auto hover?
 24 MR. BURT:
 25 A. It was all but ready. Again with the radar

1 Q. So the predecessor -- not quite the
 2 predecessor because I know there's 76s and
 3 different things, but it does seem to be that
 4 the 61, the Sikorsky 61, was almost the 737 of
 5 helicopters.
 6 MR. BURT:
 7 A. That's a fair assessment, yeah.
 8 EARLE, Q.C.:
 9 Q. It's a 1960s model helicopter which still has
 10 very large numbers operating in the world
 11 today, and it -- so it was equipped with auto
 12 hover?
 13 MR. BURT:
 14 A. Correct.
 15 EARLE, Q.C.:
 16 Q. Now the S-92, you had them come in service in
 17 2005?
 18 MR. BURT:
 19 A. Right.
 20 EARLE, Q.C.:
 21 Q. I think your second one came in in 2005,
 22 actually?
 23 MR. BURT:
 24 A. The first one is 2005, 2006, and 2007
 25 respectively.

1 altimeter and some wiring, yes, it was all but
 2 ready.
 3 EARLE, Q.C.:
 4 Q. Tell me what drives the certification process?
 5 I mean, is the reason that there is now a
 6 certification application to the FAA in the US
 7 for this auto hover software because Cougar
 8 has said we want that option, and so it's got
 9 to be certified?
 10 MR. BURT:
 11 A. Yes.
 12 EARLE, Q.C.:
 13 Q. Or has it been hanging in the works since
 14 2005?
 15 MR. BURT:
 16 A. No, the first aircraft that we ordered, a
 17 completion on the auto hover was our serial
 18 number 61, and that aircraft was some two
 19 years ago that we had made that request and
 20 the certification is still pending.
 21 EARLE, Q.C.:
 22 Q. It's taken two years?
 23 MR. BURT:
 24 A. Yes.
 25 EARLE, Q.C.:

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1 Q. The question is, if you had on your first
 2 aircraft decided we want an auto hover
 3 capacity, would, in fact, the certification
 4 process have started two years earlier?
 5 MR. BURT:
 6 A. We would have hoped it would have started
 7 immediately when we put our order in before
 8 2005, and we would hope it would have been
 9 delivered when we got the aircraft, but we
 10 hoped that for serial number 61 and we're two
 11 years later getting it, so it's --
 12 EARLE, Q.C.:
 13 Q. What you're telling us that the application
 14 for certification to the FAA --
 15 MR. BURT:
 16 A. Right.
 17 EARLE, Q.C.:
 18 Q. Did not start until two years ago?
 19 MR. BURT:
 20 A. That's correct.
 21 EARLE, Q.C.:
 22 Q. But it could have started earlier?
 23 MR. BURT:
 24 A. Absolutely.
 25 EARLE, Q.C.:

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1 Q. Okay. Now I want to ask you about -- some
 2 questions about the tanks. It appears to me
 3 that what you've done is you've gone with your
 4 own custom auxiliary tank, is that correct?
 5 MR. BURT:
 6 A. That's correct.
 7 EARLE, Q.C.:
 8 Q. Why would you not have just gone with
 9 Sikorsky's own tanks?
 10 MR. BURT:
 11 A. The tanks that Sikorsky have are not designed
 12 for a passenger aircraft, they're primarily
 13 designed for search the rescue. The tanks are
 14 -- the cover up windows, they take up a
 15 greater space, and they're not conducive to
 16 what we see as maximizing the interior of the
 17 aircraft.
 18 EARLE, Q.C.:
 19 Q. Are you aware of an option for external
 20 auxiliary fuel tanks, each of 871 litres?
 21 MR. BURT:
 22 A. There's no option for that.
 23 EARLE, Q.C.:
 24 Q. For the Sikorsky S-92?
 25 MR. BURT:

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1 A. There is no external fuel tank option.
 2 EARLE, Q.C.:
 3 Q. You're quite confident in that?
 4 MR. BURT:
 5 A. I'm very confident, absolutely.
 6 EARLE, Q.C.:
 7 Q. So that's another one of these things that's
 8 out there about this aircraft that's not
 9 correct?
 10 MR. BURT:
 11 A. I could posit that there's a wide variant of
 12 military proposals on the table, and in those
 13 variants you'll see in a military
 14 configuration some contracts that Sikorsky is
 15 bidding on there might be some conceptual
 16 drawings that like the Black Hawk, you would
 17 have a winglet on either side and hung
 18 underneath that would be the torpedo type
 19 tanks and, you know, from a military
 20 configuration there might be some conceptual
 21 drawings.
 22 EARLE, Q.C.:
 23 Q. Did you explore with Sikorsky the option of
 24 external auxiliary tanks?
 25 MR. BURT:

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1 A. We have talked to them about it, and again
 2 that was again a conversation, it wasn't an
 3 official one, it was one that would be, well,
 4 you know, we might explore that down the road
 5 for a military application, but certainly not
 6 for a civilian application.
 7 EARLE, Q.C.:
 8 Q. Let's deal with the distance issue.
 9 MR. BURT:
 10 A. Okay.
 11 EARLE, Q.C.:
 12 Q. You say that you first looked at the S-92
 13 essentially because of a demand for another
 14 aircraft driven by Petro Canada, now Suncor?
 15 MR. BURT:
 16 A. That's correct.
 17 EARLE, Q.C.:
 18 Q. How far is the Terra Nova FPSO?
 19 MR. BURT:
 20 A. 186 nautical miles.
 21 EARLE, Q.C.:
 22 Q. 186 nautical miles, and with a 30 minute
 23 reserve, what was the stated range for the
 24 Sikorsky when you bought it?
 25 MR. BURT:

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1 A. Zero wind, in our application. It was about
 2 200 nautical miles, zero wind, return back to
 3 St. John's with 30 minutes.
 4 EARLE, Q.C.:
 5 Q. Why would you have bought an aircraft that you
 6 had to set to and have a custom tank designed
 7 for it?
 8 MR. BURT:
 9 A. Based upon the marketplace at that time, what
 10 was available in the latest design standard
 11 aircraft and aircraft in general, the S-92
 12 presented the greatest basic fuel range
 13 aircraft, and a cabin that could we used to
 14 configure additional fuel tanks. St. John's,
 15 we here on the east coast of Canada, own the
 16 distinction of flying to some of the most
 17 distant locations in the world, and that's a
 18 reality of where we operate, not only to
 19 production areas, but also exploration, and
 20 that's a reality. So right from the beginning
 21 of ordering this aircraft as part of the
 22 commercial procurement of this aircraft, it
 23 was agreed with our customer, Petro Canada,
 24 that we would design and implement an
 25 auxiliary fuel tank for the aircraft.

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1 EARLE, Q.C.:
 2 Q. Uh-hm. Was the auxiliary fuel tank put in
 3 service when the aircraft went in service or
 4 was it later?
 5 MR. BURT:
 6 A. I'm not sure about the exact date, to be
 7 honest with you, when we did get the auxiliary
 8 fuel tank certified and implemented, but it
 9 was certainly shortly thereafter, and I could
 10 get that date for you.
 11 EARLE, Q.C.:
 12 Q. Because people tell me they've flown on the S-
 13 92 to the offshore installations without the
 14 auxiliary fuel tanks?
 15 MR. BURT:
 16 A. Absolutely, and that was one of the design
 17 features of the tank, understanding that as
 18 soon as we put it in, we'll lose 300 pounds
 19 payload. We spent a great deal of time
 20 engineering and money to make sure that we had
 21 some flexibility if we needed to maximize our
 22 payload and we did not need fuel, to take the
 23 tank out and put seats in and fly passengers.
 24 EARLE, Q.C.:
 25 Q. Speaking of payload, what is the payload that

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1 you generally operate with?
 2 MR. BURT:
 3 A. The payload in terms of what location?
 4 EARLE, Q.C.:
 5 Q. Well, as I understand it, the thing stripped
 6 down and empty is about 17,000 pounds?
 7 MR. BURT:
 8 A. 17,300.
 9 EARLE, Q.C.:
 10 Q. Its maximum gross weight is somewhere around
 11 26,000?
 12 MR. BURT:
 13 A. Right.
 14 EARLE, Q.C.:
 15 Q. And so Sikorsky says you can have 9,000 pound
 16 payload?
 17 MR. BURT:
 18 A. Right.
 19 EARLE, Q.C.:
 20 Q. As you indicated, that is to certain wind,
 21 temperature conditions?
 22 MR. BURT:
 23 A. Uh-hm.
 24 EARLE, Q.C.:
 25 Q. And that sort of thing. What's the range

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1 payload that you're looking for?
 2 MR. BURT:
 3 A. Again it's specific to where we're going. I'm
 4 not trying to avoid your question, but if
 5 we're going to Hibernia, for example, we would
 6 pretty well have an ability to carry 19
 7 passengers to Hibernia. As soon as we went to
 8 Terra Nova, that number would vary probably
 9 around 17 passengers, and a we went to Husky,
 10 that number would come back to 15/16.
 11 EARLE, Q.C.:
 12 Q. What does it do to your need for the auxiliary
 13 fuel tank?
 14 MR. BURT:
 15 A. At some point, there will not be sufficient
 16 fuel in the basic fuel tanks to -- never mind
 17 put people in there, but to actually complete
 18 the trip because of winds and because of --
 19 remember when we go out, we don't always have
 20 St. John's as an alternate. If we have to use
 21 an alternate such as Long Pond or Gander, we
 22 just need the capacity to get that trip done.
 23 EARLE, Q.C.:
 24 Q. I caution you to wait until the end of my
 25 questions, Mr. Burt.

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1 MR. BURT:
 2 A. I thought that was part of your question.
 3 EARLE, Q.C.:
 4 Q. No, no, what does it do to your fuel tank or
 5 your fuel consumption if you say that the --
 6 in terms of the current three installations,
 7 your current customers, the people who are
 8 chartering the aircraft, if you go a 10
 9 passenger load --
 10 MR. BURT:
 11 A. Right.
 12 EARLE, Q.C.:
 13 Q. I mean, do you need the auxiliary fuel tank if
 14 you go with a ten passenger load?
 15 MR. BURT:
 16 A. It all depends. First of all, it doesn't
 17 affect fuel consumption at all, to answer your
 18 question, and number two, if we had ten
 19 passengers on board, we still may need the
 20 tank. We may need the tank if we go offshore
 21 and the winds are high. Am I still answering
 22 your question now? We may need the tank if we
 23 lose an alternate airport on route, and we
 24 need to carry the additional fuel to complete
 25 that flight. For example, if we lose Long

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1 Pond -- what I mean by lose, the weather drops
 2 and we Gander, then that tank will have to go
 3 in the aircraft to complete the trip.
 4 EARLE, Q.C.:
 5 Q. So am I to take it from that, that passenger
 6 payload, weight payload does not have a
 7 significant impact on fuel consumption as
 8 compared to wind conditions?
 9 MR. BURT:
 10 A. That's a correct statement, yes.
 11 EARLE, Q.C.:
 12 Q. And if you talk in terms of the need for the
 13 alternate aircraft, how does -- the alternate
 14 landing site, how does that fit in with the 30
 15 minute reserve?
 16 MR. BURT:
 17 A. A 30 minute reserve is a hard line, it doesn't
 18 change no matter where we end up at the end of
 19 our flight.
 20 EARLE, Q.C.:
 21 Q. So you can't eat into your 30 minute reserve--
 22 MR. BURT:
 23 A. No.
 24 EARLE, Q.C.:
 25 Q. To go to Long Pond?

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1 MR. BURT:
 2 A. Should we need more fuel, Transport Canada has
 3 an official category called contingency fuel,
 4 so should the pilots see that he's not
 5 confident that he can make a straight line, he
 6 might have to deviate around. He may also
 7 suggest that the weather at the location is
 8 going to take a full approach, or in some
 9 cases take fuel for two approaches. He make
 10 take fuel for loitering time, to wait for the
 11 conditions to improve. Holding fuel, I think
 12 it's referred to in the airline business. So
 13 that also affects the fuel he'd need to take.
 14 EARLE, Q.C.:
 15 Q. Now you've talked about travel to the Flemish
 16 Pass.
 17 MR. BURT:
 18 A. Yes, sir.
 19 EARLE, Q.C.:
 20 Q. And as I understand it, that is a circumstance
 21 in which you will require two auxiliary fuel
 22 tanks in the aircraft?
 23 MR. BURT:
 24 A. It's most likely that would require two tanks.
 25 EARLE, Q.C.:

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1 Q. And they would be two tanks of the same nature
 2 as the one that we're seeing now?
 3 MR. BURT:
 4 A. That's correct, they're actually identical
 5 tanks.
 6 EARLE, Q.C.:
 7 Q. So what would you anticipate doing with those
 8 tanks in terms of placement? Would you intend
 9 to have one of those tanks inboard with
 10 passengers as the tank earlier was?
 11 MR. BURT:
 12 A. One tank would have to be placed on the left
 13 position, and there's no flexibility where it
 14 goes. One would be placed on the right
 15 position. The right position takes a row of
 16 single seats and displaces a row of single
 17 seats. I think it's three seats. The left
 18 position, it would displace an equal amount of
 19 three seats on the outboard, and then leaving
 20 a row next to the tank.
 21 EARLE, Q.C.:
 22 Q. That's my question. So you're anticipating
 23 replicating the problem that the operators
 24 asked you to eliminate?
 25 MR. BURT:

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1 A. We're putting the tank in a situation where
 2 there may or may not be seats on the side of
 3 it, and people may or may not sit on those
 4 seats.
 5 EARLE, Q.C.:
 6 Q. So are you telling us you haven't decided
 7 that? I mean --
 8 MR. BURT:
 9 A. Well, we were asked to move the tank to the
 10 right hand side and completely cooperated and
 11 obligated to move the tank to the right side.
 12 The aircraft is certified, absolutely
 13 certified with those tanks in either location,
 14 or both locations.
 15 EARLE, Q.C.:
 16 Q. We know that, Mr. Burt, but we also know that
 17 one of the things that has been changed is
 18 moving of the tank to the starboard side?
 19 MR. BURT:
 20 A. Right, right.
 21 EARLE, Q.C.:
 22 Q. So that there are no passengers inboard of
 23 that tank?
 24 MR. BURT:
 25 A. Right. The concern was, if I could, was that

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1 the tank on the left side with the double row
 2 of seats, that some individuals who sat in the
 3 seat next to the tank couldn't reach the push
 4 out window.
 5 EARLE, Q.C.:
 6 Q. Exactly, that's the concern.
 7 MR. BURT:
 8 A. I understand that.
 9 EARLE, Q.C.:
 10 Q. And, you know, while there's nobody drilling
 11 in the Flemish Pass at the moment, there's
 12 considerable speculation that the drill ship
 13 that's down in the Laurentian Channel may, in
 14 fact, go out there after it finishes its work
 15 down there, and what you're telling me is that
 16 you don't know at this point in time whether
 17 people will have to sit inboard of a tank on
 18 flights to an installation on the Flemish Pass
 19 if drilling resumes out there?
 20 MR. BURT:
 21 A. The way that -- the way that we have handled
 22 that with the customers is that we have
 23 assigned seating, and should somebody not feel
 24 comfortable or be able to reach that window,
 25 then they don't have to sit by that tank.

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1 EARLE, Q.C.:
 2 Q. What happens if you have a group of
 3 passengers, all of whom feel uncomfortable?
 4 Do you reduce your load?
 5 MR. BURT:
 6 A. Could I ask Mr. Williams to speak to this as
 7 well?
 8 MR. WILLIAMS:
 9 A. I want to talk to that one because when we do
 10 go to the Flemish Pass, understand that the
 11 particular customer we will be going to the
 12 Flemish Pass will be offered the configuration
 13 with the tank on either side or both sides,
 14 keeping in mind that all are deemed certified
 15 and safe. It's the operator's decision not to
 16 use the seating that's currently by the side
 17 of the tank now. We will configure an
 18 aircraft and offer it to the operator, and the
 19 particular operator, ABC Company who's going
 20 to the Flemish Pass, can decide not to avail
 21 of these seats, which the operators have done
 22 here. They've decided not to use those seats
 23 and put the tank to the other side.
 24 EARLE, Q.C.:
 25 Q. But, you see, Mr. Williams, I think it would

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1 be my position to the Commissioner that the
 2 operator should be told, don't put your
 3 employees in a position where they've got to
 4 say whether they're comfortable sitting
 5 inboard of a tank or not, that they shouldn't
 6 have any less of a situation than people going
 7 to the Jean D'Arc installation.
 8 MR. WILLIAMS:
 9 A. But there's been no decision that those seats
 10 are unsafe. It's opinion. That tank is
 11 certified and the seats where they are meet
 12 all the requirements for egress.
 13 EARLE, Q.C.:
 14 Q. Very impressed with the opinion, Mr. Williams.
 15 Now the issue of customer notification, I want
 16 to draw your attention to what I think would
 17 be by anyone's standard a serious incident, on
 18 July 25th, 2006, we had an emergency landing
 19 of a helicopter in St. John's. Do you recall
 20 that incident?
 21 MR. BURT:
 22 A. I don't specifically recall that incident.
 23 EARLE, Q.C.:
 24 Q. It was a Hibernia helicopter, Hibernia flight,
 25 two engines had to be powered down to minimum

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1 power, the aircraft returned to St. John's,
 2 made a landing, and there was a request from
 3 the Occupational Health and Safety Committee
 4 on the Hibernia Platform for explanation as to
 5 what happened on July 31st, 2006. Ring any
 6 bells with any of you?
 7 MR. BURT:
 8 A. I just don't have the reference in front of
 9 me, sir.
 10 EARLE, Q.C.:
 11 Q. That's fine, but what I would like you to do--
 12 MR. BURT:
 13 A. Sure.
 14 EARLE, Q.C.:
 15 Q. Is to check and provide the Commissioner with
 16 the information that was passed on to the
 17 operator about that, and the date when it was
 18 passed on, because I'll tell you what I've
 19 been told and what the Commissioner will hear,
 20 is that that is a drastically different time
 21 frame than your 24 hours, that it took until
 22 November before the response made it to the
 23 members of the Occupational Health and Safety
 24 Committee. Mr. Whalen, you're looking like
 25 you want me to repeat the time?

