U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 18 September 2008

Case No.: 2007-SOX-5

IN THE MATTER OF

ANTHONY MENENDEZ,
Complainant

vs.

HALLIBURTON, INC.,
Respondent

APPEARANCES:

HOWARD T. DULMAGE, ESQ.
On Behalf of the Complainant
JOSEPH AHMAD, ESQ.
On Behalf of the Complainant

W. CARL JORDAN, ESQ.
COREY E. DEVINE, ESQ.
MAURO RAMIREZ, ESQ.
On Behalf of the Respondent

BEFORE: PATRICK M. ROSENOW
Administrative Law Judge

DECISION AND ORDER

This matter involves a complaint under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002[1] (the Act) and the regulations promulgated pursuant thereto[2] brought by Complainant Anthony Menendez against Respondent Halliburton, Inc. It was referred to the Office of Administrative Law Judges for a formal hearing.

[1] 18 U.S.C. § 1514A *et seq.*
[2] 29 C.F.R. Part 1980.

Both parties were represented by counsel. On 24 Sep 07 through 26 Sep 07 a hearing was held at which the parties were afforded a full opportunity to call and cross-examine witnesses, offer exhibits, make arguments, and submit post-hearing briefs.

My decision is based upon the entire record, which consists of the following:[3]

<u>Witness Testimony of</u>
Complainant
James Paquette
J.R. Sult
Richard Mize
John Christopher
Laura Lewis
Kelly Youngblood
Mark McCollum
Susan Wilrodt
Mark Traylor
Millicent Chancellor

<u>Exhibits</u>[4]
Complainant's Exhibits (CX): 1, 2, 19, 22, 23, 25, 27, 29, 31, 39-50, 80, 167, and 221.
Employer's Exhibits (EX): 1-57, 59, and 63.

STIPULATIONS[5]

1. There was an employee/employer relationship between Complainant and Respondent.
2. Complainant communicated information about Respondent's accounting practices to the SEC, the PCOAB, the audit committee, and internally to various supervisors and higher officials of Respondent.
3. Respondent was aware of these communications.

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[3] I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited. A detailed summary of the evidence is in an evidentiary appendix.

[4] Parties were informed that all exhibits in excess of 25 pages must be cited to specifically by page number in brief in order to be considered part of the record. Tr. 61.

[5] Tr. 49.

ISSUES

1. Whether Complainant engaged in protected activity.
2. Whether Respondent took adverse employment actions against Complainant because Complainant engaged in protected activity.

FACTUAL BACKGROUND

In early 2005, Chris Hill, then Respondent's Director of Technical Accounting Research and Training, was promoted to controller of a division of KBR. In March of 2005, Complainant was hired by Respondent to replace Hill as director of technical accounting research and training. This was a Senior Manager level position within Respondent's formal management hierarchy. Complainant was hired to report to Evelyn Angelle, as did Hill when he was in that position. Before Complainant reported to work, Angelle was promoted to Investor Relations. Her position was not filled and Complainant's reporting relationship was reassigned to Mark McCollum, Respondent's Chief Accounting Officer.

In July of 2005, field accountants in the UK asked the Technical Accounting Research and Training group to review a revenue recognition issue related to a line of oil well completion products known as TCP perforating guns. On 15 Jul 05, Complainant circulated a memorandum taking the position that Respondent could not recognize revenue unless the product had been delivered to the physical possession of the customer. He did so without consulting Chris Hill or Evelyn Angelle, who had authored a previous memorandum that came to a different conclusion on the same question.

J.R. Sult, then the controller for the Energy Services Group, and Angelle were frustrated about Complainant's failure to consult with them. Sult complained to McCollum about Complainant's failure to follow the normal collaborative process. On 18 Jul 05, McCollum met with Complainant to counsel him to adopt more effective collaborative work strategies. On 1 Aug 05, Sult called a meeting of key individuals who had worked on Respondent's accounting position for customer-owned inventory, including Complainant, Angelle, and Hill. Sult then ordered a new study of Respondent's customer-owned inventory accounting practices. The study had two parts: (1) an analysis of whether Respondent was recognizing revenue in compliance with SAB (Staff Accounting Bulletin) 104 on certain equipment sold and delivered at customers' requests to Respondent's warehouses for future use and (2) an analysis of whether revenue was being properly recognized on equipment in some instances where Respondent was likely to provide subsequent services related to that equipment (multiple element arrangements).

Sult selected Kelly Youngblood, the Senior Manager of Global Operations, to coordinate the study. Youngblood and several members of the F&A organization began a contract review process. Complainant participated in this process by reviewing some contracts and having extensive discussions with Youngblood, John Christopher, who was senior manager of the audit practice at KPMG, and KPMG. Youngblood provided Complainant with an advance draft of the memorandum he authored for the first study. On 26 Oct 05, Youngblood issued a memorandum to KPMG that concluded that Respondent's revenue recognition accounting practices were compliant with GAAP. McCollum, Sult, Charlie Geer (the director of external reporting for the F&A group), and Bryce Tawney (another member of the F&A group) agreed with this conclusion. KPMG independently reviewed the facts and concurred with the conclusion. KPMG referred the issue to its National Office, which found that Respondent was correctly recognizing revenue.

On 5 Nov 05, Complainant contacted the SEC to report that Respondent, with KPMG's knowledge, was engaging in "questionable" accounting practices with respect to revenue recognition.

Complainant approached Charles Muchmore, Respondent's Vice President of Financial Controls, and similarly objected to the company's accounting practices in these areas. Muchmore approached the CFO, Chris Gaut, about Complainant's concerns. Gaut assured Muchmore he was fully apprised of the issues and all relevant considerations had been weighed. He encouraged Muchmore to meet with McCollum. Muchmore met with McCollum, who addressed Complainant's concerns in more detail. Based on this discussion, Muchmore felt the company was not disregarding accounting standards and communicated that judgment to Complainant in a follow-up meeting.[6]

On 19 Jan 06, Youngblood issued a second memorandum, this time addressing multiple element arrangements. He concluded that the requirements of EITF 00-21 were satisfied. All those involved except for Complainant agreed with the conclusion.

On 4 Feb 06, Complainant sent an e-mail communication to the Respondent's Board of Directors stating that the company was in violation of GAAP with respect to revenue recognition and joint venture accounting practices. The e-mail also implicated KPMG. Complainant provided his contact information in the e-mail. Richard Mize, Respondent's Assistant General Counsel, received Complainant's email to the Audit Committee. Mize forwarded the e-mail to the Board Secretary, who forwarded it to the Audit Committee Chairman, Robert Crandell. Mize also forwarded copies to CFO Gaut and Bert Cornelison, Respondent's General Counsel and chief legal officer.

[6] Muchmore does not recall the date of these conversations and the dates are not documented in the record.

The SEC notified Cornelison on 8 Feb 06 that it was opening an inquiry into Complainant's allegations. The SEC directed Respondent to suspend its normal document retention policy and retain all documents and information related to variable interest entities, revenue-generating bill and hold transactions, and multiple element arrangements. Cornelison composed an email instructing relevant individuals to retain all documents related to these topics. McCollum consulted with counsel and on 8 Feb 06 forwarded the document hold notice to fifteen members of Respondent's F&A organization, including Complainant. The document hold notice contained Complainant's name. McCollum met with each of the individuals on the distribution list for the document hold notice to instruct them that there was to be no change in their treatment of Complainant. Immediately following the distribution of the document hold notice, Complainant left the office. He stayed out for the remainder of the week and did not attend work regularly after that point.

Complainant requested a leave of absence approximately one month after the document hold notice was issued in order to prepare with his attorneys for the SEC and Board investigations. On 9 Mar 06, after Complainant had been away from the office for almost a full month, Complainant's counsel formally requested that he be granted a paid leave of absence during the SEC investigation. On 30 Mar 06, Respondent formally notified Complainant that his request had been approved. He was granted up to six months of paid leave with benefits on the condition that he cooperates with the SEC and company investigations into his allegations. Complainant's effective date of leave of absence was adjusted to 2 Apr 06 so that he could receive his salary increase for the year. Had his leave been effective before 2 Apr 06, he would not have received his increase.

After being notified that Complainant had lodged complaints with the SEC, the PCAOB and the Respondent's Board of Directors, KPMG's engagement partner notified McCollum that KPMG's auditors had been instructed by legal counsel not to interact with Complainant on accounting issues until those complaints were resolved.[7]

Complainant had been asked to teach two revenue recognition courses at an accounting summit scheduled for June of 2006. Laura Lewis, along with Nick Stugart and a steering committee, was in charge of organizing presenters. In Mid-March of 2006, Lewis became concerned because Complainant was not in the office and was unresponsive to her inquiries regarding his course. On 13 Mar 06, Lewis brought her concerns to Stugart, who then spoke with McCollum. Stugart recommended Youngblood and Geer teach the course, and McCollum approved the change.

In late 2005, Peter Bernard, the president of Respondent's Landmark and Digital Consulting Solutions division, along with Mark Traylor, Director of Finance for that division, had asked Complainant to provide technical accounting research and consulting

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[7] The exact date of this interaction is unclear.

on a project called Red Technologies Alliance (RTA). On 25 Jan 06, McCollum called a meeting to settle on the proper accounting solution. At the meeting, every member of the RTA accounting team, including Complainant, agreed that the joint venture was not a variable interest entity and did not need to be consolidated. Complainant produced a memorandum immediately following the meeting which summarized the accounting treatment of RTA. On 23 Mar 06, Complainant sent feed back to the RTA team regarding the accounting treatment for the deal. In July of 2007, the RTA transaction formally closed.

In October of 2006, Complainant's leave of absence was about to expire and both the SEC and the Audit Committee investigation had concluded. The SEC formally notified Respondent on 19 Sep 06 that no enforcement action was being recommended, nor were any changes in the company's accounting practices required based on the Audit Committee's investigation. Complainant was informed on 19 Sep 06 that he needed to return to work. He was to return to the same position that he left; the only change was that his position would report to Charlie Geer. In December of 2005, McCollum was trying to reduce the number of his direct reports. He often had anywhere from ten to thirteen direct reports, and he wanted to decrease that number so he could more effectively develop and relate to each employee. For this reason, Charlie Geer was promoted. On 16 Oct 06, Complainant voluntarily resigned his employment. He had applied for and taken employment as a consultant to a law firm during his leave.

POSITIONS OF THE PARTIES

Complainant argues that he engaged in protected activity because he had a reasonable belief that Respondent was engaging in violations of SEC rules and defrauding shareholders pursuant to 18 U.S.C. § 1514A, and reported this activity to the company's audit committee and the SEC. Further, Complainant claims that he engaged in protected activity by participating in an investigation regarding an alleged violation of SEC rules. Complainant argues that because of his protected activity, Respondent retaliated against him in the form of adverse employment actions. These actions include a breach of confidentiality, isolation, removal of duties, an investigation of his activities, and a demotion.

Respondent counters by arguing first that Complainant did not engage in protected activity because his belief that there was a violation of SEC rules was not reasonable. Further, Respondent also contends that the actions that Complainant alleges were adverse employment actions were not (1) adverse actions under the law because they would not deter a reasonable employee from engaging in protected activity; and (2) not causally related to his protected activity.

LAW

Section 806 of the Act codified at 18 U.S.C. § 1514A, creates a private cause of action for employees of publicly traded companies who are retaliated against for engaging in certain protected activity. Section 1514A(a) states, in relevant part:

> No [publicly-traded company] . . . may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of … any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) . . . .[8]

Additionally, such action may not be taken against an employee because of a lawful act done by the employee –

> (2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.[9]

The legal burdens of proof set forth in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21")[10], govern SOX whistleblower actions.[11] To prevail, an employee must prove by a preponderance of the evidence[12] that (1) he engaged in protected activity; (2) the employer knew that he engaged in the protected

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[8] 18 U.S.C. § 1514A(a)(1).
[9] 18 U.S.C. § 1514A(a)(2).
[10] 49 U.S.C. § 42121(b).
[11] 18 U.S.C. § 1514A(b)(2)(C).
[12] The employee is entitled to the relief provided by § 1514A(c) "only if the [employee] demonstrates that [her protected activity] was a contributing factor in the unfavorable personnel action alleged in the complaint." 49 U.S.C. § 42121(b)(2)(B)(iii). The term "demonstrates" means to prove by a preponderance of the evidence. *See Dysert v. Sec'y of Labor*, 105 F.3d 607, 610 (11th Cir. 1997) (addressing analogous statutory burden-shifting framework under the Energy Reorganization Act of 1974 ("ERA")).

activity; (3) he suffered an unfavorable personnel action; and (4) the protected activity was a contributing factor in the unfavorable action.[13]

In order for Complainant to demonstrate that he engaged in protected activity, he must show that he had a reasonable belief that a violation occurred. Reasonableness is determined on the basis of knowledge available to a reasonable person in the circumstances with the employee's training and experience.[14]

In AIR 21 cases, the ARB has adopted the definition of "adverse employment action" set forth in the recent Supreme Court case of *Burlington Northern & Santa Fe Railway Co. v. White.*[15] *Burlington* held that "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from [engaging in the protected activity]."[16] Based on the similarity of the whistleblower protections afforded under SOX and AIR 21, the *Burlington* definition of "unfavorable personnel action" applies to SOX whistleblower claims.[17]

ANALYSIS

PROTECTED ACTIVITY

The Act provides two ways by which Complainant may establish that he engaged in protected activity. First, Complainant may show that he provided information regarding any conduct which he reasonably believed constitutes a violation of SEC rules. Second, Complainant may show that he filed, participated, or assisted in a proceeding relating to an alleged violation.

There is no dispute that Complainant provided information to various groups, including the SEC, his supervisors, and the audit group that Respondent was not in compliance with accounting standards relating to revenue recognition. Similarly, there is no question that he participated in the SEC investigation relating to his complaint.

The parties dispute the factual question of whether Complainant reasonably believed the information he provided related to a violation of SEC rules. They also

[13] 49 U.S.C. § 42121(b)(2)(B)(iii); *Stojicevic v. Arizona-American Water*,ARBCase No. 05-081, 2007 WL 3286331, at *7 (ARB Oct. 30, 2007); *Welch v. Cardinal Bankshares Corp.*, ARB Case No. 05-064, 2007 WL 1578493, at *5 (ARB May 31, 2007); *see Reyna v. ConAgra Foods, Inc.*, 506 F. Supp. 2d 1363, 1380 (M.D. Ga. 2007); *see also* 29 C.F.R. § 1980.104(b)(1)(i)-(iv).

[14] *Grant v. Dominion East Ohio Gas*, 2004-SOX 63 (ALJ Mar 10, 2005).

[15] 126 S. Ct. 2405 (2006). *See Hirst v. Southeast Airlines, Inc.*,ARB Case No. 04-116, 2007 WL 352447, at *4-*5 (ARB Jan. 31, 2007) (AIR 21 case) (using the term "adverse employment action" and "unfavorable personnel action" interchangeably).

[16] 126 S. Ct. at 2415 (internal quotation marks and citations omitted).

[17] *Allen v. Administrative Review Board, USDOL*, No. 06-60849 (5th Cir. Jan. 22, 2008).

dispute the legal question of whether his participation in the investigation must be accompanied by the same reasonable belief.

As to the factual issue, Complainant must prove by a preponderance of the evidence that he reasonably believed the information he provided related to a violation of SEC rules.[18] The reasonableness of a whistleblower's belief regarding statutory violations by an employer is to be determined on the basis of "the knowledge available to a reasonable [person] in the circumstances with the employee's training and experience."[19]

Complainant argues that Respondent was not adhering to the revenue recognition guidelines in SAB 104, FIN 46, or EITF 00-21 regarding joint ventures. James Paquette, another accountant in the F&A group that worked with Complainant, agreed with some of Complainant's conclusions. Sult also agreed with some of the things that Complainant was alleging and McCollum stated that Complainant's memo regarding the issues was good.

On the other hand, there were clearly multiple disagreements between Complainant and others who reviewed the same data. In some cases, Complainant was alone in his conclusions. Each issue that Complainant raised was thoroughly examined and vetted at all levels of the F&A organization and by Respondent's independent auditors. When Complainant raised these issues within the organization, they were thoroughly researched by many of the members of the F&A group. The conclusions were analyzed by Respondent's CFO and by Respondent's outside auditors, KPMG. All found that Respondent's method of recognizing revenue was not in violation of SEC rules. The audit committee also investigated the issue and determined that Respondent did not need to change its accounting procedures. Perhaps most significantly, the SEC investigated the issue with Complainant's fulltime assistance and eventually decided that no enforcement action was necessary.

Complainant continued to insist that Respondent was not properly recognizing revenue even in light of others' conclusions to the contrary. Respondent argues that the issues raised by Complainant are those in which reasonable minds can differ. Complainant, according to Respondent, saw these issues in black and white and would not consider that this was an area of the SEC rules with a variety of reasonable interpretations.

Nonetheless, the weight of the testimony was that the accounting issues in question are not simple and require judgment and thoughtful analysis. The witnesses

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18 *Welch v. Cardinal Bankshares Corp.* , ARB No. 05-064, ALJ No. 2003-SOX-15 (ARB May 31, 2007).

19 *Melendez v. Exxon Chemicals Americas*, ARB No. 96-051, ALJ No. 1993-ERA-6 (ARB July 14, 2000), quoting *Minard v. Nerco Delamar Co.,* Case No. 92-SWD-1, Sec'y Dec., Jan. 25, 1994.

generally agreed that at least at the outset, reasonable minds can differ and it is best to reach a collaborative conclusion.

Accordingly, I do find that, at the outset, it was possible for Complainant to have reasonably believed he had discovered accounting practices that were contrary to relevant standards and therefore in violation of SEC rules. However, as the various reviews and studies continued, that belief became less reasonable. Certainly, by the time the SEC completed its investigation and returned its findings, Complainant could no longer claim he was reasonable in his allegations.

Nonetheless, I do find that Complainant's initial communications and participation in the investigation were related to his reasonable, albeit ultimately incorrect, belief. He has therefore established the element of protected activity.[20]

Adverse Action

The Fifth Circuit has clarified the definition of adverse action in the context of cases brought under the Act. "…[I]n AIR 21 cases, the ARB has adopted the definition of 'adverse employment action' set forth in … *Burlington* … Based on the similarity of the whistleblower protections afforded under SOX and AIR 21, we find that the *Burlington* definition of 'unfavorable personnel action' applies to SOX whistleblower claims."[21] The definition requires that "the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination."[22] Therefore, in the instant case, Complainant must prove that he suffered an adverse action that could well dissuade a reasonable worker from engaging in protected activity. The ultimate burden of persuasion that the respondent intentionally discriminated because of complainant's protected activity remains at all times with the complainant, but temporal proximity may establish the causal connection, if not retaliatory intent.[23] If the complainant succeeds in establishing that protected activity was a contributing factor in the adverse action, the respondent may avoid liability by demonstrating by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected activity.[24]

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[20] This finding renders moot the legal question of whether participation in an investigation must be accompanied by reasonable belief.
[21] *Allen v. Administrative Review Board*, 2008 WL 171588, 21 (5th Cir. Jan. 22, 2008).
[22] *Burlington Northern & Santa Fe Railway Co. v. White*, 126 S.Ct. 2405, (2006).
[23] *Taylor v. Wells Fargo Bank,* 2004-SOX-43 (ARB June 28, 2007).
[24] *Id*.

Complainant alleges five adverse actions: (1) breach of confidentiality; (2) isolation; (3) an investigation; (4) removal of duties; and (5) a demotion.

Breach of Confidentiality

The first adverse action Complainant alleges is a breach of confidentiality. Complainant claims that when McCollum exposed Complainant's name as the individual who filed a complaint regarding Respondent's accounting practices to the SEC, Respondent was inviting upon Complainant isolation and adverse treatment and subjecting him to frustration and isolation from other members of the finance and accounting group.

The relevant facts are clear. McCollum received an e-mail from Cornelison stating that Complainant had filed a complaint with the SEC and that documents relating to variable interest entities, revenue-generating bill and hold transactions, and multiple element revenue arrangements must be retained for the SEC investigation. This e-mail, which included Complainant's name, was forwarded by McCollum to numerous members of the finance and accounting group. McCollum testified that the reason he did so was to alert these individuals that there were new document retention requirements in light of the SEC investigation. In the portion of the e-mail authored by McCollum, he did not identify Complainant; Complainant was identified by Cornelison in a previous e-mail.

There was substantial testimony that even if McCollum had not exposed Complainant's identity, members of the finance and accounting group would still have known it related to Complainant as the individual who filed a complaint with the SEC, based upon the types of documents that were identified in the document retention notice. Complainant himself stated that it was well known in the finance and accounting group that he had objections to Respondent's business practice in the areas about which he complained to the SEC. Additionally, Paquette stated it was well known to the finance and accounting group that Complainant objected to the company's practices regarding revenue recognition and FIN 46. Youngblood testified that had Complainant's name been deleted from McCollum's e-mail, he still would have known that it was Complainant who filed the complaint with the SEC because of the issues with which he expressed concern and disagreement. Susan Wilrodt similarly testified that she would have known that it was Complainant who filed the complaint with the SEC based upon the issues that the SEC was investigating.

McCollum testified that it was not his intention in forwarding the e-mail to breach confidentiality or cause Complainant to be subjected to isolation and frustrations from others. McCollum noted that his failure to delete Complainant's name from the e-mail was not a mistake. He thought that Complainant would see this in a positive light because his issues and concerns were being addressed by the company and the SEC. Moreover, McCollum approached either each individual he sent the e-mail to or their direct supervisor to inform them that Complainant was not to be treated any differently and that business should resume as it normally would. He wanted to assure that other members of the finance and accounting group would not engage in any activity that might even appear to be retaliatory. It was only after McCollum discovered that Complainant had left the office after the e-mail was sent that he realized that Complainant did not see the exposure in a positive light.

