

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

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Investigation of: *

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AXEL SPIRIT/ATON ALLISION *

* Docket No.: DCA-08-FM-002

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Interview of: DAVID PENNY

Thursday
August 28, 2008

The above-captioned matter convened telephonically,
pursuant to notice.

BEFORE: LARRY BOWLING

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1 I N T E R V I E W

2 MR. BOWLING: Okay. Mr. David Penny.

3 MR. PENNY: That's right.

4 MR. BOWLING: All right. We have -- you've got a visual
5 and audio on us?

6 MR. PENNY: Yes.

7 INTERVIEW OF DAVID PENNY

8 BY MR. BOWLING:

9 Q. Okay, great. We're all back in. We'll go ahead and
10 start up. Again, very informal, just an open exchange of ideas
11 and information and before we get started, this is Larry Bowling.
12 I'm with the NTSB and we're going to be interviewing
13 Mr. David Penny, who is now Vice President of the Gas Fleet for
14 Teekay, formerly the Fleet Director for Team Lynx. Is that
15 correct, Mr. Penny?

16 A. That is correct.

17 Q. All right. And you are aware that I have a visual
18 recording going, correct?

19 A. I'm aware of that, yes.

20 Q. Okay, sir. Can you tell me a little bit, before we get
21 started, about the specific questions, just about your background
22 and how you came to Teekay?

23 A. Okay, I started when I was a teenager in the U.K. I was
24 a cadet with a company called The Bibby Line Ltd. I served with
25 them for 18 years, ten of those as chief engineer at sea,

1 principally in the latter years, on gas tankers. I then did a
2 stint with a company called Jardine Matheson in Hong Kong and I
3 came ashore with the Maersk Company (A.P. Moller) in London as a
4 superintendent for three and a half years. I moved to Worldwide
5 Shipping in London and then after year in London and they asked me
6 to go out to their Hong Kong office to beef up the management
7 aspects of the technical department.

8 So I did three years in Hong Kong, then I came back to
9 the U.K. I joined Novoship U.K. as a technical manager, three
10 years later I was promoted to the Deputy General Manager and I did
11 seven and a half years there, altogether, and then I came to
12 Teekay six years ago.

13 Q. Okay. Now, do you currently hold a chief engineer's
14 license?

15 A. No, I allowed that to lapse so that I don't get
16 shanghaied to sail on ships.

17 Q. Okay. Who had issued your last license?

18 A. That's British.

19 Q. British, okay.

20 A. I had a British license and obviously, for some ships, I
21 had a Liberian license, but that was issued back to back on the
22 U.K. one.

23 Q. Right, okay. And again, how long have you been with
24 Teekay?

25 A. Just coming up six years.

1 Q. Okay. You're familiar with the Axel Spirit incident and
2 at the time, if my information is correct -- and again, I've been
3 provided information from the company through Mr. Fernandez here
4 -- you were the Fleet Director for Team Lynx, correct?

5 A. That's correct.

6 Q. At the time of the incident, last year, November 2007?

7 A. Yes, that's correct.

8 Q. Can you tell me a little bit about that position, what
9 -- the responsibilities of the position, what it entailed, how
10 many vessels were under your authority at that time?

11 A. At that time, it probably would've been about 18, 19
12 vessels. And it's approximately four vessels per vessel manager,
13 (superintendent engineer) vessel manager is a term we use. And we
14 run in mini-teams which consist of a vessel manager, a purchasing
15 agent and in those days, we had a voyage manager. That's the
16 person who looks after the post-fixtiture.

17 He liases (VoyM.) with the chartering department on
18 pre-fixtiture questions and then once the ship's fixed, he deals
19 with the post-fixtiture issues, cargo issues, agents and of course,
20 in that respect, liases very closely with the vessel manager.
21 They keep the vessel position report updated. The vessel manager,
22 is responsible for the day-to-day operation of the four ships in
23 his mini-team and he's the point of contact for the master and the
24 chief engineer for their day-to-day operations. And then the
25 vessel managers and the group report up to me on the overall

1 operation of their mini teams, whilst I am take a step back and
2 supervise what happens to the whole team, make sure it's
3 coordinated and make sure that we're being consistent in our
4 actions across the Team in the way we operate each of the mini-
5 teams within and that we're following practices according to our
6 SMS, that we actually operate that way day in, day out.

7 Q. Okay.

8 A. So a general oversight.

9 Q. As far as the construction of the mini-teams, can you
10 walk me through that again, within --

11 A. Okay. Well, there's a vessel manager and he's
12 responsible for four ships, generally, where possible of the same
13 class, but that's not always the case; a purchasing agent who's
14 responsible for purchasing all the spare gear, all the stores,
15 consumables, and a voyage manager who's responsible for, as I say,
16 the pre-fixture liaison for the chartering questions from
17 prospective charters. The ship is fixed by the chartering
18 department and then the voyage manager's responsible for the post-
19 fixture work. That's dealing with agents, monitoring the cargo,
20 performance, et cetera, et cetera.

21 Q. Okay. Within Team Lynx, what was the composition of the
22 vessels' type and class? Were they all Aframax or were they other
23 type --

24 A. They're all Aframax. They were in several 'classes' -
25 the Axel, which is a family class, there was a group of those.

1 There was a Mountain class. There were some K class. There were
2 some other ships at the time of the incident, the Irish class.
3 They're very similar you know, they're all in a group.

4 Q. Okay. With regard to operational expectations for the
5 Axel Spirit for the voyage into New York, what directions were --
6 what directions from your level had been executed or sent to the
7 ship to be acted upon? Can you tell me what the operational
8 expectations were of the vessel at the time of the incident?

9 A. Well, there wouldn't have been any specific instructions
10 from me. I mean, the voyage orders come from the charterer.
11 They're seen by the voyage manager, who will pass it to the ship
12 and if we've got any additional instructions to add, we'll add
13 them. The voyage manager liases with the vessel manager and
14 should the -- you know, should the ship be taking bunkers in that
15 port, if the vessel manager's arranged delivery of spares, stores,
16 all this has to be coordinated and the voyage manager and vessel
17 manager will work together to coordinate that.

18 There would be no specific instructions to any single
19 ship from me. My job is to take an overview of what's happening
20 within the team, what's happening within the company. I
21 occasionally write Fleet Letters, something I used to do. If I
22 see things from safety minutes, from near misses, from any safety
23 minutes on the ship, from incidents, the near miss reports that I
24 think have a bearing across the team I may write on this. If it is
25 a matter which is ship-specific, I would liase with the marine

1 and safety coordinator, who's a member of the support group that
2 is there as part of the Team, as well as the mini-team, that
3 consists of the marine and safety coordinator, a technical
4 coordinator and we have marine personnel officers and we have an
5 technical assistant and there's a regional HSEQ manager and a
6 regional technical manager. So if I see something that's ship-
7 specific that's happened, I'll liase with the M and SC, who will
8 go to the vessel manager to execute whatever has to be done. I'll
9 mark it ship-specific. I mean, he (indiscernible) feel worthy of
10 going back to that ship.

11 Q. All right.

12 A. If I see something that I think has got wider
13 implications across the team, I'll mark it with a T and I'll put
14 my comments and discuss with the M and SC that this needs to go in
15 our monthly summary and to the whole Team and all the ships in the
16 team. If I believe it's something that has an impact that's --
17 has implications fleet-wide, I'll mark it and we have the same
18 discussions, my notes, and then I'll go to the regional HSEQ
19 manager for crossing back to Vancouver, as the way we were
20 organized then.

21 So if they feel they agree it's got fleet-wide
22 implications, then they can take the necessary actions to go
23 across the fleet. So my role is more to oversee specific
24 instructions. We do monthly summaries. There may be something
25 that comes up. I feel it necessary, and probably maybe about

1 eight a year that I feel something matters to us, that I'll write
2 a letter to all masters and chief engineers. It may be
3 distributed to everybody on board and it's a letter on formal
4 paper and it's scanned in, sent out to the ships, so they file it
5 in that fleet director's letters file. But day to day, I wouldn't
6 be issuing any specific instructions for a ship to follow on its
7 voyage.

8 Q. Okay. In the last six months of the year 2007, say from
9 July forward, what type of directions, guidance or other output
10 came from your desk to Team Lynx? Were there any safety related
11 issues that you identified and went out with? Can you tell me --
12 give me a snapshot of what was going on in that six-month period
13 from your perspective within the team?

14 A. Well, I'd have to go back and check the records. I
15 don't -- I must confess I haven't got it at hand at the moment.
16 As I say, I'll go back and check. I don't recall much on,
17 specifically, safety. Certainly, I wrote about vetting. I may
18 have written months ago on something from safety minutes, but I
19 can get that information and get that across to you.

20 Q. Yeah, I'm just making myself a note. I'd like for you
21 to grab that data and review it and if you can get it, I mean, if
22 you need to time, let me know and we'll just make a note and we'll
23 follow up with Mike and Mike can pull it up.