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1 WHALEN, Q.C.:
 2 Q. No, no, if you could just be precise on the
 3 undertaking.
 4 EARLE, Q.C.:
 5 Q. I would request an undertaking that you would
 6 supply any and all responses in respect of
 7 that flight given to the operator with the
 8 time of those responses.
 9 WHALEN, Q.C.:
 10 Q. July 25th, 2006?
 11 EARLE, Q.C.:
 12 Q. July 25th, 2006. I'd like to go to some more
 13 things that are a bit more current. What I'm
 14 looking at here is the communications for a
 15 couple of instances in October, one of which
 16 I'm sure you've heard about because I asked
 17 Mr. Sacuta about it, and it seems that people
 18 take note, and that was July -- sorry, August
 19 11th -- sorry, not August, October 11th, 2009,
 20 Flight 531, as I understand it, going to the
 21 Hibernia Platform, when it went to land, the
 22 aircraft was in a tail-low attitude and the
 23 passengers had to be asked to move within the
 24 aircraft, which I take it would involve
 25 getting out of their seat belts, moving to

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1 other seats to adjust the balance of the
 2 aircraft, and I would like to know how you
 3 handled the response in respect of that
 4 incident, and also did you file with the
 5 Transportation Safety Board an incident report
 6 in respect of that matter?
 7 MR. BURT:
 8 A. Are you specifically asking about the events
 9 of the incident, or just how we handled it?
 10 EARLE, Q.C.:
 11 Q. I would like to know, (a) did you file an
 12 incident report with Transportation Safety
 13 Board, and (b) what notification in respect of
 14 that incident you provided to the operator and
 15 when?
 16 MR. BURT:
 17 A. I don't believe we filed with the TSB on that
 18 event, and as regards to the reporting to
 19 Hibernia, I'll ask Mr. Williams if he could
 20 recall, if you wouldn't mind.
 21 MR. WILLIAMS:
 22 A. I'm not sure about the actual reporting on
 23 that, but I'm sure when this item was brought
 24 to our attention, there would have been a
 25 process that we would have went through, as I

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1 described the other day, an event form. I'd
 2 have to get that information.
 3 EARLE, Q.C.:
 4 Q. Could you provide us with a recap by way of
 5 information, provide to the Commissioner the
 6 information of what you did on that.
 7 MR. WILLIAMS:
 8 A. Yeah.
 9 EARLE, Q.C.:
 10 Q. There's another incident --
 11 MS. FAGAN:
 12 Q. Just so we have it, an undertaking to provide
 13 the notification to the operator and when?
 14 EARLE, Q.C.:
 15 Q. Yes. On the same flight number, October 2nd,
 16 2009, and the information I have is that just
 17 after take-off from Hibernia, the cabin door
 18 opened completely. A passenger advised the
 19 pilots of the situation. The pilots
 20 immediately landed, had the door closed, and
 21 departed again. Again I would like to know was
 22 that incident reported to the Transportation
 23 Safety Board?
 24 MR. WILLIAMS:
 25 A. No.

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1 EARLE, Q.C.:

2 Q. Why not?

3 MR. WILLIAMS:

4 A. I don't have that answer right now.

5 EARLE, Q.C.:

6 Q. Pardon?

7 MR. WILLIAMS:

8 A. I don't have that answer.

9 EARLE, Q.C.:

10 Q. I would like to know that answer.

11 MR. WILLIAMS:

12 A. Understand.

13 EARLE, Q.C.:

14 Q. And what report was made on that incident to

15 the operator, and also I'd like to know what -

16 - want you to tell the Commissioner what your

17 internal follow up on that was.

18 MR. BURT:

19 A. Yes, and we have a report on that.

20 MS. FAGAN:

21 Q. So that we got it clear, an undertaking as to

22 why the cabin door incident of October 2nd,

23 2009, was not reported to TSB, the report to

24 the operator and when, and the internal report

25 or follow up?

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1 WHALEN, Q.C.:

2 Q. Three, four, and five undertakings.

3 MS. FAGAN:

4 Q. With the other two; three, four, and five.

5 Five undertakings.

6 EARLE, Q.C.:

7 Q. Yes. Gentlemen, I think it was around the

8 22nd of January, you ascertained that there

9 were cracks or a crack in the mounting feet of

10 a gearbox on CQCH, and you did -- we know you

11 did notify the operator in respect of this,

12 and e-mails went out to the employees and

13 everything, and most of them got it before

14 they heard it on the radio, but the question I

15 have for you, did you report that to the

16 Transportation Safety Board?

17 MR. BURT:

18 A. I'd have to check on that.

19 EARLE, Q.C.:

20 Q. Can we have an undertaking on that.

21 MS. FAGAN:

22 Q. Six.

23 EARLE, Q.C.:

24 Q. I would assume this incident was either the

25 26th or 27th of January. It was reported to

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1 the Transportation Safety Board, and it

2 involves Cougar helicopters CGVCH, which is

3 one of your Halifax based units.

4 MR. BURT:

5 A. Right.

6 EARLE, Q.C.:

7 Q. And I'll just read the Transportation Safety

8 Board notation, "A Cougar Helicopter Sikorsky

9 S-92, registration CGVCH, was on route from

10 Halifax to the Rowan Gorilla III oil

11 production platform when the crew declared a

12 pan pan pan, due to illumination of the main

13 gearbox chip detector indicator. The aircraft

14 returned to Halifax and landed safely without

15 further incident. Maintenance inspection

16 revealed a pin shaped foreign metal object on

17 the MGB chip detector plug. The MGB had been

18 recently overhauled. The operator will be

19 replacing the MGB", that being the main

20 gearbox, "before returning the aircraft to

21 service". The question for you is what

22 information would you have given the operators

23 in Newfoundland about that event?

24 MR. BURT:

25 A. I know that the -- obviously, like you said,

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1 the TSB was notified, and the customer in

2 Halifax was immediately notified, and I'd have

3 to ask Mr. Williams, as the base manager here,

4 what was -- if that was translated here.

5 MR. WILLIAMS:

6 A. Absolutely, that incident would have been

7 totally transparent with our operators here.

8 What we've been doing, and we've been doing

9 for some time, anything pertaining to any of

10 our fleet that would affect, or the

11 information they want to know, they get

12 information vice versa, as I would if an

13 incident happened here today or an event on

14 any of our three operators here, our customer

15 in Halifax would be aware of it as well.

16 EARLE, Q.C.:

17 Q. So would you have communicated that

18 information?

19 MR. WILLIAMS:

20 A. Yes, myself or my operations manager.

21 EARLE, Q.C.:

22 Q. In this particular instance, did you

23 communicate the information?

24 MR. WILLIAMS:

25 A. Yes.

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1 EARLE, Q.C.:

2 Q. And to whom did you communicate it?

3 MR. WILLIAMS:

4 A. The logistics -- the single point of contact

5 that I mentioned yesterday. We have a single

6 point of contact with each operator, the same

7 thing as I have in Nova Scotia. That's my

8 liaison into the oil companies.

9 EARLE, Q.C.:

10 Q. And that's somebody in logistics?

11 MR. WILLIAMS:

12 A. Correct.

13 EARLE, Q.C.:

14 Q. Now you do not go to the HSE advisor on that

15 issue?

16 MR. WILLIAMS:

17 A. No, I don't. I report all incidents directly

18 to the logistics individuals for each

19 respective company.

20 EARLE, Q.C.:

21 Q. And just for the record, I think most of us

22 understand what logistics does, but what do

23 you understand logistics do?

24 MR. WILLIAMS:

25 A. I understand logistics is that they are a

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1 contract sponsor, these are the ones that

2 monitor our performance of our duties in

3 respect for each individual oil company.

4 EARLE, Q.C.:

5 Q. I know your training manual is audited, but is

6 there an audit of your training itself?

7 MR. BURT:

8 A. Yes, our training is audited, our ground

9 school training is audited and approved. Our

10 simulator training is audited and approved,

11 and Transport Canada participates in all

12 elements of that on an occasional basis.

13 EARLE, Q.C.:

14 Q. So it's a Transport Canada audit?

15 MR. BURT:

16 A. Transport Canada oversight and Transport

17 Canada audit.

18 MR. WILLIAMS:

19 A. We also have our customer audits that

20 participate in that as well.

21 EARLE, Q.C.:

22 Q. Mr. William Parsons made a presentation to the

23 Inquiry before Christmas, and he suggested the

24 positioning of a longer operation platform or

25 drill ship or a dedicated rescue ship with a

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1 helipad on it offshore, so as to provide an

2 offshore alternate landing site.

3 MR. BURT:

4 A. Uh-hm.

5 EARLE, Q.C.:

6 Q. In your experience, is the weather as between

7 your destinations and St. John's, and your

8 points in between, sufficiently variable that

9 you would be able to avail of such an

10 alternate site for landing purposes? I've

11 never been out that way. I mean, is it foggy

12 all the way out all the time, or is it -- or

13 is there a point when you get out further that

14 you're more likely to run into fog? What's

15 the situation?

16 MR. BURT:

17 A. I think the strange enough way to answer that

18 is yes, because it's very, very unpredictable.

19 The forecasting of the offshore Newfoundland

20 has always been a challenge. In fact,

21 Transport Canada will not permit us to legally

22 flight plan to an offshore destination and use

23 an offshore alternate, an additional rig,

24 whether it's fixed or floating. There are

25 other areas such as the Gulf of Mexico that do

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1 allow that, but that's predicated on their

2 weather environment and the fact that they

3 have 2200 platforms there. So we can't take

4 avail of that. Having other places to land is

5 always good, the more the merrier in regards

6 to opportunities as far as having places to

7 land.

8 EARLE, Q.C.:

9 Q. I think those are all my questions for you,

10 gentlemen. You've covered the situation with

11 search and rescue fairly well in your

12 examination. What I'm hearing from you

13 gentlemen, and I want to be sure I'm correct,

14 is that if somebody says to Cougar

15 Helicopters, or for that matter any number of

16 your competitors, provide us with dedicated

17 search and rescue equipment to what DND can

18 offer based in St. John's, Newfoundland, you

19 can do it?

20 MR. BURT:

21 A. That's correct, or exceed it.

22 EARLE, Q.C.:

23 Q. And really it is only a matter of somebody

24 being willing to pay for it?

25 MR. BURT:

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1 A. Ultimately somebody has to pay for it, yes.
 2 EARLE, Q.C.:
 3 Q. Yes, and the fact that you now have a one hour
 4 wheels up time, the fact that you had ten
 5 hours of training before March 12th, is a
 6 function of what the operators were prepared
 7 to pay for?
 8 MR. BURT:
 9 A. At that time, yes.
 10 EARLE, Q.C.:
 11 Q. Thank you, gentlemen.
 12 COMMISSIONER:
 13 Q. Thank you, Mr. Earle. I know, Mr. Martin,
 14 that you want to ask some questions, and I
 15 think Ms. O'Brien, do you -- probably we ought
 16 to -- we didn't have a proper break anyway
 17 this morning. Let's adjourn, if you agree,
 18 until 2 o'clock and then come back and have
 19 time to ask whatever you want to ask. Okay,
 20 thank you.
 21 (RECESS)
 22 COMMISSIONER:
 23 Q. Okay, Mr. Martin.
 24 MR. MARTIN:
 25 Q. Thank you, Mr. Commissioner.

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1 MR. RICHARD BANKS, MR. RICK BURT, MR. HANK WILLIAMS:
 2 EXAMINATION BY MR. JAMIE MARTIN:
 3 MR. MARTIN:
 4 Q. Good afternoon, gentlemen. As you know, I'm
 5 Jamie Martin, I represent the families of the
 6 deceased passengers on the March 12th, 2009,
 7 incident. I'm going to start off with a
 8 couple of -- just points of clarification, and
 9 the first one, and I'm a little bit unclear,
 10 the Safety Management System that you're
 11 mandated to provide, I think it's the Safety
 12 Management System that you're mandated to
 13 provide by Transport Canada in 2011, I'm a
 14 little bit unclear as to when that decision
 15 was made by Transport Canada. Was that made
 16 before the March 12th incident, or can you
 17 give me just a little bit of background as to
 18 how that decision was made?
 19 MR. BANKS:
 20 A. The regulatory requirement originated for
 21 first audits to begin in 2009. They then
 22 concluded, Transport Canada, that they weren't
 23 ready, push it back to 2010. Now we have just
 24 learned in the last couple of months that
 25 it'll be 2011 before the audits begin for

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1 helicopter transportation operations. So, in
 2 essence, 2009 was supposed to be the date of
 3 initial, not only development, but regulation
 4 in place. Cougar was developing and enhancing
 5 through the time of March 12th, 2009. There
 6 was no requirement at that time because it had
 7 already been pushed back to 2010, yet we
 8 forged ahead with it, finalized and completed
 9 it and initiated it through the company.
 10 MR. MARTIN:
 11 Q. But it's a process separate from the March
 12 12th incident, is that a fair comment?
 13 MR. BANKS:
 14 A. Yes, yes.
 15 MR. MARTIN:
 16 Q. I just wanted to clarify that. I just --
 17 MR. BANKS:
 18 A. It's been on development phases since 2007.
 19 MR. MARTIN:
 20 Q. Okay, that's fine. The next question I have
 21 is concerning the audits, and it's not a
 22 detailed question per se, there were several
 23 slides presented yesterday, and I don't need
 24 to reproduce them for our purposes this
 25 afternoon, but you were asked about areas of

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1 non-conformity and I think your answer was --
 2 I think, Mr. Banks, your answer was it's been
 3 some time since I have seen that, and there
 4 wasn't a question asked about examples of non-
 5 conformity and I'm just wondering whether you
 6 could indicate -- because obviously from your
 7 answer, I presumed that there were areas of
 8 non-conformity that came up in the audits in
 9 past years. Can you think of an example of
 10 non-conformity that's come up in your audits
 11 in recent years?
 12 MR. BANKS:
 13 A. Oh, there could be, for instance, ISO
 14 9001:2008. At the time, as we were through
 15 certification and moving forward with our
 16 program, we did receive a non-conformance a
 17 number of years back, and that is applicable
 18 to the standard of ISO, for instance, and I
 19 could throw one out there that was a
 20 management review that was not completed in
 21 January, we completed it in February, so, you
 22 know, at that time it was a month out, a month
 23 behind, so according to the standard it was
 24 supposed to be done in January. So to them,
 25 when they audited us, it becomes a non-

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<p>1 conformance. Now not critical because it was 2 on the plans, it was just delayed a little 3 bit, so it was summed up rather quickly and we 4 moved on.</p> <p>5 MR. MARTIN: 6 Q. So that's the only example of non-conformity 7 that you can recall?</p> <p>8 MR. BANKS: 9 A. That I can recall. You know, it depends on -- 10 you know, it could be contractual, to do with 11 HS&E, or it could be a quality QHS&E, which is 12 Quality Health Safety and Environment audits 13 from years gone by, but nothing to my 14 recollection that I can recall.</p> <p>15 MR. MARTIN: 16 Q. The next area of questioning, I know you've 17 had a longstanding relationship with Sikorsky 18 and I know you currently have four S-92s, I 19 believe, and one S-61, is that correct?</p> <p>20 MR. BURT: 21 A. I believe we have five --</p> <p>22 MR. MARTIN: 23 Q. In the east coast, Newfoundland and Labrador?</p> <p>24 MR. BURT: 25 Q. East coast, yes.</p>	<p>1 MR. MARTIN: 2 Q. So they're fairly expensive products?</p> <p>3 MR. BURT: 4 A. Correct.</p> <p>5 MR. MARTIN: 6 Q. I'll get to that just a little later in my 7 questions. I just want to refer you just in 8 the area of questioning, the organization 9 chart -- if I can get the Registrar to 10 reproduce that. There's actually two that I 11 want to refer to. One is at Tab 9 and the 12 other one is at Tab 13. They're not tabs. I 13 refer to them as tabs. Exhibit 9 of the 14 PowerPoint presentation, and Exhibit 13.</p> <p>15 MR. BURT: 16 A. I don't know the exhibit number offhand.</p> <p>17 MS. FAGAN: 18 Q. 155.</p> <p>19 MR. MARTIN: 20 Q. Okay.</p> <p>21 MS. FAGAN: 22 Q. So it will be slide 9.</p> <p>23 MR. MARTIN: 24 Q. Slide 9 and slide 13. So we'll start with 25 slide 9 first. My particular interest --</p>
<p style="text-align: right;">Page 114</p> <p>1 MR. MARTIN: 2 Q. That's what I'm referring to, and those S- 92 3 are dedicated to the companies involved in 4 exploration and production?</p> <p>5 MR. BURT: 6 A. Right.</p> <p>7 MR. MARTIN: 8 Q. Do you normally purchase or lease your 9 helicopters?</p> <p>10 MR. BURT: 11 A. We purchase the aircraft through our parent 12 company and we lease to the operating 13 entities, so we will, in fact, lease the 14 aircraft.</p> <p>15 MR. MARTIN: 16 Q. And typical, what would be the normal price? 17 I know you can get them with different options 18 and things like that.</p> <p>19 MR. BURT: 20 A. Price of the S-92?</p> <p>21 MR. MARTIN: 22 Q. Price of S-92, yes.</p> <p>23 MR. BURT: 24 A. Sure. I mean, it will range between 21 25 million US to 25 million US.</p>	<p style="text-align: right;">Page 116</p> <p>1 there's no date on this organization chart, 2 and I presume that depicts the organizational 3 structure that exists today, is that correct?</p> <p>4 MR. BURT: 5 A. That's correct.</p> <p>6 MR. MARTIN: 7 Q. What I'm particularly interested in is you 8 have the Director of Safety and Quality 9 reporting directly to the President and Chief 10 Executive Officer. Was that the reporting 11 relationship on March 12th, 2009?</p> <p>12 MR. BURT: 13 A. Yes, Ken Norie was the accountable executive 14 which Rick -- Mr. Banks, the Director of 15 Safety and Quality, reported to.</p> <p>16 MR. MARTIN: 17 Q. Was there ever a time in your memory, in your 18 memory of the organizational chart, where that 19 reporting relationship didn't exist? I mean, 20 or is that something that's been there for a 21 long while.</p> <p>22 MR. BURT: 23 A. It had to go right back to the accountable 24 executive concept with Transport Canada some 25 five or six years ago.</p>