Consequently, the weight of the evidence shows that Respondent did no more than identify Complainant as having made allegations against the company to a group of people who would have known it was him anyway. The action had no practical impact. To the extent Complainant might argue that the action was nonetheless intimidating, the record shows Respondent included his name to clarify the scope of the document retention requirements and show him the company intended comply with a full investigation into his allegations. It also shows Respondent took steps to ensure Complainant was not subjected to isolation and frustration from other members of the finance and accounting group. Thus, the record shows by clear and convincing evidence that there was no retaliatory motive.

Complainant has failed to prove that the disclosure of his name in the case was such that it would dissuade a reasonable employee in these circumstances from engaging in protected activity.

Isolation

As a corollary to the breach of confidentiality, Complainant next alleges that he was subjected to increased isolation by other members of the finance and accounting department. He complains that after his name was disclosed as the individual who filed a complaint with the SEC, no one came by his office, no one consulted with him, and he received fewer e-mails. He also alleges that members of KPMG, Respondent's independent auditors, would not speak with him. However, allegations of a hostile work environment based on "stonewalling" and "friction," are insufficient to raise adverse action if the evidence does not show that such circumstances were pervasive, humiliating or interfered with a complainants' work performance.[25] "These ordinary tribulations of the workplace do not rise to the level of adverse actions because they do not result in tangible job consequences or deter employees from engaging in protected activity."[26]

In the instant case, Complainant had essentially accused his coworkers and outside auditing partners of accounting fraud and was working with the SEC to investigate them. It is not unreasonable that they would be reticent to communicate with him about the

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[25] *Allen v. Stewart Enterprises, Inc.* (ARB No. 06-081, ALJ Nos. 2004-SOX-60 to 62 (ARB July 27, 2006)).
[26] Id, Slip op. at 16.

topics being investigated. That reluctance was not retaliation for whistle blowing, but recognition of Complainant's role as an SEC agent.

More importantly, the record shows that Complainant left the office immediately after the document hold notice containing his name was sent out. After that point, he came to work only sporadically until his leave of absence. Since Complainant was only infrequently in the office and other employees and members of the finance and accounting group did not know his availability, it follows they would not rely on him for their inquiries. This is a likely explanation as to why he received fewer e-mails and consultations unrelated to his allegations.

Complainant failed to demonstrate that the isolation he experienced was not just as likely a function of his voluntary absence as the affirmative actions of Respondent. Receiving fewer e-mails and having fewer people consult with him did not prevent Complainant from performing his job functions. Nor did Complainant prove the alleged isolation was "pervasive or humiliating." Any isolation sensed by Complainant was likely an immediate and temporary reaction directly related to a reluctance to discuss the allegations then under investigation. That would not necessarily have any long term impact or cause any material change in Complainant's working conditions. What Complainant experienced does not rise to the level of an "adverse action." That accused coworkers and audit partners would not be willing to discuss the allegations with a complainant while he worked with the SEC on an investigation would not deter a reasonable employee from engaging in protected activity. Any longer term change in the level of his interaction was more likely a function of his voluntary absence.

Removal of Duties

Complainant alleges that he had two duties with Respondent, from both of which he was removed following his complaint to the SEC. First, Complainant alleges that he spearheaded the RTA committee and that he was stripped of that duty following his complaint. Second, Complainant alleges that he was to teach a revenue recognition course for the Finance and Accounting Summit and was replaced following the filing of his complaint to the SEC. Such a removal may constitute an adverse action if it is "a diminution in Complainant's authority and responsibility, [and] is the type of action which is reasonably likely to deter employees from engaging in protected activity."[27]

RTA Joint Venture

Claimant submits that his only duties at the time he complained to the Audit Committee and the SEC were teaching revenue-recognition courses and working as head of the RTA team. He alleges that McCollum removed him from both of these duties.

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[27] *Reines v. Venture Bank and Venture Financial Group* 2005-SOX-112 (ALJ Mar. 13, 2007) at 55.

However, the weight of the evidence does not support his allegation. The record shows Complainant worked on a project called the Red Technology Alliance along with other employees at Respondent. Respondent, through RTA, was trying to divest certain oil and gas properties. Complainant was assigned to work on the project.

McCollum testified that Complainant was involved in the project for a little over a month and that he neither removed Complainant from the project nor ever heard that Complainant was removed from the project. McCollum said he received feedback from Charlie Geer that during the time they were working on the issue, Complainant was not carrying his weight as a member of the team. Geer told him that Complainant had made up his mind on the issues and did not see the value in going through all of the details and looking at the contracts.

Complainant testified that he was on the RTA team, and immediately following his communication to the audit committee, he was stripped of this responsibility. Complainant also stated it was made clear that he was to leave the RTA team. He cited the document in CX 80 as having led him to believe that he was to leave the RTA team as far as accounting was concerned.

However, CX 80 is a meeting notice to numerous individuals and specifically states, among other things, that Complainant is to lead the group with options on financial structures which keep them from consolidating. Nothing in the e-mail appears to be asking Complainant to leave the RTA team. Quite the contrary, it asks Complainant to lead the group regarding accounting. Complainant provides no documentation or evidence, nor does Complainant point to any evidence in the record that he was removed from his position on the RTA team. The evidence shows he continued to receive e-mails requesting his feedback on the RTA matter even a month after he went on his voluntary leave of absence. Complainant failed to carry his initial burden of proof establishing that he was removed from the RTA team and there is consequentially no adverse action.

Teaching Position

Complainant further alleges that he was subject to adverse action when he was removed from his position as an instructor for a revenue recognition course held at Respondent’s Finance and Accounting Summit. The record shows that the purpose of the Finance and Accounting Summit was to organize a conference for all of Respondent’s accountants globally and provide technical training focusing on motivation and rewarding leadership. Laura Lewis, manager of benefits accounting and risk management, developed an agenda that included a variety of different topics. Complainant was initially scheduled to teach a revenue recognition course at the summit, and then another course on multiple deliverables.

Lewis needed to have the courses prepared and presented to be compiled and reviewed. She became concerned in March of 2006 whether Complainant would be available to teach the revenue recognition course, due to his unresponsiveness and unavailability. She testified that Complainant was not around the office and did not respond to her e-mails. She invited him to a mandatory kickoff meeting for all presenters, but he did not accept the invitation or come to the meeting. She did not know why Complainant was not at work. She became anxious because she needed to have an agenda with solid presenters and needed the presenters to be on board.

She expressed her concerns to Nick Stugart, her executive sponsor. Stugart asked McCollum who he preferred to teach the revenue recognition, recommending Youngblood with the assistance of Craig Jones and Charlie Geer. McCollum responded that Stugart's recommendations were fine.[28] Lewis eventually received an e-mail stating that Kelly Youngblood, with the assistance of Charlie Geer, would be teaching revenue recognition in place of Complainant. Lewis then sent an e-mail to Complainant requesting his availability to teach a class on derivatives. When he did not respond, she cut the course.

Lewis testified that she knew at some point Complainant had filed a complaint regarding accounting policy to the SEC, but she did not recall if she knew this before or after she replaced him. Her concerns regarding his ability or availability to teach revenue recognition did not have anything to do with any concern that he would teach something that was different from company policy or practice. Her concern was that she needed to deliver a successful training course, which required an available and reliable instructor.

Complainant was replaced by Kelly Youngblood as the instructor for the course on revenue recognition training. Complainant alleges that he was replaced because of his complaint to the SEC and the audit committee, and that this was an adverse action. However, the record shows that there was no causal connection between Complainant's complaint and his being replaced.

Given the context, removing Complainant from the teaching roster was not an adverse action. Teaching the course was a "peripheral" duty and not one of Complainant's central job responsibilities. The course was a single event to be held at the Summit and was not central to his role with Respondent. Moreover, a reasonable employee would not be dissuaded from engaging in protected activity because he was removed from a duty that he was unavailable to fulfill.

Even if the removal from the speaker roster was an adverse action, the evidence is clear and convincing that it was not motivated by Complainant's protected activity but by his unavailability. The Finance and Accounting Summit was scheduled for June of 2006,

[28] RX 8.

during which time Complainant was on his leave of absence allowing him to cooperate with the SEC. During March of 2006, when Lewis was attempting to finalize the presenters for the summit, Complainant was out of the office frequently and non-responsive to Lewis' e-mails. Her decision to seek to replace him was due to his lack of availability and reliability. Lewis testified that the revenue recognition course was one of the most important at the Summit, and that she needed a reliable instructor to present it. Complainant's failure to respond to Lewis' e-mails and attend the kick-off meeting caused her concern, and she started the communication that resulted in his replacement. Had Complainant never engaged in protected activity, but been nevertheless unresponsive, he still would have been removed from the staff.

Investigation

The next alleged adverse action that Complainant complains of was an "investigation" ordered by McCollum. Complainant alleges that McCollum asked James Paquette to keep him informed of what Complainant's group was working on.

Paquette testified that following the release of an e-mail that identified Complainant as the individual who filed a complaint with the SEC, McCollum requested to speak with him. McCollum wanted to know what issues the group that Complainant and Paquette belonged to were working on and to assure McCollum had an understanding of those issues. McCollum asked what Complainant was involved in, and if there were any other issues that Complainant was working on. McCollum requested that Paquette report back to him what Complainant was working on. Paquette was not consulted after that.

Complainant testified that he thought this was highly unusual, and that the company was trying to keep tabs on him. McCollum never asked Complainant what he was working on. Complainant testified that he tried to meet with McCollum several times but McCollum was unable to set up a time for a meeting.

A request from an upper level manager to a work group member for information about that work group's activities, without more, does not rise to the level of an adverse action against the leader of the work group. McCollum's request was not sufficiently materially adverse that it could well dissuade a reasonable employee from engaging in protected activity.

Demotion

Complainant further alleges that in response to his complaint to the SEC, Respondent demoted him, which was an adverse action under the Act. Complainant notes that Respondent would have had him report to Charlie Geer instead of Mark McCollum. Complainant reasons that since he and Geer were on the same level in the employment hierarchy prior to Complainant's leave of absence, having him report to Geer would be a demotion.

Significantly diminished material responsibilities can constitute a materially adverse change in working conditions.[29] However, in the instant case, the change in Complainant's reporting relationship would not have diminished his material responsibilities or resulted in a tangible job consequence[30] and therefore does not constitute an adverse action under the Act.

A letter dated 19 Sep 06 states that Complainant's leave of absence expires on 1 Oct 06 and Respondent expects him to return to work on a fulltime basis on Monday, 2 Oct 06.[31] His job title, duties, office location, and salary will remain the same; his position will now report directly to Charlie Geer, Director of External Reporting in the Finance and Accounting department.

The record shows that Respondent has generic job titles that correspond to hierarchical levels in the organization. Before he was promoted, Geer was senior manager, or a "K-band". Complainant was in the "K-band" as well. Prior to her promotion, when Complainant was supposed to report to her, Angelle was in the "L-band", which is the true director level and one above the "K-band". McCollum testified that Geer was promoted to "L-band" in December of 2005 because he was performing well. Complainant had a director title but was not at the director band level and was never promoted to a higher band level.[32]

Complainant testified that he viewed the change in his reporting relationship to be a demotion. Before Complainant's leave of absence, he and Charlie Geer were both at the "director" level and Complainant reported directly to McCollum. Complainant believed that reporting directly to the chief accounting officer was as high as one can go in finance and accounting. Therefore, when Respondent informed him that he would now be reporting to Charlie Geer, who had been at the same level, Complainant felt he had been demoted and would now just be a part of the external reporting group. He was concerned because his role reporting to the chief accounting officer gave him access to higher levels within the organization. The chief accounting officer's direct reports were senior members of the finance and accounting organization and executive leaders of the finance department and would address the highest levels of company accounting and business. Complainant felt that he would have limited access to important information and opportunities by reporting to the director of external reporting, Charlie Geer.

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[29] *Glanzman v. Metro. Mgmt. Corp*., 290 F.Supp.2d 571, 582 (E.D. Pa. 2003).
[30] *Allen v. Stewart Enterprises, Inc.*.2004-SOX-60 to 62 (ARB July 27, 2006), No. 06-60849 (5th Cir. Jan. 22, 2008).
[31] RX 16.
[32] There is no allegation (and the record does not support a finding) that Greer's promotion or Complainant's failure to be promoted was an adverse action.

McCollum testified that although Complainant would now report directly to Geer in the finance and accounting group, he sought the advice of internal counsel and HR when he made the decision to realign Complainant's reporting relationship. He did not want it to be perceived as being retaliatory. One of the primary reasons that McCollum realigned the reporting relationship was because he was trying to cut down his direct reports. In 2005, he had anywhere from ten to thirteen direct reports and he wanted to reduce that number so that he could more effectively develop and relate to each employee and address issues they had. He also wanted to make sure everyone had proper supervision. McCollum also took into consideration that Respondent was beginning a separation from KBR, which would take up a significant portion of his time. For those reasons, Charlie Geer was promoted and the reporting relationship realigned. McCollum stated that in his judgment, reporting to Geer would not have impeded Complainant's ability to fulfill his responsibilities as the leader of the technical research and training group. Complainant would have had the same access to the organization that he would have had without the change. Complainant would have the same responsibilities and because of the collaborative way in which McCollum prefers the finance and accounting group to work and Respondent's open-door policy, Complainant would have had access to him if necessary. There was not going to be any change to Complainant's duties and responsibilities other than the realignment of his reporting relationship. The fact that Complainant had filed a complaint with the SEC did not impact McCollum's decision to realign Complainant's reporting relationship.

The record shows that the realignment of Complainant's reporting relationship was not an adverse action. Upon his return to work, Complainant was to have the same title, salary, and responsibilities. The only difference was his reporting relationship. In context, this change did not materially impact Complainant's ability to do his work, nor was it materially adverse to the point it would dissuade a reasonable employee from engaging in protected activity.

More importantly, Complainant was not demoted; rather, Charlie Geer was promoted to a position that had been filled by Angelle, who had not been replaced since her promotion. Complainant was informed when he was hired that he was reporting to McCollum only because Angelle had not been replaced. Moreover, the evidence is clear and convincing that Complainant's protected activity did not motivate Charlie Geer's promotion or the change in Complainant's reporting relationship. Even in the absence of the protected activity, Greer would have been promoted and Complainant reassigned.

In sum, Complainant has not demonstrated that he was subject to adverse action by means of a demotion.

Constructive Discharge

A final consideration is whether Complainant suffered the adverse action of a constructive discharge. To prevail on such a claim, he "must prove that working conditions were so difficult or unpleasant that a reasonable person in the employee's shoes would have found continued employment intolerable and would have been compelled to resign.[33]

Had Complainant returned to work when directed by Respondent, his conditions of employment would have been essentially the same as those in effect prior to his protected activity. The only difference was that he would have reported to Charlie Geer instead of Mark McCollum. He retained the same title, position, salary, and responsibilities, and still had access to McCollum. This does not appear to be so difficult or unpleasant that a reasonable employee would find continued employment intolerable.

Even if the cumulative effect of all of the alleged adverse actions are taken into account, the record falls short of establishing constructive discharge at the time Complainant refused to return to work. Complainant was unable to clearly articulate in his testimony whether his refusal to return to work was a function of the adverse actions he believed he had suffered at the hands of Respondent or his fundamental disagreement with Respondent's accounting policies. He testified that if he were offered his original reporting level when he returned to Respondent, but Respondent would not change its accounting policy, he would not know whether he would return to the company. Conversely, he stated that if Respondent changed its policy but he would still report to Geer, he would still not know if he would return to Respondent.

However, in his deposition, he stated that he resigned because he had every reason to believe that the company was continuing to commit serious violations of securities laws and materially misleading the investing public. He also stated that he felt it was unreasonable for the company to expect him to return to his position without having any awareness or comfort with respect to what the company's accounting practices were going to be. He said he could not professionally or ethically go back to a situation where he had legitimate concerns that the company was continuing to engage in securities violations. Complainant also stated that he had reservations about retaliation and that auditors would not meet with him, but he also indicated that he could not predict with any level of certainty whether he would in fact be retaliated against if he went back to work.

Based upon his demeanor and the tenor of his testimony as a whole, I find that Complainant's motivation for refusing to return to work for Respondent was that he subjectively believed its accounting practices were deeply flawed and misleading. He was

[33] *Gattegno v. Prospect Energy Corp.*, ARB No. 06-118, ALJ No. 2006-SOX-8 (ARB May 29, 2008).

frustrated that it refused to correct those practices in accordance with his views. He did not want to return to an organization that engaged in that type of accounting. Moreover, he had another job that paid at least as well and allowed him to advocate his views on accounting issues. In short, he ultimately refused to return not because of any personnel related alleged adverse actions by Respondent, but because of a fundamental disagreement over accounting policy. There was no constructive discharge.

SUMMARY & ORDER

Complainant was able to establish protected activity, but unable to establish retaliatory adverse action. Therefore, his claim is **Dismissed**.

So ORDERED.

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PATRICK M. ROSENOW
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of the administrative law judge's decision. *See* 29 C.F.R. § 1980.110(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(c). Your Petition must specifically identify the findings, conclusions or orders to which you object. Generally, you waive any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. The Petition must also be served on the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1980.109(c). Even if you do file a Petition, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days after the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b).

EVIDENTIARY APPENDIX

Complainant testified at hearing in pertinent part that:[34]

He graduated from the University of Houston in 1995 with a BBA in accounting and started his career at Ernst & Young. He assumed a position with the audit practice and was a staff auditor, progressing to senior auditor. After about four years he accepted a position with a local accounting firm called Mann Frankfort Stein as manager of audit practice. After two years at Mann Frankfort, he accepted a job with Marathon Oil Corporation as an internal auditor. After that, he returned to Ernst & Young as a manager in the audit practice and after six months was promoted to senior manager.

He was hired by Halliburton through a recruiter. He was very interested because the position involved teaching and research. He understood it to be similar to working in a national office of an audit practice, where he would basically do all of the technical research and then train the actual accountants to make sure they understand GAAP and accounting rules. He was ultimately hired by Halliburton as Director of Technical Accounting Research and Training. CX 1, tab 2 is the position profile. It had been his understanding that he would be reporting to Evelyn Angelle, but Angelle was promoted to vice president of investor relations and he reported to the chief accounting officer.

When he interviewed with Mr. McCollum, he got the impression that he was looking for a "smoky the bear;" someone who could prevent issues from arising. Mr. McCollum informed him that the company was very conservative in its accounting and that he needed someone to come in who could keep his name out of the Wall Street Journal. He saw Mr. McCollum as the fifth highest officer in the company. If one was to report to anyone in finance and accounting, Mr. McCollum was the highest. He never received notice that this would be a temporary reporting relationship.

He started at Halliburton around March of 2005. He supervised Susan Wilrodt and James Paquette, who were to assist him with research and training. One of his early projects was called GMI. GMI was a joint venture set up between Halliburton and some outsiders to develop technology and perform research and development. It was structured such that the company only owned 19% of the stock, but funded the entity through preferred stock. The other investors had roughly $50,000.00 at stake, but Halliburton was claiming that they did not have control. Halliburton reported that 7.5 million dollars on the balance sheet as an investment.

[34] Tr. 194.

There has been recent accounting guidance pertaining to joint ventures. FIN-46 is called "consolidation of variable-interest entities" and completely re-worked the accounting rules surrounding consolidation. The original consolidation rules were based on rules that came out in the early fifties, which were based upon the concept of common stock ownership. The differences between the three accounting treatments are first, if you consolidate the entity, you actually put the assets and liabilities on the books. You simply take the financial statements of the entity and add them to yours as if they are part of the company. If they are not consolidated, the company has to account for it either as a cost method investment or an equity method investment. Cost method investment is a situation where you own less than 20% of the common stock. Whatever is invested in the entity is put on the books as an asset. Equity method is between 20 and 50%; that asset is put on the books, while recognizing the share of the entity's profits and losses over a period of time. There are huge advantages for a company to deconsolidate. When FIN-46 came out, it changed the entire consolidation model from looking only at the common stock ownership to looking at the entire entity and the arrangement.

Regarding GMI, Halliburton had a 19% interest and others invested $50,000 and had an 81% interest. That allowed Halliburton to not consolidate this entity, but the entity needed money to fund R & D and Halliburton funded seven and a half million dollars through preferred stock interest. When he went to look at the financial statements, it was clear that as the cash went in, it went directly out. The owners of the entity that had the control of the common stock were taking the funds and then paying themselves. By the time he looked at the financial statement, there was nothing left in the entity. The control was in the individuals who owned 81%. Halliburton was funding the entity. By capitalizing the seven and a half million dollars they were able to avoid recognizing seven and a half million dollars of expense on the books. GMI was not worth anything in terms of the money expected to get back as an investor; it was completely exhausted. Halliburton had no recourse to anything that would have been developed.

His recommendation on GMI was that the entity was valueless and needed to be written off. He brought those concerns to Mark McCollum. McCollum was concerned that this looked suspicious and asked him to determine if these were Halliburton employees and what their relationship to the company was. He then spoke to J.R. Sult about the issue. J.R. Sult was the former vice president and controller for the Energy Services Group division of Halliburton. He was with Henry Jazdzewski, who was a manager-level employee with some responsibility over joint ventures. Sult informed him that GMI needed to be written off. Sult approached him, Jazdzewski, and Geer and asked if there was any way to defer writing off some of this investment. He informed Sult that they could probably write off only four and a half million dollars at the current time and address it next quarter when the analysis was complete. Ultimately, the four and a half million dollars was written off, and no one ever addressed the remaining three and a half million dollars, because it was thought to be immaterial. This was not an isolated instance as far as joint ventures. It bothered him at the time that Sult became overly excited about only writing off four and a half million because the company would have had to report any significant deficiencies over $5 million to the audit committee. He got the impression that they probably wanted to avoid disclosing that accounting error to the audit committee.