24 A. I can get it -- well, I can get it today and I can get
25 it across to Vancouver while you're there.

1 Q. Okay, thank you. As far as the Axel Spirit itself, do
2 you recall any unusual events or other occurrences that may have
3 come across your desk in that six months preceding the allision
4 with the Ambrose Light?

5 A. No unusual occurrences and no unusual events. I'd have
6 to check. This might have been a ship that had some minor cracks
7 in pipe supports that we repaired, but that's not particularly
8 unusual. And that's something that's done in conjunction with
9 class as a formal safety case, to go through and agree. We do a
10 repair procedure for class and they have to approve it and then,
11 if it was this ship -- I know we had one in that class -- then it
12 would've been done in the states. It would've been done as
13 described and we would then have advised the Coast Guard of the
14 issue and got their permission to do the repairs, and it would've
15 been done under the supervision of the class. And I can check if
16 that was the case for this ship.

17 Q. Right. I thought I saw a condition of class on the
18 vessel. I don't remember if that was related to that, you know,
19 and that would not be really relevant to what we're looking at
20 here, but I do think I saw a condition of class on the ship at one
21 time and it may have been cleared. But from the standpoint of --

22 A. (indiscernible) one in this class did have this issue
23 and it might've been this one. I'll check.

24 Q. Okay.

25 A. But that is all -- that's how we deal with anything like

1 this. The minute we see it we investigate, we bring the class in,
2 we put our proposals to them. They'll either check them, validate
3 them or say, well, that's fine, but we'd like this or this. When
4 we have got a class approved plan, we go to whichever port state
5 we're going into, where we're going to do the repair. We go to
6 those before we get there, when we advise them and say, look, we
7 have found this problem, we brought the class in, this is our
8 class-approved repair plan. Then we might put forward a proposal
9 as to how we're going to deal with it. Then we'll wait for port
10 state
11 -- it would've been the Coast Guard in that case -- to come back
12 and say they agree, give us anything that they want in addition,
13 and then we'll do it accordingly.

14 Q. Okay. Who specifically is the vessel manager for the
15 Axel Spirit?

16 A. That was David Cox. He's now the fleet director at Team
17 Lynx.

18 Q. David who?

19 A. Cox, David Cox, C-o-x.

20 Q. Okay. As far as span of control at your level and then
21 at the vessel manager level, is the -- and again, this is an
22 opinion-type question. Is the span of control comfortable at this
23 point with you, with regard to having responsibility for the 18
24 vessels, and it's broken down to vessel -- you know, four to five
25 vessels per vessel manager? Does that system work for you?

1 A. Yes, it does.

2 Q. Give me some high points.

3 A. Sorry?

4 Q. Give me some high points of how it works. Why is it
5 successful? Why does it work?

6 A. Well, it works because the vessel manager, having a
7 group of ships which he's associated with, he gets to know the
8 people, he gets to know the ship. He knows -- he's dealing with
9 them day to day. You can't do it by remote control, by just
10 e-mails, you need to know the ships, you need to know everything.
11 The vessel manager will attend the delivery of these ships, the
12 new ships, and David Cox will be there for delivery so he gets to
13 know the ships as they're delivered and he'll do that for several.
14 He handles all the guarantee claims during the first year, so he
15 knows all the teething problems that have occurred with the ships.
16 And he liases very closely with the purchasing agent for the ship.
17 So it works.

18 It's a good system and he has total control. He has
19 control of the budget, he prepares the budget, which he then
20 submits to me. I'll go through it with them. When I'm happy I
21 submit it to my boss, who was then the VP, David Robinson. And
22 within that, once it's signed off, we have control and it works.
23 We have several different vessel managers, every day we have a
24 daily operations meeting where we've got all the vessel managers,
25 the regional HSEQ manager, the technical manager, the technical

1 coordinator, the MSC and the personnel officer, and at that
2 meeting, everything that's happened in the last 24 hours across
3 the team, of any significance, is put on the table.

4 So (indiscernible) it works is you've got different guys
5 looking after different ships, different personalities, different
6 ways of looking at things. But anything of significance gets
7 brought out on to the table so we can harness the experience of
8 the wider team. We're not just relying on one person and it's
9 good team collegiate spirit. It's not just these are my ships.
10 I'm the only one that's got the answers.

11 If we need to, we've got the input from everybody. So
12 it's a big pool of experience and it works quite well. Anything
13 that's significant, we put it out there. Each of these meetings
14 starts every day the same way and we have a format, a template,
15 safety issues, any safety issues and any environmental issues and
16 I go through each ship, ship by ship, and we'll discuss everything
17 that may have happened and they all have an input.

18 Q. Okay.

19 A. So I think it works very well.

20 Q. Do you select your vessel managers and your voyage
21 managers, or how are the decisions made that one obtains that
22 position?

23 A. I will interview anybody who's being -- who applies for
24 the job as a vessel or voyage manager the process here is somebody
25 applies for the job, there's a screening interview with HR at that

1 stage, I'm sure you know we're in the process of the some
2 reorganization. If we go through what it was then, somebody
3 applies for the job, there's a screening interview with human
4 resources, and somebody from the technical S and P group. I'm not
5 involved at that stage.

6 Q. Right.

7 A. They will screen all the applicants and they'll bring it
8 down to a short list that they feel meets our criteria and can go
9 through to the next landing. So at that point I will be
10 interviewing them with HR again, regionally, to see, do they fit
11 the team, do they fit Teekay, do I believe I can work with them,
12 and you know, get the finer points in a face-to-face interview.
13 Then we do PI testing as well and we'll look at that. It's not
14 the be-all or end-all, it's just one of the tools we use. We'll
15 look at their experience and CVs. If we feel it's necessary,
16 we'll check their background, and if we feel they're a good fit,
17 they've got the right attitude and aptitude and we feel they're
18 the right person, then that's when we make an offer.

19 Q. Follow up with me on that aptitude and attitude. What
20 are you looking for? For example, with David Cox, he's the vessel
21 manager for the Axel Spirit or was.

22 A. Yeah. Well, we look for -- well, David was already
23 employed with the company when I came here. But if we're looking
24 for somebody, what you want to see at that position is their
25 technical knowledge. That's important. But have they got -- are

1 they open-minded? One thing I have a phobia about, and I've
2 probably got a few, but if I ask somebody why we're doing
3 something and they say because we always did it or its standard
4 operating procedure, it's pretty much guaranteed to get my blood
5 pressure going up. I'm not asking how long we did but why. So we
6 are looking for somebody who's open-minded, somebody who's
7 prepared to challenge themselves, who's not prepared necessarily
8 to always accept the status quo. Times change, the situation
9 changes, the type of ships, the design, they all change and we
10 have to be flexible and open-minded and not because we did it 20
11 years ago, that's the right thing necessarily to do today.

12 So are they a team player? I don't want somebody who is
13 got this knowledge is power, I'm going to be powerful and I'm
14 going to keep it to myself. As I say, this system works, but if
15 we do have significant issues and we have problems, they do get
16 brought out on the table and everybody's willing to listen to what
17 the other guys have got to say. Not anyone of us has got a God-
18 given right to be right all the time, and there are different
19 points of view.

20 You know, you can slip up, you can be too close to
21 something, that you're not quite seeing it, where somebody, it's
22 not his ship, looking at it might say, well, have you considered
23 this, and you might go, oh, hell no. So somebody who's open-
24 minded, prepared to -- a self-starter, somebody who's got
25 confidence in themselves. They don't always have to refer to me,

1 but they have the sense to know, if there's something happening
2 that they're not sure of, that they will come to me and let me
3 know what's going on and keep me informed so that I know what's
4 happening across the team in a general sense.

5 Q. Okay. What is your expectation for your vessel managers
6 with regard to site visits to vessels? For example, what was your
7 expectation of Mr. Cox and his number of visits to the Axel
8 Spirit?

9 A. Two per year is the requirement I've been pushing for
10 and we haven't been very good at it. It's something that we have
11 not been as good as we should've been, there's no question. We
12 have gotten a lot better. And one of those visits to be a short
13 sailing trip. We can do so much in a day, a day and a half, two
14 days in port. We can visit the ship, we can walk around it, we
15 can check it physically, we can do all of this, we can check
16 paperwork and do random checks. We can talk to the people, but to
17 really get our messages across and our expectations of them
18 across, we need to talk and we need to listen and that takes time,
19 because when the ship's in port, these guys have got the job to
20 load the ship or discharge it.

21 So we need the sailing trip to get time to talk to them
22 and to listen, too. You know, we want to know if they understand
23 what we're saying. If there are any barriers, real or perceived,
24 you need time to hear what they are and then logically, you know,
25 try and explain why these aren't issues, and if they're real

1 barriers, bring them back to the office so we can look at them in
2 a wider sense. But that's the expectation. David, though, is
3 pretty good, but we didn't always get the sailing trip in.

4 Q. Sure.

5 A. That's something we have got better at, but we're aware
6 that it was a weak area.

7 Q. Can you tell me about the -- you just mentioned an issue
8 may come up from a ship, that would get to your level and you
9 would potentially address it. Can you give an example of what
10 you're referring to? Maybe if it's a master complaint about a
11 schedule being too tight or something like that. Give me an
12 example of what you're referring to.