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1 MR. MARTIN:
 2 Q. So it's a Transport Canada directive that
 3 requires --
 4 MR. BURT:
 5 A. Transport Canada mandated line of
 6 communication and responsibility.
 7 MR. MARTIN:
 8 Q. If you can just turn up Exhibit 13, please, in
 9 the same PowerPoint.
 10 REGISTRAR:
 11 Q. Slide 13.
 12 MR. MARTIN:
 13 Q. Slide 13, yes, I'm sorry, my terminology is a
 14 bit different, I guess. So slide 13 there
 15 refers to the Quality Assurance Manager. Now
 16 that's different than the individual who's
 17 described on slide 9. That's a manager as
 18 opposed to a director. Is that --
 19 MR. BURT:
 20 A. The Quality Assurance Manager in this case is
 21 an engineering quality assurance manager, but
 22 the Director of Safety on the right hand side,
 23 as well as the Director of Maintenance, and
 24 the Director of Flight Operations, all have
 25 direct lines of reporting to the accountable

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1 executive.
 2 MR. MARTIN:
 3 Q. Okay, and again is that a Transport Canada
 4 requirement?
 5 MR. BURT:
 6 A. Yes.
 7 MR. MARTIN:
 8 Q. So it's not something that Cougar, on its own
 9 volition decided that that's the reporting
 10 relationship we should ideally have?
 11 MR. BURT:
 12 A. No, and that's why I said it's absolutely
 13 important to understand this slide as a
 14 Transport Canada mandated reporting system.
 15 MR. MARTIN:
 16 Q. Okay. I just want to make some general
 17 observations and I do have some questions
 18 arising from your so-called safety culture,
 19 and one thing that I observed and heard over
 20 the last couple of days, I could probably
 21 count it in the transcripts, having reviewed
 22 them all last night, the word "proactive"
 23 shows up frequently.
 24 MR. BURT:
 25 A. Yes.

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1 MR. MARTIN:
 2 Q. You keep talking about how proactive you are
 3 in whatever aspect of your operations, and I
 4 noted with interest, Mr. Banks, when he spoke
 5 of the Safety Management System, he spoke of a
 6 continuum that had reactive on one hand -- on
 7 one side, with generative on the other side,
 8 and proactive in the middle. So -- and I did
 9 observe, Mr. Burt, I think you made it a point
 10 to say that your organization is not
 11 complacent, you don't rest on your laurels,
 12 and that you don't like the words -- I think
 13 your words were, we don't like the words, no,
 14 we don't do that here. So I think it's a fair
 15 representation that you're fairly open, you're
 16 fairly transparent, you're very interested in
 17 your people. These are the things that I
 18 glean from your so-called safety culture, and
 19 as a matter of fact, I do recall you referring
 20 to your system as a broad safety culture. Is
 21 that a fair representation of --
 22 MR. BURT:
 23 A. Sure.
 24 MR. MARTIN:
 25 Q. Of your organization, because I did hear that

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1 word "proactive" several times.
 2 MR. BURT:
 3 A. Yes, yes, without apology.
 4 MR. MARTIN:
 5 Q. Okay. So I do have a couple of questions, but
 6 I'm just leading up to them. There was
 7 evidence given here, I think on Tuesday, you
 8 spoke of alert service bulletins, and I gather
 9 they're manufactured -- they're generated by
 10 the manufacturer?
 11 MR. BURT:
 12 A. Right.
 13 MR. MARTIN:
 14 Q. Which in this case, because you use a Sikorsky
 15 helicopter, they would be generated by them?
 16 MR. BURT:
 17 A. Right.
 18 MR. MARTIN:
 19 Q. Okay, and you also talked about airworthiness
 20 directives?
 21 MR. BURT:
 22 A. Yes.
 23 MR. MARTIN:
 24 Q. Which I gather are from the regulator?
 25 MR. BURT:

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1 A. Correct.
 2 MR. MARTIN:
 3 Q. And we saw evidence of that, the FAA
 4 airworthiness directive in relation to the S-
 5 92 in March, I gather, of 2009, shortly after
 6 the accident, is that correct?
 7 MR. BURT:
 8 A. That's correct.
 9 MR. MARTIN:
 10 Q. I just want to go back to the alert service
 11 bulletins, though. Do you know of any alert
 12 service bulletins that were issued by the
 13 manufacturer, and I'm talking prior to March
 14 12th '09, so I'm trying to avoid any dispute
 15 on the appropriateness of the question, are
 16 you aware of any alert -- and if it's beyond
 17 the jurisdiction of the Commission, I'm sure
 18 I'll be told. Are you aware of any alert
 19 service bulletins that were issued by the
 20 manufacturer, Sikorsky, prior to March 12th,
 21 2009, in relation to the S-92s?
 22 MR. BURT:
 23 A. I think it was the alert service bulletin in
 24 January.
 25 MR. MARTIN:

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1 Q. January of '09?
 2 MR. BURT:
 3 A. Right, referring to the replacement of the
 4 studs.
 5 MR. MARTIN:
 6 Q. And that was in January of '09?
 7 MR. BURT:
 8 A. Right.
 9 MR. MARTIN:
 10 Q. The replacement of the studs. Was that the
 11 first time you had heard of a problem with the
 12 studs?
 13 MR. BURT:
 14 A. For me, it was, yes. I mean, from a alert
 15 service bulletin point of view, yes.
 16 MR. MARTIN:
 17 Q. And just describe what the problem was with
 18 the studs that you understood from the alert
 19 service bulletin? If we can't go there, fine,
 20 but I --
 21 COMMISSIONER:
 22 Q. I think that's perfectly all right because
 23 this predated the --
 24 MR. MARTIN:
 25 Q. Predated March 12th, and that's where I'm

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1 going with my line of questioning. So what
 2 did you understand to be the problem with the
 3 studs in January of '09?
 4 MR. BURT:
 5 A. The only thing that I had knowledge of before
 6 that point there was -- actually, the ASB
 7 before March, I hadn't had any overview of
 8 that ASB myself, in January 28th.
 9 MR. MARTIN:
 10 Q. And how about other members of the panel, what
 11 if any knowledge did you have?
 12 MR. BANKS:
 13 A. I wasn't engaged.
 14 MR. MARTIN:
 15 Q. You weren't engaged on that. So the first you
 16 heard about a stud problem was the -- you got
 17 the service bulletin from the manufacturer?
 18 MR. BURT:
 19 A. Correct.
 20 MR. MARTIN:
 21 Q. Now I think you indicated yesterday that
 22 there's about 120 to 125 S-92s in service
 23 around the world?
 24 MR. BURT:
 25 A. Right.

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1 MR. MARTIN:
 2 Q. I think that was your evidence.
 3 MR. BURT:
 4 A. Yes.
 5 MR. MARTIN:
 6 Q. And the S-92 is a Sikorsky manufactured
 7 product.
 8 MR. BURT:
 9 A. Right.
 10 MR. MARTIN:
 11 Q. Do you people have any knowledge of an
 12 incident in the summer of 2008 in Australia
 13 involving an S-92?
 14 MR. BURT:
 15 A. I understood that they had an incident there
 16 as well that they did lose main gearbox oil.
 17 MR. MARTIN:
 18 Q. Related to the studs?
 19 MR. BURT:
 20 A. Yes.
 21 MR. MARTIN:
 22 Q. Okay, when did you first become aware of that?
 23 MR. BURT:
 24 A. I heard of the event in just general talk in
 25 the industry, and then, of course, it was

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1 brought more to light in light of our event.
 2 MR. MARTIN:
 3 Q. So you just heard talk in the industry, say,
 4 between -- it happened -- my recollection, my
 5 reading indicates that it happened in July of
 6 '08.
 7 MR. BURT:
 8 A. Right.
 9 MR. MARTIN:
 10 Q. So between July of '08 and January '09, when
 11 you got the alert service bulletin, there was
 12 talk of some problem with the studs in the S-
 13 92 helicopter?
 14 MR. BURT:
 15 A. There was talk of a loss of oil in the
 16 incident in Australia, in general. Again I
 17 had very few specifics as to what went on
 18 there.
 19 MR. MARTIN:
 20 Q. Okay, now any other members of the panel have
 21 any knowledge that they could bring to bear on
 22 that question?
 23 MR. BANKS:
 24 A. For myself, no. It was post March 12th before
 25 I found out.

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1 MR. MARTIN:
 2 Q. Mr. Williams, same thing.
 3 MR. WILLIAMS:
 4 A. (no audible response)
 5 MR. MARTIN:
 6 Q. Now let's go back to your organizational
 7 chart. If you could turn up slide #9, and,
 8 you know, there's information out in your
 9 industry about a problem with studs that
 10 caused the helicopter to not function properly
 11 in Australia. Was there any communication that
 12 any of you were aware of from the Director of
 13 Safety and Quality, or from someone else in
 14 the organization, to the President and Chief
 15 Executive Officer about a problem that was
 16 happening with a piece of equipment that you
 17 relied so extensively on?
 18 MR. BURT:
 19 A. No, not necessarily, no.
 20 MR. MARTIN:
 21 Q. You're not aware of any communication?
 22 MR. BURT:
 23 A. No.
 24 MR. MARTIN:
 25 Q. Wouldn't that be something you would want to

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1 bring to the attention of your President and
 2 Chief Executive Officer that there's a problem
 3 with an aircraft that you use extensively?
 4 MR. BURT:
 5 A. It just wasn't raised in our industry as a
 6 standing issue. We try to keep awareness of
 7 everything that goes on in general, but there
 8 wasn't anything that was brought up as a
 9 specific topic, no.
 10 MR. MARTIN:
 11 Q. So you get your airworthiness directive --
 12 sorry, the alert service bulletin in January
 13 '09, there's knowledge that there was a
 14 problem with the studs in a similar aircraft
 15 in Australia some six months earlier, and then
 16 -- and you spoke to this in your evidence, I
 17 believe on Tuesday, the airworthiness
 18 directive of FAA, the Federal Aviation
 19 Authority, is that correct?
 20 MR. BURT:
 21 A. Uh-hm.
 22 MR. MARTIN:
 23 Q. And that says in part, and correct me if I'm
 24 wrong, that there is a problem with the studs
 25 in the March 12th -- the helicopter that was

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1 being used on March 12th.
 2 MR. BURT:
 3 A. Right, right.
 4 MR. MARTIN:
 5 Q. A similar problem to what existed in Australia
 6 that you know of?
 7 MR. BURT:
 8 A. I certainly know of now. It's been a big part
 9 of the post-accident investigation and general
 10 pool of knowledge in this event.
 11 MR. MARTIN:
 12 Q. So you then proceeded pursuant to that
 13 directive, I'll call it the airworthiness
 14 directive, to order parts to look after the
 15 issue, look after the problem, is that
 16 correct?
 17 MR. BURT:
 18 A. Yes.
 19 MR. MARTIN:
 20 Q. And I presume --
 21 MR. BURT:
 22 A. After the ASB that we received on January
 23 28th, you mean?
 24 MR. MARTIN:
 25 Q. Yes, that's correct. No, no, no, I believe

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1 your evidence was that you did it after the
 2 airworthiness directive in March of --
 3 MR. BURT:
 4 A. No, we did it -- the ASB, as a normal function
 5 of receiving an ASB, the parts were ordered
 6 right away at that time, and then as we said,
 7 the parts started arriving soon after that.
 8 MR. MARTIN:
 9 Q. Now you did have parts on March 13th, if my
 10 memory --
 11 MR. BURT:
 12 A. It started coming as soon as March 13th, some
 13 of them.
 14 MR. MARTIN:
 15 Q. So you got the directive in January?
 16 MR. BURT:
 17 A. ASB.
 18 MR. MARTIN:
 19 Q. ASB, I'm sorry, but I thought you ordered the
 20 parts because of the ASB?
 21 MR. BURT:
 22 A. Yes.
 23 MR. MARTIN:
 24 Q. Yeah, so you parts don't arrive until almost
 25 two and a half months after?

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1 MR. BURT:
 2 A. Well, the parts arrived -- we ordered the
 3 parts after the ASB, right after it.
 4 MR. MARTIN:
 5 Q. Yes, which is in January? January was the
 6 ASB. I think that was your evidence, January
 7 was the ASB. Two of the three people on the
 8 panel say that's -- you said you had knowledge
 9 of it in -- with the summer of 2008 problem
 10 and experience in Australia. You get the ASB
 11 and you order some parts, and it's two and a
 12 half months later, post March 12th, when you
 13 actually get the parts in? If I'm misreading
 14 your evidence, please let me know.
 15 WHALEN, Q.C.:
 16 Q. Mr. Commissioner, I don't know where counsel
 17 is going with this, but if the notice came in
 18 late in January and parts were starting to be
 19 received in early March, I don't believe
 20 that's two and a half months, I believe that's
 21 more like a month and a half. I wonder where
 22 it's taking us because we're straying right
 23 into that same area again.
 24 MR. MARTIN:
 25 Q. I'll tell you where it's going to take us.

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1 COMMISSIONER:
 2 Q. I think it's a legitimate question because it
 3 was answered yesterday, and I thought that the
 4 witness, I'm not sure which one, said that the
 5 parts had to be manufactured, and they waited.
 6 MR. MARTIN:
 7 Q. I'll tell you where I'm going with it, because
 8 I'm ultimately going to be asking the question
 9 what information, if any, did you provide to
 10 the end users of your system, the people who
 11 are your passengers, and I'll get to that in a
 12 moment, because that's where I'm going with
 13 this.
 14 MR. BURT:
 15 A. Uh-hm.
 16 MR. MARTIN:
 17 Q. So I want to know what information, if any,
 18 did you communicate to the eighteen people
 19 that were on -- including your pilots, that
 20 were on that aircraft on March 12th, and prior
 21 to that and subsequent to it, but I'll get to
 22 that in a moment, because what I want to
 23 establish is that you were aware of the alert
 24 service bulletin, you started ordering parts,
 25 and as the Commissioner noted --

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1 MR. BURT:
 2 A. Let me clarify, our Maintenance Department was
 3 aware of the service bulletin. We told you
 4 that.
 5 MR. MARTIN:
 6 Q. Yes.
 7 MR. BURT:
 8 A. So our Maintenance Department received this
 9 service bulletin. I think it was late --
 10 January 28th, and I gave you the format that
 11 they use to review it. The service bulletin
 12 comes in, it gets reviewed for applicability,
 13 and then gets run through our Maintenance
 14 Department, goes to the planning area, and
 15 then it gets assessed and then gets put in.
 16 Parts get ordered, and then we put the work
 17 order into our system. Combined with when the
 18 parts arrive in a complete kit, the
 19 maintenance is effected and then there's a
 20 compliance report that the maintenance is done
 21 goes back upstairs. That is what happens to
 22 an ASB.
 23 MR. MARTIN:
 24 Q. Right. Now --
 25 MR. BURT:

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1 A. All ASBs.
 2 MR. MARTIN:
 3 Q. Mr. Whalen is probably correct in the dates,
 4 it's probably a month and a half or so, but we
 5 do know that there's a return to service in
 6 May, and I forget the exact date in May --
 7 what date in May was that?
 8 MR. WILLIAMS:
 9 A. May 18th.
 10 MR. MARTIN:
 11 Q. May 18th. You've already got an alert service
 12 bulletin indicating that there's a problem
 13 with the studs with Sikorsky S-92s. You get -
 14 - Mr. Williams is shaking his head. I think
 15 that's what Mr. Burt has indicated was the
 16 substance of that bulletin. You then get an
 17 airworthiness directive in March alerting you
 18 to the problem with the studs.
 19 MR. BURT:
 20 A. After March 12th, yes.
 21 MR. MARTIN:
 22 Q. After March 12th, yes, yes. So then you --
 23 presumably you correct that problem before May
 24 18th, is that correct?
 25 MR. BURT:

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1 A. Correct, before --
 2 MR. MARTIN:
 3 Q. You get your parts and you --
 4 MR. BURT:
 5 A. Before next flight.
 6 MR. MARTIN:
 7 Q. Before next flight, yeah, and again I'll ask
 8 the question. If I'm forbidden from doing so,
 9 I'll obviously have to respect the opinion of
 10 the Chair or the position of the Commissioner,
 11 but was that an expensive repair to that
 12 particular helicopter in terms of repairing
 13 those studs?
 14 MR. BURT:
 15 A. I can't say it was -- I wouldn't categorize it
 16 as an expensive repair, no.
 17 MR. MARTIN:
 18 Q. No, relatively minor repair, would it be fair
 19 to say in terms of labour that had to be
 20 expended and --
 21 MR. BURT:
 22 A. It was a repair that had a fairly
 23 sophisticated repair scheme. You know, any
 24 time we're touching the main gearbox, I
 25 wouldn't call it minor. It had, you know, a