He looked at other joint ventures after GMI. The individuals he worked with during the initial meeting believed that the GMI situation was similar to another joint venture called Fiberspar, and they anticipated the same problem would arise there. A few weeks later he looked at Fiberspar. It was another entity that Halliburton had funded through preferred stock. This time the amount was about $11 million. Halliburton had $11 million in it and was reporting it as an equity method investment, which meant they were picking up their share of the losses. The problem was that they structured the entity such that Halliburton only owned seven percent of the common stock but one hundred percent of the preferred stock. The entity was effectively being funded by Halliburton's preferred stock. His group researched Fiberspar and issued a memorandum suggesting that the proper accounting treatment would require this entity to be written off. Fiberspar was written off.

He was not seeing FIN-46 applied to joint ventures. After dealing with GMI and Fiberspar, John Christopher, the senior manager in the audit accounts, approached him and asked him to look at some issues concerning FIN-46. It took him about five minutes to realize there was a problem with the conclusion that was reached in relation to Bass. He discussed it internally with his staff. The entity was a joint venture that Halliburton had with one of its largest customers, Sonatrach in Algeria. Halliburton owned 60 percent of the entity, so the entity was receiving 60 percent of any profits and was on the hook for 60% of all of the losses. Control of the entity was with Halliburton. KPMG told Halliburton that it should not be consolidating this entity, and then gave them an accounting model to use based on EITF-9616. He did not understand why the entity would be deconsolidated when Halliburton owned 60% of the entity. Even though Halliburton owned 60% of the entity, the board representation was 50/50, so KPMG's argument was that because Halliburton did not control the entity, they should not consolidate it.

The entity was a joint venture that buys all of its products and services from Halliburton to provide to the national oil company. The substance of the arrangement clearly pointed to Halliburton as having a vested interest in the entity beyond 50%. The entity was designed to provide Halliburton services to the national oil company in Algeria. The board representation may have been 50/50 and there may have been some local nationals doing some of the underlying work, but it was really a Halliburton entity.

After GMI and Fiberspar, he became concerned that the organization didn't understand FIN-46. He developed FIN-46 training and went to Duncan, OK to meet with the group that was supposed to be responsible for accounting for these joint ventures. It was clear to him that the company had no one in-house that understood FIN-46, and there were no controls to determine whether the company was complying with FIN-46. He went to Mark McCollum, who asked him not to look at past joint ventures and to only move forward. McCollum spoke to Dennis Whalen and they decided they were not going to do anything with Bass. His concern was whether the company's true operations were being reflected in its income statement. There were about a hundred and fifty or so joint ventures with about $200 million at stake. He was concerned that these entities were being used to facilitate the company's business and improve gross margins. Applying FIN-46 to these joint ventures would affect the gross margins in the company and would make a difference in terms of something an investor wants to see. There were very few joint ventures that Halliburton had consolidated.

He also ran into issues regarding revenue recognition while he was at Halliburton. Revenue recognition under SAB 101 and SAB 104 requires the revenue to be earned and realizable. That depends on whether collectability is reasonably assured and whether payment will be received. The four criteria are persuasive evidence of an arrangement, delivery or performance, price fixed or determinable, and collectability reasonably assured. This is SAB 101; a more expanded version came out as SAB 104. In the late nineties, there were a lot of problems with financial reporting around revenue recognition and the FASB was not moving fast enough, so the SEC stepped in. The staff issued SAB 101, which had to be complied with by public companies because it was an interpretation of GAAP.

EITF 00-21 involves multiple element arrangements, and was designed to have one look at the complete arrangement with the customer. You recognize revenue when value has been provided to the customer. Halliburton is an oilfield services company. They are in business to provide services and they are not a manufacturer or a wholesaler. Halliburton would go out of business if it sold only products and not services. EITF 00-21 requires you to look at each of the elements and ask if they can be separated and the revenue can be appropriately recognized. In order to justify meeting the separation criteria, you have to have objective reliable evidence of what the service is worth on its own. Bill and hold arrangements are multiple element arrangements. In this situation, you are selling the equipment, warehousing it, and doing a third service. You have to address 00-21 before you can look at bill and hold, because there is no point in looking at bill and hold if you fail to meet the criteria of EITF 00-21.

He had many discussions with people at Halliburton about the notion of delivery when it comes to delivering the product to a Halliburton warehouse. His group received the e-mail request from the UK. They discussed the situation about the TCP guns. He did not think it was right that revenue was being recognized on that particular transaction. This was in April of 2005, very early on in his career at Halliburton. He did not believe the revenue recognition was being done properly, so he had Paquette perform some research, which confirmed his belief that the revenue recognition was not being properly performed.

Tab 58 in CX 51 is a bill and hold decision tree. It was the company's previous trainings on revenue recognition. The decision tree was used as a guideline for the actual accounting treatment of the product that they were shipping out to Halliburton warehouses. There are many things wrong with the decision tree. It oversimplifies revenue recognition and is missing many elements to the decision making process, one of which is delivery. The bill and hold decision tree does not include delivery as a factor before you can recognize revenue. It does not address delivery; it just assumes that it is already in the Halliburton Facility. If you do not have delivery, you must meet bill and hold criteria in order to recognize revenue. All of the bill and hold criteria are not included in the bill and hold decision tree. One of those criteria is fixed delivery date; Halliburton did not ever meet the criteria of fixed delivery date. The product remains at the warehouse until the customer needs it. The parts are in the warehouse, and when the customer is ready for it, Halliburton assembles it based upon the conditions of the well. The product is then tested and taken out to the well to do services.

Even if you had delivery, you cannot recognize revenue if there are significant post delivery obligations under SAB 104. There is an obligation to assemble and test the product and to take it to the rig. In a typical case with respect to Halliburton, assembly and testing usually takes place in the Halliburton facility, which is the purpose of having a warehouse.

Delivery occurs when there is delivery to the customer or an intermediate site. An intermediate site is a third party site, independent of the seller and the customer. If Halliburton delivers to itself, it is not an intermediate site. You could never have delivery to a customer if you deliver the product to your own site. This is not what SAB 104 says. He was never told what the rationale was for there being delivery. He was never told why he was wrong in his concern about delivery. If Halliburton is just a store of product and there is a bailment relationship, there would still not be delivery to the customer. He has never seen any literature that indicates a company can deliver to its own warehouse and recognize revenue under SAB 104. His research has indicated the contrary.

There are seven bill and hold criteria. Risk of ownership must have passed to the buyer who has made a fixed commitment to purchase the goods, fixed meaning that the seller will presumably get paid. The buyer requests bill and hold and must have a substantial business purpose for doing so. The seller must not have retained any specific performance obligations. The goods must be segregated, and the equipment must be complete and ready for shipment. During his research, he talked to people in the field. His concern elevated because people did not understand revenue recognition rules. He therefore took the initiative to develop training. He provided an in depth course that took two and a half days and used case studies. There were 400 to 500 people attending these training courses, and there was frequently open dialogue. It gave his group an opportunity to understand what was going on in the field. They were out there talking to people and recording transactions.

It is not proper to meet only a few of the seven bill and hold criteria and recognize revenue. The SEC has never waived on the fact that if you are using bill and hold, you must meet all of the criteria. He did some research on whether the risk of ownership was truly passing to the customer. Through conversations in the field, he realized that if the equipment got damaged or destroyed, Halliburton would be responsible. At the end of 2003, when the company initially tried to do some work around whether bill and hold was a problem, they realized in most cases that title had never passed. Prior to 2005, the bill and hold elements of SAB 104 were not being met. There were no controls in place to even determine whether the elements were being met and prior to him looking at this issue. The individuals in the F&A departments that were required to record the revenue never looked at a contract to evaluate the contract. At the end of the 2003 audit in January of 2004, KPMG pointed out to the company that revenue recognition is especially risky and very legal-form driven. When the company realized it might have a problem, it tried to go to its customers and get them to agree about title being passed. In order to introduce the concept of title and ownership, arrangements need to be made with customers to modify purchase orders. When it is not the customer, but the seller requesting this arrangement, there is a problem. In 2004 when the UK contract was under review, the UK was trying to comply with the bill and hold decision tree. They needed to get the legal department to review the contract to see if title was passed. Legal stated that these are service contracts and do not lend themselves to counter terms, which are delivery terms, and there is no mention of passage of title.

If a buyer requests bill and hold, he must have a substantial business purpose for doing so. In all of his research, he never saw where the buyer specifically requested bill and hold and wrote a document that stated they wanted delivery to a Halliburton warehouse. There is nothing wrong with bill and hold as a practice. The problem arises when you try to recognize the revenue. He never saw anything in his research that showed a customer wanting bill and hold.

The fifth criterion for bill and hold is that the seller must not have any specific performance obligations. He did not see this criterion being met. He researched the issue regarding ordered goods having to be segregated from the seller's inventory. Equipment must be complete and ready for shipment under bill and hold. This was not true for Halliburton. The SEC's guidance stated that this is to be interpreted strictly.

He looked at literature in 2005 regarding SAB 104. His group pulled down all the guidance from large accounting firms, all enforcement actions in which the SEC addressed bill and hold, and any speech the SEC gave regarding bill and hold. Tab 62 of CX 1 is KPMG's article on bill and hold oilfield services by John Christopher. There were questions as to whether the delivery criteria would be met if delivery was made to a common carrier. He does not believe that delivery to a common carrier is delivery. He had a discussion with John Christopher regarding his concerns. John Christopher informed him that the article he wrote was sent to the national office, which essentially re-wrote the entire article, but allowed John Christopher to keep his name on it. This article therefore is guidance from the national office. The article came from the oil and gas winter 2005 topics, where there was an annual conference for oilfield service companies, and they were addressing some of the accounting and reporting tax issues. After further research, he realized that the Christopher article was a “cut-and-paste” from an article that had already been written entitled “Hocus-Pocus Accounting” by Professor Douglas Carmichael, who had previously been the chief auditor for the PCARB. He also found speeches by Lynn Turner. Lynn Turner is the former chief accountant at the SEC. He was there during the adoption or creation of SAB 101, so he was very instrumental in writing SAB 101 as the chief accountant. Mr. Bayless was also with the SEC; he was the chief accountant for the division of corporate finance.[35] Tab 71 of CX 1 is another article by Mr. Lynn Turner that he uncovered in his research on this issue.

Grant Prideco also had a bill and hold issue. In March or early April of 2005, Grant Prideco released the fact that they had a material weakness and they were going to restate their financial statements for problems with bill and hold, and so there was a disclosure. At that time he did not know what the issue was, but J.R. Sult forwarded the announcement of the restatement, suggesting that everybody in his organization be extra diligent in revenue recognition. As he was doing research with his group, he realized that when he looked at Grant Prideco it was the same situation with the bill and hold issue that Halliburton had. Grant Prideco had stated that they believed that risk of loss and title had passed, but that they could not meet all criteria to recognize revenue. He does not believe there is any distinction between Halliburton’s justification of recognizing revenue and Grant Prideco’s. There is probably a better argument for a company like Grant Prideco than Halliburton for recognizing revenue because Grant Prideco provides tools and not services. One of the fundamental tenets of revenue recognition is that the seller has performed or delivered. If the seller has not physically delivered, the bill and hold criteria must strictly be met; it is not easy to meet the bill and hold criteria. He is not aware of any company that has ever met bill and hold criteria. SAB 101 reminds public companies that just about every bill and hold transaction that one could come up with does not meet the basic criteria for revenue recognition.

A public company may approach the SEC if they have a compelling need or justification to recognize revenue, but they do not meet bill and hold criteria. This is known as getting pre-clearance. If a company believes it has a controversial accounting position or a unique transaction, they may receive permission from the SEC. This encourages public companies to talk to the staff and get pre-clearance on a transaction before actually doing

[35] CX 1, Tab 72.

it. This is what is suggested in KPMG's own article written by John Christopher. The article states that public companies with bill and hold transactions should consider pre-clearing them with the SEC. If a company goes to the SEC and says they would like to state their case regarding a bill and hold situation, this would be appropriate. KPMG or Halliburton never went to the SEC to get pre-clearance or to get a variance. John Christopher indicated that the companies would definitely not do that.

He received information regarding TCP from Mr. Paquette regarding how the company was using bill and hold. He realized that this method of recognizing revenue was inappropriate. It is inappropriate under SAB 104 for basic revenue recognition because there has not been any delivery, and services have not been rendered. Because many of the services have not been rendered to the point, it is probably a multiple element relationship contract that services cannot be separated out. The contract really contemplates that it will go to an intermediate point and then more work will actually be done on the project before it can be delivered. Even in those cases where there is some risk of ownership on the customer, either because of informal or understood arrangements, Halliburton will end up picking up that risk. This is his understanding based on his research and discussions with his group. He also realized that other individuals in the accounting community believed that there has been delivery and bill and hold does not need to be addressed. He had never been given a proper explanation as to why they disagreed with him and why they decided to go the way they did on the issue. He was originally told that his conclusion was correct, but after that point the company surveyed the field to see how big of a problem it could be. He never had a substantive discussion about his view of the factors and their view of the factors. He does not consider delivery to a Halliburton warehouse to be a delivery to an intermediate site.

He provided documentation of his research reflecting various EITF revenue recognition issues and bill and hold issues to the SEC when he filed his complaint with them. Tab 4 of CX 1 is the analyst conference call for the third quarter of 2005, which occurred immediately after the company had disposed of its bill and hold issue, and the external auditor informed him that the issue had been negotiated. The analysts during this call were asking questions as to why revenue was down in a particular region, and they were not satisfied with the answers given. The answers that were given were direct sales, and the analysts' questions were why revenues were down from second quarter to third quarter when activity is up. This hints at a revenue recognition problem, because if revenue is recognized when the work is done, then the work, the service, the revenues, and the activities should match up. Tabs 5, 6, and 7 are also documentation provided to the SEC when he filed his complaint. The analyst in particular that had concerns was with JP Morgan. The following day the Wall Street Journal posed that "JP Morgan cut Halliburton to neutral from overweight." They cited concerns over management credibility and execution. That was pointed to the misunderstanding about what was going on in the revenue; the shareholders were being misled. The amount at issue was approximately $27 million.

Tab 8 of CX 1 reflects some of the research that he did. It is his communication to Kelly Youngblood where he was concerned about the issues that were showing up in analyst calls. He said that he was concerned that the term direct sale was being applied too broadly within F&A and that F&A might be placing too much emphasis on contract terms. He was working with regional finance and accounting managers, the people that were in the field that had the contracts and knew what the business was. He spent a considerable amount of time working with them and asking them questions so he had all the facts. He also relied on tabs 9, 10, 85, 91, and 94.

He saw problems with the TCP in England. Chris Hill had looked at similar contracts prior to him. When he discovered problems with TCP, he discussed the issue with Chris Hill. He told him he was concerned about 00-21; Chris Hill sent him the memo that was issued when 00-21 came out. It was not much of an analysis, it just gave a general background, and then it went into specific arrangements at the company. It addressed a joint venture named Inventure to determine whether or not it was recognizing revenue properly. The entity itself, however, was not consolidated, so those revenues did not show up on Halliburton's books. The other entity that was looked at represented a very small portion of the company's revenue. He had several discussions with Mr. Hill. He tried to set up several meetings with him but Mr. Hill avoided him. When he finally spoke to Mr. Hill, Mr. Hill said there was no point in having a long meeting and that he could explain in five minutes what the company position was, namely, that title passed and delivery had occurred. He spoke with Mr. Hill before he sent out a draft analysis on this issue. This draft of the TCP memo was also sent to J.R. Sult. It would not be a fair statement to say that he did not collaborate with others about some of the bill and hold revenue recognition issues in terms of reaching his conclusions. He had discussions with Charlie Geer, J.R. Sult, and the F&A individuals in the field because they are the ones with the most knowledge of the transactions and the business practices. He provided training in the field also as a way to learn what people knew. During those trainings, there was a lot of dialogue about what was going on.

He sent out his TCP memo on 15 Jul 05 because he was getting no response from anyone in the company. All of the individuals that received the draft were the people that were actually working on it and that were involved in the underlying facts and circumstances, with the exception of J.R. Sult. Sult received the draft because he had already discussed the issue with him. He felt that if Sult got the draft memo he might be able to help others facilitate in dealing with this issue. The fundamental conclusion of his 15 Jul memo was that the group was trying to address whether title passage and risk of loss could be considered delivery for accounting purposes. J.R. Sult informed him that shipments to Halliburton's own warehouse could not be considered delivery. They looked into business practices and he discussed with Sult the past revenue trainings and the flow chart, which he disagreed with. It says in the business practice that delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or another site specified by the customer. Sult said that an intermediary delivery site cannot be a company facility.

He spoke with Mark McCollum on 18 Jul 05 to discuss the memo. This conversation was tape recorded. He tape recorded the conversation because he was concerned that this issue could have a major impact on the financial statements, and no one wanted to deal with the issue. He was under the impression that something improper might occur. He actually raised the issue much sooner than the 15 Jul memo. He began raising concerns over 00-21 and bill and hold practices in his bi-weekly meetings with McCollum. Sometime in late June, he approached McCollum to discuss his concerns about revenue recognition. McCollum instructed him to stay out of it and said he is no longer an auditor at Halliburton and he needs to stop looking at past practices and move forward. His opinion, as a professional accountant, is that it is not proper for him to look the other way if he finds something improper that might pertain to past practices or potentially fraudulent practices. McCollum told him at the 18 Jul meeting that his conclusion was right and that his memo was good. McCollum recognized that the policy out there was causing people to do things incorrectly, and the company was going to fix it. He also stated that he had extensive discussions regarding the memorandum with J.R. Sult. The majority of the conversation was directed at his insensitivity to the politics of Halliburton. He was disturbed by his discussion with McCollum. He was trying to do his job and he received the impression that people in the organization did not trust him. He was told that his conclusions were appropriate and that he was doing a good job, but that he was not a team player. He felt that the organization was going to run him over at that point. Walking out of the meeting, however, he felt that the organization was going to correct the problem.

He taped a number of conversations that he had with some of the accounting employees at Halliburton. He transcribed these tapes based upon listening to the conversations and remembering what was said when he was present at the meeting. He knows the voices of McCollum, Sult, Angelle, Muchmore, Chris Hill, and generally speaking all of the employees in the accounting department. He thinks that these transcripts might be helpful for somebody reviewing those tapes in determining who the speakers are and the actual content of what was being said. CX 26, 28, 30, and 32 are transcripts of the conversations. To the best of his knowledge, they are accurate and true representations of his recollection of what was said during the conversations. These conversations occurred between March of 2005 and when he went on administrative leave in April. He found out that the company was not going to follow his advice regarding their accounting in October of 2005.

He ultimately realized that his conclusions regarding revenue recognition and EITF and FIN-46 were not adhered to by the company. No one ever gave him a reason for this.

CX 43 is Halliburton's 10-K filed 13 Mar 06 for the period ending 31 Dec 05. The issues that he discussed and the advice he gave the company was known to the company by the time they filed their 2005 10-K with the SEC. He provided comments to the SEC reporting group on this 10-K report and his advice was not followed. The company does not reveal in its 2005 public filings how it deals with revenue recognition. It does mention revenue recognition and when it recognizes revenue. He also found the claim that there are no ongoing obligations to be a very misleading statement. Based upon the research he did in reviewing contracts, talking to the field with respect to rights of return, he is aware that in Barite, the fluids division, actually provide a right of return feature to the customers in that they have a contract to do services and those services involve a product. The contract states that any unused materials will be bought back by Halliburton. The statement about post-delivery obligations is probably more misleading because it suggests that the product has been delivered to the well site because that is when there would no longer be post-delivery obligations. A suggestion he made was that the company's position on customer-owned inventory needed to be discussed, even if the bill and hold rules are not going to be followed.

In his SEC report, he talks about some of the research that he did with respect to Saudi Aramco. He received some feedback from the field when they were doing the installation after delivery to the Halliburton warehouse. This is under Tab 8 of CX 1; it says that product sales are recognized when title passes, the customer assumes risk and rewards of ownership, and collectability is reasonably assured. When the three are met, the company says it recognizes revenue. This is not in accordance with GAAP or SAB 104 because delivery is missing. The four basic criteria for recognizing revenue are that you have a fixed commitment or that collectability is reasonably assured, the fee is fixed and determinable, risk of loss, and delivery has occurred. If the company took the position that delivery had occurred and that somehow delivery to its Halliburton warehouse was delivery, it could have been included in the 10-K where it discusses how the company recognizes revenue. That way someone can determine whether it is proper under SAB 104. He knew this was the treatment they were going to use back in 2005.

He spoke to McCollum and Sult about how he believed their accounting practices and conclusions were wrong. He would not consider Kelly Youngblood part of management, but he was told, in addition to Frank Switzer and John Christopher at KPMG. He went outside the company and informed the government about Halliburton's accounting practices. He went to them about a week after the third quarter earnings call, around 4 Nov 05.