13 A. Well, I haven't got any master complaints as such, but
14 on one occasion we had a master and at the discharging port where
15 there was a leak on the Chiksan flanges and the terminal told the
16 master to carry on discharging. So he called the vessel manager
17 and the vessel manager called me, so I called the master and said,
18 well, what is happening? And he said sort of vaguely, it's a drip
19 and the terminal said to carry on discharging and he said no. And
20 I said well, no, you're quite right. You just tell the terminal
21 the cargo will stop until they fix the leak.

22 So he did and he came back and said, well, they're
23 totally unhappy. I said all right, just go back and say -- to
24 take the heat off you. It's not you saying it, you're saying you
25 referred it back to your management and your management has told

1 you you're not to discharge any more until they address the
2 problem that's on their part. There's nothing you can do about
3 it. It's not the ship's equipment and you know, because we can't
4 afford there to be a spill because, if there is, the terminal will
5 turn around and say, well, your captain was aware, but he did
6 nothing. And you know, it doesn't matter whether it was their
7 part on the Chiksan. We're aware of it, we're culpable. So if
8 it's an issue like that, then the master gets a hundred percent
9 support. And so the terminal wasn't happy, the charterer wasn't
10 happy, but that's the way it is. So they fixed it and we carried
11 on.

12 Q. Now, that decision as made at your level or did you have
13 to fleet that up?

14 A. Sorry

15 Q. Okay.

16 A. No, I can make that decision on my own.

17 Q. Okay. All right.

18 A. As a courtesy, I do let my boss know. Anything that is
19 customers are facing, I let my boss know. But it's not just a
20 courtesy, it's part of our procedures.

21 Q. Okay. Can you tell me about the -- I want to get into a
22 specific regarding the ops meeting post-allision with the Axel
23 Spirit. Were you present for that?

24 A. By ops meeting, what do you mean?

25 Q. When did you learn from the vessel manager that the Axel

1 Spirit had allided with the Ambrose Light? Can you tell me about
2 that, how you became aware of the allision?

3 A. About two minutes afterwards.

4 Q. Okay.

5 A. It so happened that we'd been on the team-building event
6 over at Edinburgh. We had come back by coach and there was
7 probably a dozen of us that came into the office to spend an hour
8 to pick stuff up, what have you. So we were at our desks and the
9 phone went and it was John Thompson (ph.) who took the call. He
10 was probably covering for David Cox at the time. And I'll have to
11 check if he was the vessel manager of that boat. He took the call
12 and he told me, he came over to my desk and told me. I phoned the
13 master and said, you know, what's happened and so on and so forth.
14 This does not read properly what I said is that that I called the
15 Master and asked him what had happened etc. etc. We went through
16 it and he said, I think I may have hit.

17 And so I said okay. Well, first of all, tell the P&I
18 Club and you tell the Coast Guard. He asked - do you want me to
19 tell the Coast Guard? That's our standard policy. I answered
20 yes, because the Coast Guard may not want you to start discharge
21 when you get in. They may not allow you to begin discharging
22 because, you know, sometimes they want to ask questions and
23 they'll say nothing happens until we've done an investigation.
24 Which is when he told me and everybody else - by saying that's not
25 the problem, we're already along side and we are discharging. So

1 that's when we asked, well, when the hell did this happen, and it
2 we found out, about seven hours earlier.

3 So that was the first mistake, that nobody had been
4 advised that there was, in his mind, a possible issue. But it
5 should've been a first alert as he wasn't sure and we should've
6 been told.

7 Q. Right. And again, have you had an opportunity to listen
8 to the VDR recordings?

9 A. No, I haven't.

10 Q. Okay. With regard to your expectations with your
11 masters on the first alert, there is a -- I think it's on the
12 actually form, it's highlighted. It actually says, if in doubt,
13 report.

14 A. Yes.

15 Q. So if the master would've had some level of doubt in his
16 mind, would there have been any reason he wouldn't have reported
17 that up to the emergency reporting number with Teekay?

18 A. There should've been none whatsoever. I mean, one of
19 our core things, and we discuss this with all senior officers who
20 come through here and we discuss it generally, is trust and trust
21 is built on transparency. And we have a good reputation with our
22 customers, we have a very good reputation with the Coast Guard,
23 and it's only because, when things happen, like I said about these
24 modern vessels and the pipe supports, they weren't in the deck,
25 they were in the pipe supports and not so significant.

1 But we don't try to hide it. We go up front and we tell
2 the customer, we tell the Coast Guard, we tell whoever and then,
3 whatever we've told them we're going to do, we live by it and we
4 do it. And by doing that, you build up trust and that means that
5 when you sometimes get into difficult situations, you get a much
6 better flow between the parties because they've dealt with you
7 before and they know that they can trust what you're saying.

8 Now, that extends all the way down through the fleet and
9 we just cannot understand why, because, as you say, our rule is if
10 in doubt, and it's quite simple. They call the call center. It's
11 a 24-hour manned center. The call center calls the vessel
12 manager. If he doesn't answer for whatever reason, they then call
13 me. And I don't answer, there's a whole process, there's about
14 four people in the chain, to make sure we get the message. And
15 it's something that nobody gets upset about.

16 We get calls at all hours of the day and night. We
17 don't get so many, but you sometimes get a spate where there's
18 little things. And that's part of the job and it always has been
19 and they all know that nobody minds. People get up at 2:00 in
20 morning, they phone back, they make it on to the e-mail, there may
21 be an exchange, and it's just part of every day's work. So it is
22 not understandable as to why the master did not inform us. And in
23 fact, if we roll it back, it probably was something like six
24 o'clock in the morning U.K. time, which on a Saturday morning is
25 not going to really disturb anybody too much.

1 Q. Right. What are the predominant means of communication
2 between the vessel manager and the vessels themselves? What's
3 the --

4 A. E-mail and telephone.

5 Q. Okay. So each ship is outfitted with a satellite
6 telephone system?

7 A. Each ship's got a satellite telephone and they've got
8 Sat-B phones, they've got e-mail, Sat-C, and they each have a
9 mobile phone for use in port.

10 Q. Okay. So I guess, at least from my perspective, there's
11 adequate ability to communicate?

12 A. Absolutely.

13 Q. Okay. I asked you an earlier question about the VDR and
14 the reason I asked that was the master had made some comments
15 right after the allision with the light. There were some
16 expletives, which we've X'ed out on our transcript, and then he
17 made a comment something to the effect that there'll be hell to
18 pay or this will be hell, something to that effect.

19 And I'm not asking you to speculate, but if there are
20 open communications between the master and up through the team,
21 I'm having a hard time understanding why he would feel that way.
22 He just got a letter from the president saying congratulations on
23 20 years of outstanding service, and within in seconds of alliding
24 with the light, he seems to express some reluctance or some fear
25 about possibly bringing this up, you know, the chain of

1 communication. At least that was my interpretation of the VDR,
2 but --

3 A. Well, I don't know -- as I say, I wouldn't like to
4 speculate, but all I can say is I'll stick to the fact that when I
5 called him, he did ask, do you want me to report this to the Coast
6 Guard? And I mean, that is surprising because it is our standard
7 policy because we just don't believe in just hiding things under
8 the carpet. I mean, what it was I turned it around and said --
9 we'll put it this way, Captain Mack. If you don't report it to
10 the Coast Guard and if you -- because at this stage he was still
11 unsure -- if he had made contact -- that if you don't report it
12 and it is discovered later that you have made contact, then can
13 you imagine what the position would be then? Put it that way,
14 then answer the question yourself. So he said oh, okay, I
15 understand. So that's fine. So then he did, but as we all know,
16 somewhat late.

17 Q. Right. How long had you known Captain Mack prior to --
18 I mean, give me -- when did you first meet Captain Mack? When did
19 you first work with him?

20 A. Well, I'd have to go and check the record of when I
21 first worked with him. I'm not actually sure if I've met him
22 personally.

23 Q. Okay.

24 A. But I probably have, but I wouldn't swear to it.

25 Q. All right. How do you -- with regard to the 18 vessels

1 that you manage, do you routinely meet with the vessel masters
2 or --

3 A. I'll meet with them. Again, it's something we're not as
4 good as we should've been. It's not something I'm particularly
5 happy with. But I'll meet with them at seafaring conferences.
6 I'll meet any senior officer coming through here being promoted.
7 I meet every senior officer who joins the company. And ideally,
8 we should get out to at least half a dozen of the ships per year.
9 That hasn't happened, that's a fact.

10 Q. Okay. With regard to -- there's a form that was
11 provided to me from Teekay. It's Form 017 or 0167. It's called a
12 Record of Senior Officer Visit. Now, the one I have was from the
13 Kiowa Spirit. Was that vessel in Team Lynx or is that another
14 team?

15 A. That is a Team Lynx now. It depends on what the date
16 was the report you are referring to.

17 Q. Okay, this was well before then. This was a 2003 visit.
18 But can you walk me through what exactly the purpose of this form
19 is and how it benefits the master and the management as well? Can
20 you give me some background on it?