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1 series of directions, it had a series of
 2 tools, specialized tools, specialized
 3 materials, and adhesives, and the new studs
 4 that were involved in it.
 5 MR. MARTIN:
 6 Q. But is it something that having the knowledge
 7 that you did about the summer of '08 incident
 8 in Australia where essentially the same
 9 problem presented itself, is it something that
 10 using your proactive stance --
 11 MR. BURT:
 12 A. Yes.
 13 MR. MARTIN:
 14 Q. Something that you probably could have
 15 addressed -- notwithstanding having to wait
 16 around for an alert service bulletin, is it
 17 something that you could have looked into as
 18 the company, Cougar? Knowing what you did in
 19 the summer of '08, between the summer of '08
 20 and January of '09 --
 21 MR. BURT:
 22 A. I didn't do anything in '08.
 23 MR. MARTIN:
 24 Q. I know you didn't, but I think you've
 25 indicated that you knew about the problems

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1 generally?
 2 MR. BURT:
 3 A. Generally, yes.
 4 MR. MARTIN:
 5 Q. About the problems that existed with the
 6 similar aircraft in Australia?
 7 MR. BURT:
 8 A. Sure, yes.
 9 MR. MARTIN:
 10 Q. So between the summer of '08 and January of
 11 '09, there's talk in the industry that the
 12 problem in Australia was due to the bolts, but
 13 do you then have to wait -- because it goes
 14 back to your safety culture, your proactive,
 15 and as a matter of fact, I think you like to
 16 be generative, I think that's where you strive
 17 to be. Could you have been proactive?
 18 MR. BURT:
 19 A. Well, the --
 20 MR. MARTIN:
 21 Q. Knowing what you did about the summer incident
 22 in Australia?
 23 MR. BURT:
 24 A. What I remember about the incident in '08 was
 25 described to the industry -- again, this is,

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1 you know, fairly high level, described as
 2 though it -- because it was of an unapproved
 3 maintenance action. It was an unapproved
 4 maintenance action, that's why the studs
 5 broke.
 6 MR. MARTIN:
 7 Q. Uh-hm.
 8 MR. BURT:
 9 A. That's what I understood about '08, but again
 10 the details of it, that's all our industry
 11 got, so -- and I believe that's out there in
 12 formal records somewhere because that's all I
 13 heard about '08.
 14 MR. MARTIN:
 15 Q. I'm going to go back to a question that -- I
 16 told you where this was leading.
 17 MR. BURT:
 18 A. Sure.
 19 MR. MARTIN:
 20 Q. And I represent the families of the deceased
 21 passengers.
 22 MR. BURT:
 23 A. I understand.
 24 MR. MARTIN:
 25 Q. And the outcome for them was devastating and

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1 it'll never be repaired.
 2 MR. BURT:
 3 A. And I certainly have an appreciation for that.
 4 MR. MARTIN:
 5 Q. And I'm just wondering, and it's a question
 6 I'm sure that people who are current users and
 7 future users of the system would want answered
 8 as well, when you get an alert service
 9 bulletin or when you get an airworthiness
 10 directive, what if any communication takes
 11 place between the company and the users, the
 12 end users of the system, the hundreds of
 13 thousands of passengers that you've
 14 transported over your history here in the east
 15 coast offshore?
 16 MR. BURT:
 17 A. An alert service bulletin is a normal
 18 mechanism in the aviation business, aviation
 19 wide; fixed wing, rotor wing, globally. It is
 20 a regular piece of communication that comes
 21 out. We've used it for years. It's a part of
 22 a standard part of any manufacturers
 23 procedures. What I'm getting to is that when
 24 these ASBs come in, these ASBs don't get
 25 communicated, it's a function of our

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1 Maintenance in maintaining the aircraft in the
 2 fashion that the manufacturer has stipulated
 3 that we do so. It's not an issue of
 4 avoidance, it's certainly not the intent. The
 5 intent is for the Maintenance Department to
 6 take them and effect the directed maintenance
 7 that the manufacturer has asked to do. Now
 8 you're talking about two different lines here.
 9 MR. MARTIN:
 10 Q. What I'm talking about is the line, what, if
 11 anything, is communicated to the passengers?
 12 Like, do they know --
 13 MR. BURT:
 14 A. The passengers --
 15 MR. MARTIN:
 16 Q. Do they know --
 17 MR. BURT:
 18 A. The passengers do not get the communication of
 19 an ASB.
 20 MR. MARTIN:
 21 Q. No, I'm not saying they do, but should they
 22 get something from the company because, okay,
 23 you get an alert service bulletin in January
 24 of '09 --
 25 MR. BURT:

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1 A. Uh-hm.
 2 MR. MARTIN:
 3 Q. So between January of '09 and March 12th, '09,
 4 and I would imagine your records are
 5 consistent, and I'm sure they are in terms of
 6 the passengers that you put aboard your
 7 aircraft --
 8 MR. BURT:
 9 A. Yes, yes.
 10 MR. MARTIN:
 11 Q. What, if anything, do they know that the very
 12 helicopter that they were flying on had a
 13 problem with titanium bolts, because that's
 14 what the -- you've indicated that's what the
 15 alert service bulletin was all about. Do you
 16 disclose -- in your transparent model, in your
 17 willingness to involve everyone in your
 18 decision making process, what if anything do
 19 you tell these people who are your end users,
 20 the passengers on your helicopters?
 21 MR. BURT:
 22 A. When we receive an ASB, it goes to our
 23 Maintenance Department and our responsibility
 24 and total responsibility is to effect that
 25 directive maintenance as soon as possible.

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1 Communications outside of that, again as a
 2 normal function of our business, it's not an
 3 issue of hiding anything, it's making sure
 4 that you effect that maintenance as directed,
 5 you know. This ASB came out, our Maintenance
 6 Department looked at it and said we must
 7 effect this repair within a year or 1250
 8 hours, and that was amongst a list of, I
 9 think, 11 active ASBs that we were working on
 10 at that time.
 11 MR. MARTIN:
 12 Q. But do you communicate that to your end users?
 13 I know you, as the --
 14 MR. BURT:
 15 A. No, we don't communicate our normal level of
 16 line maintenance to our passengers. We're
 17 responsible to make sure that aircraft is
 18 airworthy.
 19 MR. MARTIN:
 20 Q. But it's a safety issue.
 21 MR. BURT:
 22 A. It's a safety issue --
 23 MR. MARTIN:
 24 Q. It's been determined to be a safety issue in
 25 Australia.

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1 MR. BURT:
 2 A. It's a safety issue if you don't comply with
 3 the ASB, if you don't focus on your work, and
 4 you do what we're charged to do by Transport
 5 Canada. We have a great deal of respect for
 6 our passengers, we always have, and we have a
 7 proactive stance in communicating and on March
 8 12th, we took a proactive stance and said
 9 we're putting this aircraft on the ground
 10 until we know what to do with it.
 11 MR. MARTIN:
 12 Q. Yeah, but it becomes an issue, it becomes a
 13 safety issue when a similar incident in the
 14 summer of '08 happens in Australia for the
 15 very same aircraft that you're operating
 16 offshore Newfoundland?
 17 MR. BURT:
 18 A. I'm telling you that the context of the
 19 accident -- the incident, actually, in
 20 Australia, I told you our knowledge about it.
 21 That incident itself was not communicated as a
 22 tangible link and an ongoing standing issue by
 23 the manufacturer or the operator that had the
 24 incident, and, in fact, the noise that was out
 25 there, not official, was that it was a

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1 maintenance action by the company that was
 2 operating the aircraft, and, in fact, they
 3 shouldn't have done that and that problem was
 4 dealt with.
 5 MR. MARTIN:
 6 Q. Okay.
 7 MR. BURT:
 8 A. So a tangible link to, you know, to the fault
 9 part would presumptuous and we're not about to
 10 go there in our business. We're going to deal
 11 with the facts in the matter. So I want to go
 12 back and tell you that we have very stringent
 13 procedures how to handle this, and we have a
 14 contract, we have an obligation to the
 15 taxpayers and the public of Canada through
 16 Transport Canada to make sure our aircraft is
 17 maintained in an airworthy status, and that's
 18 what we did.
 19 MR. MARTIN:
 20 Q. The issue of the integrity of the S-92 in
 21 terms of whether -- you know, and you can
 22 explain what your understanding was of the
 23 summer 2008 incident in Australia, but is the
 24 airworthiness or the integrity of your S-92s
 25 something that has been subject to audit in

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1 the past, either externally or internally?
 2 MR. BURT:
 3 A. Sure. Our aircraft gets audited by internal
 4 through our QA System on a regular basis. It
 5 gets audited by Transport Canada. They come
 6 in and look at flight safety and also for the
 7 maintenance of the aircraft. On top of that,
 8 we also accommodate our customers who have the
 9 contractual right to come in and audit us and
 10 our aircraft. Their aviation specialists come
 11 in and they also have full view of ASBs, how
 12 we apply them, have we done them in a timely
 13 fashion, that's right on the checklist there,
 14 so they do have overview of that as well.
 15 MR. MARTIN:
 16 Q. Okay. I'm going to move on to a new area of
 17 questioning now and it's the area of
 18 maintenance training because yesterday I
 19 believe you were asked by Ms. Fagan as to
 20 where would you like to see improvements in
 21 the offshore Newfoundland and Labrador.
 22 MR. BURT:
 23 A. Right.
 24 MR. MARTIN:
 25 Q. And one of the areas I believe you identified

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1 was the -- was your desire to see greater
 2 regulation of maintenance training, I think
 3 you --
 4 MR. BURT:
 5 A. That's correct.
 6 MR. MARTIN:
 7 Q. And I assume you're referring to the work
 8 that's conducted by your maintenance
 9 engineers? Is that what you're --
 10 MR. BURT:
 11 A. What I'm referring to is that there's an
 12 absence of direction and regulation in
 13 Transport Canada that our engineers in Canada
 14 have a structured required initial and
 15 recurrent training program.
 16 MR. MARTIN:
 17 Q. Uh-hm.
 18 MR. BURT:
 19 A. That's what I was referring to.
 20 MR. MARTIN:
 21 Q. But it would affect the daily operations of
 22 your maintenance engineers?
 23 MR. BURT:
 24 A. It could affect the daily operations of an
 25 engineering department, but I want -- if you

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1 would allow me --
 2 MR. MARTIN:
 3 Q. Sure, no problem.
 4 MR. BURT:
 5 A. I really want to cite this as a prime example
 6 of our proactive nature. It's been our
 7 organizations drive for at least two and a
 8 half years now, through the unfunded
 9 employment of a maintenance training manager
 10 and the development of a sophisticated, a
 11 thorough maintenance training program for both
 12 initial and recurrent, and we've been doing
 13 that of our own volition and out of our own
 14 pocket book. So I had that horse to ride when
 15 I said, you know, this is the right thing to
 16 do, it is part of our proactive culture, and
 17 that's why I cited the example. It should be
 18 an industry standard, not just for us.
 19 MR. MARTIN:
 20 Q. So it's not a question that you perceive
 21 problems with your own organization, you just
 22 look at the industry in a broader context?
 23 MR. BURT:
 24 A. I think for the industry, it would better our
 25 industry as a whole.

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1 MR. MARTIN:
 2 Q. You mentioned, I thought, the Australian
 3 incident in the summer of '08 -- I probably
 4 didn't get your answer, or didn't
 5 understanding your answer, was a maintenance
 6 related problem?
 7 MR. BURT:
 8 A. The rumours that we had got was that it was
 9 related to a maintenance -- unapproved
 10 maintenance action related to the filter bowl
 11 assembly.
 12 MR. MARTIN:
 13 Q. Okay. I'm just going to proceed to a new line
 14 of questioning again, and again it's in
 15 response to a question that Ms. Fagan asked
 16 you yesterday, and I think the Commissioner
 17 followed up on it as well, and I'll refer to
 18 both their questions and the answers that are
 19 on the record, and it was in relation to, you
 20 know, the Commissioner is writing his report
 21 and doing this very important area, where
 22 should he look for guidance.
 23 MR. BURT:
 24 A. Right.
 25 MR. MARTIN:

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1 Q. And I think Ms. Fagan and the Commissioner
 2 asked questions on that, and I believe your --
 3 the place where you consider to be the best,
 4 the most logical place to look, would be the
 5 North Sea, and in particular, the Norway
 6 experience, is that correct?
 7 MR. BURT:
 8 A. That's correct, yes.
 9 MR. MARTIN:
 10 Q. And I believe you said they were leaders in
 11 regulation?
 12 MR. BURT:
 13 A. Right.
 14 MR. MARTIN:
 15 Q. That's correct, and they were leaders in
 16 standards, and they were leaders in
 17 technology, is that correct?
 18 MR. BURT:
 19 A. Yes.
 20 MR. MARTIN:
 21 Q. And they were leaders in volume of aircraft?
 22 MR. BURT:
 23 A. Right.
 24 MR. MARTIN:
 25 Q. And I'm -- well, that's -- that's where my

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1 question is going.

2 MR. BURT:

3 A. Sure.

4 MR. MARTIN:

5 Q. Because it invoked the question of the

6 Commissioner and the Commissioner asked -- he

7 put forward the general perception of the

8 operators that, and I don't want to misquote

9 the -- the Commissioner said, the operators

10 are of the view that they're among the most

11 highly, if not the most highly regulated

12 industry in the offshore.

13 MR. BURT:

14 A. Uh-hm.

15 MR. MARTIN:

16 Q. And -- you recall that question?

17 MR. BURT:

18 A. Yes.

19 MR. MARTIN:

20 Q. And at that time you indicated and paid -- you

21 know, referred to the C-NLOPB in this case as

22 perhaps being the leader and perhaps

23 contributing to where we are with safety on

24 the east coast.

25 MR. BURT:

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1 A. That's correct.

2 MR. MARTIN:

3 Q. Okay. What I'm getting at, and I'm really

4 just -- maybe the volume of aircraft, maybe

5 you didn't want to put that in the context of

6 your answer, I'm not sure, because -- that's

7 where I'm going with this because the volume

8 of aircraft does generate some questions from

9 my perspective.

10 MR. BURT:

11 A. Sure.

12 MR. MARTIN:

13 Q. And, you know, is the volume of aircraft

14 issue, do you think the operator should have

15 more than one aircraft dedicated to the

16 offshore? What were you -- because there's

17 another line of questioning I'm going to go

18 with in a minute, but what were you saying? I

19 don't think you elaborated on it too much, but

20 --

21 MR. BURT:

22 A. Yeah, I --

23 MR. MARTIN:

24 Q. It's certainly an area that you wanted the

25 Commissioner in this Inquiry to look at vis a

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1 vis Norway?

2 MR. BURT:

3 A. Well, I'm glad to have an opportunity to

4 clarify that because I think it's important.

5 What I meant by that is that the North Sea has

6 been actively flying in production oil fields

7 for in excess of 35 years. They have certain

8 centres, such as Aberdeen, and Bergen, and

9 Stavanger, Norway, where there's in some cases

10 two/three dozen aircraft actively flying.

11 They also have areas in Humberside and

12 Hammerfest and all that, that have the two and

13 three operations as well, but the total

14 aggregate amount of aircraft flying and the

15 history of those aircraft flying is daunting.

16 That's what I was getting at, it's a very

17 prolific area when it comes to offshore oil

18 and gas operations and has the time factor

19 that has deepened it. Now I will say that,

20 you know, numbers of aircraft and time do not

21 equate to quality. What equates to quality is

22 a good organization that answers the bell and

23 provides meaningful regulation, great

24 research, and then applies it to the

25 organization. So that's the depth of what I

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1 was trying to communicate.

2 MR. MARTIN:

3 Q. In terms of meeting the bell, now that leads

4 me to my second question, and it's on response

5 times.

6 MR. BURT:

7 A. Right.

8 MR. MARTIN:

9 Q. And you were asked a question by Ms. Fagan,

10 and correct me if I'm wrong in characterizing

11 the answer that you gave her, is that, you

12 know, you were asked questions about how other

13 jurisdictions responded and there's some

14 jurisdictions that respond in terms of search

15 and rescue 20 minutes, the response time here

16 is an hour. Is that --

17 MR. BURT:

18 A. Right.

19 MR. MARTIN:

20 Q. I'm correct so far?

21 MR. BURT:

22 A. Yeah, that's right.

23 MR. MARTIN:

24 Q. And you did pay some compliments to the Board,

25 the C-NLOPB, for promoting safety issues in

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1 the offshore. You recall your evidence on
 2 that.
 3 MR. BURT:
 4 A. Right.
 5 MR. MARTIN:
 6 Q. Now put simply, if the operators -- and Mr.
 7 Earle was getting at this this morning, and
 8 I'm just really following up on his question.
 9 If the operators wanted to respond earlier
 10 than an hour, say the 20 minute standard that
 11 you say exists elsewhere --
 12 MR. BURT:
 13 A. Yes.
 14 MR. MARTIN:
 15 Q. From your experience in the offshore, is that
 16 something that the Board, looking after the
 17 overall safety interest of the passengers,
 18 could ask the operators to do as part of their
 19 operations contract?
 20 MR. BURT:
 21 A. I would imagine on a continuous improvement
 22 basis, you know, there's all kinds of options,
 23 but I can't really speak to the Board.
 24 MR. MARTIN:
 25 Q. I know you can't speak for the Board, but you

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1 spoke of the experience in Norway --
 2 MR. BURT:
 3 A. Yes.
 4 MR. MARTIN:
 5 Q. You spoke of the -- and you paid compliments
 6 to the Board for promoting safety issues in
 7 the offshore. If responding quicker is in the
 8 best interest of the passengers, and the Board
 9 is the regulator, is that something that the
 10 Board could encourage or require the companies
 11 to do in order to better promote safety in the
 12 offshore, based on your experience,
 13 considerable experience in the offshore? I'm
 14 not asking you to --
 15 MR. BURT:
 16 A. I think that's a great thing that the Board
 17 should take and take upon consideration under
 18 their mandate and look at that, and I think
 19 there's always an evolution. What I'm
 20 referring to at the Board is the proactive
 21 stance and number of things, such as, you
 22 know, looking for things like exterior life
 23 rafts and standard equipment that we've had,
 24 and let me tell you about the other areas that
 25 we operate, such as the Gulf of Mexico.