A very significant portion of the business was impacted by the TCP issue, likely around 20-25%. All of the revenues are affected by 00-21 and bill and hold because the services and the products are linked. At least a quarter, maybe even all are bill and hold type transactions. They are transactions where a product is being sold but in his view mixed with a service contract and there are still significant on going service obligations that are connected to that product. EITF 00-21 affects at least 90% of the company's business. The foot note in the 10-K that describes how the company recognizes revenue says Halliburton recognizes revenue from product sales when title passes to the customer, the customer assumes the risks and rewards of ownership, and collectability is reasonably assured. Then, if you compare that to the SAB criteria, title passage isn't mentioned in the SAB. SAB 104 talks about delivery instead of title changing. Title passing and delivery are separate, in that title only deals with one aspect, with who actually owns it at what point in time. Delivery really deals with whether or not you've delivered a service and you've earned those revenues. Title passage is not relevant in terms of when to recognize revenue. Title is not as important as delivery and that is why SAB 104 never mentions title but does mention delivery. Additionally, he believed the 10-K footnote to be factually wrong in saying that the transactions did not involve significant post-delivery obligations. A significant number of transactions also included right of return provisions, so to suggest in the foot note that they did not is false because GAAP and the SEC rules require you to disclose your critical accounting policies.

There was a discussion at Halliburton about whether title could substitute for delivery. In the research that he did, he found that title cannot substitute for delivery. He went through all the SEC enforcement actions, all the SEC speeches, and all of the GAAP. He looked at other companies that had to deal with this accounting issue and pointed out that Grant Prideco had restated its financial results for bill and hold. He looked at all of the authoritative literature and he never found anything that supported the position taken by Halliburton.

He spoke with Sult about whether title was the same as delivery. Sult had strong views; he said that it is not title, not risk of loss, it is delivery, and if there is physical possession, the criteria must be evaluated. This discussion is taped. Sult said it more than once and it is expressed on the recording from the 1 Aug meeting. This discussion was after the 15 Jul memo and his meeting with McCollum. Sult coordinated a meeting with everybody that was involved in the company's previous accounting conclusion. The participants were Chris Hill, Evelyn Angelle, Mark McCollum, J.R. Sult, Bryce Tawney, and himself. He opined that title and delivery were not the same, so the company management was aware in 2005 that they could not substitute title for delivery.

His original SEC filing was on 5 Nov 05. He did this confidentially. At the same time he contacted PCAOB and had several conversations with them between November and January of 2006. He went to the audit committee in February of 2005. When he met with the SEC in November of 2005, they told him they could not tell him exactly when or if they were going to do something, but that they were looking at it. A suggestion was made that this was a quarterly review, and it might be fixed by the company by the time they get to their annual filing. This was suggested by the SEC enforcement division.

He filed the complaint with the audit committee on 4 Feb 06. He filed the complaint on that Saturday morning because on Friday afternoon he overhead Dennis Whalen say that the SEC subpoenaed bill and hold revenue recognition, FIN-46, and that he needed to get with McCollum to respond and make sure they were on the same page. After hearing that, he thought he had an obligation as an employee of Halliburton to contact the audit committee.

In an e-mail dated 8 Feb 06, McCollum had informed various people in the accounting department about his identity. Prior to that, he had not told anybody at Halliburton about his SEC complaints or audit committee complaints. He did not have any idea that the fact that he had gone to the SEC or the audit committee was going to be broadcast to the various people he worked with in the accounting department. This is not what he wanted to happen. When he went to the SEC, he stressed how important it was to keep his name out of it. For this reason, he was surprised and called them as soon as the e-mail came across, because he did not think that would be done to him. The SEC assured him they did not disclose his name.

He went to the company's website and specifically studied the code of business conduct, and researched Sarbanes-Oxley to understand the rules governing confidentiality. After he did so, he sent the e-mail. A number of people in the accounting department found out about his complaint. He then noticed a difference in the way he was treated from before the e-mail was sent out compared to after the e-mail was sent. In the office, people stayed away from him. The audit partner in particular, Dennis Whalen of KPMG, gave him dirty looks.

The worst reaction was the day that John Christopher came in and his eyes were bloodshot and he was very upset. They were close friends and worked through some of these issues; Christopher would no longer come into his office. John Christopher told him that he respects what he did and he knows he did it with the best intentions, but what really was hurtful was the inclusion of John Christopher's article[36]. No one called him, and he no longer received e-mails. He had a friend at KBR whom he met with occasionally for lunch, and that friend no longer wanted people to know that he was meeting with him. It was an extremely uncomfortable situation for him. He spoke with Paquette after his name had been disclosed to the various people in the accounting department.

On the day he found out that his name had been disclosed, he was at work sitting at his desk. When the e-mail came across, he was stunned; he walked around the office and no one was around, which was unusual. He then left the office. The SEC Complaint was filed in November of 2005. Prior to leaving that day he did not ask for time off; he never asked for time off. He told his staff, however, that he would be out that Thursday and

[36] CX 1, tab 62.

Friday. He was not sure if he would be able to go back anyway, but had scheduled to be off for another reason. He went into work the following week. When he returned, things were not normal in his workplace compared to the way things had been prior to when the e-mail was sent out. It was very difficult being in his office; he kept waiting for a call from the audit committee. People were not approaching him or coming by his office, but his wife encouraged him to keep going to work.

He believed at that point he needed an attorney. His attorneys were paid as part of the SEC investigation in order to help him comply with the SEC investigation; these attorneys are not the same as the counsel representing him in the instant case. The call volume went down from his coworkers. He no longer had regular conversations with KBR. People often called him with questions after Kelly Youngblood issued his memorandum on bill and hold and revenue recognition; this stopped after the e-mail went out. All questions on FIN-46 were also diverted from his group to another group. His group was very limited in what they were doing. Most of the projects he was working on were helping Steve Vonteur and Pat Finegan at KBR. He was working on one big transaction called RTA with the Digital Consulting Solutions group. The only other thing they were working on was the F&A summit in 2006.

After 8 Feb 06, he remained in contact with Paquette. He does not believe that Paquette was among those people who acted differently toward him. Apart from Paquette, in walking around the office when he was there, there was a difference in the way he was treated as opposed to before 8 Feb 06. He and Charlie Geer used to speak often, and after 8 Feb 06, he no longer came by his office. People no longer engaged in conversation with him. Before 8 Feb 06, people would come by his office often. He was excluded from the vetting process as far as the conclusion that the company reached. He tried to provide comments to Kelly Youngblood. On the 00-21 project he had an assigned duty, which was to train people who were gong to review the contracts, but that was it.

It is fair to say that sometimes reasonable people can disagree. He is not the type of person who believes that has to be right, and that if his conclusion is not accepted, he will keep going until his view prevails. He went forward with his complaint after he saw Kelly Youngblood’s conclusions because it was not a reasonable difference of opinion. He believed that it was an intentional commission of securities fraud and intentionally misleading shareholders. He believes that his obligations as a Certified Public Accountant are for the public. He thought the best way to fulfill this obligation to the public would be by going to the SEC.

No one had mentioned to him the possible justification regarding vaccines and drug companies on vaccines. If they had mentioned that, he still does not believe that this provides reasonable support for Halliburton’s accounting policies. The issue there was dealing with vaccines. There was an article in The Wall Street Journal that addresses the concern regarding pharmaceutical companies that they would not stockpile the necessary vaccines if they could not recognize the revenue. Thus, under that extremely unusual circumstance, the SEC was lobbied to give them special treatment, but there were many restrictions on that. There was a lot of debate about it, and ultimately the SEC allowed them to recognize revenue, but they required significant disclosure about what they were doing. He does not think there is any reasonable analysis or analogy between that situation and Halliburton's. He read this at the time he was drawing his own conclusions, but did not take it into consideration because he did not think it would apply. In his discussions with Sult or anyone else, no one ever told him that one of the justifications for the company's conclusions is the SEC ruling in the pharmaceutical companies' case. There was a bird flue issue at the time that concerned bio-terror vaccines. From what he read at the time, none of the policy considerations that led to the SEC's guidance applied at all to Halliburton's oilfield services business. This was characterized as a bill and hold exception. Even in that instance, with the clearance, they still characterized the vaccines as bill and hold, not customer owned inventory. If it were analogous to Halliburton's situation of delivering goods to the warehouse, it would mean that Halliburton must comply with the bill and hold criteria. Even then there were disclosure requirements that were imposed on the vaccine companies if they wanted to recognize revenue when they shipped it to the warehouse. Halliburton did not comply with any of these disclosure requirements.

It was made clear to him that if he kept pushing accounting issues, the political process of Halliburton would run him over and he would not have a career there. Many of those conversations in which this was stated are taped. When he ultimately left the company, he did not think he had a job to go back to. He was told he could not teach courses in accounting that did not comply with company policy, so that meant he did not know how many opportunities he would have to teach. He also was on the RTA team; it was the one other project in which he was dealing with a potential transaction with the sale of the company's oil and gas rights and properties. Immediately following his communication to the audit committee, he was basically stripped of that responsibility. That was the one project that he was spearheading and leading and working closely with the business unit. It was clear to him that he was to leave the RTA team. CX 80 is the document that led him to believe that he was to leave the RTA team as far as accounting was concerned.

CX 177 is his e-mail to the board of directors, with attention to the audit committee. On the second page there is a confidentiality statement that says "This e-mail including any attachments may contain confidential and privileged information for the sole use of its intended recipient. Any review, use, distribution or disclosure by others is strictly prohibited." This exhibit is the complaint that he submitted with the confidentiality provision at the end. When using Halliburton's e-mail system, this confidentially provision automatically is attached to the end.

He was never told why he would not be doing the training anymore. The only time he heard he was not going to be training or any justification was when he got a call from

James Paquette. He received positive feedback about his training. He never heard any negative feedback from anybody at Halliburton that his training was muddled or confused; he thought this feedback was because the organization did not understand revenue recognition. CX 1, tab 23 is an e-mail from Mr. Paver; it says that he did a good job with the training and that the course content was thorough and well delivered. It also says that he did well presenting information that many did not want to hear. He experienced this from people other than Paver; he heard that his advice on revenue recognition was not what people wanted to hear. According to Paver, the confusing part of his training was that he presented a lot of concepts in GAAP that his audience had never heard of or never gave any thought to. This is because the field was relying on the bill-and-hold decision tree, and revenue was recognized whenever the product was shipped to the warehouse, which was simple. When he came out with the training on GAAP it elevated everybody's awareness to how it could have an impact on the company. He does not know of any way that one could teach GAAP by adhering to Halliburton's accounting policies.

He was informed that instead of reporting to McCollum, he would be reporting to someone else in late September, when the company demanded that he return to work. He had been on a leave of absence at that point for approximately five to six months. CX 167 indicates that his leave started in April of 2006. In September of 2006, he learned he would be reporting to Charlie Greer when he came back to the company. Greer was the director of external reporting from the finance and accounting group. When he left, Greer was a director; he was also a director and they were at the same level. In his view, this was a demotion. Reporting directly to the chief accounting officer is as high as one can go in finance and accounting. His job before specified he would work closely with management, the external auditors, and the external reporting group. Now, he would just be part of the external reporting group, and he would not be working with them. He was concerned that his role reporting to the chief accounting officer gave him access to higher levels within the organization. The chief accounting officer's direct reports were senior members of the finance and accounting organization, executive leadership of the finance department, and generally at those staff meetings the individuals discuss things about the company at the highest levels of accounting and business. He felt that he would have limited access to important information and opportunities by reporting to the director of external reporting.

Paquette testified that McCollum asked to be updated on what he was working on. He thought that was highly unusual. The meeting with Paquette was a day after his named was disclosed, and asking Paquette what he was working on was unusual because McCollum could have just approached him. He felt as if the company was trying to "keep tabs" on him. McCollum never asked him what he was working on. When the company was going through the process of coming up with its conclusions about its policy on revenue recognition and joint ventures, he asked to speak to McCollum, who did not agree to speak to him. He tried to meet with McCollum before going to the SEC.

He wanted to have a conversation with McCollum and express his concern, but when he e-mailed McCollum asking for a meeting, McCollum declined his request. This was in the middle of October, before the Youngblood memorandum was released. His last conversation with McCollum was the 18 Jul meeting. It was about issues concerning revenue recognition and the politics at Halliburton. After that meeting, there was not a great deal of communication. He was not invited to meetings regarding revenue. After he requested to speak with McCollum, McCollum never set up a time for a meeting. He spoke to Youngblood about a rep letter signed by Sult. Youngblood informed him that Sult changed the rep letter to qualify his answers on revenue recognition. McCollum would not accept Sult's changes.

CX 157 is a letter sent to the company on 17 Oct 06. He was told that if he did not report to work on 18 Oct 06, he would be terminated. The letter was his resignation letter. He did not go back to work at Halliburton because he did not believe he had a job to back to. He learned that the external auditors had refused to meet with him or talk to him about accounting issues. Part of his job is to talk to them; it is his primary job responsibility to identify, research, and resolve technical accounting issues, working with the external reporting group, the external auditors, and management. Being demoted to work under Charlie Greer meant he had less access to management and no access to the external auditors. He was just part of the external reporting group. He did not accept the job at Halliburton because he did not want that role, and he also did not feel welcome. As a CPA, he also did not feel that ethically he could return to his job. It was clear to him that the company was not going to correct any of its deficient practices, and the company was going to continue to mislead shareholders. Aside from the separation and treatment following his complaint, he loved his job at Halliburton as director of technical accounting.

During his leave of absence he did some contract work. CX 195 is a letter he received 30 Mar when he was for the first time notified that the company had agreed to put him on administrative leave. The letter outlines his responsibilities. CX 196 is the ESG business practice that was sent along with CX 195. It deals with the company policy on leave of absences. Under Halliburton policy, he was not prevented from doing work while he was on leave. The letter that they sent him told him that the leave was considered for the benefit of ESG. Under business practice, it says that an employee may not be employed by another employer while on leave of absence from ESG except for seasonal leaves and/or leaves for ESG's benefit. He read this before he accepted work outside of Halliburton. He was not doing any work at the contract level that had anything to do with Halliburton.

He had a Halliburton laptop computer that he would work off of. From this laptop, he possessed documents; he had these documents while he was on leave. He had some paper documents, but most of the files already existed on the laptop. As a Halliburton employee, he thought he was entitled to those documents, especially because the purpose of the leave was so that he could fully cooperate with the audit committee and the SEC. This is reiterated in the 30 Mar letter. He made the audit committee fully aware that he had the documents, and during his meetings with them, he would tried to help them by providing them many of the same documents that he provided to the SEC. There is no way he can fully cooperate without giving the SEC documents. After he left Halliburton, he still had the documents because he still had his computer. Halliburton made many arguments toward why he needs to return the documents. He returned to Halliburton a number of documents. He gave them three to four boxes of documents. He did not maintain copies anywhere. He retained a box of things that he thought were arguably privileged. He deleted his files from his personal computer in addition to giving back the paper documents. The only reason he held the documents was because he thought they might be needed to prove his case, and he was under the impression that there was an arrangement with Halliburton that if he turned the documents over to them, they would in turn provide them back to him and his counsel. That did not happen. Realizing that he was missing critical documents, he contacted his former attorneys and asked them if they had any copies in electronic versions. He did not know whether the attorneys had the documents, but they did in fact have them. Those attorneys are not currently representing him and nor was he in regular contact with them at the time.

A performance evaluation was scheduled for 9 Feb 06. It never took place. He never learned of any criticism of his performance while at Halliburton, other than criticizing the politics of some of the things he may he may have been doing. McCollum emphasized at the 18 Jul meeting that his conclusions were appropriate and he was doing a good job in that respect but that he was not being political, meaning that people were upset by his conclusions and the answers he was giving them.

In 2006 he received a raise of 4½%. It was communicated to him that he was a valued asset to the company and that they were rewarding him for his performance. He never received any written criticism from McCollum. The only document he ever saw was in discovery for the instant case. The memo was produced that went to his personal file suggesting that he had a performance review meeting with McCollum on 26 Sep 06. The memo indicated that Charlie Greer was there, and the memo portrayed a lot of criticisms about his performance and a lot of restrictions on his job moving forward. He did not see this until some time in 2007. This memo is dated 26 Sep 06, which would have been after they asked him to return to the company but before he informed them that he was not coming back. The criticisms in the letter he never saw while he was working at Halliburton. The meeting allegedly took place with him, McCollum, and Greer, but he was in California on that date and was not at the office since he went on administrative leave. No one asked him to come in for that meeting.

Before October of 2006, he had a reputation as a technical individual and had a lot of credibility and integrity. He felt that people’s perception of him changed dramatically as a result of his going to the SEC. He always had a good reputation at Ernst & Young. He always worked well with clients and was known as someone who was diligent. His mindset at the time was that it would be difficult for him to find other work. He has not found permanent employment, but he has not looked. He has only taken contract work. There is no way he could have gone back to Halliburton in October of 2006 and be a competent professional and an ethical accountant.

CX 200 is the performance review that was in his personnel file at Halliburton documenting a performance review that too place on 28 Sep 06. This is the memo that refers to a meeting that never took place; it contains performance criticisms. He went to the SEC before he went to the internal audit committee because he felt more confident going to them than making the complaint internally. He went to the SEC in November; the Youngblood memo came out 26 Oct. He saw the memo and saw that they did not apply his conclusions and he did not think the company was acting properly. The process with the SEC is slow because he informed them in November and Halliburton did not send out the e-mail regarding document retention until February. If he were to return to Halliburton, he would be below Greer in the hierarchy, as oppose to equals as they were before his leave of absence. He had trouble reporting to Greer because he felt like it was an attempt to limit his access to information that would have been vital to his job.

If he were offered his same position when he returned, but Halliburton would not change its accounting policy, he does not know whether he would return to the company. Additionally, if Halliburton changed its policy but he would still report to Greer, he still does not know if he would return to Halliburton. On page 230, line 12 of his deposition, he is asked why he resigned as opposed to returning to work. He answered that it was because he had every reason to believe that the company was continuing to commit serious violations of securities laws and materially misleading the investing public. In the next paragraph of his answer, he says that he felt it was unreasonable for the company to expect him to return to his position without having any awareness or comfort with respect to what the company's accounting practices were going to be. On page 231 of the transcript, he said that he could not professionally or ethically go back to a situation where he had legitimate concerns that the company was continuing to engage in securities violations. On page 232, when asked if there was any other reason that he resigned, he said that he had reservations about retaliation, for example, that the auditors would not meet with him. When asked if he could be certain that those concerns would materialize, he said he could not; he said there is no way he could predict with any level of certainty whether he would be retaliated against if he went back to work.

Mr. Greer was at the same level as him regarding their jobs; they had the same title. He does not know whether he was in the same salary band of the company that he was in at the time he was told to come back to work. He believes he received a demotion because of the difference between a director of external reporting and the chief accounting officer. When he was hired, he was to report to Angelle, who was the director of external reporting. Greer was overseeing technical research and external reporting at the time he was told to work. He knew that Paquette was reporting to Greer when he was out of the office, and that Paquette was in technical research.

When he testified that he felt that the reassignment of his reporting relationship to Mr. Greer was an attempt to limit his access and knowledge, that was based on what he knew about the finance and accounting organization and what he knew about McCollum's staff meetings compared to Greer's staff meetings, and also what he knew of McCollum's experience and knowledge versus Greer's experience and knowledge. McCollum had staff meetings once a month. There was nothing in the communications he received from the company about needing to come back to work that said he would not have access to any individual. The document hold notice that McCollum circulated to certain individuals within the finance and accounting department went out on 8 Feb, and one month later on 9 Mar, his lawyers wrote to Halliburton's lawyers at Baker and Botts asking on his behalf for a paid leave of absence. RX 15 is a letter to Mr. Hilger and Mr. Boyles at Baker Botts law firm, and it indicates that he has a desire to be placed on paid administrative leave, given the current environment and circumstances involving the SEC investigation. A month after the document hold notice with his name in it circulated, he asked through his lawyers for a leave of absence. He was not in the office very much during that month period of time. For much of that time and thereafter while his request for leave was pending, he was in the office of his lawyers to prepare to cooperate with the SEC and audit committee investigation. He had an understanding from his lawyers that it was ok with Halliburton for him not to go into the office but to work with them to get ready for the SEC investigation. Halliburton granted the leave of absence that he requested; they granted it with full pay and full benefits. At the time, his salary was approximately $120,000. He got a raise immediately before his leave became effective. It sounds familiar to him that the formal effective date of his leave had been delayed so that he could get his raise because only active employs could receive raises. Hilger represented him in his cooperation with the company. Mr. Hilger made a request of Halliburton to pay Hilger's attorney fees on his behalf.

RX 44 is an e-mail from John Taylor to several people, including him. It attaches a draft of a consultation memo related to what has been called the RTA project. This memo and the transmittal e-mail to him are dated 17 Mar 06. His lawyers had requested his leave by that time, but he was still received e-mail relating to the RTA project. RX 45 is an e-mail from him dated six days after Taylor's e-mail to him. In that response, he relates his concerns about a revision that had been made to the memo to address a concern that KPMG raised about the accounting treatment. It was a conversation between him and Grant Switzer that prompted the revisions. He sent his response on 23 Mar not only to the Halliburton people that were working on the project but also to Christopher and Switzer. In the e-mail from Taylor, Taylor is trying to schedule a meeting and asking when people are available; he was a recipient of that e-mail. His response to Taylor and others dated 23 Mar says that after the start of a period, the structure of the entity needs to ensure that it has sufficiency of equity at risk to satisfy or meet the entity's ongoing activities. He is telling them that after the start up period, RTA would no longer be considered a developing stage enterprise and from that point forward it was necessary to ensure that it had sufficient equity to satisfy its ongoing operations. He was not aware of any frustration on the part of Maloney regarding his dissatisfaction with his response because he was saying the suggested approach in the draft memorandum would not work past a certain point in time and yet he was not offering an alternative solution to make it work after that point in time. He was the technical research person assigned to this project.