21 A. The only thing is that we do -- we use that form
22 principally when we've got -- if we have new entrants that come
23 through here for a five-day orientation. If we've got somebody
24 who's being promoted, they'll go through a three-day orientation.
25 If we've got somebody we're bringing in for any other reason, it

1 could be they're just -- we want to see them about performance and
2 maybe (indiscernible). It's somebody you had a record of when
3 that person was here and that they were -- somebody took them
4 through all the points that are on that form. Now, what I do with
5 it, I take the form and I will write, in the right-hand box, brief
6 notes about all the topics I've covered. I don't just sign a
7 blank thing, I will go through the points about what our
8 expectations are of senior officers, what we're looking for, what
9 we're looking for, and one of the things we stress in this is that
10 if you're in doubt, pick up the phone, e-mail us. There is no
11 such thing as a stupid question. If you're ever in doubt, ask us.
12 It's better you ask at the front end than we have to deal with
13 something afterwards.

14 And it's one of our safety expectations. It's about
15 this openness. It's about building trust. It's about what we
16 stand for. And we also got things to do with where the company
17 is, what we see our future role, what's happening in the fleet.
18 So it's mainly about what we expect of them. We expect them to
19 exercise -- you know, what we want, there are a general overall
20 expectations in operating and maintaining the ship, maintaining
21 morale on board, and making sure that they give safety the first
22 priority.

23 And we have a thing out there and it's posted on the
24 (indiscernible) in some ships, (indiscernible), the cargo control
25 room, no commercial gain at the risk of safety. (indiscernible).

1 We do not compromise safety for commercial gain. And these are
2 all of the things we go through. We go through a whole number of
3 other things. We go through purchasing (ph.). We go through the
4 voyage, a lot of this with the voyage manager, you know, what the
5 charterers will ask for, what we expect you to do, the timelines
6 and all of that stuff. And again, it's a lot about if you're not
7 sure, the HSEQ (ph.) manager meets them. He'll spend, if it's a
8 new entrant, two and a half days training them, going through the
9 SMS system, but it's making sure that we go through all the
10 different aspects of the operation, let them know at a fairly high
11 level what our expectations are and that we record that it has
12 been done.

13 Q. Okay. I want to get a communications issue with regard
14 to the communications between the vessel manager and the senior
15 staff on the ships that were in Team Lynx, and then back to you.
16 How do you ensure that you're getting -- for example, if a vessel
17 manager is on site with one of the ships and him or the master and
18 the individual are having concerns and the master wants to get to
19 you with regard to, for example, the concern you brought up with
20 regard to the Chiksan and the leak in the Chiksan. How do you
21 ensure that you're getting the shipboard personnel's concerns up
22 to your level and are acting upon those concerns? What safeguards
23 are there to ensure that your vessel managers are not just telling
24 you what they want you to hear?

25 A. Well, every master is told that he has the -- you know,

1 if he's not happy with the situation, he can bypass the vessel
2 manager and come direct to me. That's quite clear. If he feels
3 he's not getting any satisfaction from me, he can go to the DPA,
4 and that's quite clear. That's a quite firm written policy.

5 Q. Right.

6 A. And if he didn't feel that was working, we have this
7 thing called the open door and it's there and inside the front
8 cover of every Teekay current. There's Bjorn Moller's e-mail
9 address, Graham Westgarth's and so on and so forth. And it's
10 there for anybody, not just the master, who's got concerns, to
11 write and say I'm not happy with whoever. So there are a number
12 of safeguards. There are monthly HSEQ meetings on the ships.
13 Those minutes come to me.

14 If the master has concerns, he can put them in there.
15 There's an annual SMS review by the master. If he's got concerns,
16 he can put them in there. There's no way those things can bypass
17 the system. If they come through, I see them. I make comments.
18 I have to put them through the system. So there are a whole
19 number of ways that he can make sure that his message is getting
20 through if he feels he's being blocked anywhere.

21 Q. Okay. Were you aware -- I'm sorry?

22 A. I was going to say, the whole team works on the basis
23 that, you know, there is nothing to be gained from hiding things--
24 -- I ask them, if they feel that way, what value is there in
25 hiding things? And we have a very open culture, so I think it

1 works. I don't think there's very much that gets hidden.

2 Q. Who is --

3 A. If anything.

4 Q. Are your vessel managers actually doing the performance
5 evals on the chief engineer and the master or are you doing the
6 performance appraisals?

7 A. Originally, we were supposed to. The fleet directors
8 weren't very good at it. Since SCOPE has come in, we've given it
9 to the vessel managers because it makes more sense. They're the
10 guys that are dealing with them day in and day out. I touch on
11 the periphery, I see the reports they write, I see the meeting
12 minutes, et cetera, et cetera, but I'm not dealing with them on a
13 day-to-day basis, the vessel managers are.

14 Q. Okay.

15 A. And we've given that job to the vessel managers and they
16 do the sign-on interviews, the sign-off. They may be face to face
17 if they're on board a ship or they're done by telephone if the
18 guy's joined them. The vessel manager obviously can't be there
19 for every senior officer (indiscernible), he can't be there for
20 everyone signing up, so they're done on the telephone.

21 Q. Okay. Do you have an opportunity to review those
22 sign-ons and sign-offs, the forms?

23 A. I can.

24 Q. Okay.

25 A. But I rely on the vessel managers to tell me if there's

1 any issues, and they do.

2 Q. Okay. Were you aware of any issues with Captain Mack,
3 for any reason?

4 A. No, I was not. Captain Mack, as far as I was concerned,
5 was a very competent senior master with no black marks to his
6 name.

7 Q. Okay.

8 A. (indiscernible).

9 Q. A specific question to the vessel equipment and not so
10 much a question, more of a comment. On the VDR you can hear
11 alarms, actually, on the bridge. The records we obtained from the
12 Coast Guard on site, we had no indication, from any of the paper
13 monitors or any other monitors, of the system that went off. I
14 would imagine there would've been some cargo or something down in
15 the cargo room that was also repeating on the bridge. I've got a
16 note. We'll need to get those, Mike. We need to talk about that
17 maybe on a break or something, but I don't know if it'd be a good
18 opportunity to ask Mr. Penny. Were you aware of any alarms going
19 off on the bridge of the Axel Spirit when it allided with the --
20 did you hear about any alarms going off on the bridge, through
21 your vessel manager?

22 A. No, I didn't, but any alarms could've been engine
23 alarms. There's a repeater. It doesn't list what the alarm is.

24 Q. Right.

25 A. But it may be an engine alarm. It depends on where

1 they've got the (indiscernible). It could've been in the
2 (indiscernible). They could've been fire alarms. There's a fire
3 alarm repeater up there. There are other repeaters. So it
4 could've been from the engine room or cargo control room. I would
5 like to say that it could've been from the bridge itself. There
6 are alarms up there. I don't know. None were mentioned.

7 Q. Yeah, I will ask Mike to track that down for me, but I
8 derailed from there. Actually, I think -- go ahead, I'm sorry.

9 A. Yeah, perhaps we could. When an incident like this
10 happens, it's one of those things. When it's declared, when this
11 is reported up the chain and this is declared a Level 4 or a Level
12 5 incident, then, to some extent, it is removed for me and the
13 team, because it has to be investigated independently, so we are
14 no longer involved in investigating and necessarily pulling alarm
15 records and anything else. That's done by the investigating team
16 that's appointed by Vancouver at that stage. Up to Level 1, 2 and
17 3, incidents are handled through the team. Level 3, at that
18 stage, the process was I can close them out, but then they have to
19 be validated by another group. Level 4 and 5, the team are not
20 involved. It's down to the independent investigator appointed.

21 Q. Okay. And you've already alluded to this a couple
22 times, but I want to ask the question to you directly. As far as
23 your management expectations for the Axel Spirit, what could've
24 been done better on the night of the incident when the allision
25 occurred? What would've met your expectations as a manager?

1 A. Well, as I say, I was not privy to all the investigation
2 as such, and then I was off for some preplanned surgery for four
3 months not long after the accident, so I was completely out of the
4 loop, I didn't have to worry about that. But I haven't seen the
5 passage plan. I don't know whether it was -- was it correct, was
6 it checked by the master? There should've been a passage plan
7 from the pilot, from the anchorage into the berth, to picking up
8 of the pilot, into the berth. It should've taken care of
9 distances away from the light, it should've, you know, had the
10 route plan, and it should've taken care of all possible hazards,
11 and you know, it should've been checked by the master. I don't
12 know whether it was and if it was, why was it not adhered to,
13 because you don't go that close to a light. I don't know. I
14 mean, I would be speculating to say -- you know, you've got a
15 fairly prominent light. It's very difficult to understand
16 (indiscernible).