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1 There's nowhere near close to the regulation
 2 that provides us a level playing field and a
 3 nominal start point that is representative, in
 4 my opinion, of a safe working environment.
 5 It's just the risk here is more managed in
 6 some aspects. There is no regulatory board in
 7 the Gulf of Mexico that has decided to put in
 8 a dedicated search and rescue service. It is
 9 the oil companies that have done that, and
 10 they continue to lead in this aspect more than
 11 any other entity, to be quite honest.
 12 MR. MARTIN:
 13 Q. Now you brought up -- I'm going to close on
 14 this, you brought up the Norwegian experience,
 15 and I think you said they're a leader in
 16 regulation or a leader in standards and what
 17 not?
 18 MR. BURT:
 19 A. Yes, yes.
 20 MR. MARTIN:
 21 Q. And I've asked this question of other
 22 witnesses. I'm just following up on the
 23 testimony of a previous presenter to this
 24 Inquiry, Lorraine Michael, in particular,
 25 where she is advocating for a Norwegian style

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1 board to regulate the offshore that's
 2 independent of government and independent of
 3 the companies. I'm assuming that when you
 4 spoke of the Norwegian experience that you
 5 think so highly of, that you've thought that
 6 the Norwegian experience and that you come
 7 here with some experience on it.
 8 MR. BURT:
 9 A. They were part of the aggregate comment when I
 10 said the quality of the North Sea.
 11 MR. MARTIN:
 12 Q. Yes. Do you have any comments, do you have an
 13 opinion, personal or otherwise, on how
 14 effective the Norwegian Board is, if we accept
 15 the facts as presented by Ms. Michael that
 16 they're independent of government and
 17 independent of the operators, how -- from your
 18 experience, how effective is that Board in
 19 regulating the offshore in Norway, and I know
 20 that's a broad question, but --
 21 MR. BURT:
 22 A. Again I'll just go back to my comment, and I
 23 stand by it, that the Norwegian and the UK,
 24 and again remember the UK centres --
 25 MR. MARTIN:

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1 Q. Yes.

2 MR. BURT:

3 A. I think they have an effective regulatory and

4 a very mature, as I say, regulatory regime,

5 which has had the opportunity to evolve and

6 progress over the years into the entity it is

7 today. Again the reason why I didn't jump

8 here necessarily, because I think we do things

9 here in many ways better than many other

10 entities do, and again I don't want to forget

11 the fact that I think, you know, what we do

12 here is also very proactive, it is also quite

13 industry leading, and it's largely based on

14 the fact of where we fly. We fly in a harsh

15 environment and a lot of things like rotor

16 craft ice protection, we've led the industry

17 in that end. When it comes to operating in

18 harsh weather and low weather operating

19 conditions, we've led there, but I still say

20 and give homage to the North Sea as a very

21 mature well evolved entity, and I don't

22 apologize for that.

23 MR. MARTIN:

24 Q. Okay. Those are my questions. Thank you very

25 much, gentlemen. Thank you, Mr. Commissioner.

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1 COMMISSIONER:

2 Q. Thank you, Mr. Martin. Now Ms. O'Brien, for

3 the estates of the pilots.

4 MR. RICHARD BANKS, MR. RICK BURT, MR. HANK WILLIAMS:

5 EXAMINATION BY MS. O'BRIEN:

6 MS. O'BRIEN:

7 Q. Thank you. As I said earlier today, I'm here

8 today representing the estates of Matt Davis,

9 who was captain of Flight 491, and the estate

10 of Timothy Lanouette, who was the first

11 officer, and I represent Mr. Lanouette's

12 family by agency for another counsel, and I

13 directly represent the family of Matt Davis.

14 I didn't know either of these two men, but I'm

15 acutely aware today that I'm here questioning

16 people who worked with him, and I know many of

17 his other colleagues from Cougar is also here

18 today. I know from speaking with his family

19 that Matt Davis loved what he did, he loved

20 being a pilot, and he was a happy member of

21 your company. That being said, I still have a

22 number of questions that I want to ask and

23 delve into a little deeper.

24 MR. BURT:

25 A. Sure.

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1 MS. O'BRIEN:

2 Q. I'm going to start with the issue of the

3 external oxygen tank for the pilots, what

4 you're calling HEEDS.

5 MR. BURT:

6 A. Yes.

7 MS. O'BRIEN:

8 Q. Distinguishing it a bit from the HUEBA device

9 that's currently being used by the passengers.

10 I understood from your direct evidence that

11 this device is that the pilots are not yet

12 using, they're going to be using it very soon,

13 is that correct?

14 MR. BURT:

15 A. As of the 8th of this month, yes.

16 MS. O'BRIEN:

17 Q. I'd like to talk -- get you to address a bit

18 when you first decided to explore putting this

19 piece of safety equipment in for your flight

20 crews?

21 MR. BURT:

22 A. So if you would allow me, I know that Mr.

23 Banks was involved in the whole HUEBA

24 evaluation, and then brought that through,

25 even through ours, so if I could allow Mr.

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1 Banks to answer that.

2 MR. BANKS:

3 A. Okay, yes, originally I was on the HUEBA Task

4 Force, myself from Cougar, and another member

5 from CHC in Halifax, their safety officer, and

6 as we progressed and assisted in that program,

7 we fundamentally agreed that our air crew

8 needed such a bottle, such air supply, and

9 from past history of our company with our

10 rescue specialists wearing the same type of

11 HEEDS in the back for a number of years, it

12 was decided in our eyes that that could be an

13 opportunity for us. After exploring and doing

14 risk assessments, after the introduction to

15 passengers, we started looking into the HEEDS

16 versus HUEBA, that when that came to light

17 that it was more desirable for us for the

18 HEEDS bottle, then we had to take it to

19 another level to see who actually

20 manufactures, the approvals, the dangerous

21 good issues through Transport Canada, and

22 having that summed up, completed, then we were

23 to provide training to the individuals outside

24 of Marine Institute because they didn't

25 necessarily have the training vehicle that we

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1 wanted, we approached Survival Systems.
 2 Survival Systems then started discussions with
 3 us, arranged and facilitated training to us,
 4 and travelled to Newfoundland to provide that
 5 training, and as of yesterday, our crews are
 6 done and Monday, we're initializing them for
 7 flight. They have to be filled up at this
 8 stage, rechecked and they'll be good to go on
 9 Monday.
 10 MS. O'BRIEN:
 11 Q. When did you sit, first sit on the HUEBA task
 12 force?
 13 MR. BANKS:
 14 A. Oh, it's I'd say two years ago now.
 15 MR. WILLIAMS:
 16 A. Two years, yeah.
 17 MS. O'BRIEN:
 18 Q. Only two years ago. The question here is that
 19 we know that the issue of the HUEBA first came
 20 to light in 2000, in the year 2000. So at
 21 that time, in 2000, the C-NLOPB had identified
 22 this is a piece of safety equipment that would
 23 be beneficial for passengers to have, and
 24 that's when they started to look at it, in
 25 2000. So that's nine years ago, and I

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1 understood from the evidence that the reason
 2 why it took -- one of the major reasons why it
 3 took this nine years to get the HUEBA in place
 4 was because they were introducing this
 5 compressed air system to more of a general
 6 population, that these devices had been used
 7 by pilots, and particularly military pilots,
 8 for years, but that pilots are a highly fit
 9 group of individuals with -- you know, who
 10 don't have medical problems, just by the
 11 nature of the profession, and that the big
 12 concern was taking this compressed air and
 13 giving it to a more -- you know, a wider
 14 audience. You guys didn't have that concern.
 15 Your flight crew were already in that fit
 16 group for whom these compressed air bottles
 17 had been being used for a long time. So I'm
 18 just curious as to why, for a company who's
 19 telling us today that you're very, very
 20 proactive on safety, you're generative, they
 21 were looking at it for passengers for seven
 22 years before you even got involved to look at
 23 it for your own flight crew.
 24 MR. BANKS:
 25 A. Well, you know, I can speak to that too.

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1 Assuming that somebody is, you know, fit and
 2 not applying physiological aspects or
 3 psychological aspects to it are another thing.
 4 Some of our crews, while undergoing training,
 5 did have problems, but we worked through those
 6 problems, and to say that it took you guys
 7 seven years and it took us two, I think we've
 8 done a pretty good job actually. So I think
 9 the introduction is pretty proactive by our
 10 company and I think getting the right piece of
 11 equipment for our air crew and moving forward
 12 to this is definitely a wave in the future for
 13 us.
 14 MS. O'BRIEN:
 15 Q. Were you aware in 2000 that it was being
 16 looked at for passengers?
 17 MR. BANKS:
 18 A. No.
 19 MR. BURT:
 20 A. I wasn't, but the whole issue of using a
 21 compressed air for this HEEDS or HUEBA has
 22 been a contentious issue for a number of
 23 years, along with the -- you might have heard
 24 the rebreathers some people use, and when you
 25 effect such wide-ranging changes of

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1 introducing this type of device on an
 2 immersion suit, when you talk about egress of
 3 an aircraft, the dangerous goods of a 3,000
 4 pound psi bottle, the charge of them, the
 5 recharge of them, the training of people, the
 6 recurrent training, the management of change
 7 and risk analysis for that is quite daunting.
 8 We have other places throughout the world that
 9 was looking at it as well, and our industry is
 10 -- and the oil industry in general is quite
 11 careful to make sure that we just don't
 12 increase levels of risk because it's a
 13 perceived safety initiative. So I'll just
 14 give you a little bit of background from my
 15 knowledge into it.
 16 MS. O'BRIEN:
 17 Q. Sure.
 18 MR. BURT:
 19 A. And as far as a company goes, we were
 20 following through this passenger HEEDS system
 21 as well and trying to comment on it, and
 22 wanted to make sure that we put our attention
 23 towards that, and what Mr. Banks was saying
 24 that once that was done, our management of
 25 change process went in, which was a little bit

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1 different because -
 2 MS. O'BRIEN:
 3 Q. You know, I don't mean to cut you off. I
 4 appreciate everything that you're saying.
 5 MR. BURT:
 6 A. Sure, okay.
 7 MS. O'BRIEN:
 8 Q. But the fact remains is that this was a device
 9 that had been used for pilots, had been used
 10 for pilots for some time. So a lot of the
 11 issues that you're talking about, about how --
 12 you know, how it would be implemented for this
 13 group of people, it was already being done out
 14 there, very different from the passengers, who
 15 I understand our passengers are the first ones
 16 globally using this compressed air system.
 17 That's not the same for flight crew. Flight
 18 crew have been using this for a long period of
 19 time.
 20 MR. BURT:
 21 A. Military.
 22 MR. BANKS:
 23 A. Military.
 24 MS. O'BRIEN:
 25 Q. Military flight crew.

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1 MR. BURT:
 2 A. Military. Like I'm a flight crew member, and
 3 I wouldn't regard myself as that fit, but you
 4 know, so I -- you know, I have flown -- I
 5 don't have a military background. I've flown
 6 for 25 years and I've not used it before, and
 7 in fact, I was one of the -- admittedly, one
 8 of the two people in our company that could
 9 not pass the training because I just couldn't
 10 -- I just couldn't do that thing, that gasp
 11 thing. So it's a little embarrassing, but I
 12 didn't pass it. So I had an appreciation for
 13 the seriousness of insisting that this be put
 14 on our staff without making sure it was
 15 properly addressed. Our intent was to, as we
 16 always do, is to put every piece of equipment
 17 out there, in the light of your question, that
 18 we can put in front of our staff, in front of
 19 our flight crew, every piece of kit, every
 20 piece of gear that we can, including equipment
 21 they have in that aircraft, to make their job
 22 as safe and effective as possible.
 23 MS. O'BRIEN:
 24 Q. I'll leave that for questioning now. I still
 25 maintain that it doesn't seem -- it seems to

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1 me it could have been earlier and a lot
 2 earlier, but I will leave it, okay.
 3 MR. BURT:
 4 A. I appreciate your question.
 5 MS. O'BRIEN:
 6 Q. Yeah, okay. The next question I want to ask
 7 has to do with security, and it's just a
 8 fairly quick question. We have heard from you
 9 that keeping certain items off your aircraft,
 10 such as explosives, firearms and things,
 11 that's mandated to you by Transport Canada,
 12 and there's certain items you keep off your
 13 aircraft and that's mandated by the operators,
 14 such as cell phones, cameras, things they
 15 don't want on the installation.
 16 We heard from the -- I'm not sure if it
 17 was the operator panel or from one of the
 18 operator groups, that the reason why they --
 19 that there is heavy security checking only on
 20 the way to the Platform, right, where
 21 passengers -- where there's metal screening
 22 and searches of their bag, we saw it on your
 23 video -
 24 MR. BURT:
 25 A. Right.

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1 MS. O'BRIEN:
 2 Q. - but there's no similar checking done when
 3 passengers are leaving the installations, was
 4 because they consider the installations
 5 similar to the secured flight area of an
 6 airport. Once you pass through security,
 7 you're in there and there's nothing coming or
 8 going and it's considered a secured area. Do
 9 you look at -- from your perspective, and your
 10 obligations to Transport Canada, do you
 11 consider the installation a secured area,
 12 similar to that of an airport?
 13 MR. BURT:
 14 A. I'm going to -- Mr. Williams, I know he's been
 15 involved in this, so -
 16 MR. WILLIAMS:
 17 A. Yes, to some degree, and I'll be the first one
 18 to say that that conversation has been for a
 19 few years discussing how we do this. There
 20 is, you know, I can say, a general inspection
 21 of returning baggage and freight, but not to
 22 the extent that we do it with metal detectors
 23 in that regard. But we do consider the
 24 Platform, for example, you know, with regards
 25 to Transport Canada, dangerous goods and

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1 weapons. All of the people that ship freight
 2 offshore are all trained in dangerous goods,
 3 so we're quite confident that dangerous goods
 4 will not get on our inbound flight. We don't
 5 see weapons as a potential because they didn't
 6 get out, and it is a secure environment, both
 7 from the vessel and the helicopter. So it's
 8 an area that we -- I agree maybe we should
 9 look at, but we do not see it as a threat to
 10 us in no way.

11 MS. O'BRIEN:
 12 Q. I just -- you know, because we do have -- it's
 13 a little different, you know, an installation,
 14 to me, seems a little different because you
 15 have vessels going out there which it's a lot
 16 harder to control security on vessels. So I
 17 just wanted to get your views on that.

18 MR. BURT:
 19 A. I think it would be worthwhile to talk about
 20 it a little bit more, in general. That's a
 21 general comment.

22 MS. O'BRIEN:
 23 Q. Okay, all right. I'm going to move now to the
 24 flight suits. From what I understood from
 25 your presentation is that the flight crew wear

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1 a suit -- unlike the passengers who have a
 2 suit that meet two different standards that
 3 are put out by the CGSB, very stringent
 4 standards that we have all seen for the
 5 helicopter passenger transportation suit and
 6 the immersion suit and these standards go into
 7 lots and lots of detail about, you know,
 8 temperature gradients and water ingress and
 9 egress and a whole lot of things. But that
 10 for your flight crew, there's really no
 11 standard for the suit other than it has to
 12 adequately protect the flight crew from
 13 hypothermia. Am I right?

14 MR. BURT:
 15 A. Our mandate is set by Transport Canada for a
 16 flight crew and that mandate is that we
 17 provide suitable protection against
 18 hypothermia. That's the mandate.

19 MS. O'BRIEN:
 20 Q. Okay. So the suits that your flight crew
 21 wear, can you -- we talked a bit about a
 22 thermal layer. I mean, do they have a thermal
 23 layer? Can you just give us a -

24 MR. BURT:
 25 A. They have three layers.

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1 MS. O'BRIEN:
 2 Q. Okay.

3 MR. BURT:
 4 A. What we provide is a waterproof layer, a flame
 5 layer and also a thermal layer, and the suit
 6 itself has obviously the -- and in fact, we
 7 went out and did the research. Our suit is a
 8 dry suit. It has a latex neck seal and wrist
 9 seals and enclosed feet in this suit. So
 10 that, first of all, was our standard for our
 11 flight crew. And then, you know, we provide
 12 that flame barrier as well for flash, for
 13 fires, and then there's an issuance of thermal
 14 underwear that goes to complement that suit.
 15 Our crews have used that suit when they've
 16 done their training, but I guess when we
 17 analyze this, together with our flight crew,
 18 we went all throughout our industry worldwide,
 19 looked at manufacturers and various operators
 20 and we used that best practices theory or
 21 principle, and in that, we came back and we
 22 had a bunch of suits to try, to use and we had
 23 our crews try them on and talked about the
 24 benefits of those. There was a risk analysis
 25 done in our organization, a risk assessment by

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1 our crew, and this suit came out as the clear
 2 winner. It had a great following from other
 3 operators who used it in the North Sea. It
 4 met the -- we preferred that dry, the dry suit
 5 aspects of it, and it met the conditions that,
 6 I think -- I won't re-elaborate, but the
 7 conditions of what's required in a cockpit
 8 environment to manage and not cause any other
 9 hazards and accommodate egress and things like
 10 that. That was our selection process for that
 11 suit.