He never had a discussion with McCollum in 2006 regarding his performance in 2005. The memo in RX 30 purports to document such a discussion and have McCollum's comments on his performance. The next part of the memo contains a listing of expectations for the remainder of 2006; there are seven things written there. Tab 24 of CX 1 is his resignation letter, in which he indicates that he enjoyed a great working relationship with many Halliburton employees. This does not imply that he was not treated differently after he filed his complaint. He expected it to be awkward if people knew he went to the SEC.

After the document retention e-mail went out, he did not go back full time to the Oak Park office; he was there a few days per week, and once he went on administrative leave he was not there at all because in the middle of February the audit committee asked him to prepare for meetings. He had been absent from the finance and accounting department for seven months by the time he resigned. He does not know whether the seven month period allowed some of the tensions in the office to ease. He did not return to the office to try working at his job again. For the last three months of his leave he was working for a law firm. This took up most of his time which is why he did not look for alternative employment.

He tape recorded the 15 Jul 05 discussion with McCollum. He did not seek anyone's consent to tape record that meeting. This was about four months after his employment had begun. He felt that McCollum was threatening his career at Halliburton at that meeting. One way he felt threatened was when McCollum spoke to him about resisting taking hits and his expectation that people would resist taking hits. At page 110, line 13 of his deposition, there is a transcript of the recording; McCollum states:

> "One of the things that put people on the defensive is to come to them after you have already reached a conclusion and say you've got a hit. Just understand that the company's job is to make money, not to write off investments. That's not a value-added exercise. So when you come in and say 'we've got a $10 million hit' that gets people excited around here, because we've just destroyed $10 million of shareholder value, right? Don't expect people to like it, ok? We're not going to roll over. People are going to fight taking a hit. That's expected. If people didn't

> do it, I would fire them. We shouldn't just roll over and take hits just for the hell of it."

He does not think there is anything wrong with a manager challenging an accountant to defend his position if he is advocating writing off a $10 million investment. On page 116, line 3 of the deposition, there is a record of the conversation in which McCollum states:

> "The fact that the memo went out and yet those discussions and that review appeared to be incomplete caused those who were involved to feel they can't trust you. I'm not questioning your conclusions; I'm questioning the process by which you arrived at them. The thing that you've got to be able to do if you're going to be able to be successful here is that you've got to get the people involved. Recognize that if somebody reached a different conclusion you need to be able to reconcile with them and make sure that everybody is together. If you don't, the organization is going to close up and not work with you. Then what's the point, right? Am I making sense on that? So is it easy? No. But the problem is that if you think that the answer is that I'm just going to run over it, what will happen to you here is that the process will run over you because the relationships will be damaged. People will not trust. Quickly you will find yourself irrelevant because they will not work with you or they will work around you. That's not what you want, that's not what I want, and it's not because anybody in this process disagrees with your conclusions. The issue is not disagreement. The issue is around how the process should work to get to the ultimate conclusion."

These are the words that McCollum used that he considered a threat that the process would run over him. At page 115, line 16 of his deposition, he was asked about his complaint where he alleged that McCollum threatened him that others at Halliburton would retaliate against him by making him irrelevant and isolated if he kept bring up accounting issues; this was part of his allegation. He believes there is a big difference between reading the above statement by McCollum and being there; more goes into how he felt about the event than can be gleaned from reading the passage. There were occasions when McCollum told him that he was not criticizing him for issues that he was raising but counseling him for the manner in which he raised them. McCollum knew that he was in disagreement with the company's accounting practices, its business practices with respect to accounting for customer-owned inventory, multiple-element arrangements and joint ventures as evaluated under FIN-46.

Muchmore, the director of internal controls, was also aware of this. He went to see Muchmore in late 2005, and in that meeting he elevated to Muchmore his disagreement with the accounting practices involving customer owned inventory, multiple element arrangements, and FIN-46. Muchmore heard him out patiently and then had a follow up meeting with him after that. Muchmore told him in the follow up meeting that he had taken his concerns to Chris Gaut, the CFO of the company, and shared them with him. Gaut told him that if the outside auditors felt there was a reasonable basis for what Halliburton was doing, that he was comfortable with that. Muchmore also told him that Gaut had instructed him to go visit with McCollum about these issues to investigate them in that way. Muchmore told him that he had a discussion with McCollum and that McCollum had told Muchmore that he and McCollum had a professional difference of opinion on these matters, but that he was comfortable with what the company was doing.

It was well known generally within the finance and accounting group that he had serious objections to the accounting business practice in these three areas. People knew that he was concerned about the accounting practices and the internal control in those areas. He knew that Angele and Hill were aware that he had a different opinion from theirs about when revenue could be recognized on customer inventory in Halliburton warehouses. They knew that he had actually authored a memorandum that came to a directly opposite conclusion from the memorandum that they had authored two years earlier. The memo that he wrote addressing whether something has been delivered when it is sitting in a company-owned warehouse is the crux of their previous memo. When Youngblood was leading the study on customer inventory, he had discussions with him about it. He had a friendly relationship with Youngblood and they spoke about many of the issues. One of the issues was whether delivery could be deemed to have occurred when the product left the manufacturing facility and went to the warehouse. Youngblood knew his view when he was leading the study. Later, Youngblood was responsible for coordinating a study on the multiple-element arrangements, and he made his views on those issues known to him and communicated his concerns regarding that application of GAAP. There was a point where they agreed on the issue of 00-21, but by the time the memo went out, Youngblood had taken a different position. At some point, Youngblood agreed with his views, but by the time the study was completed, Youngblood’s judgment was different than his; Youngblood’s memo did not reflect the concerns that he was communicating to him.

Part of the process was to air out the disagreements. They would try to come to a consensus conclusion within his group. With respect to BASP and whether it should be consolidated under FIN-46, he and Susan Wilrodt were in agreement. He had discussions with Charlie Geer about FIN 46. They had a disagreement regarding whether Halliburton was significantly involved with an entity; he thought the facts did not support that conclusion. He does not believe that Mr. Geer’s position was completely unreasonable.

He went to the SEC knowing that they would protect his identity, but knew that down the road there was a possibility his identity might become known if it became a public matter. He would have gone to the SEC even had he known that his identity would have been revealed. He asked to be reassigned to Charles Muchmore when he went to see him about the accounting issues. He suggested a possible change in reporting relationship in late November of 2005 after he had gone to the SEC. Muchmore had the responsibility to ensure the company had internal controls. The chief accounting officer of the company has the ultimate say subject to CFO and board oversight on what accounting positions the company takes, and the CAO signs the financial statements. The officer that is responsible for internal controls has to decide what internal controls need to be in place to ensure proper compliance with GAAP. He was willing to have his group report to Muchmore. He viewed Muchmore as an equivalent in terms of status with the company and importance in terms of what his job entailed.

When he went to the SEC, he turned over all of the tabs under CX 1. There were some letters and communications they had with the SEC, and also a copy of Paquette's statement. He cannot think of any other documents he provided the SEC. He gave two interviews to the SEC. He went to the SEC in November of 2005 and they opened their inquiry in February; he never heard from them again until September. He did not meet with them until March of 2007. He met once with the public board that oversees accounting firms; he had a few conversations with them after his SEC complaint, between November and January. Once he returned, he never had any personal contact with them. The two interviews with the SEC took place in the Fort Worth office, which is their enforcement division. The first interview was probably about four hours, and the other lasted about a day. He had a conversation with the Congressional Oversight Subcommittee, but did not meet with them. They requested the documents that went to the SEC and his attorneys complied with that request.

He did not tell the Houston Chronicle that Halliburton was improperly recognizing billions of dollars in revenue. He believes that came out of the complaint which was reported on Bloomberg's website; he does not recall making that statement to anyone from the Chronicle.

All of the jobs he had prior to his Halliburton experience were in auditing functions. He understood when he was hired into the Halliburton job that it was not an auditing position.

He is still working for a law firm in California. He is working as a consultant in a forensic accounting capacity. He is also studying to obtain a Certified Fraud Examiner license designation. The law firm that he works for specializes in securities fraud litigation; it is part of their larger practice. He has being working for them since July of 2006. He did not notify his superiors at Halliburton or the human resources department at Halliburton that he had accepted other work for compensation while he was on his leave of absence. He did not notify Halliburton that he was receiving compensation from another source for his persona services while Halliburton was paying his salary on that leave. Halliburton continued to pay him his entire salary for his 6 month leave of absence. The law firm initially paid him $100.00 per hour; at some point that got changed to a retainer of $15,000.00 per month. This is the current arrangement. He has not received any bonuses so far. He does not know how much he has earned from the law firm since July 2006, but it has been $15,000.00 per month since his deposition. RX

26 reflects that he has earned approximately $147,000.00 for his law firm work between July 2006 and April 2007, and has been earning $15,000.00 per month since then.

RX 27 is a confidential document signed by him. It is an agreement he made when he accepted work at Halliburton. The agreement states that documents compiled or made available to him while employed by the company concerning company business is the property of the company. They are not his property. He has copies of the approximately 100 documents he submitted to the SEC. These contain confidential Halliburton finance and accounting information.

He provided the Congressional Oversight Committee the same documents he provided to the SEC after he resigned his employment. RX 16 is his letter formally approving his leave of absence for up to six months. In paragraph 2, it says that if he needs access to documents to cooperate in the investigation he could contact Mr. Bedman in the legal department. He did not tell anyone in the law department of Halliburton that he already had many finance and accounting documents. The SEC requested the documents, and he and his lawyers felt that they had to comply. He did not know that his attorneys did not contact Halliburton. In November of 2005, he communicated his complaint to the SEC via e-mail. In September of 2006, the SEC requested documents and he sent them what is contained in CX 1. He went to the audit committee long before the SEC requested the documentation. After he resigned from his employment at the company, he and his attorneys kept Halliburton documents or copies of them. The SEC requested that they retain the documents. At the time he sent the documents to the Congressional Subcommittee, he did not know that Halliburton's lawyers had made a request to his lawyers to have the documents returned. He knew there was some discussion about the documents, but he did not know what the attorneys may have agreed to.

The comments that McCollum made to him about expecting people to resist taking hits to the financial books were in the context of Fiberspar. He issued a draft memorandum on Fiberspar that suggested a write-off, and ultimately the company wrote off the investment as he proposed. He recommended a reduction in the amount of assets it was carrying on its books regarding GMI. McCollum approved this. He does not know whether this write-off was disclosed to the audit committee. Halliburton's partner in the BASP venture was Sonatrach. Sonatrach is an oil company in Algeria. Halliburton owned 60% of the stock in that venture and Sonatrach owned 40%. The board of directors was controlled 50/50 in terms of appointing representation. The largest joint venture that Halliburton ESG had was Welldynamics. Welldynamics was consolidated onto Halliburton's books. Whether an entity is consolidated has an impact on the company's operating performance in terms of gross margin. It would also impact revenue but not net income, and would not impact earnings per share. He did not know that Halliburton does not disclose gross margins or track gross margins. He is aware that based on issues that he researched regarding joint ventures, that the finance and accounting department treated joint venture accounting as a control deficiency and reported it to the audit committee. Some of his recommendations were accepted by McCollum and others.

CX 19 is an offer letter from Halliburton. It has a title that describes what position level he would be, namely, senior accounting manager. When he talked to Ms. Wilrodt about BASP and they disagreed, he was aware that KPMG agreed with her position rather than his. He believed it should have been consolidated, and Wilrodt argued that it should remain unconsolidated. It originally had been consolidated; at KPMG's suggestion, Halliburton had taken another look at it and decided it should be consolidated. He never saw KPMG's position after that. John Christopher said they should agree to disagree and leave it at that. He thought there was no reasonable basis to unconsolidate that entity. If KPMG felt that it should not be consolidated, he does not believe their conclusion in that instance was reasonable.

CX 1, tab 56 is a bill and hold decision tree. It asks, based on the terms of the purchase order and underlying contract, whether title passed to the customer. This chart suggests that if title had not passed, there was still a way to possibly recognize revenue. This is because you ask whether the transaction meets all of the bill and hold criteria. One of the criteria for recognizing revenue under bill and hold is not passage of title. If title has not passed, it is extremely difficult to meet bill and hold criteria. It would be difficult to recognize revenue rather than having to defer it under this scheme under tab 56. This exhibit was in use at Halliburton and he brought it to management's attention. Sult ordered that it be taken off the internal website.

He never spoke with Evelyn Angelle before the July meeting with Sult about coming to different conclusions than what she and Hill had come to. He knew Angelle for a while; he also knew her at Ernst and Young. She had a mentoring relationship with him when he was a new accountant at Ernst and Young for the first time and she was involved in recruiting him. McCollum approved the hiring but she was the one who interviewed him, and he was going to work for her. He did not approach her before the 1 August meeting with Sult about why they reached different conclusions. He was working with Chris Hill, who worked for Angelle. Hill was the director of technical research; Angelle had moved to investor relations. She was the supervisor over the memo that Hill authored. He later heard from McCollum that Angelle was unhappy that he had not gone to talk to her about the issue before circulating around the finance and accounting department that he had come to a different conclusion.

Sult told him that he did not think delivery to a Halliburton warehouse could be delivery under SAB 104, but that was before the study was undertaken by Youngblood. He is aware that the company internally estimates how much product is coming back and then takes a reserve. With regard to Aramco, Halliburton sells the product to an independent agent. The independent agent turns around and sells to Aramco. He does not know whether the agent takes physical delivery of the product from Halliburton. It might occur that the product is delivered by the agent to an Aramco facility. When Aramco is ready to have some service performed with respect to that product, it goes back to Halliburton. Thus, by the time it is in Halliburton's warehouse, it has previously been in Aramco's facility.

He cannot recall all of his conversations with the SEC, but substantially they were contained in the report and the documents that go along with it. CX 1 is the report; it contains the memo that he wrote. It is his description of what he thought was wrong with Halliburton's accounting practices. He believes there is no reasonable basis for the conclusion that delivery had occurred under SAB 104 with regard to inventory housed in Halliburton warehouses. The product has not been physically delivered when it is residing in a seller's own warehouse. He does not see any basis for Sult's conclusion; he also believes that Youngblood's, McCollum's, KPMG's, and Geer's judgment on that issue is totally unreasonable.

CX 177 is a copy of his communication to the audit committee that had a boilerplate confidentiality rider on it. He did not do anything to overtly place the rider on the e-mail before he transmitted it to the audit committee. He did not type out the confidentiality disclaimer at the time that he sent the communication to them. He does not know when the first time he saw it was or whether it was in discovery.

He thought his last conversation with McCollum may have been the 18 July meeting that he tape recorded. Aside from that, they had a few brief interactions. In the 18 July meeting, one of the things McCollum said to him was that they were not communicating enough and they needed to have more communication among them.

The audit committee and the SEC inquiries were concluded by about October of 2006. He had no awareness as to whether KPMG would have worked with him had he resumed his employment position at Halliburton. He did not ask if it was going to be an issue. The letter he received from the company asking that he come back to work stated that he would have the same responsibilities he had before his leave.

CX 1, tab 68 is the Grant Prideco earnings release that he forwarded to Sult. It says that the company's testing indicated that while title and risk of loss had transferred to the customer in certain instances, the supporting documentation did not meet all the requirements as prescribed under SEC guidelines to recognize revenue prior to being picked up by the customer. The 8-K describes their situation, and goes into some internal controls, but it is actually their disclosure that is contained in their 10-Q that gives insight into the actual accounting problem. That is where it says that the revenue and profits from these transactions were required to be deferred until the period in which the customer takes physical possession. He does not know if they were just manufacturing it and stacking it in the facility or whether they were shipping it to a Grant Prideco warehouse.

No one ever explained to him why his leave of absence was categorized as a leave of absence for the benefit of ESG. His understanding was that the leave was set up so that the company could benefit from his cooperation into the investigations.

When he went to work for the Robbins law firm, he did not know that Robbins law firm had sued Halliburton. He subsequently learned this when it was brought up by Halliburton's counsel during his deposition. He is not aware of the lawsuit; his deposition was the first he had heard of it. What he testified to at his deposition was that there was an instruction that went out informing people not to talk to him about Halliburton; he interpreted that to mean that they were being sensitive to his situation and he requested that they specifically not ask him questions about Halliburton. He knew the lawyers at the Robbins law firm had been instructed not to talk to him about anything related to Halliburton; they did not tell him that the reason they issued that instruction was because they had litigation against Halliburton.

If a customer buys a piece of equipment or a product from Halliburton, and it is not needed and stays in the Halliburton warehouse, his position is that Halliburton cannot recognize revenue on that part because it is still in its own warehouse. He does think it matters that the customer has expensed the part for income tax purposes. He agrees that EITF 00-21 is considered a complex accounting standard. That rule can require the exercise of professional judgment, and reasonable competent professionals can differ in judgments regarding the application of that rule in situations, as is basically the case for all accounting rules, including FIN 46. Accounting in general requires professional judgment and understanding of the facts. He is not comparing one piece of literature to another and weighing which is more complex. Although these rules can be subject to professional judgment, this does not mean that all judgments are necessarily reasonable. No one he knows has ever considered it delivery when products are taken from a manufacturing facility to the seller's own warehouse, even if by common carrier. Grant Prideco was clear when it discussed delivery in terms of revenue recognition; they characterized it as physical possession. This term is contained in almost all guidance coming from big accounting firms.

AICPA is the Association of Certified Public Accountants. They issue guidelines with respect to what delivery is, and they are considered authoritative. The book entitled Miller Revenue Recognition Guide is considered authoritative. Lynn Turner is also considered to be authoritative. He was chief accountant for the SEC at the time that SAB 101 was written and implemented. Professor Carmichael is the former chief auditor for the PCAOB, which is the Public Company Accounting Oversight Board. His views are considered authoritative on issues of delivery, bill and hold, and whether there can be delivery by delivering to a site owned by the seller.

CX 167 is a letter they sent to him telling him who he was going to report to. They told him that the position Geer had was as director of external reporting. If Geer had been promoted on a level as high as McCollum or slightly lower, this was not made known to him when they asked him to come back. Before his leave of absence, he viewed himself and Geer as coworkers at the same level. They had the same relevant backgrounds and experience; they both came from Ernst and Young as senior managers. When he got the letter instructing him to come back to work, he did not approach Halliburton to address issues regarding reporting and Geer's promotion. He sent a letter to Halliburton explaining that he felt it was a demotion. He did not go back to work or ask for a meeting to discuss his reporting relationship and what the reasons for the change were.

McCollum told him that there were many smart people that had analyzed the issues and come to a conclusion different than his. McCollum reminded him in that conversation that when the organization books an adjustment, McCollum has to answer to the audit committee and board of directors. Having to go before the audit committee to book an adjustment is considered very discouraging. He worked with Angelle Ernst and Young and she recruited him to Halliburton. After he began working at Halliburton and she had been in the position of vice president of investor relations, he got the impression that she did not want to be involved in the accounting issues. He therefore is not aware of her ever suggesting he needed to talk to her about accounting issues. RX 57 is a document with some notes on it. He used to have that document with his personal notes; when Halliburton demanded that he return all their documents, he turned these over as well, under the expectation that they would be returned. These notes were written when he was working with his attorneys.

The fact that there is an allowance requires an additional step. Anytime you have a right of return, then you have to meet the criteria as set out in FAS-48, meaning there is a set of criteria, but basically you have to be able to reliably and reasonably estimate what that allowance is. Generally that is always considered a critical accounting estimate or policy that one would disclose. EITF 00-21 deals with the issue that arises when one tries to determine whether elements may be separated. If you have a right of return and that right of return is in your control, then you have to defer revenue recognition.

In a situation such as Saudi Aramco, Halliburton has an explicit obligation to perform the services related to that equipment. They sell them through the agent, the agent clears customs, they sit in an Aramco warehouse for a period of time, then they get shipped to Halliburton where Halliburton waits for Aramco to schedule the rig and tell them exactly what they need. The whole purpose of the business in Saudi Aramco is to actually perform the service. There are limited situations where other companies may be retained to perform the services. The obligations and services that Halliburton performs is effectively managing the inventory and assembling the product. He discussed this issue with people in the field. You cannot recognize revenue, even if it has been to a customer site, if you have continuing obligations for that product.

SAB 104 allows revenue recognition where its other requirements are met and there is delivery to an intermediate site designated by the customer. Intermediate site means a third party has physical possession. SAB 104 contemplated that delivery cannot occur until all the services related to the product have been rendered, even if title, risk of loss, and physical possession have all been transferred to the buyer. If the services are inconsequential, then you can recognize revenue. He has never heard of an intermediate site being considered a Halliburton warehouse. Delivery to an intermediate site can be considered delivery or physical possession to the customer.

He heard testimony about some opinions of his revenue recognition training. He was not aware that people disagreed with some of the things that he was saying about revenue recognition and other accounting issues. There were people in the field that did not like when he taught the courses; they did not like what might happen to the company's revenue recognition practices. The revenue recognition courses he taught highlighted a number of concerns in the company's practices which would have required a lot of extensive effort on behalf of the company to get the controls in place and probably would have resulted in a lot of adjustments; he got push-back at every turn. The push-back occurred from the point at which he started at Halliburton, following the two write-offs of GMI and Fiberspar. It was minimal at first but increasingly built up over time. As he worked with people in the field to try to help them or develop accounting, he received push-back in person, over the phone, and via e-mail. After the e-mail about his complaint was sent out, there was little to no interaction with anyone in the office. He no longer received e-mails or phone calls.