17 There is a procedure within the system that is used all
18 the time and that's a passage plan and it has to be berth to berth
19 to anchorage, from anchorage to a pilot station. It's not just
20 for the sea voyages, all the detail, danger areas, the abort
21 points, no-go points, everything's supposed to be on there, and I
22 would've expected that if it's coming in from here, that that
23 would've included making sure you have sufficient sea room
24 rounding the light and anything else that was there. And if for
25 any reason the ship deviated from that plan, then there should've

1 been communication with the bridge team, between them, as to why
2 we deviated from it and what are we are going to do about it. So
3 that would've been my expectation. Why it didn't happen, I don't
4 know.

5 Q. Okay. And my final question. Then I'll turn it over to
6 my colleagues. You're mentioning the communications amongst the
7 bridge team, which is the bridge resource management of a larger
8 perspective. What are your expectations for bridge resource
9 management within your team, the Team Lynx, when you were managing
10 it, with regard to daily activity on a ship, and did you take any
11 or did you direct your vessel managers to do any type of oversight
12 to ensure that those bridge resource management objectives that
13 you established were being done? Can you walk me through that?

14 A. Well, the vessel managers, being engineers by
15 background, we don't expect them to sort of audit the master's
16 navigational capabilities. We expect them, when they go on board,
17 to -- and as part of their checks, is to check that our SMS system
18 is being complied with by making random checks of charts or
19 passage plans, cargo plans, loading, discharge, and see that they
20 have been filled out correctly, they do make sense, they've been
21 signed by the right people, et cetera, et cetera.

22 The bridge team resource management, that training
23 record is kept by the training department, and when people are due
24 for refresher courses, they go on them. Captain Mack had done the
25 bridge resource management, bridge team management. We have a

1 system called back-to-back basics, navigation and engineering, and
2 the back-to-back navigation, that's where a qualified master will
3 go on and we'll check -- one of the marine managers, usually, and
4 we'll check the actual processes the master is following, the
5 whole navigation team is following, in more detail and
6 professionally. He's the guy who's got the professional knowledge
7 to see if they're doing it correctly. And we pick a random number
8 of ships, about 20 a year, to carry out these back-to-back orders.

9 Q. Now, is that done --

10 A. Back to basics.

11 Q. Yeah. And I actually have a copy of that. I was going
12 to save that question for the afternoon, for Peter Lolic. But is
13 that something that you direct or is that over in the quality or
14 designated person ashore?

15 A. That's in the quality assurance department.

16 Q. Okay. How do you monitor the results from specifically
17 the back to basics program? How do you monitor the results or
18 feedback you get from the vessels that were in your fleet at the
19 time?

20 A. The back to basics report will come back to me, I will
21 go through it, review it and then I'll make comments and pass it
22 to the training department, or whoever is relevant, that, okay,
23 this indicates here that maybe the second officer needs some
24 additional training and we'll give that training. It's for them
25 to then arrange for him to attend the next course and put him into

1 the training plan for whatever it might be. Or we may take up --
2 if it's something that's very significant, and what we'll do is
3 write a SCOPE Competency, or we'll go back to the vessel manager
4 for engineering issues, or we go back to the master via the vessel
5 manager. Has this guy got it in his SCOPE Sign On? We may
6 sometimes say we want particular attention paid. We want you to
7 draw up a plan and in your plan to cover this aspect and enter it
8 into SCOPE and deal with it that way.

9 Q. Okay, my final question, and I'll move along here. But
10 on this back to basics, the last evaluation I had or was provided
11 for Captain Nils Mack was 2004 and it was when he was on the Kiowa
12 Spirit, November the 5th of 2004. Are you aware of any or a more
13 recent evaluation of his bridge resource management capabilities
14 and how he handles his bridge teams? Have you seen anything?

15 A. No, I'm not aware. That's the latest one that I -- you
16 know, I'd have to check. If that's the latest one, we would've
17 checked the records and used that one.

18 Q. Okay. From a manager's perspective, is the frequency of
19 information acceptable to you or what's your expectations here?

20 A. Well, our expectations as a company is about 20 ships a
21 year. That states 2004. We've probably had about a hundred
22 ships.

23 Q. Okay.

24 A. So every five years, you know, you're going to cover the
25 fleet and again, that's only going to cover half the people,

1 possibly, because every ship's got more than -- you know, it's got
2 two masters, so you could say it could take quite a while to get
3 everyone.

4 Q. Okay.

5 A. It has worked and not to say it couldn't be increased.

6 Q. The frequency you're referring to or the --

7 A. I mean with SCOPE. We put SCOPE in all the elements we
8 do. I think, with SCOPE in place and running, you know, this is a
9 random check of the health across the fleet.

10 Q. Right.

11 A. It should be okay.

12 MR. BOWLING: Okay. Well, thank you. David, let me
13 turn it over to Jon or Barry. Jon?

14 BY MR. FURUKAWA:

15 Q. Sure. Hi David, this is Jon Furukawa. I'm another
16 investigator specialized in deck or, you know, nautical, as a
17 licensed officer. Let's see. You said, for the fleet director or
18 the team director, you expect six ship visits per year, and for
19 the vessel managers, two visits per ship per year, so about eight
20 visits with voyages. Is that really realistic, because --

21 A. No, not eight voyages, two visits per year, one of which
22 would be a port visit and the other one would be a short sailing
23 voyage.

24 Q. Okay.

25 A. That's four short sailing voyages a year and four port

1 visits a year. Now, it should be possible. We've had some
2 issues, for various reasons, in getting it done, but now we've got
3 where we are and we're settled down. There's no reason that's not
4 possible.

5 Q. Okay. And a short voyage?

6 A. Yeah. Mostly all of our ships, not every one, but the
7 majority of our ships, the trading process changed over the years.
8 We do a lot of Black Sea, besides the Baltic, into Northwest
9 Europe and then into Europe - cross Europe. So we can usually
10 pick somebody up, maybe, you know, at a loadport and sail to say
11 Antwerp, four or five days, maybe six.

12 Q. Okay.

13 A. We can usually (indiscernible), you know, and that's
14 what we're looking for.

15 Q. Okay. Let's see. For the internal investigation for
16 the Axel Spirit, it wasn't your team, but do you know did the --
17 headed up the investigation?

18 A. Some other (indiscernible). I'll have to go and check.
19 Was it Victor (ph.) or was it (indiscernible)?

20 UNIDENTIFIED SPEAKER: Yeah, we can check with Victor,
21 exactly, who (indiscernible).

22 BY MR. FURUKAWA:

23 Q. Okay. Were you given the conclusions of the
24 investigation?

25 A. No, I was away.

1 Q. Okay, right, for surgery. Okay. For Teekay, would you
2 consider this a zero-defects company?

3 A. We strive for zero defects, it's what we strive for.

4 Q. Um-hum.

5 A. And it's a goal. We have a whole set of KPIs (ph.) that
6 we measure ourselves and the ships and that's on port safety
7 inspections, vetting (ph.) inspections, availability, pollution
8 incidents, major incidents, lost-time injuries, and the targets
9 are fairly low. I mean, pollution and major incidents, the
10 target's at zero. That's in the inspection. (indiscernible)
11 target is less than 1.3 on average per ship per finding. So we --
12 and then the RTIs (ph.) is just on the two. So it's fairly
13 aggressive.

14 Q. Okay.

15 A. All right, in this case, a major incident, we didn't
16 meet the target, but that's what we strive for.

17 Q. Okay. If the second -- if things had pretty much gone
18 to plan, you know, if there was a passage plan all the way to the
19 berth and Captain Mack had informed everybody on time, would it
20 have been possible for him to survive an accident as a company
21 employee?

22 A. It depends. Everybody's accountable. We're not going
23 to punish mistakes, but gross negligence, gross incompetence,
24 there has to be accountability. So yes, we do remove people.

25 Q. Okay.

1 A. You know, I have written letters of dismissal since I've
2 been here, because people just do not follow -- we've laid our
3 expectations, they haven't met them and you know, they have to go.
4 If it's something that's not caused damage or maybe if it's
5 something minor, if the person can accept that they have not done
6 what they should've and they genuinely appear to have learned, you
7 know, we believe and we trust that they've learned, then they
8 would get a warning letter and it would go in their file. If
9 there's any doubt, and I have a case for the chief engineer, but
10 if I have faith that he has learned or spent on time on the ship
11 myself with a fleet manager, laid it out pretty clear and then
12 within a week something happened. It wasn't an accident. It was
13 just something that just shows me that he hasn't learned, he
14 hasn't paid attention to what he was told and he refuses to accept
15 that he's done anything wrong.

16 Well, this is, you know, again, aptitude and attitude,
17 leadership, team work. If you can't accept that you made a
18 mistake, then that's exposing us to risk. I don't know what this
19 guy -- you were saying earlier, do I have fears that people don't
20 tell me things? With somebody like that, yes, I do. So I don't
21 see that they have a place. And yes, if you have an accident, if
22 he told us -- I don't know, this is a pretty significant accident,
23 I mean, and I don't know, it would seem some pretty significant
24 break from everything that we say. So as I say, gross negligence,
25 gross incompetence, we hold people accountable.