12 MS. O'BRIEN:
 13 Q. Okay. When did you choose that suit? When
 14 did this evaluation process take place?

15 MR. BURT:
 16 A. I don't have the exact dates.

17 MS. O'BRIEN:
 18 Q. Roughly.

19 MR. BURT:
 20 A. Roughly -

21 MR. WILLIAMS:
 22 A. The suit they currently wear has been in
 23 implementation for three to four years.

24 MS. O'BRIEN:
 25 Q. Okay. So when you're saying that -- is it --

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1 is Viking the manufacturer, correct?
 2 MR. BURT:
 3 A. Viking is the manufacturer.
 4 MS. O'BRIEN:
 5 Q. So is it Viking who manufactures all three
 6 layers, the thermal layer, the fireproof layer
 7 and the -
 8 MR. BURT:
 9 A. No.
 10 MS. O'BRIEN:
 11 Q. - waterproof layer?
 12 MR. BURT:
 13 A. It's the external layer, the waterproof layer.
 14 We have a Nomex flight suit, which is the fire
 15 retardant layer, and then the issuance of the
 16 thermal layer is basically like a Helly Hansen
 17 type of thermal underwear.
 18 MS. O'BRIEN:
 19 Q. Okay. Do your flight crews have to wear all
 20 three layers that you have issued when they
 21 fly? Are they required to wear the thermal
 22 layer you issue as well as the fireproof layer
 23 and the waterproof layer every time they fly?
 24 MR. BURT:
 25 A. It's our direction for them to wear all three

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1 layers and they've been educated as to why
 2 that that is a complete system.
 3 MS. O'BRIEN:
 4 Q. In practice, do they wear all those three
 5 layers? Yes? I'm getting a nod there from
 6 Mr. Williams.
 7 MR. BURT:
 8 A. In my practice, and practice that I've seen,
 9 I'd say yes.
 10 MS. O'BRIEN:
 11 Q. Okay.
 12 MR. BURT:
 13 A. I don't -- I haven't watched them all,
 14 whatever, and I would suggest that if we did
 15 see somebody who didn't, we would have a talk.
 16 MS. O'BRIEN:
 17 Q. Okay. We have asked Colonel Drover, who was
 18 here with DND, to supply the Commission with
 19 the specs for the suits that his pilots, DND's
 20 SAR pilots wear.
 21 MR. BURT:
 22 A. Right.
 23 MS. O'BRIEN:
 24 Q. And I would ask if Cougar could -- if you
 25 could supply the same specifications for all

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1 three of your layers, so that -
 2 MR. BURT:
 3 A. Sure.
 4 MS. O'BRIEN:
 5 Q. You know, we can -- because we know the specs
 6 for the passenger suits, and I know that
 7 there's differences in the jobs that they do,
 8 but I think it might be helpful to have the
 9 different specs of the suits that everybody is
 10 wearing.
 11 MR. BURT:
 12 A. That's a good initiative in and of itself,
 13 yes, and to answer your question, yes.
 14 MS. O'BRIEN:
 15 Q. Okay, thank you very much. Just to be clear,
 16 your pilots aren't issued gloves, is that
 17 right, as part of their suits, because of the
 18 hooking concern?
 19 MR. BURT:
 20 A. Our gloves are not here, but they're in a
 21 separate -- I'm not exactly sure where it is,
 22 but it's in the leg pocket.
 23 MS. O'BRIEN:
 24 Q. Okay. So they do have gloves?
 25 MR. BURT:

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1 A. We've taken them off the arms for that whole
 2 hooking things, but they're issued gloves and
 3 the hood as well.
 4 MS. O'BRIEN:
 5 Q. Okay, and do they have the light as well?
 6 We've seen -
 7 MR. BURT:
 8 A. The lights are integral on the life jacket.
 9 MS. O'BRIEN:
 10 Q. Okay.
 11 MR. BURT:
 12 A. And the personal locator beacons as well.
 13 MS. O'BRIEN:
 14 Q. Okay, thank you. I'm now going to move to
 15 helmets.
 16 MR. BURT:
 17 A. Sure.
 18 MS. O'BRIEN:
 19 Q. I'm just on the safety equipment. I
 20 understood you, Mr. Burt, yesterday to say
 21 that "some of our pilots have come from a
 22 military background, so they have asked if we
 23 would mind if they wear helmets and we have
 24 said that that is okay." So you have a mix --
 25 in practice, you have a mixture of flight crew

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1 who some are wearing helmets and some are
 2 wearing headsets? Is that correct?
 3 MR. BURT:
 4 A. Right. I mean, to clarify that too, there's
 5 some that have come from the civilian world
 6 that have worn helmets as well. They equally
 7 requested to keep those.
 8 MS. O'BRIEN:
 9 Q. Okay. So to me, and obviously not a pilot,
 10 but coming as a mom, I always consider helmets
 11 to be a really good thing, right.
 12 MR. BURT:
 13 A. I hear you.
 14 MS. O'BRIEN:
 15 Q. The helmets protect you. If you're in an
 16 accident -- I mean, not to be funny about it,
 17 but of course, head trauma can be a
 18 significant factor for any one who's in an
 19 accident, and certainly it can impede -- you
 20 know, if you get head trauma, and perhaps you
 21 can't get yourself out of the helicopter, and
 22 there's all kinds of good reasons to protect
 23 the head. So it seemed to me that wearing a
 24 helmet would be the obvious best practice, and
 25 you know, clearly it's not a requirement for

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1 your pilots to wear these helmets. So I was
 2 wondering if you could give me a little more
 3 information on that.
 4 MR. BURT:
 5 A. I think it's based in risk management. Our
 6 search and rescue crews wear helmets and they
 7 wear helmets because of the tactical nature of
 8 that job. I mean, as versus flying with Air
 9 Canada, the crews and the passengers don't
 10 wear helmets. Our passengers going offshore
 11 don't wear helmets. I flew 30 years and I've
 12 not worn a helmet. That doesn't mean -- I'm
 13 just telling you my situation. But we do fly
 14 a transport airline style, as you heard, in
 15 environment and the risk levels of doing so,
 16 along with the passengers, have been assessed
 17 as acceptable. However, as the general
 18 manager of the company, I was faced with a
 19 pilot group, and I had to look at our company
 20 safety culture, and as I said, everything we
 21 do here we run through our safety culture
 22 statement, and they said, you know, "Rick, I
 23 would really like to wear my helmet. I'm
 24 comfortable with it. For me, it adds value.
 25 I've had it my career. I like the visor

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1 because the visor I can just put down, I don't
 2 have to wear my sunglasses," and you know, I
 3 thought about it, and it's one of these ones
 4 where you're going to say, you know, "darn it,
 5 just wear your headset and go," and then I
 6 said "no, I've got to" -- I think, as a proper
 7 stance as a manager is listen and I didn't see
 8 any reason why we would not allow them to do
 9 that, and I appreciate them coming forward to
 10 do it. Now I know that we have a crew, one
 11 crew with a helmet and one with a headset.
 12 Does not affect their job. They both can hear
 13 and function the same way. So I just took
 14 that principle and I said "sure, we will
 15 accommodate that." I didn't have any negative
 16 stance to say that you couldn't do that. That
 17 was my -
 18 MS. O'BRIEN:
 19 Q. Is there a down side to wearing a helmet?
 20 MR. BURT:
 21 A. There is in some cases a down side. It's a
 22 very heavy -- no, it's a heavier thing to put
 23 on your head. You know, it does have a
 24 tendency to tire the neck a little bit. I
 25 find it -- and this is very personal, by the

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1 way. I find it personally uncomfortable
 2 myself. I'm not used to it, and there's no
 3 difference in -- from my hearing protection,
 4 I've flown 30 years and I have still above
 5 average hearing. So that would be my personal
 6 answer to your question.
 7 MS. O'BRIEN:
 8 Q. From a safety point of view, is it safer to
 9 wear a helmet than to not wear a helmet?
 10 MR. BURT:
 11 A. I think a helmet would protect, you know, your
 12 head and your face more than a headset would,
 13 yes.
 14 MS. O'BRIEN:
 15 Q. Okay. So you know, if it's safer to wear a
 16 helmet than to not wear a helmet, if the issue
 17 is comfort, isn't safety more important?
 18 MR. BURT:
 19 A. Well, again, it has to do with levels of risk.
 20 What is an acceptable level of risk? I would
 21 not necessarily say that the other crew
 22 members had to wear a helmet, because I
 23 believe that that is an acceptable level of
 24 risk and I say that for myself. But again,
 25 ask -- we have to ask the question about the

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1 entire aircraft. I'm not fighting against
 2 helmets because I'm the one who made the
 3 decision to bring them in. So I don't know if
 4 I really adequately answered your question.
 5 It was a tough one for me.
 6 MS. O'BRIEN:
 7 Q. Have you done a full risk assessment on the
 8 issue of helmets? Has your company done a
 9 full risk assessment? We've seen you have
 10 risk assessment procedures.
 11 MR. BURT:
 12 A. Yeah.
 13 MS. O'BRIEN:
 14 Q. Have you done that?
 15 MR. BURT:
 16 A. No. No, we haven't.
 17 MS. O'BRIEN:
 18 Q. Do you think it might be a good time to
 19 perhaps run a risk assessment on helmets and
 20 see, you know, what the results are when you
 21 do it, rather than a my opinion, my personal
 22 opinion, do it in a systematic way?
 23 MR. BURT:
 24 A. I think it's actually -- I think it's a very
 25 good idea.

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1 MS. O'BRIEN:
 2 Q. Okay, good.
 3 MR. BURT:
 4 A. And I can agree here, on the record, that we
 5 will do it, because it's just pure goodness to
 6 do so.
 7 MS. O'BRIEN:
 8 Q. Okay, good, thank you. The next thing I want
 9 to talk about is night flights. So I
 10 understood from your direct evidence that when
 11 Cougar is making a decision about whether or
 12 not to take a night flight, and we're talking
 13 about Cougar's own criteria, like are you
 14 going to send your employees out, your pilots
 15 out. What you are looking at is the heave and
 16 the motion of the installations? Is that
 17 correct?
 18 MR. BURT:
 19 A. That's one factor.
 20 MS. O'BRIEN:
 21 Q. Oh, that's just one factor, okay. I
 22 understood that that was the main factor. So
 23 maybe if you can over what are the other
 24 factors that you are looking at when you make
 25 the call about a night flight?

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1 MR. BURT:
 2 A. For nighttime operations, specifically flight
 3 crew have to have a currency for nighttime
 4 flying. You have to make sure your license is
 5 current, that you've had five take off and
 6 landings in the following six months, I
 7 believe. So there's a currency issue.
 8 There's an issue of making sure that your
 9 destination has -- all its lighting is working
 10 appropriately, because again that's a go-no-go
 11 factor. The pitch, roll and heave, you have
 12 to adjust the limits to the nighttime
 13 limitations, and as a pilot, I've often, in
 14 the nighttime, you know, talked to my crew
 15 member and said there's some physiological
 16 differences nighttime. You know, let's
 17 remember that nighttime, your vision, your
 18 cones narrow from a visual point of view, and
 19 these are things that pilots are trained and
 20 are supposed to brief each other. So that's
 21 what I would regard as our considerations for
 22 nighttime.
 23 MS. O'BRIEN:
 24 Q. Okay. Do you look at -- in terms of the
 25 safety of your employees, do you look at --

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1 when making a decision about whether or not to
 2 do a night flight, do you look at some of the
 3 other factors that we know that the operators
 4 are looking at, in terms of does DND have
 5 their helicopter there in Gander, sea state
 6 requirements, things like that? Are you
 7 looking at that or not?
 8 MR. BURT:
 9 A. Well, certainly, you know, we -- you know,
 10 Gander has always been an important -- we've
 11 had a good liaison with them and we do check
 12 with the availability of Gander and Rescue
 13 103, and -
 14 MS. O'BRIEN:
 15 Q. But that's because it's mandated -- that's
 16 because the operators have requested you to,
 17 correct?
 18 MR. BURT:
 19 A. No. I mean, we do it as a normal function of
 20 our business, and I think Mr. Williams has
 21 probably got more of a day-to-day handle on
 22 that, and I just want to make sure that he
 23 validates what I'm saying.
 24 MR. WILLIAMS:
 25 A. Yeah, I think what you're referring to is what

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1 we said yesterday is when we would launch a
 2 flight that the customer has agreed for us to
 3 fly. Yes, we verify with 103, but there's
 4 been a very informal process, I call it
 5 industry courtesy, that we're always familiar
 6 with each other, where we are and what we're
 7 doing on any given day and any given night.
 8 MS. O'BRIEN:
 9 Q. Okay. Just to be clear, here's my concern, as
 10 I've been hearing, you know, all the evidence
 11 as we've gone to date as well as the evidence
 12 that we've had from Kimberly Turner about
 13 safety systems and how they work. It seems
 14 like when we're talking about night flights
 15 that when we're -- and we're looking at the
 16 safety barriers, so these pieces of cheese,
 17 that at night, it seems to be we're getting
 18 into a situation where we -- for night flights
 19 now, where we're having increasingly larger
 20 holes in each of these barriers and I'm
 21 wondering if it might be getting up to a
 22 situation where even though not one particular
 23 thing is over the safety limit, that in the
 24 aggregate, there's enough things are kind of
 25 at a higher level of concern that perhaps

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1 night flying might not be a good idea or might
 2 be -- it might merit some further scrutiny,
 3 and the things I'm looking at are this. We
 4 know that the ability to launch an FRC or the
 5 fast rescue craft. So if people do end up in
 6 the water, heaven forbid, the ability to
 7 launch the fast rescue craft is limited,
 8 depending on sea state. That sea state is
 9 related, no doubt, to the heave, pitch and
 10 roll of the installations that you're looking
 11 at, but it's not necessarily a direct
 12 correlation between those two numbers. We
 13 have a case where, you know, they're calling
 14 to find out is the helicopter on the ground in
 15 Gander, but that's only when the flight is
 16 launched. That flight is going to be ongoing
 17 now for two and a half hours, there and back,
 18 and we know that the helicopter in Gander
 19 could take off 20 minutes after your plane
 20 does. So it might not be there. So again,
 21 just a little bit more risk there. You don't
 22 have the auto hover yet, so the first response
 23 helicopter doesn't have that ability to do the
 24 hoisting at night, because at night you need
 25 the auto hover, because you can't get a visual

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1 reference.
 2 So you know, as I've been listening to
 3 all this, I'm thinking, you know, we have a
 4 lot of things that even though each one, each
 5 measure might be within limits, they're all
 6 kind of high or reaching a concern area and
 7 we're looking at this cheese model, lots of
 8 holes getting bigger. I'd like to get your
 9 thoughts on that.
 10 MR. BURT:
 11 A. Well, I think your point is valid that there
 12 are elements that just are in night flying.
 13 You can't see as well. I mean, therefore
 14 obviously it's going to impede, like you say,
 15 some of the things to do with the fast rescue
 16 craft or the fact of if a helicopter has to
 17 land on the water. I mean, that takes an
 18 extra skill set to do that, an extra enhanced
 19 risk model. There's no doubt about that. So
 20 again, it really is what it is. You're flying
 21 nighttime, even as a crew member, you know,
 22 you can't quite see if there's any ice build
 23 up on the aircraft. Even though you have a
 24 rotor ice protection system, it's still nice
 25 to see, you know, what's coming up ahead and

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1 things like that. So there's undoubtedly a
 2 different risk model, you know. Is that
 3 inside the acceptable risk realm? It's our
 4 business is managing risk. Our credo says
 5 unduly affecting risk. We have assessed to
 6 date that that's within the acceptable levels
 7 of risk, but we constantly look at that. I
 8 think your question is a good question, and I
 9 think are there ways that we can mitigate that
 10 by having more capability, have more kit? I
 11 think there are ways that we can do that.
 12 MS. O'BRIEN:
 13 Q. Okay, I just -- you know, at this point, and
 14 we're at the -- you know, looking for issues
 15 and just getting the information out there.
 16 So I appreciate your answer.
 17 MR. BURT:
 18 A. I like the points that you're raising.
 19 MS. O'BRIEN:
 20 Q. Okay, thank you. The next thing I would like
 21 to move onto is to get some clarification on
 22 incident reporting, because I'm a little
 23 confused, so if I'm confused, probably
 24 somebody else is too, maybe not. We heard
 25 early from, I think it was Howard Pike, the

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1 chief safety officer with the C-NLOPB, that
 2 sort of after March 12th, he came to be aware
 3 of Transport Canada's CADORS site where
 4 incidents, near misses, or certain aviation
 5 events of concern are reported, and he looked
 6 at the incidents that had been -- helicopter
 7 incidents that had been reported to the C-
 8 NLOPB and he compared that to the CADORS
 9 database and they didn't necessarily matched
 10 up. There was some events in one, not in the
 11 other, and there wasn't a match up there.
 12 We've also heard today from your questioning
 13 by Mr. Earle that Mr. Earle is aware of
 14 reporting that's being done to the TSB, which
 15 of course is slightly different from the
 16 CADORS system, and he asked you and you gave
 17 undertakings to bring forward reporting that
 18 you did to the TSB.
 19 MR. BURT:
 20 A. Right.
 21 MS. O'BRIEN:
 22 Q. So now we've got sort of three reportings of
 23 helicopter incidents or near misses, or
 24 however they're categorized, reporting to the
 25 C-NLOPB, reporting to Transport Canada CADORS,

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1 and reporting to the Transportation Safety
 2 Board, and at least we know some of them
 3 weren't matching up. I'm wondering if you
 4 could explain these three different
 5 reportings, what's being reported, should they
 6 be consistent, should they not be consistent.
 7 Could you give us some more information on
 8 that?
 9 MR. BURT:
 10 A. Sure. The CADORS, again, is a mechanism that
 11 is available. The Federal Government has
 12 decided that when a flight turns around or has
 13 some discrepancy in an airport area or even on
 14 route that it will report and it will put it
 15 out to the public at large. It's not
 16 something that we report. It's something that
 17 the air traffic controller will report as an
 18 automatic function. I find them confusing
 19 myself.
 20 MS. O'BRIEN:
 21 Q. Okay.
 22 MR. BURT:
 23 A. And I have to be honest with you, I don't
 24 understand a huge amount of value in the
 25 CADORS. As far as the Transport Safety Board

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1 reporting, there's two levels there, and one
 2 is an occurrence reporting, which is not an
 3 incident and it's not mandatory, but this is
 4 the mandatory reporting event, and that's the
 5 one we would refer to here as -- actually,
 6 it's a reportable aviation incident, and
 7 that's the context of what we have today. TSB
 8 has prescribed exactly what that is, the items
 9 which is reportable, and just to give you an
 10 example, when I cited earlier on that we did
 11 not report to TSB on one or two events, they
 12 were not required to be reported. It's not as
 13 though we didn't want to report them. It was
 14 a function of it is not part of the mandatory
 15 reporting that TSB has cited here that they're
 16 interested in.
 17 So I think there is a level of confusion
 18 between CADORS and TSB and even in some
 19 regards to maybe the regulatory regime, what's
 20 required here. I would like to have it
 21 cleared up, to be honest with you, between
 22 CADORS and this mandatory reportable aviation
 23 incident, because I find it confusing.
 24 MS. O'BRIEN:
 25 Q. Okay. Well then I don't feel bad for being

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1 confused.
 2 MR. BURT:
 3 A. And you shouldn't.
 4 MS. O'BRIEN:
 5 Q. Perhaps that something that the Inquiry will
 6 look into in a little more detail, as part of
 7 their work. Okay. You just -- when you
 8 responded there, you addressed the CADORS and
 9 the TSB, but you didn't really address the C-
 10 NLOPB reporting. Do you have anything to do
 11 with that or not?
 12 MR. BURT:
 13 A. Mr. Williams certainly does.
 14 MR. WILLIAMS:
 15 A. Yeah. Well, we do not have a direct reporting
 16 mechanism to the C-NLOPB. I am obligated
 17 under our contracts to report any event to our
 18 customer base, and my understanding is that
 19 they have a requirement to report the
 20 incidents to the Board that they see fit. I
 21 often provide information to them that they
 22 need for those reports on a continuous basis.
 23 MS. O'BRIEN:
 24 Q. Okay. So something that you might report to
 25 the operators wouldn't be something that

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1 you're required to report to the TSB?