He heard from Paquette in mid-February of 2006 that people had been calling him names such as "Capital One No Man". He had never heard it before; he thought people appreciated the trainings and advice he was giving. He does not know whether this nickname developed before or after he went to the SEC.

James Paquette testified at hearing in pertinent part that:[37]

He is an FX accountant for Dell, prior to which he was a senior accountant for Halliburton for four years. He graduated from A&M in May of 2002 with a double major in finance and accounting. Subsequent to that, he obtained a CPA license in December of 2004 and his MBA in December of 2005 from University of Houston, Victoria.

He started at Halliburton in June of 2002 as an associate accountant for the internal reporting group. He worked at Oak Park, which is where the corporate accounting group primarily works. He did internal reporting for approximately a year and a half, and worked for Brian Frazier. His next job at Halliburton was as an accountant in the

[37] Tr. 68.

technical accounting research department, where he reported to Chris Hill. He started working for Mr. Hill in spring of 2004 until February of 2005, when Mr. Hill moved over to KBR. He had a good relationship with Mr. Hill. Also in the department was Susan Wilrodt. After Mr. Hill left, he worked for Complainant until April of 2006. Mr. McCollum was already in the chain of command when he started working for Complainant. His group consisted of himself, Complainant, and Susan Wilrodt. The title of their department was Technical Accounting Research and Training. As a department, they had quarterly updates set up for GAAP and SEC, which Mr. McCollum sometimes attended. At the first quarterly update meeting, they were instructed to scrub the balance sheet, the financial statements, to fix any issues and prevent any other accounting issues from occurring. Mr. McCollum used the term "Smokey the Bear" to describe scrubbing the balance sheet based off of Complainant's introduction and remarks where he stated they should smoke out any issues and then be preventative in terms of any further accounting issues.

Documents involving research that was done are preserved in a memo folder on Halliburton's network. That is where high level memos would be stored. If he needed to go back and look into an issue that a predecessor another person had worked on, he would be able to figure out who that person was, if they still worked at Halliburton, and how to contact them. It was common to do these things either by e-mail or in person.

When he worked for Chris Hill, the head of technical research, he reported to Evelyn Angelle, who reported to Mark McCollum. Angelle was promoted to investor relations and she was not replaced. When Complainant went on a leave of absence, the technical research and responsibility was reassigned to Mr. Geer. Thus, while Complainant was on leave, he reported to Mr. Geer. When he was working for Complainant, Mr. Geer was director of external reporting and Complainant was director of technical accounting research and training. Complainant and Mr. Geer were equals in terms of hierarchy.

The F&A department is the finance and accounting department; there are hundreds of accounting employees at the Oak Park office. At the Oak Park site, all of the employee's offices are close together. Mr. McCollum's office was just below his on the second level, and Complainant's office was approximately twenty yards away from his office. While working in the summer of 2005, one of the first issues that were dealt with was the TCP memorandum. There was an accounting issue that came in through Susan Wilrodt on revenue recognition. Tab 60 of Complainant's Exhibit 1 is the TCP memorandum.

Halliburton has an arrangement with other manufacturers to customize manufacturing guns, which is referred to as TCP equipment. They provide these charges upon request to store the TCP equipment and charges at Halliburton's UK warehouse. These guns are used in oil well production. The issue arose from the finance and accounting group in the UK who wanted to confirm the company's position on the way they ran an account for the TCP gun. They were asking for approval on the accounting; they wanted to bill the customer once the guns were shipped to Halliburton's warehouse and then recognize the revenue at that point. The question was presented to Complainant and it was his understanding that revenue should not be recognized until the goods are delivered to the customer. He researched the issue and discussed the company's policy with Complainant, and showed Complainant the company's position that supported recognizing revenue prior to delivery. Complainant asked him to do some additional research into specific SEC guidance and SEC speeches to confirm that the policy that Halliburton had in place was aligned with that of the SEC. Based upon what he found, in situations where the equipment or product is not delivered to the customer is what the SEC refers to as bill and hold, and bill and hold criteria would need to be met. Based on the company's accounting policy, these criteria were not being met.

He researched SAB 104, which specifically deals with revenue recognition issues, and speaks to four criteria that must be met to be able to recognize revenue, one of which is delivery or performance. When delivery has not occurred, bill and hold criteria must be assessed. When there is a situation where the company delivers a product to perform a service in relation to that product for the same customer, it falls under EITF 00-21, which is accounting for multiple deliverables. One must assess the criteria to be able to determine if one can separate the service and the delivery of the product in terms of recognizing revenue. Multiple deliverables means that there are unique elements in the contract, in that there is more than one element in the contract indicating a product or service to be delivered or performed for the customer. It is possible to have a contract that might have two or three elements of product and two or three elements of service that would be part of the analysis.

With regard to EITF 00-21, he looked at some situations where the contract called for the delivery of a product, a part, and then a subsequent contract that called for installation of the part. 00-21 speaks to having to look at the relationship with the customer and the contracts as a whole, so regardless of whether it is split into two contracts or if it is one contract, the determination must still be made whether both contracts may be viewed in tandem with each other, and then the criteria may be assessed as to whether the contracts may be separated and revenue recognized at different points. EITF 00-21 must be assessed in order to recognize revenue, so if there was no assessment, revenue would have been incorrectly recognized.

Regarding the TCP memorandum, the UK asked him to assess whether they can book revenue or recognize revenue on the TCP guns. When looking at bill and hold issues, they specifically focus on SAB 104 and all speeches by the SEC that related to revenue recognition in SAB 104. SAB's are staff accounting bulletins, and they are issued by the SEC. These documents are found on the SEC website by searching for specific language; it is publicly available. SAB 101 was the original revenue recognition guidance put out by the SEC in 1999. SAB 104 clarified that guidance with a question and answer section. SAB 104 he believes was issued in 2001.

SAB 104 set forth four criteria for recognizing revenue; these four criteria support that the revenue has been realized and earned. If the revenue has been realized and earned, under these four criteria, then one never gets to the bill and hold analysis. The four criteria include evidence of an arrangement, which the cost is fixed or determinable, that collectability is reasonably assured, and that delivery has occurred or services have been rendered. If these four elements are met, including delivery and the inventory is sitting in a Halliburton warehouse because that is where the customer has told the common carrier to deliver it, then this is customer owned inventory.

There was some discussion with a field location about risk of loss. This was a telephone call. Subsequent to that discussion, when revenue recognition training was done in September, a warehouse was visited and questions were asked. Risk of loss was still Halliburton's with respect to the perforating guns in the UK warehouse. He did not visit that warehouse. The customer in this case was Shell Oil. The final conclusion regarding revenue was that its recognition would be deferred. The equipment involved in this particular analysis is equipment that Halliburton, because of the nature of the product, has to install itself. The equipment, standing alone without Halliburton installing it, because of its nature, would not have much value to the customer. Revenue recognition would therefore be improper under 00-21.

In addition, during this time he was also doing accounting research regarding revenue recognition and FIN-46 issues, which is accounting variable interest entities. These issues could be raised by F&A from around the world, or it could be in-house or Houston both asking questions to prepare for upcoming adoptions of particular accounting standards. All issues that were researched originated from people asking the department questions, it was not something that Complainant specifically requested the department look into. He was never present when management directed Complainant to look into any issues. He typically saw the e-mails that would come in when inquiries were received from out in the field or from accounting outside of Oak Park. He, Complainant, and Susan Wilrodt were all generally copied on these e-mails. These e-mails were circulated amongst the F&A department if a particular question needed answering by others in the F&A department.

If he had found out that a given person had worked on the issue before, he would try to contact that person if he could not find the supporting documentation relating to that prior issue. Complainant never told him not to contact somebody. He does not recall if he ever contacted Chris Hill, but he knows the group contacted Chris Hill for information. He saw the e-mails in which Chris Hill was contacted on some of the issues that he testified were going on in the summer of 2005. He did not personally speak to Hill and Angelle about his and Complainant's different conclusions compared to the study that Hill and Angelle did regarding customer owned inventory in 2002 and published in 2003.

FIN-46 came out after the Enron era, and it talks to what is considered VIE's, which is a variable interest entity, and how companies account for these types of entities. Companies were trying to structure relationships or ownership with entities and deciding whether or not to have to consolidate those entities and put them on their balance sheets. FIN-46 provided more of a substance-over-form look at who is controlling the entity, who is being affected by the entity, instead of looking at total common stock. It forces one to have to look at who is on the hook for risk of loss of the entity, who is going to benefit from the majority of the reward of this entity, and several other criteria. His methodology for research of FIN-46 was the same as his research methods for SAB 101,104, and EITF 00-21.

Tab 60 of Complainant's Exhibit 1 is a memorandum from director of technical accounting, research, and training, which meant anyone in the group, could have written it. In this case, he wrote it with Complainant providing edits, recommendations, and approval. The memorandum says "draft" at the top, which means it had not received final approval for this accounting position. A position that the group might take would need to be approved ultimately by the CAF, Mr. McCollum.

J.R. Sult at the time was the controller of the Energy Service Group (ESG). Charlie Geer was the director of external reporting for ESG. He does not know who David Johnson is. Gary Paver was one of their contacts in the UK. Bryce Tawny was a manager or director of a division; he is unsure of his title at the time. Millicent Chancellor was the director of the specific division they were looking at. Kevin Church was the high-level accountant in that division. Kelly Youngblood may have been the global operations director at that time. Chris Hill at that time would have been with KBR. These individuals were sent a memorandum on the TCP guns. The memo itself focused on the TCP issue, but it derived a bigger question for their group in terms of Halliburton's accounting policy on revenue recognition, specifically with respect to bill and hold.

Part of the memo appears to be talking about what was going on in the UK. Farther down, SAB 104 is discussed. The way SAB 104 reads, bill and hold should be assessed on all purported transactions that could be construed as bill and hold. That guidance would be applicable to any situations where one does not deliver goods physically to the customer. In the memo, the words "retains physical possession" are typed in bold. He was stressing that the company was retaining physical possession in order to state that they needed to meet bill and hold criteria. If physical possession is retained by Halliburton, then a bill and hold analysis must be performed. The root of the issue is whether risk of loss has transferred. In most situations, risk of loss isn't transferred until the customer takes physical possession.

The issue arose prior to 2005 and was addressed by Chris Hill. It took him several days to research and gather all of the evidence, and then another few days to prepare the memorandum. He checked other documents within Halliburton's database and with other people in Halliburton. As a result of the memorandum, it was the group's conclusion that the revenue should be deferred until delivery to the customer takes place. This raised the question of what the accounting policy says, which was then given to the group to assess and confirm or change it to assure that it is in alliance with what specifically SAB 104 refers to. He participated in the project at the request of Complainant. Looking into this issue was a directive from J.R. Sult. When doing this research, he found out that the accounting policy was missing a critical step in assessing revenue recognition with respect to delivery. The accounting policy currently in effect at Halliburton did not follow this critical step. Prior to this research, he never actually read the accounting policy. As an accountant, having just read the policy without any specific knowledge of SAB 104, he would have no reason to question it; however, if an accountant had a true understanding of SAB 104, they would question the policy.

Halliburton has an intranet or website where people can go to look at the accounting policies. When he began to question the policy, the group used the research that they had done for the TCP memorandum to support making a change to the accounting policy to state that in situations where the inventory is not delivered physically to the customer, the bill and hold criteria must be assessed. His entire group and J.R. Sult's group was also involved in this issue. He did not attend any meetings where Mr. Sult was present. Complainant asked him to provide the information that the group had put together with respect to the bill and hold analysis so that he could confirm any changes to the draft and move that along the chain. Complainant informed him that he was communicating to Mr. Sult about this matter. The draft regarding the accounting policy was updated and the accounting policy was updated in July to not do a running investigation into whether or not we had additional bill and hold issues elsewhere. An e-mail was sent to the global F&A group to gather the information beyond the TCP memorandum. He talked to Complainant about the original assessment of potential bill and hold sales for a specific division or area.

During this time, it was primarily he and Complainant that were studying the issue. He was aware that there was an investigation in terms of how much this could impact the company, and he was aware that it was being analyzed as a high level process sent out to F&A managers to assess their warehouses and what in there could be considered to be customer-owned inventory. He recalls the number of products sitting in Halliburton's warehouses being significant, a substantial percentage of the Energy Services Group's business. In this division, the products would include completion tools, TCP guns, packers, mud for putting down the well, and any other equipment customers purchase and turn over to Halliburton to perform specific services. At no point did anybody in the group express to him that there was any concern about whether the product was delivered to a Halliburton warehouse versus a customer's warehouse. The issue originated with the TCP memo and the question became why the revenue was being recognized while the products were sitting in a Halliburton warehouse. Based off of his conversations with the employees in the UK and his understanding of the SEC guidance, delivery had not occurred. As a result of this, Kelly Youngblood performed a larger bill and hold analysis in October of 2005. At the beginning of Mr. Youngblood's analysis, his group was contacted; they were given several contracts to review from a bill and hold standpoint, to get an understanding of how the contracts read and how they related to the particular criteria that had to be met in SAB 104 to recognize revenue. Subpart 28 of Complainant's exhibit 1 is Kelly Youngblood's memorandum. He looked at three contracts and was never consulted again on this particular issue. He does not understand why his group was not involved in creating this memorandum.

Upon commencement of the study that Youngblood did, the technical research group, and Complainant specifically, did have input on the study on revenue recognition for customer owned inventory. Complainant's views were known to Youngblood and others participating in that study, including his views about SAB 104 and what its requirements were. When he testified that his group felt shut out of Mr. Youngblood's study, part of it was that they felt frustrated that their views were not being accepted by others involved in the study. At this time Youngblood's job was either manager or director of global operations accounting. Global operations accounting would be the accounting division within finance and accounting that oversaw or regulated the operations or activities of the field accounting personnel. In connection with the revenue recognition study that Youngblood led in late 2005, a great deal of information had to be gathered from the field. The purpose of that study was to gather the facts so that a reasoned judgment about whether or when Halliburton could recognize revenue in the various types of transactions. When Sult, along with McCollum directed that the review or study take place, they made clear that no one was making a judgment at that point in time about what was the correct method. Prior to this point Sult was already making changes to the accounting policy. He was making changes to incorporate SAB104. He does not know whether these changes were ever implemented.

The first time he heard of the concept of customer-owned inventory was as a result of reading the memorandum. He has never seen any allowance by any of the authoritative literature for customer-owned inventory. His problem with the memorandum is that the inventory was being delivered to a Halliburton warehouse and held on behalf of the customer and bill and hold criteria were not being assessed. A question that was asked in the TCP discussion with the employees in the UK was about risk of loss. The question came up of who had the risk of loss, and it was stated that contractually, Halliburton has the risk of loss. The risk of loss has not passed to the customer. This was one of his concerns.

Also during this time, there were FIN-46 issues. A question had come in about a particular entity that Halliburton had ownership in, and in the process of researching the particular issue, the group was trying to determine what particular literature was applicable, and FIN-46 was one of the items that was being assessed. The group was concerned with the adoption of FIN-46 and how it was assessed on the remaining entities that Halliburton is involved with. The adoption of FIN-46 happened prior to Complainant joining Halliburton. Prior to Complainant's employment, the technical research group employee at the time Chris Hill, was involved in adopting FIN-46. Chris Hill forwarded his group some e-mails regarding FIN-46. He would dispute the assertion that Chris Hill did not know that Complainant was looking into these issues; this dispute would be based on things that he witnessed personally.

Another issue that came out of the TCP memo was whether accounting policies were correct with respect to the EITF 00-21 in terms of assessing situations where the company must deliver or fulfill multiple services and products to a customer. This issue was a concern of J.R. Sult. Mr. Sult left Halliburton during his employment there. Based upon the research the group performed on the revenue recognition issues, there were a lot of situations where they were both delivering a product and then subsequently were either expected to or were contracted to be installing those products. In those situations, The group needed to do an assessment of EITF 00-21, and when this was discussed with the people that were doing the accounting on these types of contracts, there was concern that they were not assessing whether or not there would be a separation, and if they were, in terms of recognizing revenue at different points along the timeline of the contract. The concern was that revenue would be recognized prior to when EITF 00-21 allowed it to be recognized.

The TCP memorandum was focused on delivery of product and installation in the UK. Any where the company delivered packers and then were contracted to install those packers would involve EITF 00-21. There are also situations where there was a contract that the company was delivering product through an agent in a particular country and when the company would enter into a subsequent contract with the customer to install that equipment. This would happen with Saudi Aramco, a customer of Halliburton. With the Saudi Aramco contract, there was to be service after the item got in-country. The group's concern with 00-21 was not necessarily whether there was compliance, but that it was not being assessed. To be able to recognize revenue, you need to assess 00-21 to be within the parameters of whether you want to recognize revenue.

His understanding at the time was that Halliburton would sell to an agent, because Halliburton could not directly interact with the customer. The agent would subsequently pass that along to the customer, and Halliburton would end up entering into a contract with the customer to perform the service. Halliburton sells to the agent, and then the agent sells to Aramco. Halliburton at that point could enter into a contract with Aramco to install the product. Whether Aramco could use other companies to install the Halliburton product would depend on the complexity of the product.

Halliburton had to make some write-offs and there were some accounting issues specifically with respect to FIN-46 and the EITF 0214, and the bill and hold assessment was about a $5 million write off. He does not remember if the company Fiberspar had anything to do with FIN-46 or 0214. His conclusions regarding these issues were different than his predecessors' in the group. Before Complainant, Chris Hill was in charge of the group and he reported to Evelyn Angelle. She is now Vice President of investor relations. As a result of learning that revenue recognition may not be in compliance with the literature, Complainant started developing some in-depth training on revenue recognition that was going to be proposed, and started assessing the accounting policy regarding revenue recognition to confirm that those were updated to be in compliance with the SEC guidance. This training was done in September of 2005. He did not receive any criticism; Complainant told him that he, on behalf of the group, received criticism about the training. He was told that it was not in compliance with the company's position on revenue recognition. His conversations were solely with Complainant in terms of how to handle the accounting, and the company's position. It was his understanding that Complainant was working with management and the auditors at the time to make sure that the company's position was in compliance with that. There was a subsequent revenue recognition training that was provided in the summer of 2006.

It was not Complainant's job to set accounting policy or practices for the corporation; that was Mr. McCollum's responsibility. There was a meeting at which he believes Ms. Lewis caused him to believe that Complainant would not be teaching revenue recognition at the finance and accounting summit because it was inconsistent with company policy. Ms. Lewis made a general statement to the group that the presenters' materials would be reviewed by a reviewing committee to ensure that they were consistent with legal requirements as well as policy. Mr. McCollum was not at this meeting. He does not know what communications might have occurred between Ms. Lewis and anyone else about whether Complainant should teach the revenue recognition course, only what he heard that day at the meeting.

He did not see any interactions with Complainant and other people that would have frustrated Complainant. Complainant told him during this time that he was frustrated. He expressed his frustration in the way he was being treated by management. Complainant felt like his conclusions were not being considered, and he was not being given a valid reason as to why. Exhibit 28 is the October White Paper; it presented conclusions different than what his group had proposed. He was frustrated because his group did a lot of work on their position, and then the group was not consulted on the ultimate position generated by the company; he felt as if they were being shut out. No one informed the group why they were shut out of this decision.

He learned that Complainant had sent something to the SEC when he was sent an e-mail informing him that Complainant had filed a complaint. Complainant had never shared with him that he was going to file a complaint. Respondent's Exhibit 5 is the e-mail that he received on 8 Feb 06 from Mr. McCollum. The e-mail was sent to Mr. McCollum's counterpart at KBR, Jan Gann, the director of external reporting, and the director of global operations, Nick Stugart. The part of the e-mail authored by Mr. McCollum does not say anything about an SEC inquiry. He learned of the SEC inquiry because the subject of the e-mail says "SEC investigation", but the actual SEC investigation was discussed in an e-mail that was included on Mark McCollum's e-mail. Based on that, he assumed that Mr. McCollum had simply forwarded Mr. Cornelison's e-mail. To ask him to preserve documents did not require him to know who filed the complaint with the SEC. It was well known in the finance and accounting department that Complainant objected with the company's practice on revenue recognition and FIN-46.

CX 1, Tab 62 is the Christopher article that refers to bill and hold transactions and ship and place transactions. Ship and place transactions refer to scenarios where revenue is recognized after a seller has substantially completed its obligations under an arrangement but prior to the buyer or a common carrier taking physical possession of the goods. Mr. Christopher is saying here that bill and hold applies commonly where a buyer or a common carrier has not yet taken physical possession of the goods.

As a result of this e-mail he had discussions with Mr. McCollum. Mr. McCollum wanted to see how he was doing after the e-mail came out, and to see what all the issues the group was handling at the time to assure he had an understanding of those issues. When he brought up that the group was working on a specific issue, or that Complainant was working on a specific issue, McCollum asked if there were any other issues, and what else Complainant was involved in. The major issue that the group was working on was the RTA issue. McCollum asked him to report back to him what Complainant was working on; he was never consulted after that. After the e-mail was sent, he observed at the Oak Park office that there was no more communication with Complainant. He did not see Complainant involved in issues, consulted on problems, or included in e-mails. He spoke with Susan Wilrodt about what had happened; she expressed concern and frustration about why Complainant had to file a complaint with the SEC. Complainant did not work for Wilrodt; she had worked for him until about the time Complainant made this complaint. Wilrodt was his immediate supervisor. Wilrodt did not agree that Complainant should have elevated these issues to the audit committee or the SEC, and she did not agree with Complainant's view on FIN-46 in all cases.