1 Q. Okay.

2 A. They don't survive it.

3 Q. Okay. Did you find that -- I think Captain Mack, he
4 came from another company that you acquired.

5 A. Yes.

6 Q. Do you find that Teekay officers that are, you know, the
7 Europeans style of a cadet ship and come up through the ranks,
8 that they do better, that they're kind of born and raised with the
9 company?

10 A. I'm going to say no. We've taken on new entrants on
11 four ships that we managed for another owner from Newville (ph.)
12 for three and a half years, and a number of their senior officers
13 including masters were brought into Teekay and those ships perform
14 as well, in some cases, better than other ships. (indiscernible).
15 I don't think -- again, I don't think it's necessarily that you've
16 been with Teekay. It is again part of this aptitude and attitude.
17 If you're willing to adapt, you're willing to work with the system
18 we've got and you're willing to learn it and say this is good,
19 then fine, you'll do well.

20 Q. Okay. And what have you guys -- what have you done to
21 ensure that an accident like this doesn't happen again?

22 A. We have raising awareness campaigns if we have an
23 incident of any kind. I mean, this is going out to the whole
24 fleet afterwards and we've incorporated this in raising awareness,
25 that we use at seafarer conferences. There have been notices

1 about navigation and you know, the whole thing that comes out from
2 this, you know, the passage plans. Also, we have looked at it and
3 we have Risk Watch. This one I know was done because I presented
4 it in a seafarers conference recently, this incident, and we put
5 it up there in as much as we can disclose. And we asked the
6 audience, who are all professional senior people, you know, why
7 did it happen, and could you have seen yourself in this position,
8 you know, to really think, well, what went wrong here? And I have
9 to confess that most of the people I've asked shake their heads
10 and say they don't understand.

11 MR. FURUKAWA: Okay.

12 MR. BOWLING: Thank you. Barry, any?

13 BY MR. STRAUCH:

14 Q. Yeah, I have a few questions, David. The captain,
15 Captain Mack, apparently had been ill for a few days before the
16 accident.

17 A. Yeah, I've heard that just recently.

18 Q. Okay.

19 A. (indiscernible).

20 Q. I'm sorry?

21 A. Sorry?

22 Q. Okay. Anyway, I think he reported that he was ill. He
23 did not report this to the company?

24 A. He mentioned it in a telephone call to the voyage
25 manager. What I've heard is that he said he had bad stomach, he'd

1 eaten some bad fish, and the voyage manager apparently asked are
2 you all right, and he said yeah, I'm fine now. So that was as far
3 as it went.

4 Q. Okay. What is your expectation as to what a master
5 should report if they are ill, if they eat that fish or whatever?

6 A. Well, I mean, we've all been there. If you eat bad fish
7 and you have a bad night of diarrhea vomiting etc. Provided he
8 was all right the next day, I wouldn't necessarily expected him to
9 say anything. If he was ill and he felt it was compromising his
10 job, I would've expected him to tell us so we could look at what
11 alternative arrangements we might make, what mitigation we make or
12 replace him.

13 Q. Okay.

14 A. I mean, we do this all the time. We've taken people off
15 by launch, we've taken people off by helicopter if they've been
16 sick, you know. I mean, sometimes we take people off because we
17 have limited medical knowledge on board. We have access to
18 (indiscernible) and professionals. We report all the symptoms to
19 them and then we've got the ship captain's medical guide
20 (indiscernible) and you know, first aid, if you like. If it's
21 beyond us, then we advise that, you know, if we're not sure, get
22 this guy off and off he comes.

23 And we sometimes take guys off like this and then we get
24 them to a shore hospital, a doctor, and he examines him and says
25 yeah, it's minor. Okay. But we don't know. We can't afford to

1 take that risk, so our policy is to get them off. Since I've been
2 here, we've taken people off (indiscernible) by helicopter and
3 again, it was minor when we got him to the hospital
4 (indiscernible) in France. I forget the problem there. He went
5 off by launch. We deviated the ship to get him off and he was
6 seen by a doctor and passed fit to travel and went home
7 (indiscernible) and saw his doctor there and then was declared fit
8 after a short while. So something like this, you know, we don't
9 want to wait until we to have to take people off because their
10 seriously ill. But sometimes it's nothing much, but we're not in
11 a position to judge we're not doctors. We have to take a cautious
12 approach, so that's the way we work.

13 Q. I think he reported at the time of the accident that he
14 had been able to sleep, maybe at most, two hours at a time because
15 of his illness. Now, does that change in your mind whether or not
16 he should've reported in to you?

17 A. He has said that's never been able to sleep more than
18 two hours?

19 Q. The most he was able to sleep the night before the
20 accident was two hours, because of his illness.

21 MR. FERNANDEZ: This was during his interview?

22 THE WITNESS: I was not aware of that.

23 MR. STRAUCH: Yeah.

24 MR. FERNANDEZ: Okay, because I -- okay.

25 BY MR. STRAUCH:

1 Q. Yeah. No, this is what he told us in the post-accident
2 interview.

3 A. Okay, I was unaware of that.

4 Q. Should you have been aware of it?

5 A. I think if he wasn't sleeping and if he was fatigued,
6 yes, we should've been -- he should've at least made, you know,
7 some provision on board to cater to that, and if it was
8 significant enough and he felt that is was impairing his ability
9 to do his duties, he should've let us know and we may have just
10 given advice and we may have said, well, okay. In this case it
11 might even have been wait until we get somebody else over there.

12 Q. Now, should he have done this because it was good
13 seamanship or because this is what you require?

14 A. Well, we expect him to be -- if he wasn't able -- if he
15 felt he was ill to the point that it was impairing him in
16 executing his duties, he should've told us.

17 Q. Is there a company requirement that he does this or this
18 is your advice?

19 A. I'll have to check if there's an exact company
20 requirement. I'm not sure we actually write that down. But
21 again, this is something that falls under the heading of if in
22 doubt, pick up the phone.

23 Q. Okay.

24 A. So I'm not happy. I'm not sleeping. You know, he's an
25 experienced master. He should've been able to judge if this was

1 affecting his ability, and if it was, he should've told us.

2 Q. Okay. You said --

3 A. (indiscernible).

4 Q. Go on.

5 A. No, I'm sorry. I was going to say, you know, we'd have
6 been sympathetic. If this guy said look, I'm really
7 (indiscernible), I'm struggling to execute my duties, that
8 would've given us some concern, to say the least.

9 Q. Okay. You said his first mistake was not reporting the
10 incident?

11 A. No, his first mistake was in hitting the light tower. I
12 mean, I don't know what the first mistake was, but the first
13 mistake wasn't not reporting it. That's an in-house technical
14 mistake. Once he hit it, this is just our in-house procedures.
15 That's not his first mistake. The first mistake was whichever
16 action brought the ship that close. That was a mistake. Now, the
17 not reporting it, yeah, it's an internal technical mistake. It
18 wasn't his first mistake.

19 Q. What other mistakes did he make?

20 A. Well, the first one was what caused the ship to come
21 that close to the light tower, in my opinion. I don't know what
22 the mistake was.

23 Q. What subsequent mistakes did he make?

24 MR. FERNANDEZ: If I could just interrupt just in terms
25 of the witness. I'm sorry, but I think he indicated, you know, he

1 was ill. I don't know how much he's even seen the report or knows
2 the details about what happened. He wasn't involved in the
3 post-investigation. So with that caveat, I mean, there are other
4 people that are going to be interviewed that I think have much
5 more intimate details. But with that caveat, you know, ask him
6 anything you want. I just don't want the record to have the
7 impression that he has personal knowledge or direct knowledge as
8 to an analysis as to what took place.

9 BY MR. STRAUCH:

10 Q. Okay. And Dave, if you feel that you don't know because
11 that, your illness and your inability to --

12 A. Well, just for the record, if we just get something
13 straight, I wasn't ill, I wasn't in pain and I had to have some
14 prearranged surgery. You know, I was having a rod put in right
15 close to my ankle to cure some new issues that had come from an
16 accident 20 years ago. So just to be very precise for the record,
17 I was not ill. I hadn't eaten any bad fish.

18 MR. BOWLING: Duly noted.

19 THE WITNESS: I did that team-building event and it was
20 Saturday morning and I was (indiscernible). No, I don't know.
21 The issue was, of course, that quite soon after, I went out for
22 the surgery and then I'm not -- when I came back, I have to
23 confess, it wasn't the first thing I did, was dig out -- I was
24 going, where's the Axel Spirit report? That was a mistake on my
25 part.

1 But I don't know what mistakes he made. The one about
2 not reporting is an in-house. It's a technical issue, if you
3 like. There is a very clear procedure. If you're in doubt -- and
4 from what you're telling me, that the VDR -- I mean, the worry
5 there is that he seemed to be clear, from what you're saying, that
6 he had contacted it. Now, when I spoke to him he was still in the
7 mode, I'm not sure I if made contact with that. Why he waited six
8 hours, what value he thought he was having, what the hell he
9 thought he was achieving by this, I don't know. Now you're
10 telling me that -- I only heard the other day about the fish.
11 I've only heard just now about the sleeping. So whether it was
12 his judgment that was impaired because of these things, I don't
13 know and I'm really not qualified to comment.

