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Subject RE: BP Theory of the Case

Confidential Attorney Work Product:

Thanks for the input Chris. That is the goal for July and August; to get something in writing on the charges and evidence. It won't be trial ready in August. My hope for the August 28 meeting is to listen to BP and find out what they think their defenses or mitigating circumstances are so that we can focus on those. The government's case in chief is fairly straight forward (famous last words). In a nut shell:

- There was a discharge - undisputed
- From a point source - undisputed
- To a water of the U.S. - EPA experts are currently working on this pulling together the literature and mapping the hydrology. having taken a fairly hard look it appears that this can be proved.
- The mental state and causation are the issues. Very briefly;

Mental state:
BP has said publicly in many forums that 'in hindsight' they should have pigged the line. Essentially, a negligent case would be that BP knew or should have known that failure to maintenance pig the line that leaked would cause the line to fail. Standard in the industry is anywhere from quarterly to once every five years. It had been eight years since the line had been pigged. We have a nice photo of the cross-section of pipe where the leak occurred with 6 inches of sediment accumulated in the line. BP's own corrosion engineers say that if they had known there was that much sediment in the line they would have pigged immediately. The important point here is that other parts of BP's organization besides the corrosion team knew that there was sediment in the line - so perhaps a corporate collective knowledge would get us to knowing, ie, BP knew that failure to pig was going to cause the pipe to fail because of sediment build up.

Causation:
BP defense attorneys have suggested that the failure of the line could have happened rapidly, within a 6 month time frame, thus suggesting that even if they had been pigging on a regular schedule it may have failed anyway. BP's own corrosion engineers disagree with this theory. But BP has an expert working on the issue and we are trying to address this with our own experts and help from DOT and BP's own inspection data. BP has also made a point of saying that everyone thought these lines were not likely to leak and so even if they had more money to throw at it, nothing would have been done differently regarding the lines that leaked. We have a ton of evidence to the contrary on this point.

What makes this criminal?:
BP has said that they had changed their attitude of aggressive cost cutting in 2005 and that they were changing how they did things and had even scheduled a pigging for summer 2006 but the spill happened first. That they were trying to do the right thing but they just didn't do it quickly enough (and I think the implication is that they should thus not be penalized).

It was all, however, too little too late. Like trying to turn the titanic. Managers at BP have said that things were so tight at BP from the

90s through 2004 that even after things began to change in 2005 the mentality of employees was still so entrenched in cost cutting that the first response to any proposal is 'we'll never get the money for that'. The only reason things started to change were because the corrosion manager was such a tyrant and cost cutting was so rampant that whistleblowers complained to the probation office while BPXA was on probation for their felony conviction. This led to an audit in '04 which recommended serious changes in organization and budgeting to address the problems that started to be rolled out in '05. Also, the explosion in Texas got BP's attention. Tony Hayward traveled to Ak after the explosion to see if there were similar problems in ak as in tx such as overly aggressive cost cutting and a lack of communication between mgmt and employees and found that there were. Thus, the changes at BP did not come about because they were being good corporate citizens, it was because they were already felons and had recently killed a bunch of people.

Sentencing:
FBI is working on a financial analysis regarding the stock loss as a result of the leaks as well as public statements made in relationship to stock offerings regarding BP's commitment to being green. I think we have a viable theory that the mis-representations by BP about their green image while at the same time running their operation into the ground in ak led to the huge stock loss when the field had to be shut down as a result of the leaks. Even if we don't charge this substantively as fraud I think we can use it as a basis for sentencing. Also, attached is a memo put together by Dean Ingemansen, an RCEC in Seattle, about possible basis for fine amount in this case.

Look forward to talking with you in person about all this.

- Aunnie