He recalls having two discussions with Mr. McCollum. The first was shortly after the complaint was filed and second was when Mr. McCollum asked him to keep him advised about what Complainant was researching. He confined his discussions to work related matters; he wanted to know what technical accounting issues were being worked on in his group. That was the extent of what Mr. McCollum told him about keeping him advised about what he and Complainant were doing.

Halliburton was planning an F&A summit, which was a gathering of all lead accountants and above personnel to the Woodlands area for a three-day conference and to focus on a lot of topics, some of them being technical accounting topics. On that list of topics to be taught was revenue recognition. When the list was originally compiled, Complainant was the trainer of the revenue recognition section. A meeting was held in early to mid March of 2006 where it was concluded that Kelly Youngblood would be doing the revenue recognition training and Complainant would be doing derivative accounting. Kelly Youngblood authored the October 26th White Paper that took a different position on bill and hold and deliver than what he and Complainant had concluded. The person conducting the meeting said that Complainant would remain under accounting, but would be pulled off the revenue recognition section because they wanted to make sure whoever was teaching the revenue recognition training was in line with the company's position on revenue recognition. The training that was given at the summit was different than what his group had put together. The training they had provided was derived from SAB 104 and SEC speeches, so it spoke straight to that, whereas the new training spoke to customer-owned inventory and how to assess whether or not the revenue can be recognized. Customer owned inventory was not a term that he was familiar with from the literature, and the criteria that they were utilizing to define whether or not one could recognize revenue was not the criteria that he had seen in any literature anywhere else. There were some things in this new training agenda that were not contained in SAB 104. He had not seen the material in any authoritative literature that he reviewed at that time.

He learned that Complainant was taking a leave of absence at the end of March or early April. Complainant being pulled off of the revenue recognition training did not have anything to do with him going on leave. Based upon his conversations with Complainant, he learned that the auditors at KPMG, Halliburton's external auditors, would not speak with Complainant. He found it unusual as a member of his group and as a CPA that the auditors would not speak to Complainant. In a whistle-blowing situation, his understanding of what the outside auditors would want to do is speak to everyone involved with the issues that the whistleblower is discussing or whistle-blowing on. Complainant went on leave in April of 2006; he continued to communicate with him. At no point did Complainant refuse to assist him on any projects he was working on. At some point, Complainant was no longer able to access company e-mail. After that point they no longer exchanged e-mails, but they did speak periodically via telephone; he also met with him on occasion. They discussed hypothetical situations, to give him guidance on research. He was a little bit concerned about talking to Complainant because he had never been in a situation with someone on administrative leave and what that means regarding what he could talk to Complainant about. Complainant's guidance was helpful in terms of him performing his duties at Halliburton. He found Complainant's guidance to be consistent with the literature and other research that he was doing on subsequent issues. Complainant never gave him any guidance that he thought was not consistent with the literature or research.

He did not see the finance and accounting managers in Complainant's office often after he submitted his complaint to the audit committee and the SEC. Complainant was not at his office for a short period of time following that event. He went on leave in early April of 2006 and he requested that leave in March of 2006; he was working primarily out of his lawyer's offices after they made the request for leave on his behalf. During the month between when he filed his complaint and when he had been given paid personal leave, he was at the office probably 40 percent of the time. He was probably gone for a week or two at the very beginning and then came back up until the end of March. He was there less than half the time. Other than what he did or did not see, he does not have any idea what communications other finance and accounting managers might have had with Complainant during that time.

Around June of 2006 he was interviewed by the audit committee. Complainant's Exhibit 2 is a communication documenting what was discussed at his meeting with the lawyers for the audit committee. After he was interviewed, somebody with the law firm sent him the firm's write-up of their interview for his review and requested his corrections. He made those corrections and sent them back; he never heard from the lawyers that interviewed him that they had any problems with his corrections. The document is what he e-mailed to the lawyers stating his position on the issues they discussed. He was told he was going to be interviewed by the audit committee. He was interviewed at Halliburton's corporate boardroom in down town Houston. Other interviews were conducted by the audit committee at either Oak Park or North Belt. There was a chart that was discussed at the meeting. There are some comments in the memo that Complainant said he was critical of the chart. He believed the flow chart to be incorrect. When making corrections on the e-mail, he was concerned that the auditors or lawyers were trying to put words in his mouth. He made several corrections and comments; he stated that the original insinuated that the company already had a position on customer-owned inventory; he had never used that term and was not familiar with it. The next comment stated that although Complainant's views on FIN-46 were not always his views and that they often came to the same conclusion although they disagreed on certain issues. He was uncomfortable with them saying that he did not have the same views as Complainant, because that was incorrect. Complainant is not a "my way or the highway" type of person. He was open to working with other people's input and he never insisted on his own position or disregarded that of others. Another comment that he wrote on the memo states that he was not aware of any complaint when the matter was first brought up. He felt they were insinuating that he knew Complainant had gone to the Department of Labor before they informed him that he had. Another comment states that he does not believe that Complainant was being treated fairly in some respects. This was based on his understanding of the amount of time and knowledge and effort that Complainant had put into all of the issues that he had researched and the conclusions that he came to and how they were handled, and for him to no longer be consulted on issues the way he was.

He does not remember telling Mr. McCollum when he met with him after the e-mail requesting him to hold documents that traffic into the technical mailbox in his department had dried up before that time. He remembers saying there was not much going on; he was not getting a lot of traffic into the technical mailbox in the research department at that time. However, he does not believe that there had been a decline in the volume of traffic into that mailbox from the time Mr. Hill was his box until the time that Complainant went on a leave of absence. The traffic in the mailbox was cyclic.

Exhibit 1 tab 80 is a section form; it is the Halliburton 10-K draft process for 2005. He was given the responsibility to review last year's section on critical accounting policies and estimates and determine if any updates needed to be made. He looked at the SEC website and also looked at KPMG's guidance on what should be included on critical accounting policy estimates, and came to the conclusion that the company should be disclosing more information about the revenue recognition process. He proposed his thoughts on the issue for management to review and determine if it should be included, and to his knowledge the suggestions were not adopted.

He and Complainant disagreed with the company's ultimate conclusion after Mr. Youngblood led the study about what the revenue recognition policy ought to be. KPMG, the outside auditor, found that there was a reasonable basis for the conclusions that Mr. Youngblood and his group had come to. He was aware that KPMG was involved in the discussions about what the requirements of SAB 104 were. Part of his frustration had to do with the fact that the memo was generated outside of his group. Additionally, no consideration was given between the group's position and Youngblood's position, which is the one the company took. He never received an explanation why KPMG supported the company's position, or how KPMG's position on bill and hold could be reconciled with the letter they wrote. To this day he has not seen any documentation that supports the idea that all of these concerns that he and Complainant had about bill and hold and the accounting issues was only a small amount of Halliburton's revenue. He has never seen anything that justifies Halliburton taking the position that they currently take on this issue.

His research showed that, according to SAB 104, in situations where delivery has not occurred, and furthermore in situations where a contract could be purported to be where delivery has not occurred, they should be assessed under the bill and hold criteria. Complainant is the type of person to build relationships with others, based on his experience working for Complainant. Based on his observations working for Complainant, he believes that Complainant took to heart and followed the collaborative culture that Halliburton had with respect to the revenue accounting issue. He would disagree if anyone were to say that Complainant believed his own opinions were infallible or that he never made mistakes. Prior to Complainant filing the complaint to the SEC, people worked with Complainant on many issues. After he went to the SEC, Complainant was no longer incorporated or involved in discussions regarding the issues.

Exhibit 45 is an e-mail from John Taylor, an accountant at the company. It is addressed to some people at KPMG, Brian Maloney, another accountant at the company, Scott Willis, a Halliburton employee, and Complainant, with a copy to Mark Traylor, an accounting manager. The e-mail is dated 17 Mar 06. This was more than a month after it became known that Complainant had filed his complaint with the SEC. Mr. Taylor's e-mail attaches a draft memorandum regarding the RTA or red technology alliance project. He says to addressees, including Complainant, to please review the revisions and provide any comments. Complainant responded six days later providing some comments in response to Mr. Taylor's revised draft of the memorandum. So at least with respect to some projects, such as the RTA matter, Complainant was not cut off from communications with the rest of the finance and accounting department.

SAB 104 provides guidance related to intermediate sites. The intermediate site designated by the customer is generally thought to mean a location other than one of the customer's locations. Most of the speeches and SAB 104 state that the intermediate site needs to be very independent between the company and the customer. If the product is in Halliburton's warehouse, it could be bill and hold.

EITF and FIN come from the FASB, the Financial Accounting Standards Board, which develops literature on generally accepted accounting principles that have to be followed by a company like Halliburton in issuing financial statements because they are a publicly traded company. This is pursuant to the SEC; the SEC requires that companies follow EITF and FIN and failure to do so is a violation of SEC rules and regulations. Thus, both FIN and EITF have the force of SEC regulations. With regard to the Shell Oil product, the customer takes the risk of loss, but because they are such a large customer, Halliburton would not let them take the loss on that. This would not be a legal obligation but something Halliburton would do to maintain the goodwill of the customer.

After the e-mail went out saying that there was a document hold because the SEC might be investigating, the recipients learned first that there had been a complaint filed and second that the complaint was filed by Complainant. Not long after that McCollum called him into his office to ask what was going on in his group and what issues they were looking at.

He wrote a draft of the 10-K stating that the company ought to put more information about revenue recognition policies. The company decided they were not going to take his point of view as to these transactions. He had never looked at this type of document before; he was simply given the task to determine what needed to be done in certain parts of the documents. There was no misleading information because there was no information on it whatsoever. It is not his sense that this is an area of accounting where reasonable minds could differ. Rather, he believed that what the company was engaging in was misleading and could be fraudulent to the shareholders.

J.R. Sult testified at hearing in pertinent part that:[38]

He is currently employed at El Paso Corporation. He is the senior vice president and chief accounting officer for the corporation and the chief financial officer for the pipeline. El Paso Corporation is the largest pipeline company in the United States. Prior to going to work for El Paso Corporation, he was employed by Halliburton and worked there for approximately one year. At Halliburton, he was the controller for the Energy Services Group, responsible for accounting, budgeting and planning activities.

In the course of his employment at Halliburton, he had some involvement in a review or study that was undertaken in connection with Halliburton's customer owned inventory. The review was started as a result of several different factors. He was traveling internationally in Kazakhstan, taking a tour of one of the Halliburton facilities with the manager on site, and the manager pointed out some inventories that were housed within the Halliburton facility. He immediately contacted the Halliburton office in Houston asking them if they were aware that the customer's inventory was being stored at the Halliburton warehouse, and whether the bill and hold criteria was met. The office responded that the bill and hold criteria had been met. There were a number of other developments that occurred shortly after his trip to Kazakhstan that ultimately caused him to believe that his definition of inventory held and bill and hold was necessarily consistent with the language that was being used by the organization. As a result, he ultimately embarked on a task to better understand both the initial implementation of the original SAB, as well as looking specifically at customer-owned inventory.

Another factor was Complainant's memorandum written in July of 2005 concerning perforating guns in the UK. One of the first discussions he had with Complainant was in connection with the memo about the UK transaction. There had been work done in connection with the initial implementation of the staff accounting bulletin. He discussed with Complainant early on about whether he should consult with Mr. Hill or Ms. Angelle concerning the work they had done a couple years prior. He thought it was critically important that they understand all the work that went into the initial implementation. Complainant responded that he would do so. He recalls at some point in time Complainant telling him that he was having difficulty connecting with Chris Hill to be able to have a substantive conversation about the topic. He believed it was critically important to have that background before Complainant started coming to conclusions of his own about whether the company was complying with SAB 104. He called a meeting of all of the key participants who would have either been involved historically or who were involved currently. At the meeting were Complainant, McCollum, Angelle, Hill, Tawney, and Youngblood. Youngblood was working for Tawney in global operations accounting. That is the part of the organization that would liaison with the field

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accountants. The meeting likely took place in late summer. He was not aware that Complainant was tape recording the meeting at that time.

He had some concerns at the August of 2005 meeting about whether Halliburton's business practices for recognizing revenue complied with SAB 104. He expressed these concerns at the August meeting. He does not recall much with regard to the specific discussion in the meeting. The purpose of the meeting was to understand the basis for the conclusion for the initial implementation of the staff accounting bulletin, which would have been SAB 101 at that point. He wanted to understand the work that was done and the conclusions that were reached to provide a framework upon which to determine whether it was something the organization could be comfortable going forward with. He raised questions and expressed some concern during the meeting about whether the conclusions that had been reached two years earlier were correct under SAB 104. His opinions at the meeting were not concrete or conclusive. He did not order a change to the current business practice for the recognition of revenue under SAB 104. They were just starting the effort to analyze the company's effort with regard to the initial implementation; all the work that followed that initial meeting went on for another couple of months.

CX 1 tab 63 is a Halliburton policy with regard to revenue recognition. This policy is dated October of 2004 and he believes it was in place in August of 2005. There is a handwritten notation on the second page that is his handwriting. It says in a parenthetical "other than a company facility." That has to do with the issue regarding delivery. He thought this was done contemporaneously with the discussion he had with Complainant regarding the UK TCP issue when Complainant showed him the policy at the time of the first meeting. At this point he realized that he and the organization had different concepts regarding issues of bill and hold. He did not intend for his handwritten notation on the business practice to alter the business practice in any way; it was just a note to him. They were not changing the business practice at that time to prohibit recognition of revenue when customer inventory was delivered from a Halliburton facility to a Halliburton warehouse at the request of the customer.

Kelly Youngblood took the lead in the study of the issues of customer inventory and the Halliburton warehouses that came out of the August 2005 meeting. Youngblood was selected because of his role from a global operations perspective; he was the one who had access to the regional infrastructure where all the accountants were within the regions, and ultimately within the field. He had several discussions with Youngblood and others about the fact findings and analysis as the study progressed. He does not remember any specific conversation with Charlie Geer regarding customer owned inventory, but that would not have been unusual given Geer's role in corporate accounting. Geer was also involved in the study. He does not recall if he spoke to Complainant about how the study was progressing. Had Complainant asked to come see him, he would have been available to discuss that.

He left Halliburton around mid-October in 2005. At that point, the study was in its final stages. There were still some loose ends that were being tightened down at the time that he was ultimately leaving the organization. At the time he was leaving Halliburton, he felt that he had an understanding of what the likely conclusions of the study were going to be based on the discussion he had with Mr. Youngblood and others. He believed that that the end of the day the conclusion was that there was a reasonable basis for the technical argument. It was not bulletproof, but there was a reasonable basis and the quantitative analysis that was done in parallel ultimately concluded that the amount in question was not material either. A reasonable basis for an accounting position is one's own interpretation of GAAP. GAAP requires a significant use of judgment in the application of the standard; the GAAP rules are not black and white.

RX 56 is several memoranda. The first one is a study paper that was produced by Youngblood, with help from others, regarding the revenue recognition issues and the customer owned stock stored at Halliburton locations. It is dated 26 Oct. It says that the authors believe that the current business practice complies with revenue recognition criteria according to GAAP, and that they believe that delivery in the context of SAB 104 occurs upon delivery to the Halliburton warehouse when title and risk of loss transfer to the customer. He believes that based on the discussions he head with Youngblood and others, and based upon his understanding of SAB 104, that there was a reasonable basis under GAAP for this conclusion. The memo goes on and says that because they conclude that the delivery has occurred, they do not believe that these are bill and hold situations. He believes that there is a reasonable basis for this under GAAP. He has been in the accounting business for over 25 years and believes the conclusion to be sound but is aware that reasonable minds may differ on this issue. He discussed the issue with McCollum and at the end of the day he believed his conclusion was consistent with where the company ultimately came out.

There is an SEC opinion that provided some support for the conclusion in this instance that revenue could be recognized. Different people might disagree on whether or not this opinion supported it or not, but he is aware of one particular SEC action around that same time frame that he believes supported it. The SEC commissioners ultimately ruled that pharmaceutical companies in selling vaccines to the US Government could store and hold those vaccines for the US Government and still recognize the revenue. The original SAB 101 was passed by the SEC following incidents such as the experience in the Sunbeam case. Sunbeam, under Al Dunlap's leadership, was selling extensive and significant numbers of barbecue grills in the dead of winter and had the highest sales they had ever recorded. Ultimately, it was discovered that customers had no place to store this inventory, although they were selling them to the customers, and they had the right to return this inventory, and all of this inventory was piling up in a Sunbeam warehouse. After this incident the SEC issued SAB 101.

His recollection about what the study that was commissioned at Halliburton concluded with respect to the amounts involved in the customer-owned inventory area was that it was less than $20 million. This would not be material to Halliburton's financial statements, compared to billions of dollars in income. It would be less than one percent.

He was frustrated about how Complainant went about his jobs in terms of the UK perforating gun situation. Complainant brought the issue to him just a couple of days before an earnings release. At that point the books are closed, he was within days of releasing public earnings, and he did not have time to react. The amount involved in the perforating guns memo that Complainant wrote was not a significant amount.

He had communications with McCollum about Complainant related to the performance of Complainant's job. First, he received some feedback directly from some of his direct reports regarding a training session that Complainant had given to different parts of the organization. There was a real degree of frustration and confusion as to what the messages he was sending to the organization. He heard that from several different sources within the Halliburton organization. In addition, he provided feedback to McCollum regarding his frustration and his belief that Complainant struggled in interfacing with the organization, ultimately doing the due diligence that is needed around the transactions, and at the end of the day, making the right call. He believes Complainant was reasonably effective at reading the technical literature, but his sense is that he did not have a lot of experience in the application of it. He has known McCollum for more than 25 years and has an extremely high opinion of him. His respect for him had much to do in his interest in going to work at Halliburton. In his dealings with McCollum, he never had any reason to believe he was not trying to get the most correct accounting answer.

After looking at everything, including the report and the research, he believes there was a reasonable basis for Halliburton's policy of handling revenue recognition. He believed that a good argument could be made under SAB with regard to customer-owned inventory that Halliburton could continue its policy. The amount in question was not material. He viewed the situation as one where even if down the road the SEC were to say they disagree with the way Halliburton was recognizing revenue, the amount at issue was so small that the company was not at risk.

He told McCollum when he left that he thought that the company would benefit by having some more robust guidance to ultimately help through some of the judgment calls regarding the whole area around revenue in multiple element arrangements. On the vast majority of contracts, the amount of work left was minimal. Completion tools made up the bigger bulk of the customer owned inventory and there was nothing else to be done with those materials other than deliver them to the site. The perforating gun was atypical with regard to the amount of work that Halliburton had left to do on the product at the Halliburton location.

The October 2005 letter identified some significant deficiencies. Specifically, it discussed controls over joint ventures and less than wholly owned businesses and accounting for income taxes. He is aware of FIN-46; it may or may not apply to these joint ventures. Within the energy services group, as of October of 2005, they were analyzing the joint ventures in light of FIN-46. There was an issue with whether they had a clear understanding with all of their joint venture partners on their governance rights. He does not recall this being technical accounting-driven. These governance issues and control issues are relative in terms of the accounting treatment for joint ventures.

Exhibit 63 is Halliburton's business practice. It states four criteria, the second of which says "delivery of service and/or sales items culminated by transfer of ownership risk and title to customer." What "culminated by transfer" means is that title and risk of loss has passed. He believes that title, risk of loss, and delivery are three separate things. The position he holds is that there is delivery when the seller maintains physical possession of the product. SAB 101 says that the staff believes the revenue generally is realized or realizable and earned when all of the following criteria exists, and the second criteria is delivery has occurred or services have been rendered. There is nothing in the statement about transfer of ownership risk and title to the customer. He believes that delivery to a Halliburton warehouse constitutes delivery, regardless of whether it is considered an intermediate site. The warehouse is owned solely by Halliburton.

Shortly around this same time frame, the pharmaceutical industry was dealing with issues of delivery, and his recollection is that the commissioners actually published to the effect that pharmaceutical companies selling vaccines to the US Government could sell, recognize the revenue, and store on their own premises. To him, this seemed analogous to what Halliburton was doing. Other than this, he does not recall the SEC ever indicating that it is appropriate to store products in one's own warehouse and recognize the revenue. He is familiar with the concept that a company may approach the SEC and request pre-clearance but he is not aware that Halliburton ever did this. He is familiar with the document released by the SEC that ultimately stated that they narrowed the scope for pharmaceutical companies. He is aware that Halliburton is not a pharmaceutical company but believes it goes to the fundamental issue of delivery.

In CX 1, Tab 63, he took the position that delivery would not include delivering to a Halliburton warehouse. At that time, he had not seen in his personal experience a situation like he faced at Halliburton. His belief was based on his limited historical practice with regard to complex revenue recognition issues. Based on his experience, it was his view at that point in time without knowing anything about the facts and circumstances around the Halliburton issue.

A PSL is a product service line. He has found no evidence of any inappropriate recording of revenues to meet target sales for the PSLs. Halliburton is first and foremost a service company. The traditional way that Halliburton deals with a product is that it delivers it to its own warehouse near a rig site where it will be ready to be delivered to a rig when it is needed. This may not be universal across all transactions, but there are instances when it occurs. Completion tools are a product service line. To the extent the tool requires assembly; it is done upon receipt at the warehouse. The assembly is usually done by Halliburton representatives with customer representatives there. Some tools are shipped completely assembled. Some completion tools might come in that are pursuant to a master service agreement where Halliburton has agreed to install the tool.