14 BY MR. STRAUCH:

15 Q. Okay. One thing I'm kind of curious about is the
16 discrepancy between your description of his performance as
17 described in his performance appraisals before the accident, you
18 said there was no black mark to his name, and this performance at
19 the time of the accident. You know --

20 A. I mean, this is --

21 Q. -- what's wrong here, either him or maybe your system of
22 appraisal? I mean, shouldn't you have anticipated his performance
23 deficiencies at the time of the accident and overseeing them
24 beforehand?

25 A. If these deficiencies were due to him having been

1 recently ill, having had some kind of stomach upset, then having,
2 maybe, a continuation of something else that stopped him sleeping,
3 and if sleep deprivation impaired his judgment, I'm not really
4 sure how we could've foreseen that. And given that we weren't
5 aware here that he'd even been ill, it's tricky to say what we
6 could've done beforehand. The guy had a good record. The people
7 who dealt with him day by day thought very well of him. He had a
8 very good record. He had no black marks. This is indicative of
9 the nine years he's been here, that, you know, you've got to say
10 our system's totally useless or, you know, that in nine years you
11 would've thought somebody would've picked something up. And he
12 worked with different vessel managers and different teams.

13 He was well thought of. He was well thought of by the
14 customers and we had no -- you know, no comments against him. So
15 our anticipation of Captain Mack and our expectation is that he
16 was a professional shipmaster who would handle his ship properly.
17 This incident is completely anomalous. It puzzles me. And now
18 I've just heard, as I say, this past week about the fish. I've
19 just heard this afternoon that he was not sleeping. I don't know.
20 How bad was it? How ill was he? I mean, I've heard much of this.
21 He didn't tell us.

22 You're saying the VDR indicates he knew he'd made
23 contact, yet he didn't tell us. This is out of character.
24 (indiscernible) when I spoke to him was, should I tell the Coast
25 Guard? This was out of character. So just how bad was the man?

1 I don't know. Again, I'm not a doctor and I don't know how bad he
2 was. Do we know the whole story about how (indiscernible) this
3 lack of sleep, on the whole? I don't know. So was it that he was
4 so fatigued that his judgment was impaired? But it is out of
5 character. From what we know of the man, it's completely out of
6 character. I don't want to speculate on how the thing happened,
7 but you know, when I presented this to other masters that have
8 been there and raising awareness, then, how could this have
9 happened? Everybody (indiscernible).

10 MR. BOWLING: I'm sorry. More questions?

11 BY MR. STRAUCH:

12 Q. Yeah, I have more questions. You said that you had a
13 certain desire in terms of the number of ship visits that you
14 would like to see per year, but the number of visits hasn't
15 happened to the extent that you would like, is that correct?

16 A. That is correct.

17 Q. What are some of the reasons why there haven't been the
18 number of ship visits that you would like to have seen?

19 A. Oh, changing personnel was the main issue. We had new
20 personnel coming in. We had to train personnel. We grew. We had
21 new personnel. And this all takes time and it did affect our
22 ability to go out to ships.

23 Q. How many times was Captain Mack visited in the years
24 before the accident, while he was sailing?

25 A. I would have to go and check the records.

1 Q. Okay.

2 A. I possibly wouldn't have all the records for that.

3 Q. Okay.

4 A. I could tell how many times the Axel Spirit was visited.
5 I can get you that information.

6 Q. Okay.

7 A. For the last -- the previous year or a year and a half.

8 MR. STRAUCH: Michael, could you make sure we get that -
9 -

10 MR. FERNANDEZ: Yeah.

11 MR. STRAUCH: -- for the captain?

12 MR. BOWLING: I'm making a list as well, so we'll cover
13 it this afternoon.

14 MR. FERNANDEZ: All right.

15 BY MR. STRAUCH:

16 Q. Now, after a ship visit, is there -- what documentation
17 is there as a result of the visit?

18 A. There's an inspection report prepared by the vessel
19 manager, if he's doing the visit. If it's a different one, if
20 it's an audit, we'll get internal audit. It could be an ELP (ph.)
21 audit and it could be a SCOPE audit. All of these, whatever they
22 are, they all have a format they're reported on and all of these
23 are uploaded into a database we call SOFID, ship and oil field
24 inspection database.

25 Now, from each of these visits -- and they're all done

1 by the same format -- if there are any deficiencies, observations
2 noted, they report it and they show in SOFID and then it is the
3 vessel manager and the team working together, their duty to make
4 sure that these things are dealt with. Now, it could be audits.
5 There's also the direct cause or the root cause. But all of these
6 things are addressed. If it's incidents, they come in a different
7 system. They come in ORCA (ph.), which is our observation module.
8 And all of these are put into a database and they stay there and
9 those reports, they're high-level summary reports produced every
10 (indiscernible). They're available on our intranet which I check,
11 usually on a weekly basis, to see where we are. And we've got
12 open inspections. Because all of these inspection reports,
13 they're signed, the hard copy. They're available on the intranet.
14 (indiscernible).

15 But they all stay open anything but observation stays
16 open in this database (indiscernible) these regular reports,
17 they're on the intranet and updated. I will look at them. I will
18 then go and say, well, where are with this? We have regular
19 meetings here in the office. We have safety meetings where we
20 review all of this data. We then have a risk review process where
21 each vessel manager presents a report for each of his ships to me
22 and how these targets have been met, have we closed this, and if
23 not, why not?

24 So usually before that's happened, I'm going there each
25 week into these summary reports. Everybody has access to these

1 reports, they're available on the intranet and they're open so
2 that everybody can see. Every quarter, the data is extracted in a
3 management summary which goes up to the senior management team and
4 they see what -- you know, what the overall picture of for fleet
5 is and for individual teams. So nothing gets lost or hidden.
6 It's there until it's closed down.

7 Q. Now, the difficulties that kept you from performing a
8 number of ship visits that you wanted to, you seem to indicate
9 those are behind you now and now you're --

10 A. Yes.

11 Q. Okay. And you have implemented a program to make sure
12 that the ships are visited the amount that you would like, is that
13 correct?

14 A. Yes, that's also reported.

15 Q. Okay.

16 A. And we have a program. We have (indiscernible) and the
17 vessel manager (indiscernible) to the fleet director and then it's
18 up to the fleet director to see that those are done. We have a
19 plan and the plan is flexible, it's mobile (indiscernible). But I
20 mean, a few weeks ago, one of the other (indiscernible), we had an
21 initiative called building a learning culture. The Axel Spirit
22 incident is part of that. It's a demonstration of, you know, what
23 we should learn from.

24 That has been delivered to the fleet by a fleet director
25 or a director or above level, not the vessel managers. I mean, we

1 had it lined up. I was going to go and visit four ships in Europe
2 and it was all (indiscernible) the end of week 20 (ph.). I was
3 going to visit them the back end of the second week. Then all the
4 ETAs, all the reports changed and we missed the whole lot that
5 time. David Cox had just done the same thing. He had a plan to
6 catch the last three all in one hit and then didn't work, so he
7 got two, one of his and he did one for another fleet director and
8 (indiscernible). That's separate from the two-a-year visit and it
9 is monitored. We know we weren't good at it, we put a lot of
10 focus on it and we know we can't slip back to the way we were
11 going forward.

12 Q. Okay. Could you describe the building a learning
13 culture program?

14 A. Yeah, we really do believe in learning we don't believe
15 that all this data we collect from incident reports, the
16 (indiscernible), safety minutes, all the internal audits, external
17 audits, vessel inspection, we don't believe that these are things
18 that should be taken in isolation. This happened, something is
19 found, we do this we learn. We genuinely believe that, you know,
20 in finding what can we learn from it? What caused an observation,
21 deficiency or defect? What caused it can be found? Why did we
22 fail somewhere?

23 We have a very detailed SMS system. It covers just
24 about every eventuality. We've given the guidance, we've given
25 the instruction, we've given the encouragement and we give the

1 support. We're available to 24/7. So what went wrong? Is it our
2 system? Have we not explained it clearly? Is it a lack of
3 understanding of what we want? Whatever it might be. So we
4 really decided that we needed to get this message get across, so
5 we prepared this presentation and it takes some ideas, some
6 thought and it takes real incidents to illustrate what we mean and
7 you know, where we go through them and what went wrong where we
8 don't know what wrong. What can we learn from it? What should we
9 have learned from it? We don't want to repeat mistakes. We want
10 to learn. As I say, if everybody joins a ship under SCOPE, it's
11 all part of building a learning culture, SCOPE (indiscernible).

12 We're not expecting miracles. This is a very big
13 project. It's a forever thing. It will go on for as long as
14 we're here. And then I say, if you join a ship for a three-month
15 contract, if you every three months leave a little bit smarter
16 than you joined then we are succeeding. Now, some people will
17 learn that much, some will learn this much, but as long as
18 everybody has learned a little bit and come off a little bit
19 smarter, as I put it, that's what we want, each trip continuously,
20 consecutively. And this raises the bar and we think that's what
21 will make us different from other people.