2 MR. WILLIAMS:

3 A. Correct, yes. But you know, I would say that

4 there's probably -- I almost consider every

5 event that goes in to a customer report, but

6 not all those are reportable under TSB, as Mr.

7 Burt said, absolutely not.

8 MS. O'BRIEN:

9 Q. Okay, all right. Thank you. The next thing I

10 want to ask about is in terms of notification

11 of families after an incident like the one on

12 March 12th. So we heard from one of the

13 operator panels, I think I put the question to

14 directly, about how long it would take them

15 to, you know, get the information, the

16 passenger information and call out to families

17 and they said it could be a considerable

18 period of time, hours or -- you know, hour,

19 somewhere in that realm. But we heard from

20 you that you get your passenger information,

21 you can pull it up very quickly and readily on

22 your system, and I'm not concerned right now

23 with passenger notification, because I'll

24 leave that to other people, but certainly in

25 terms of the families of your employees who

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1 are on a helicopter that has, say, ditched or

2 crashed, how long -- I mean, you know

3 obviously who the pilot and first officer are

4 on any flight, and you know, you have their

5 contact information. How long would it take

6 you, as part of your emergency response

7 system, to call their families and notify the

8 families?

9 MR. BURT:

10 A. Well, obviously we'd know that information

11 right away, and first off, I think, in this

12 case here, you know, we would make

13 arrangements to actually, you know, meet them

14 face to face. It wouldn't be a phone call in

15 regards to having like crew members that lived

16 here. Other than that, Hank -

17 MR. WILLIAMS:

18 A. I might add, in our ERP, our emergency

19 response manual, the first management member

20 that arrives on the scene at the time, if they

21 call in a list and it happens to be me, one of

22 my obligations is to identify someone for that

23 purpose, out of our group, to do that.

24 MS. O'BRIEN:

25 Q. Okay. But how long -- I mean, the question

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1 here, I understand what you're saying it's

2 information you want to give face to face.

3 It's information you don't want to give over

4 the phone, if it's someone's been in a serious

5 accident. But the fact is if it's too long a

6 window, that person is likely to have heard

7 already on the radio which, in my mind, is a

8 far worse way to get the information.

9 MR. BURT:

10 A. Sure.

11 MS. O'BRIEN:

12 Q. So, you know, how long do you expect it to

13 take? You know, I've seen your manual. I

14 reviewed your emergency response procedure,

15 but it doesn't speak to time lines, you know.

16 What's your expectation, expected time line to

17 get the information to the families?

18 MR. WILLIAMS:

19 A. To me, it would as soon as I have -- you know,

20 the word timely and -- the two words, timely

21 and accurate comes to mind here. As soon as I

22 have accurate information, I get it as timely

23 as possible to them.

24 MS. O'BRIEN:

25 Q. Could that be up to an hour, hour and a half?

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1 MR. WILLIAMS:

2 A. It probably would be up to an hour before we

3 would have exactly the information we want to

4 relay on, yes.

5 MS. O'BRIEN:

6 Q. And you realize in that amount of time though,

7 the families have heard from other sources.

8 MR. WILLIAMS:

9 A. I know.

10 MS. O'BRIEN:

11 Q. I am almost finished, but if we want to go to

12 the break. I'm not -- I'm a few more minutes

13 away.

14 MS. FAGAN:

15 Q. That's up to the Commissioner.

16 COMMISSIONER:

17 Q. I'd just as soon you go on.

18 MS. O'BRIEN:

19 Q. Yes, I'm fine to do that.

20 COMMISSIONER:

21 Q. Okay.

22 MS. O'BRIEN:

23 Q. Thank you. With respect, we've heard a lot

24 about -- I'm going to ask a bit about audits,

25 not very much, but here's what I've heard and

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1 here's my concern. Certainly there's no doubt
 2 that Cougar is a very heavily audited entity.
 3 You are being audited by your regulators. You
 4 are being audited internally. You're doing
 5 your own audits, and you're being audited by
 6 your customers. What I'm wondering is you're
 7 being audited by customers, in turn, you're a
 8 customer and a significant customer for
 9 Sikorsky, who is making the helicopters that
 10 you're flying. So we've heard lots here at
 11 this Inquiry about audits going on of you, of
 12 the operators. But what I'm wondering is do
 13 you in turn -- your customers are auditing
 14 you. Do you, in turn, go and audit Sikorsky?
 15 What -- I mean, one would presume Sikorsky has
 16 their own safety management systems and things
 17 going on. Who is overseeing them? How do you
 18 get the comfort level that the company that
 19 you're dealing with is doing things right?
 20 MR. BURT:
 21 A. Again, a good question. We do audit our
 22 suppliers, whether it's suppliers of nuts and
 23 bolts, all the way to our manufacturers, and I
 24 guess, a point is that Mr. Banks has also just
 25 recently pulled a team and we are going to

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1 audit Sikorsky and HSI and I'll let him speak
 2 to that, because he's the team lead for this
 3 one, as the quality manager.
 4 MR. BANKS:
 5 A. That's correct. Next week, we're down in
 6 Sikorsky plant, as well as HSI support, which
 7 is a function of Sikorsky that assists them in
 8 building practices, fabrication and we have a
 9 five-day vendor audit occurring next week.
 10 Whenever we do a vendor audit, there's a
 11 pulled team put together, myself from safety
 12 and ISO. We also have our quality assurance
 13 maintenance manager, he's on the team, and we
 14 have a representative from VIH Helicopters out
 15 west, and we have one third party assisting us
 16 from Rotor Maxx Limited, which is an expert in
 17 design and manufacture. So that's just one
 18 that we can speak to.
 19 MS. O'BRIEN:
 20 Q. Before this one, when was the last time that
 21 you did such an audit of Sikorsky?
 22 MR. BURT:
 23 A. Our reviews of Sikorsky were not formalized in
 24 a formal audit as such, and it was just a
 25 regular visits from the departments and

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1 meetings with them through -- whether it be
 2 HSI, the support division, or the
 3 manufacturing side of the house. So other
 4 than that, it was informal.
 5 MS. O'BRIEN:
 6 Q. So this is the first formal -
 7 MR. BURT:
 8 A. This is the first formal, yes.
 9 MS. O'BRIEN:
 10 Q. So is it fair to say that this is another
 11 change that's happened since March 12th, that
 12 you're now doing formal audits of Sikorsky?
 13 MR. BURT:
 14 A. Yes.
 15 MS. O'BRIEN:
 16 Q. Okay. With respect to the pilot training, you
 17 had just said, Mr. Burton (sic), in your
 18 presentation that you went through in detail
 19 what your requirements are for your pilots and
 20 you said that the operators may have more
 21 stringent requirements or may have additional
 22 requirements. I put that question to two of
 23 the three operators and they, both of those
 24 operators said no, what's required, we just
 25 accept what Cougar tells us is required, and

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1 that's what we put. Is there a difference for
 2 the third? Are any of the three main
 3 operators that we're talking about here
 4 putting more stringent requirements on your
 5 pilots, or if you could please speak to that?
 6 MR. BURT:
 7 A. Panel, if I miss any, the panel could comment,
 8 but there are additional more stringent
 9 requirements on night currency. There are
 10 more onerous requirements that we must be
 11 recurrent from the times that we either land
 12 on a vessel offshore during nighttime or do it
 13 in a simulated fashion nighttime in the
 14 simulator. That's one additional one beyond
 15 that Transport Canada limitation that I
 16 mentioned to you.
 17 MS. O'BRIEN:
 18 Q. Is that required by the operators here?
 19 MR. BURT:
 20 A. But the operators.
 21 MS. O'BRIEN:
 22 Q. All three of them?
 23 MR. BURT:
 24 A. Yes, yeah. The requirements for the minimum
 25 flight hours, flight hours on type and even

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1 hours on the east coast of Canada, hours in a
 2 multi-engine aircraft, hours nighttime are all
 3 in excess of what Transport Canada require.
 4 So they are fairly onerous ones as well.
 5 MS. O'BRIEN:
 6 Q. But those are your -- those are Cougar's
 7 requirements?
 8 MR. BURT:
 9 A. No, they're also stipulated by our customer.
 10 We have our own ones, but certain customers
 11 are even higher and we keep moving to the
 12 highest of our customers.
 13 MS. O'BRIEN:
 14 Q. Okay. But what I'm saying is the evidence I
 15 had from at least two of the operators was
 16 that they didn't require anything more onerous
 17 than you told them what was acceptable. Your
 18 evidence -- what I'm pointing out here is
 19 there seems to be a little bit of a difference
 20 in your evidence and the evidence of at least
 21 two of the three operators.
 22 MR. WILLIAMS:
 23 A. If I can -
 24 MR. BURT:
 25 A. Yeah.

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1 MR. WILLIAMS:
 2 A. I think Transport Canada has the base line,
 3 but all of our contracts has an insert on
 4 pilot qualifications and what they, as a
 5 particular customer, wants us to provide.
 6 MS. O'BRIEN:
 7 Q. Okay. They said you provided it though.
 8 MR. WILLIAMS:
 9 A. Pardon me?
 10 MS. O'BRIEN:
 11 Q. They said that that insert came from you.
 12 MR. WILLIAMS:
 13 A. No.
 14 MR. BURT:
 15 A. No.
 16 MS. O'BRIEN:
 17 Q. Okay. So we just have a -- and I won't make
 18 any more of that. We just have a bit of a -
 19 MR. BURT:
 20 A. It's an assessment from their aviation
 21 departments and they do, you know, a great of
 22 analysis on, you know, what is acceptable to
 23 them.
 24 MR. WILLIAMS:
 25 A. You know, just to give an example, one of the

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1 -- when I receive an RFP, request for
 2 proposals, there's a section in there of what
 3 their requirements are for flight crews, and
 4 you know, it's pretty standard. Sometimes
 5 they're pretty similar. We do see some
 6 uniqueness, as Mr. Burt identified, but -- and
 7 when we're audited, the individual aviation
 8 auditor comes in and audits against their
 9 particular standards.
 10 MR. BURT:
 11 A. I mean, while it may be inconsistent, it's a
 12 higher model, which we've moved to.
 13 MS. O'BRIEN:
 14 Q. Sure, whatever the case is, whoever is
 15 correct, it's still higher than what's
 16 required.
 17 MR. BURT:
 18 A. Right.
 19 MS. O'BRIEN:
 20 Q. I understand that. Okay. I just have a --
 21 just I might even be done, if you could just
 22 give me -- no, I have a couple of questions
 23 that do relate to search and rescue. One is
 24 you mentioned now, right now, you have here in
 25 St. John's, an S-61. Does that have float

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1 capabilities? Can that land on the water like
 2 the S-92 with the floats?
 3 MR. BURT:
 4 A. The S-61 is actually a certified amphibious
 5 aircraft.
 6 MS. O'BRIEN:
 7 Q. So it doesn't -
 8 MR. BURT:
 9 A. It's certified to land on water.
 10 MS. O'BRIEN:
 11 Q. Okay.
 12 MR. BURT:
 13 A. One of the few.
 14 MR. WILLIAMS:
 15 A. It's a boat.
 16 MS. O'BRIEN:
 17 Q. Okay. Because one of -- before I had found
 18 out during your presentation that you now have
 19 an S-61, the question came up to me is if all
 20 your fleet here in St. John's and your first
 21 responder fleet is of the same type of
 22 aircraft. So if all your fleet here in St.
 23 John's is S-92 and all of a sudden an
 24 airworthiness directive comes out and grounds
 25 an entire -- the entire fleet of S-92s, we

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1 would be in a situation here in St. John's
 2 where we don't have a first responder
 3 helicopter. Now, right now, we have an S-61,
 4 but before, there had been times, I
 5 understand, that we've only had the S-92s
 6 here. So I just wanted to get you to explain
 7 a bit of -- you know, you've probably thought
 8 of that before I did, so you know, what's to
 9 happen if you -
 10 MR. BURT:
 11 A. What you're saying is accurate, an AD would
 12 ground the fleet, it has happened in the past,
 13 it has happened in our industry and for
 14 example, on March 12th how we handled it is
 15 that we brought a S-61 in and the operators
 16 encouraged us to bring it in and helped us to
 17 do so and it provided a SAR standby, so that
 18 was a proactive thing on the operators and our
 19 company to do so. The aircraft that's here
 20 right now has that capability and together
 21 with the operators, it's here right now under
 22 retainer as well.
 23 MS. O'BRIEN:
 24 Q. When you had to bring it in, where did you
 25 have to bring it in from, like are we talking

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1 west coast Canada.
 2 MR. WILLIAMS:
 3 A. Victoria.
 4 MS. O'BRIEN:
 5 Q. So that presumably would take some time to get
 6 the helicopter over, how long does it take to
 7 get a helicopter such as that from Victoria to
 8 St. John's?
 9 MR. BURT:
 10 A. It would be about four days.
 11 MS. O'BRIEN:
 12 Q. Okay, so then that would be a time when we
 13 would say have four days where we didn't have
 14 a first responder helicopter.
 15 MR. BURT:
 16 A. Yeah, you'd be looking at a stance of, you
 17 know, talking to Gander and say we have a
 18 special situation here, we have -
 19 MR. WILLIAMS:
 20 A. March 12th was a good example of how we
 21 handled that, the immediate request came from
 22 the operators once we knew the 92's were on
 23 the ground for awhile, the immediate request
 24 from the operators was for me to mobilize a S-
 25 61. We did that in liaison with 103 Rescue in

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1 Gander and they actually stayed in town for
 2 awhile until we had that support here in St.
 3 John's.
 4 MS. O'BRIEN:
 5 Q. Okay.
 6 MR. WILLIAMS:
 7 A. So it was sort of like a three party, the
 8 operator's requesting to bring in a machine,
 9 we supplying it and 103 Gander really
 10 supporting us until we were in a good posture.
 11 MS. O'BRIEN:
 12 Q. Okay, thank you. The other question, we heard
 13 a bit about when we heard evidence about the
 14 PLBs, this is from Colonel Drover about how
 15 his helicopters had to have equipment on board
 16 that could detect the homing signals being
 17 sent from the PLBs to really home in on them
 18 and you had to have receiver technology,
 19 obviously on the helicopters attuned to those
 20 frequencies to pick up the beacons, I'm
 21 assuming that your helicopters have that
 22 receiving and homing device, is that correct?
 23 MR. WILLIAMS:
 24 A. Two of our four does.
 25 MR. BURT:

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1 A. Two of our four aircraft have it, yes.
 2 MS. O'BRIEN:
 3 Q. So does that mean that there would be
 4 sometimes helicopters who are in the first
 5 response posture who do not have that
 6 equipment on board?
 7 MR. WILLIAMS:
 8 A. Yes, that could be correct, and I wish, that
 9 could be something -- but we do have a
 10 technique that our flight operations folks
 11 could really provide you of how we manage that
 12 Whiffen aircraft that does not have the homing
 13 device. There is a procedure and a mechanism
 14 to still really detect the PLB, so I could
 15 bring back that procedure to you, I can't
 16 explain it because it's fairly technically,
 17 but we do--yes, we do have a mechanism and a
 18 procedure to detect a PLB transmission.
 19 MS. O'BRIEN:
 20 Q. Is it as good as having the actual receiver
 21 equipment on board the helicopter?
 22 MR. BURT:
 23 A. It's more complicated.
 24 MR. WILLIAMS:
 25 A. And I might add that we are moving towards