22 Q. And who participates in the program? Who gets to see
23 it? Who gets to learn the lessons that you want to be taught?

24 A. Everybody. We go on the ship. We collect as many of
25 the crew as possible we may have to do it two times. It's about

1 two and a half hours, depending on how many questions we get from
2 the audience during the presentation. We take it through and we
3 use real-life incidents and we encourage questions and if we have
4 to do it in two batches because we've got -- the guys there are
5 actually, you know, either loading or discharging the ship, the
6 job they're there for. So we'll have to split it in two and we'll
7 give it twice. I mean, the cook came to the last one I did
8 (indiscernible). We get spare people apart from the watchkeepers,
9 so they all came and then we did it for the ship.

10 Q. And who were the instructors?

11 A. Fleet director or above.

12 Q. Okay. Now, you said that the Axel Spirit was used in
13 one of the building a learning culture classes?

14 A. Yeah.

15 Q. Could we get a copy of that material?

16 A. (indiscernible).

17 MR. HILDEBRAND: We got it. We can get it.

18 BY MR. STRAUCH:

19 Q. Okay. And you have other incidents that are also used
20 within this -- these classes?

21 A. Yeah, we use real incidents, yeah.

22 Q. Could we get copies of those, too?

23 MR. HILDEBRAND: I'll find out.

24 BY MR. STRAUCH:

25 Q. Okay, learning culture. Now, you said that employees

1 can go above their immediate supervisor and even go so far as to
2 contact you, you know, through e-mails or telephone calls, if
3 they're unhappy with the way things are going?

4 A. Yes.

5 Q. Okay. In the last year, about how many times have
6 employees communicated with you, either by telephone or e-mail,
7 voicing dissatisfaction with things?

8 A. I haven't had -- I had one -- we've had one in the last
9 couple of weeks. It went above all of us. It went straight to
10 Graham Westgarth.

11 Q. Okay. So in the last year there's been one?

12 A. That I'm aware of, yes.

13 MR. STRAUCH: Okay. All right, thank you. I have no
14 further questions.

15 BY MR. BOWLING:

16 Q. A very good question. We'll follow up with Graham this
17 afternoon, on how he handled that. What was the -- David, what
18 was the nature of the call that went straight to Graham? We're
19 going to interview him this afternoon, so --

20 A. Well, it's -- I mean, I'm probably (indiscernible) a
21 complaint probably initiated just before I came over to the
22 position I'm in now. But there was a master that complained about
23 (indiscernible) let him down on the firsthand side. And John and
24 I have gather all the data and John was -- for the reply. In
25 fact, he's spoken to the master and Graham will go back to him

1 direct.

2 Q. Okay. All right.

3 A. This is through this open door thing. As I say, this is
4 where it's their route to use; I let them use it.

5 MR. BOWLING: And I think this afternoon -- well, I've
6 made some notes as Barry was talking with you. I'm going to
7 explore that with Peter Lolic and see if he can get us more detail
8 on the standing policy, the open-door standing policy. NTSB team,
9 any final questions? Mike?

10 MR. FERNANDEZ: Just a couple of either comments or
11 questions very quickly, David. According to the records that we
12 produced, July 24th through 28, 2006, the master had undergone
13 certification for bridge team management, that's NTSB 173
14 Recertification, and a recertification for basic safety training
15 and bridge resource management, NTSB 174. I just wanted to
16 highlight that not that long ago he had, you know, refresher
17 courses in that.

18 MR. BOWLING: What numbers were those again?

19 MR. FERNANDEZ: That was 173 and 174.

20 MR. BOWLING: Okay.

21 MR. FERNANDEZ: The master also attended a conference
22 and the conferences are fairly routine with Teekay, but he
23 attended a conference in Croatia, I think it is.

24 MR. BOWLING: Right.

25 MR. FERNANDEZ: And at that conference there are a lot

1 of different things that get discussed. And that's 116 to 123 and
2 you can see what types of things, and we actually have produced
3 additional modules relative to the types of discussions and
4 interaction for that particular type of conference. As to the
5 clarification, I wanted to clarify the VDR. My understanding of
6 the word "hell," in the context that it was said, was not so much
7 at all to deal with that he was fearful of reporting anything. As
8 it was, he just said something like there'll be hell or they drove
9 me to hell, something along those --

10 MR. BOWLING: This will be hell.

11 MR. FERNANDEZ: This will be hell. So you know, I don't
12 take that to mean that he in some way was afraid to report
13 anything to the company, but I just wanted to put that out there.

14 MR. BOWLING: That's an interesting question. How would
15 you -- how do you take it, then? What do you think he was
16 referring to?

17 MR. FERNANDEZ: Well, we can talk about that off the
18 record, I guess, at some point. But --

19 MR. BOWLING: All right.

20 MR. FERNANDEZ: -- it's just, you know, I didn't get the
21 sense that he was afraid to report something to the company, as
22 opposed to him thinking that, you know, maybe he had a problem.
23 So for whatever that's worth.

24 MR. BOWLING: Okay, duly noted.

25 MR. FERNANDEZ: And we haven't gotten to all the

1 records, but again, there are, you know, internal and external
2 audits on these vessels, where people are looked at and systems
3 are looked at and other types of methodology, back to basics
4 programs and so on, where, you know, people come on and they look
5 at the vessel. The master did receive various commendations and
6 awards for different types of things. Those are all in the
7 record, so I just want to put that --

8 MR. BOWLING: We have those and Barry has -- his
9 workload is three times what mine is and he hasn't had an
10 opportunity to go through the entire depth of this stuff. We've
11 been trying to clean up here, but I didn't bring all the
12 documentation with me. I have the same -- I'm taking notes on the
13 NTSB numbers, which actually, you know, have been assigned by you,
14 they're not our numbers that are assigned. So we'll have an
15 opportunity to get back and --

16 MR. FERNANDEZ: Okay.

17 MR. BOWLING: -- and I'll read through most of those
18 items. So duly noted on that as well.

19 MR. FERNANDEZ: Okay. And I think that's pretty much.
20 I'll just check. We're done. That's all I have.

21 MR. BOWLING: Dev?

22 THE WITNESS: Okay, just to be clear, from me you want
23 the number of vessel visits to the Axel Spirit in the last 18
24 months or since she was delivered?

25 MR. BOWLING: We will follow up. I will get a list

1 together and we will have that put -- I'll go through Mike to get
2 that formally requested.

3 MR. STRAUCH: But I would like the number of visits to
4 the Axel Spirit in general, and the number of visits with this
5 captain in particular.

6 MR. FERNANDEZ: On the Kiowa Spirit, when he was --

7 MR. STRAUCH: Yeah, and that too, yeah. And let's go
8 back five years on that.

9 THE WITNESS: Well, I may not have that here, because
10 the Kiowa wasn't always in this team. You know, so --

11 MR. STRAUCH: Okay. Well, from the company, then.

12 MR. FERNANDEZ: Okay.

13 MR. STRAUCH: And the results of those visits, too.

14 MR. FERNANDEZ: Yeah, okay.

15 THE WITNESS: And (indiscernible) from my desk for the
16 last six months.

17 MR. STRAUCH: Okay.

18 THE WITNESS: Okay?

19 MR. STRAUCH: Okay.

20 THE WITNESS: Very well.

21 MR. BOWLING: Thank you very much. We appreciate you
22 taking time out of your day to talk to us and we apologize for
23 going a little longer than we needed to. Oh, I'm sorry. Dev had
24 a question.

25 MR. HILDEBRAND: Yeah, I didn't want jump on David

1 there. Sorry. I just have one possible clarification. I
2 noticed, Jon, I think you had a document. It was a senior officer
3 visit to the office, dated May 20th. This would be 97 to 105.

4 MR. FURUKAWA: Correct. Right here.

5 MR. HILDEBRAND: And yeah, there's a bunch of stuff
6 crossed out on that. I just noticed that and I just wanted to say
7 that there was sort of a couple of types of it. This would've
8 been one where he was actually either signing on, in fact, you
9 know, he was joining, where he would've been focused on his team
10 itself, within the office. There was another one back in
11 September of 2001, in which he saw the whole management group and
12 that's NTSB 106.

13 MR. BOWLING: Right. I didn't bring that copy with me,
14 but we have it.

15 MR. HILDEBRAND: Yeah. So he had the full briefing
16 previous to that and that's why (indiscernible).

17 MR. BOWLING: Okay, my apologies. Anything else?

18 MR. HILDEBRAND: No, that's it.

19 MR. BOWLING: Okay. All right, gentlemen. Again, thank
20 you, David, we appreciate it. Have a good evening and we'll sign
21 you off.

22 THE WITNESS: Okay.

23 MR. BOWLING: Thank you so much. Bye.

24 (Whereupon, the interview in the above-entitled matter
25 was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Investigation of the Axel Spirit/ATON
Allision

Interview of: David Penny

DOCKET NUMBER: DCA-08-FM-002

PLACE: Vancouver, British Columbia, Canada

DATE: August 28, 2008

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

David Martini
Transcriber