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1 putting homing in under the direction of our
 2 operators there has been a request for
 3 information on the homing for the other two
 4 parts and all that good stuff, so that's a
 5 process that's on the go to bring all of our
 6 fleet to a standard for homing equipment.
 7 MS. O'BRIEN:
 8 Q. Okay. Those are all my questions, thank you
 9 very much and thank you for the time,
 10 Commissioner.
 11 COMMISSIONER:
 12 Q. Thank you, Ms. O'Brien. While it's in my
 13 mind, you mentioned a moment ago in response
 14 to something Ms. O'Brien mentioned about the
 15 S-61, that it's an amphibious helicopter?
 16 MR. BURT:
 17 A. Yes.
 18 COMMISSIONER:
 19 Q. First time I've heard that term, what does
 20 that mean?
 21 MR. BURT:
 22 A. It is certified under its type certificate to
 23 land on water as an amphibious type rating.
 24 COMMISSIONER:
 25 Q. As a plane -

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1 MR. BURT:
 2 A. It literally has a boat, amphibious rating and
 3 that was always one of the strong points of
 4 why it's been used in Navies over the years
 5 and military have extraction and take off
 6 procedures which they call water bird, it's
 7 all based on amphibious operations, so yes, it
 8 has a boat hull, it actually looks like a boat
 9 underneath.
 10 COMMISSIONER:
 11 Q. I see. In terms of response, would that be a
 12 superior aircraft to, say the S-92 or not?
 13 MR. BURT:
 14 A. The S-61--I love the 61 and flown it for a
 15 long time, it's been the workhorse, it is an
 16 older design standard.
 17 COMMISSIONER:
 18 Q. I know that, yes,
 19 MR. BURT:
 20 A. But very robust, it does have the advantage of
 21 a boat hull, but in many cases, for example
 22 the certification won't sustain putting
 23 rotorcraft icing on the aircraft. You can't
 24 get a de-iced S-61. You can't get a S-61 now,
 25 for example, we tried to bring in a S-61 in

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1 North America with auto hover and the
 2 certification is so outdated, speaking about
 3 the devices that are flying in the UK, albeit
 4 for a pseudomilitary application you can keep
 5 that grandfathered certification, but the FAA
 6 and Transport Canada wouldn't even look at it
 7 from an auto hover point of view, so it left
 8 us saying that we had, you know, you couldn't
 9 embody auto hover as well.
 10 COMMISSIONER:
 11 Q. So it's because of its age as a design, is it?
 12 MR. BURT:
 13 A. It's age and its base systems, it's an analog
 14 automatic flight control system, a
 15 stabilization system and the analog system
 16 does not match well with the current
 17 navigation and autopilot systems which are all
 18 digitally based serial buss control.
 19 COMMISSIONER:
 20 Q. You know, in reading about what they're doing
 21 in the North Sea and I've been doing that now
 22 for some months and I've heard the S-61
 23 referred to as the venerable -
 24 MR. BURT:
 25 A. Yes.

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1 COMMISSIONER:
 2 Q. S-61, which would indicate its age, but also I
 3 get the impression that it's a good solid
 4 workhorse and they're using it for Search and
 5 Rescue in the North Sea still?
 6 MR. BURT:
 7 A. Yes, and again for us, we're one of the
 8 largest S-61 operators in the world, our
 9 company. We have three in a search and rescue
 10 configuration, very high end and we build all
 11 the kits. We use them in heavy lift
 12 operation, such as we talked about our flare
 13 tip and we use them moving drill rigs around
 14 the jungles, et cetera, et cetera, and it's a
 15 very reliable aircraft and we have a large
 16 affection towards the aircraft itself. And I
 17 will say that we've also had a significant
 18 development on the S-61 in the last six years
 19 that there was a new rotor system designed for
 20 the S-61 and it was a higher performance rotor
 21 system that simply just bolted onto the
 22 aircraft and effectively gave the aircraft a
 23 12 percent increase in performance just
 24 because of a bolt on new rotor blade design,
 25 so that's provided us with an extra level of

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1 less vibration and greater performance in
 2 either lifting and or fuel burn. So it really
 3 has just taken the life of the 61 and moved it
 4 forward.
 5 COMMISSIONER:
 6 Q. I see, okay, thank you. I'd like to think
 7 about this, I may seek more information on
 8 that. It's a whole new concept to me what
 9 you've just been talking about. And, of
 10 course, any information I get will be shared.
 11 Anyway, Mr. Whalen, coming to you now, would
 12 you like a break before asking any questions?
 13 WHALEN, Q.C.:
 14 Q. I think it may be helpful, I may have one
 15 question, I'd like to consult with my client
 16 and maybe I'll have a few after, but I can
 17 assure you it won't be very long.
 18 COMMISSIONER:
 19 Q. Oh no, that's all right. We'll take a break
 20 now then and you can do whatever you have to
 21 do.
 22 (RECESS)
 23 COMMISSIONER:
 24 Q. Yes, Mr. Whalen.
 25 WHALEN, Q.C.:

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1 Q. Thank you, Mr. Commissioner, I have no
 2 questions, but I think Mr. Burt would like to
 3 have a few concluding remarks, if that's
 4 acceptable.
 5 COMMISSIONER:
 6 Q. Yes, I see. You would like to say something,
 7 Mr. Burt, would you?
 8 MR. BURT:
 9 A. If you wouldn't mind.
 10 COMMISSIONER:
 11 Q. All right then, go ahead.
 12 MR. BURT:
 13 A. I just wanted to clarify on the issue of night
 14 flying. I want to make sure that you
 15 understand that the decision to fly at night
 16 is the pilot in command's decision. We do
 17 have a co-dispatch authority, but I want to be
 18 clear, there's one person that makes that
 19 final decision is the pilot command. I just
 20 had a thought about that for clarity sake.
 21 The other thing is I would like to have an
 22 opportunity just to provide a few closing
 23 comments, we opened up with them and it is my
 24 hope and my team's hope that over the last two
 25 and a half days that the information we have

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1 provided, the presentations and that stuff
 2 demonstrate our commitment to safety and
 3 safety here on the east coast of Canada for us
 4 is extremely important. And I want to make
 5 sure that it's our intent to lead and not to
 6 follow and to compliment the development of
 7 safety standards in the offshore environment.
 8 As I said on my opening statement, March 12th
 9 was a very significant and personal day for me
 10 and it's a day that we shouldn't forget. We
 11 should take that and honour those that were
 12 lost on that date with a commitment to improve
 13 our business and that's a very personal
 14 commitment on my part. I want to thank the
 15 members of my company and my team, how they
 16 have been dedicated and resolved to make sure
 17 we communicate that as effectively as possible
 18 and then finally, I want to thank Commissioner
 19 Wells, yourself, for opening it up and making
 20 us feel comfortable here so we can talk
 21 clearly and how supportive your staff has been
 22 as well. And at the end of the day, our goal
 23 is as I've seen everybody that I've heard from
 24 today, our goal is to make this a better and
 25 safer industry at the end of the day, so thank

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1 you very much.
 2 COMMISSIONER:
 3 Q. Okay, thank you, Mr. Burt, thank you all of
 4 you for your assistance in this regard. Now,
 5 I'm going to ask you if you wouldn't mind
 6 moving out of that position you're in now,
 7 because Mr. Roil wants to raise a completely
 8 different matter with the group, okay, so you
 9 can just withdraw there.
 10 ROIL, Q.C.:
 11 Q. Yes, Commissioner, as you are aware and I've
 12 met some of the people are certainly aware, a
 13 number of months ago the Government of
 14 Newfoundland indicated that it wished to make
 15 a written submission to the Inquiry. That
 16 submission has been received and the counsel
 17 for the government, Ms. Laura Laengle is here
 18 and will introduce or speak to it and ask you
 19 to accept it as an exhibit. Once you have
 20 done that, we have given it the number
 21 anticipating acceptance of Exhibit P-00183,
 22 but I think that should await the description
 23 of what the document is and why it's being
 24 submitted by Ms. Laengle.
 25 COMMISSIONER:

1 Q. All right then, thank you. Ms. Laengle?
 2 MS. BROWN LAENGLÉ:
 3 Q. Thank you Commissioner. The Government of
 4 Newfoundland and Labrador's submission to the
 5 Phase 1A of the Inquiry, the data collection
 6 phase, was created as a result of discussions
 7 with Inquiry counsel regarding how government
 8 could best contribute information to this
 9 phase of the Inquiry. As a result of these
 10 discussions, we understood that it would be
 11 helpful to provide information on the
 12 regulatory framework of the Newfoundland and
 13 Labrador offshore are and our completed
 14 submission is a result of inter-departmental
 15 consultation and collaboration. The
 16 submission's purpose is to inform the Inquiry
 17 about the history of the Accord Act and the
 18 Atlantic Accord Agreement. The submission
 19 also seeks to clarify the roles of the various
 20 parties, the amendment procedure for the
 21 Accord Acts, the regulatory power under the
 22 Accord Acts and to provide an overview of the
 23 current process involved in the current Accord
 24 Acts amendments.
 25 The submission outlines the general

1 matters relating to the proposed amendments to
 2 the Accord Acts or the development of
 3 regulations. In 1992, the Federal Accord Act
 4 and the Newfoundland and Labrador and Nova
 5 Scotia Accord Acts were amended in order to
 6 implement a number of major recommendations
 7 flowing from the Ocean Ranger Royal Commission
 8 and the Harrison Task Force Report. These
 9 amendments had an unforeseen impact upon the
 10 ability of governments to make occupational
 11 health and safety regulations under the Accord
 12 Acts. Given that ambiguity, the C-NLOPB uses
 13 terms and conditions of work authorizations as
 14 a means to ensure a comprehensive and
 15 enforceable occupational health and safety
 16 regime for offshore workers. The overall
 17 safety of individuals in the offshore area is
 18 protected under this regime. Amendments are
 19 underway to provide regulation making
 20 authority for occupational health and safety
 21 under the Accord Acts, ensuring a
 22 comprehensive legislative occupational health
 23 and safety regime for the offshore.
 24 As well, C-NLOPB is a party to the
 25 memorandum of understanding between the

1 principles of occupational health and safety
 2 which are the basis for both onshore and
 3 offshore occupational health and safety
 4 legislation. The submission also explains the
 5 occupational health and safety regime that is
 6 currently in place in the Newfoundland and
 7 Labrador offshore area. The Atlantic Accord
 8 was designed to facilitate the orderly
 9 development of the petroleum resources in the
 10 Newfoundland and Labrador offshore area and
 11 provide a stable and fair offshore management
 12 regime for industry and the C-NLOPB was the
 13 vehicle created by the Federal and Provincial
 14 governments to achieve this purpose. The
 15 Government of Canada and the Government of
 16 Newfoundland and Labrador are responsible for
 17 any amendments to the Accord Acts and the
 18 making of regulations. The C-NLOPB is
 19 responsible for the management of petroleum
 20 resources in the Newfoundland and Labrador
 21 offshore area, including the administration of
 22 Accord Acts and Regulations. The C-NLOPB, as
 23 Accord Acts Administrator, plays an essential
 24 role in advising governments due to its
 25 operational and technical expertise, on

1 Government of Newfoundland and Labrador and
 2 Natural Resources Canada concerning the
 3 administration of legislation related to the
 4 occupational health and safety of offshore
 5 workers and a consultative process to be
 6 followed by the parties to the MOU. Canada,
 7 Newfoundland and Labrador and Nova Scotia are
 8 now engaged in a process to formulate
 9 amendments to their respective Accord Acts to
 10 provide a comprehensive legislative
 11 occupational health and safety regime in the
 12 offshore area. The number of parties, the
 13 complexities and process involved in the
 14 subject matter of occupational health and
 15 safety, as well as the realities of working
 16 within three separate government systems has
 17 resulted in a much longer process than was
 18 envisaged when the amendment process was
 19 embarked upon. Representatives from both the
 20 C-NLOPB and the Canada Nova Scotia Offshore
 21 Petroleum Board have also been full
 22 participants in this process.
 23 In 2005, an agreement was reached on a
 24 new governance model for the occupational
 25 health and safety section of the Accord Acts.

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1 Governments then proceeded to seek a mandate
 2 to draft legislation based on this new
 3 governance model. Drafting began in 2007 and
 4 officials continued to meet in an effort to
 5 conclude legal drafting. Officials plan to
 6 conduct stakeholder information sessions in
 7 early 2010 on these proposed amendments and
 8 these amendments will be presented to each
 9 jurisdiction's respective cabinet for approval
 10 in 2010.

11 The goal of occupational health and
 12 safety is to promote and foster a safe working
 13 environment. The longevity of this amendment
 14 process has not affected the ongoing
 15 regulation of occupational health and safety
 16 in the Newfoundland and Labrador offshore
 17 area. As noted, occupational health and
 18 safety regulations have continued to be
 19 imposed in the offshore area through the terms
 20 and conditions of C-NLOPB work authorizations.

21 The Government of Newfoundland and
 22 Labrador's submission sets out in more detail
 23 the general principles of occupational health
 24 and safety that form part of the safety regime
 25 which is currently in place in the offshore

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1 area through the provisions of the Accords
 2 Acts and as part of the conditions of the work
 3 authorizations issued by the C-NLOPB. The
 4 proposed amendments will reflect to the extent
 5 that they are applicable and practical,
 6 provincial or federal occupational health and
 7 safety legislative regimes. Where equivalent
 8 onshore provisions do not exist or do not
 9 reflect the unique nature of the relationship
 10 of operators with contractors or the remote
 11 nature of the work environment, provisions
 12 will reflect C-NLOPB practices have to be
 13 consistent with onshore occupational health
 14 and safety principles. It is expected that
 15 each of the three governments will consider a
 16 bill in 2010 that if approved, will be placed
 17 before their respective legislatures for
 18 debate. In the interim, C-NLOPB will continue
 19 to administer and enforce as terms and
 20 conditions of work authorizations a set of
 21 occupational health and safety regulations
 22 entitled "Petroleum Occupational Safety and
 23 Health Regulations" and a supplemental
 24 document created by C-NLOPB called "Other
 25 Requirements Respecting Health and Safety."

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1 These documents include requirements
 2 respecting employer general duties,
 3 occupational health and safety committees and
 4 the right to refuse work. The Accord Acts
 5 provide for effective enforcement of these
 6 conditions.

7 While it is not a joint submission,
 8 Natural Resources and Natural Resources Canada
 9 is not a party at the Inquiry, the Government
 10 of Newfoundland and Labrador has taken a
 11 collaborative approach to ensure that the
 12 Inquiry has fulsome information and has shared
 13 the submission with officials at Natural
 14 Resources Canada for their comment.

15 The comments received from Natural
 16 Resources Canada were taken into consideration
 17 as the submission was finalized. Natural
 18 Resources Canada has not expressed any
 19 disagreement with any aspect of the
 20 information provided in the submission and the
 21 Government of Newfoundland and Labrador has
 22 every reason to believe that they concur with
 23 the contents.

24 The occupational health and safety are an
 25 integral component of the C-NLOPB work

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1 authorization process and the Government of
 2 Newfoundland and Labrador is confident in the
 3 administration of this important component of
 4 offshore operations and are committed to the
 5 future advancement of offshore safety with all
 6 responsible parties. The protection of all
 7 offshore workers is a paramount importance to
 8 all parties involved in the exploration and
 9 production of our offshore resources.

10 We hope that the information provided in
 11 our submission will assist you, Commissioner
 12 Wells, and the Inquiry as a whole in its
 13 important work and we look forward to
 14 continuing to participate as the Inquiry moves
 15 into its next phases, and I would ask that you
 16 accept our submission for your consideration
 17 and information.

18 COMMISSIONER:

19 Q. I do indeed accept the submission and it will
 20 become part of the information and evidence
 21 before the Inquiry and I might say to you that
 22 it's very helpful to me and to everybody with
 23 standing here to understand and know what the
 24 two governments are doing, vis-a-vis
 25 occupational health and safety and also to

1 have the framework put in one document as it
 2 were. So thank you very much for that.
 3 MS. BROWN LAENGLE:
 4 Q. Thank you.
 5 ROIL, Q.C.:
 6 Q. Commissioner, the only other matter I'd bring
 7 to your attention today and to those in the
 8 room and to the public, we have a small
 9 adjustment to our agenda, as has been so often
 10 the case, the amount of time that we had
 11 allocated for evidence has been greater than
 12 what is needed, so we will not be sitting
 13 tomorrow. Our next scheduled evidence was to
 14 start on Monday, the 8th; however, having had
 15 consultations, both Ms. Fagan and I with the
 16 various parties we're working with, it appears
 17 to us that we will not need four days next
 18 week. We have a presenter who is coming in on
 19 Thursday and not able because of travel
 20 commitments to come at an earlier time and so
 21 I'm going to suggest that instead of starting
 22 on Monday, the 8th, that we will adjourn now
 23 until Tuesday the 9th, at which time evidence
 24 will be lead or on behalf of CEP, Local 2121
 25 and then we will proceed to the other evidence

1 CERTIFICATE
 2 We, the undersigned, do hereby certify that
 3 the foregoing is a true and correct transcript of a
 4 hearing heard on the 4th day of February, 2010 at
 5 Tara Place, 31 Peet Street, Suite 213, St. John's
 6 Newfoundland and Labrador and was transcribed by us
 7 to the best of our ability by means of a sound
 8 apparatus.
 9 Dated at St. John's, NL this
 10 4th day of February, 2010
 11 Cindy Sooley
 12 Discoveries Unlimited Inc.
 13 Judy Moss
 14 Discoveries Unlimited Inc.

1 that is available for next week as it unfolds.
 2 COMMISSIONER:
 3 Q. All right then, thank you very much. We'll
 4 adjourn until Tuesday at 9:30 a.m. and begin
 5 with CEP.

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