He did not see the factual back up that went into the conclusions by Kelly Youngblood with regard to customer inventory. After spending a substantial amount of time internally discussing the issues, as well as having some consultations externally, he felt like the argument with regard to delivery occurring and bifurcating it from the concept of the public warehousing was a reasonable position to take. He talked with experts in the field and became aware of the issues faced by the pharmaceutical industry and found these to be analogous issues faced by other companies dealing with these issues of delivery.

The experts he talked to were a firm called Financial Reporting Advisors. He spoke with Amy Ripeppi, and he used her more as a sounding board. He did not call them and ask for a firm and fast conclusion, but spent some time discussing the revenue recognition issues, discussion delivery, and the concept of bifurcating delivery from the public warehouse. She updated him on some of the things that were happening with regard to the pharmaceutical industry and other clients dealing with analogous issues.

He believes the company's position ultimately was a reasonable position to take. He believes that others could have taken the position that revenue could not be recognized, and delivery could not be counted when there is delivery to a Halliburton warehouse. This position would also be reasonable. Complainant's position that revenue cannot be recognized because there is no delivery by delivering to a Halliburton warehouse is not unreasonable. If there is no delivery, there would be a bill and hold situation and the entire bill and hold criteria would have to be met. He believes there were challenges around the fixed delivery date, but there was also a lot of discussion among the standard setters around exactly what is meant by fixed delivery date.

CX 1, tab 60 is a draft memo dated 15 Jul 05. It was given to him by Complainant. At the time, he thought the memo coupled with some of the other recent experiences he had and it is ultimately what led to the reanalysis of the original implementation of SAB 101. In one matter, he concluded that Complainant had reached unreasonable accounting conclusions. This was a matter relating to one of the joint ventures named Fiberspar. Complainant believed that the issue was a FIN-46 issue, but there was a misapplication of equity accounting that was done related to that entity. A correction of an error was made when that item was found. Complainant never fully agreed with the final conclusion that the error was misapplication of equity accounting. The issue was initially addressed because of Complainant's concern that it was a FIN-46 issue.

He realizes that Complainant has the right to go to the audit committee as well as the SEC with any issues he has concerning essentially fraudulent information being sent to the public by a public company. He had no idea at the time of his departure that Complainant had such grave concerns with regard to the revenue recognition issue. In August of 2005 they discussed the issue of the perforating gun and revenue being recognized without physical delivery. He does not recall the exact number that the customer owned inventory issue impacted profit, but believes it was less than $20 million. This was based on a global analysis. The analysis was designed to be a historical review of those situations in which someone might argue that both the balance sheet and income statement were misstated.

He received some negative feedback regarding Complainant's seminars. He heard from Nadeem Ashbach and others within the global accounting organization. This training was concerning revenue recognition. He believes the training was designed to cover many topics other than just revenue recognition. He does not recall if he notified Complainant of his concerns or the negative feedback. Tab 23 of CX 1 is a series of e-mails, some from him; he forwarded an e-mail from Eric Ottman to Complainant and his group. The subject was revenue recognition training. The e-mail contained positive feedback; it says that Complainant did an outstanding job. He does not recall if he has any documentation regarding the negative feedback, or whether at the point at which he sent this e-mail he had received the negative feedback. Tab 33 of CX 1 is an e-mail from him dated 27 Jun 05 to Complainant. The subject of the e-mail is Fiberspar; it thanks Complainant for a concise summary. Complainant's summary lists some errors Complainant believed to have occurred with respect to Fiberspar. Complainant's ultimate concern was that GAAP was not being applied correctly. The memo does not mention FIN-46. Complainant's e-mail concerns the equity accounting aspect of Fiberspar.

He left Halliburton in October of 2005 to pursue a better career opportunity. He did not receive any severance package or separation package from Halliburton when he left. He did not sign an agreement suggesting he would agree to cooperate. He met with Halliburton's outside counsel about his testimony in this case. He has not met with anyone else concerning his testimony. Since he left Halliburton has not discussed any of the issues concerning revenue recognition, EITF, or the joint ventures with anybody at Halliburton with respect to technical accounting. He was periodically updated from McCollum on Complainant's complaint. McCollum never spoke to him directly about Complainant's complaint and he has never seen the complaint nor does he know what is in the complaint. He only knows generally what has been alleged. He met with Halliburton's outside counsel, Mr. Jordon, and also with his own internal counsel. He received several calls from Complainant, but did not return them.

Tab 23 of CX 1 is e-mails about the training. There is an e-mail saying "my main negative about the training was that he did not have many real-life examples from the oil services sector. This sort of thing is always much easier to understand with some real and local events."

His general understanding with respect to how a product got from a Halliburton manufacturing facility to wherever it was going was that a third party transportation service or a common carrier would do the transporting. The customer did not deliver it from the Halliburton manufacturing plant to the Halliburton warehouse; he believes this was done by a common carrier. He does not know if the customer was responsible for arranging this transportation or if Halliburton was.

When he looked at everything the Youngblood group came up with, he decided they had a reasonable position, but that there was always a risk that the SEC would disagree. However, he is confident based on his analysis, that the numbers affected were not material. He believes it is appropriate to recognize the revenue even when in the realm of customer owned inventory and multiple element arrangements. The vast majority of his recollection of the customer-owned inventory was the basic completion parts that did not have a significant service component to it, or had no services component.

The ultimate conclusion of KPMG was that EITF 00-21 had to be addressed regarding all of the products. Revenue can be recognized under EITF 00-21 if there are significant post-delivery obligations to the extent that the product is separated from delivery and the additional services. They are separated by assigning separate values. One issue that was being addressed when he left was whether fair value could be ascertained. He does not know whether the issue was resolved. It is difficult to assess a fair value if there is no market. He is aware that this was one of Complainant's concerns regarding the multiple-element arrangements for the perforating gun.

Richard Mize testified at hearing in pertinent part that:[39]

He is employed at Halliburton as the assistant general counsel in Halliburton's law department, and is also director of business conduct. His duties involve assisting management in implementing the ethics and compliance program. He also has responsibility for the board of director's mailbox which is advertised in the code of business conduct and on the Halliburton website. He monitors the e-mail box for communications to the board. He is the corporate custodian of communication to the board through that mailbox.

[39] Tr. 432

RX 1 is the website page with the process for contacting the board of directors. It states on that page how complaints and concerns will be processed. If somebody wants to bring a complaint or a concern to the board, they can do so in one of three ways. They can call a special number set up for that purpose, they could write the board of directors through the mail, or they can send an e-mail to a special e-mail box set up for communications to the board. The policy discusses how complaints and concerns will be received and processed. If there is a complaint concerning accounting, internal accounting controls or auditing matters, then they will be referred to members of the audit committee. Other concerns will be referred to the chair of the management oversight committee. He is specifically responsible for receiving and processing the complaints and passing them along. The board of directors e-mail box gets thousands of e-mails every year. Every director does not read every e-mail that comes through that mailbox. There is a process in which it is decided which e-mails the audit committee, in particular, will receive. They decided it was foolish to provide every single communication that comes to the mail box, because most of them he considers irrelevant trash. It was decided that there were certain categories of communication that would be presented to the board at their regularly scheduled meetings. Those would include the categories of concerns about accounting, internal accounting controls and auditing matters, allegations of violations of the company's code of business conduct, human resources issues, as well as communications that reflect either criticism or praise of the company. There are some communications considered so urgent or significant that instead of waiting for the next board meeting, they are sent immediately to the audit committee. This is what happened to Complainant's complaint.

There is a process by which he decides if an e-mail in the board of directors' mailbox needs to go to the audit committee immediately. He contacts the company secretary; her staff has the ability to communicate with the board and knows what their e-mail addresses are. The pertinent communication is forwarded to the company secretary with the request that she forward it. In this case, it was to the chairman of the audit committee, Robert Crandall. At the time, February of 2006, the company secretary was Margaret Karier. He sent Complainant's communication directly to the audit committee or the board of directors through Ms. Karier. He also sent it to Chris Gaut, who is the chief financial officer of the company; the next day he sent a copy to Mr. Cornelison, the general counsel of the company. He sent copy to Gaut because as the chief financial officer of the company, he is responsible for accounting matters. He deemed the communication from Complainant as a potentially serious allegation. He knew it was going to the audit committee chairman, and he thought Gaut had a reason or need to know about the communication. Cornelison had a need to know because he is chief legal officer for the corporation. Forwarding Complainant's communication to Gaut and Cornelison was consistent with the kind of practice that he normally follows when he receives serious communications into the board of directors' mailbox.

Halliburton has a policy discussing whether an individual can report a concern to the board of directors anonymously or confidentially. The website indicates that individuals may bring concerns anonymously or confidentially if they wish. Complainant did not submit his communication anonymously. RX 2 contains two e-mails, both from Complainant to the board of directors' mailbox to the attention of the audit committee. The e-mails are identical except one has an attachment. Complainant signs his name at the bottom of the e-mails and includes his name, title, vocation, and contact information. The e-mail was not submitted anonymously. There is also no request for confidentiality with respect to his identity contained in Complainant's e-mail. Some copies of this e-mail have a confidentiality rider on them. They generally state that the e-mail is confidential and for the intended recipient only. This rider is in use at Halliburton on the e-mail system. The rider does not appear on either email. He recently had an occasion to go back into the board of directors' mailbox and search for Complainant's e-mails at the request of Respondent's counsel. These are true and accurate and complete copies of the e-mails that he found at that time that Complainant actually submitted to the board of directors in the exact form that he did so.

He does not take the position that if one does not specifically ask about confidentiality it is appropriate to broadcast the complaint throughout the company. When Complainant's complaint came in, he distributed it to who he thought had a need to know about it. His personal handling of these matters is that he does not broadcast them, regardless of whether they request confidentiality. Individuals may report their concerns anonymously or confidentially. He does not know whether Complainant was knowingly communicating his concerns to anybody besides the audit committee. The e-mail was not copied to anybody outside the audit committee, but it says that the audit committee may contact him. This same procedure for complaints also applies to complaints under Sarbanes-Oxley regarding accounting irregularities. These complaints also may be reported anonymously or confidentially. The complaints, and whether they are forwarded to the CFO and general counsel, are handled on a case by case basis. Had Complainant asked for his name to be kept confidential, he does not know that he would have sent it to the CFO at that particular time. He would have provided it to the company secretary so that it could be forwarded on to the audit committee chairman.

Sarbanes-Oxley mandates that the company have procedures regarding confidentiality of complaints of all their accounting irregularities. They have confidentiality concerns because they want individuals to be able to bring concerns to the company's attention without fear of retaliation or retribution. They want to have a process in place so somebody could disclose a concern anonymously. He does not know whether prior to Complainant filing his complaint with the audit committee he told anybody at the company that he made this complaint. He learned that Complainant had contacted the SEC by virtue of an e-mail he saw from Halliburton's general counsel in early February. He understands employees' concerns about retaliation for bringing forward allegations of misconduct. The first person he sent the complaint to was the company secretary; he assumes she forwarded it on to Robert Crandall, chairman of the audit committee. He also forwarded it to Chris Gaut, the CFO shortly after he sent it to the company secretary.

CX 4 is an e-mail from Cornelison, who is Halliburton's general counsel. It is addressed to him, McCollum, and the CFO about the SEC allegations filed by Complainant. RX 5 shows that McCollum sent this to a number of people in the accounting department and identified Complainant as the one who complained to the SEC. There has not been any change in policy to prevent that kind of an e-mail identifying an individual that reported to the SEC. He is not aware of any instructions of McCollum regarding that e-mail. He is not aware of any discussions with McCollum regarding that e-mail. The e-mail, in his opinion, does not necessarily violate company policy. It is always a case-by-case basis. At the time, he would think it would have been very important for the company to take steps to ensure that they are going to maintain documents that may become important in the SEC's review of what were serious allegations. So to him, an attempt to make sure that the employees who may have such documents are aware of that obligation is very important. He believes it to be important to let employees know that there is a problem and therefore documents should not be destroyed, but rather retained.

He does not agree that the disclosure of Complainant's name is in violation of company policy. RX 1 is the Halliburton website. There, an individual may report his concerns confidentially or anonymously, and the individual is assured that their confidentiality shall be maintained unless disclosure required. He did not distribute anything to anyone in the accounting section other than Gaut, who is the CFO. He does not know if anyone ever made a determination that disclosure of Complainant's name was required or advisable in connection with any government investigation report in terms of disclosing the individual's name to people within the accounting department. The company knew of Complainant's complaint as of 8 Feb 06. He was not aware prior to 8 Feb 06 that a communication from Complainant had gone to the SEC. He does not know if anyone at Halliburton other than Complainant was aware of that SEC investigation prior to 8 Feb 06. He looked at the website and saw the complaint filed by Complainant when he spoke with Respondent's counsel about his testimony. It did not have the trailer about confidentiality. He is not aware whether any determination was made that Complainant's identity should not be disclosed under company policy. There was no specific request for confidentiality in the communication, and because of the way it came in, he felt very comfortable in how he handled it and who he told.

John Christopher testified at hearing in pertinent part that:[40]

He is employed at KPMG and has worked there for five and a half years. Before that he was in the Marine Corps. At KPMG, he is the senior manager in the audit practice. That was his position during the time that Complainant was employed by Halliburton. He was

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assigned to the Halliburton team during that period of time. During the period of time that Complainant was employed, he was to manage the consolidated audit of the financial statements of Halliburton. During that time he came to know Complainant and had extensive interactions with him. He and Complainant had a very good relationship and he considered Complainant a good friend. He and Complainant would talk about accounting issues that were coming up in the finance and accounting group.

He had some involvement in studies that were reviews that were conducted at Halliburton in the second half of 2005 involving customer owned inventory and multi-element arrangements. His involvement was to manage the KPMG analysis and audit of the transactions as well as the process that the company went through for both of those analyses. GAAS is generally accepted auditing standards that are what auditors are required to follow; they are not only required to audit and analyze numbers but also to understand the client's internal controls as part of that process.

He is not sure who led the customer-owned inventory study at Halliburton, but he knows who was involved: McCollum, Complainant, and Youngblood. He communicated with those three individuals. The conclusion reached by those individuals was that those transactions were accounted for accurately under US GAAP. SAB 104 is the SEC staff accounting bulletin 104; it is the applicable accounting literature for revenue recognition. It is his understanding that the conclusion reached in that particular study by Halliburton was that delivery in most instances had occurred when the product arrived at a distant Halliburton warehouse. He agreed with this conclusion; he came to agree with the conclusion as the study progressed. During the course of fulfilling his responsibilities to KPMG during the course of that study, he learned that the products that arrived at a distant Halliburton warehouse met the definition of delivery under SAB 104. The definition of delivery under SAB 104 is that the seller either delivered the product to the customer's site or to a customer-specified intermediary site. His understanding at the beginning when Complainant spoke with him was neophyte compared to his understanding of SAB 104 by the end of the process. To educate himself on SAB 104 during that study, he consulted with individuals within KPMG such as the home office in Houston, and he consulted with individuals at the national office. He spoke with members of the engagement team, Complainant and Youngblood, and tried to get as much of a breadth of knowledge about these transactions as well as how SAB 104 interplayed with these sets of transactions.

This particular issue went to KPMG's national office. KPMG's national office is the head office of the firm, and also the technical accounting and auditing clearinghouse. At a point when an engagement team believes that something is so judgmental or so complex that there needs to be additional guidance, the engagement teams will go to the national office for guidance. After the issue of whether delivery had occurred had gone to the KPMG national office, the conclusion was that Halliburton had accurately recorded revenue under US GAAP. Complainant disagreed with this conclusion and spoke with him about it and the basis of the contrary judgment. These discussions occurred over a period of two to three months but he was not able to persuade Complainant that his view was better reasoned, nor was Complainant able to convince him that Complainant's view was better reasoned. In his view, Complainant's opinion was black and white and operating in a vacuum. He felt that Complainant was taking a literal translation of delivery under SAB 104 based on one sentence in the bulletin, when in actuality there are about three pages of materials describing delivery. He did not understand Complainant's conclusion, but understood that Complainant put a lot of effort into it and that Complainant was intelligent. He always listens to Complainant's thoughts on processes and transactions but ultimately concluded that Halliburton was adhering to GAAP.

The facts related to the types of transactions Halliburton was engaging in with its customers were relevant to this determination of whether delivery had occurred. There were contractual facts that were highly relevant; a clear reading of contracts was the primary audit procedure that was performed, as well as a discussion with legal personnel within each of the jurisdictions that might not follow US or UK common law. They did a lot of audit work, visiting the locations. There are KPMG teams around the glob that do work for Halliburton and engage in audit work around customer-owned inventory. He and others at KPMG looked at the contracts and did the field work to establish what the facts were of the transactions; they did not simply rely on what Halliburton was telling them. It would not have been normal for KPMG as the outside auditor to just rely on what a client was telling them. He felt that Complainant had a great breadth of knowledge about SAB 104 and the transaction from a generic sense. He never specifically asked Complainant, but he was not aware of whether he had actually audited the contracts or reviewed them.

Tab 62 of CX 1 is an article he wrote that was published in a journal. He does not believe that the conclusion that he reached with regard to whether delivery had occurred for customer-owned inventory conflicts with the position he took in that article. There was a subsequent study to the customer-owned inventory study; it was a review related to multi-element arrangements. In that study, the participants from Halliburton that he primarily interacted with were McCollum and Youngblood. He did an audit on that study involving the requirements of EITF 00-21. He understands the conclusions reached by Halliburton in its study on multi-element arrangements, namely that their historical accounting was in compliance with US GAAP. He reached that conclusion as a result of his audit of that situation; he concurred that the company had accurately reported revenue. He did not go into that study with an opinion on whether the company was complying with GAAP but rather came to that opinion as the study progressed. He did the same kind of audit and field work in connection with the multi-element arrangements situation as he did with the customer-owned inventory situation; he actually looked at contracts and spoke with people in the field.

There were material facts that led him to his conclusion that Halliburton was recognizing revenue with respect to multi-element arrangements consistently with GAAP. The main fact was that they had relevant fair value for the separate deliverables. There was evidence of fair value and under EITF 00-21, they were therefore separable and revenue could be recorded on the delivered elements; on undelivered elements there were either relative fair value or services were considered perfunctory. Regarding multi-element arrangements, if there is a service component that goes along with a part, it is not true that revenue can never be recognized under 00-21. This issue did not go to KPMG's national office; it was handled locally. The conclusion was that Halliburton's practices were in compliance with US GAAP. There is no specific reason the issue did not go to the national office; there were no gray areas or highly technical issues in particular that needed to go to the national office.

He had discussions with Complainant during the course of the multi-element arrangement study about whether Halliburton's revenue recognition practices were appropriate; it was Complainant's position that they were not appropriate. He disagreed with Complainant's position on the issue, although he believes Complainant was exposed to all of the pertinent facts of the transactions.

He was involved in reviews of joint ventures related to FIN 46. He recalls the BASP joint venture, an Algerian joint venture he discussed with Complainant, and several others that he cannot recall by name. The joint venture he discussed the most with Complainant was the BASP joint venture in Algeria. This joint venture was originally consolidated, then reviewed and unconsolidated. Complainant reviewed it after they discussed FIN-46. Complainant's position was that the BASP joint venture should be consolidated; his judgment was that it should have been deconsolidated. In these discussions he had with complainant, he does not think that Complainant misunderstood his views. He may have misunderstood whether he had made a conclusion at the outset. There is no doubt that he had to gain a lot clearer understanding about all the transactions. He and Complainant had a friendly relationship and they would talk quite a bit, but they did not concur on this conclusion.

At a certain point in time he learned that Complainant had filed a complaint with the SEC and the entity that oversees public accounting firms about certain of the accounting practices at Halliburton. The complaint implicated KPMG as well as Halliburton. He received instructions from KPMG about his interactions with Complainant once the complaint came to light and was instructed that he should avoid talking to Complainant about technical accounting or auditing issues at Halliburton. He does not know if there was a duration or timeline set for that instruction. The instruction specifically came from his lead audit partner, Mr. Whalen, so he is not sure what the reasoning was or if Whalen received any reasoning. The instruction simply made sense to him in that Complainant had written a letter alleging that KPMG was complicit. Whalen was the lead audit partner at KPMG for Halliburton. No one at Halliburton ever instructed him not to deal with Complainant. He had some discussions with Complainant regarding what he felt his job at Halliburton ought to be compared to what McCollum wanted him to do. Complainant felt like he had been brought in to Halliburton to perform a certain type of job at Halliburton as the director of technical accounting and research. His understanding of the job description was that it was a little bit more of a business advice type job, and Complainant said to him that that was probably part of some of the issues between Complainant and McCollum. Complainant felt that he had been brought into Halliburton to do a completely different job than what he was being asked to perform at the time. As a business advisor, he feels Complainant would help people in the field that are performing accounting work on a daily basis, and those individuals who were contracting and talking to the customers of Halliburton and helping them on a timely basis to work through accounting issues.

If Complainant finds accounting irregularities, he has a duty to keep speaking until the issue is resolved, even if that means going to the SEC and the audit committee. If Complainant feels that Halliburton is committing securities fraud, misleading shareholders, Complainant has a duty to bring that up too. Whether there is a material violation of GAAP depends on the definition of material. It needs to be analyzed and audited. There are a vast number of things that go into a materiality analysis. He believes it would be important for investors, shareholders, and the public to know that when the company says it has strict compliance with GAAP, it intentionally circumvents GAAP. SAB 104 is part of GAAP. He understands that if the company represents to the public that it has strict compliance that would mean delivery. If they do not have delivery you can only recognize revenue if it meets the bill and hold criteria.

The article in tab 62 of CX 1 is the article he wrote about revenue recognition in the oilfield services sector. He wrote that article some time in 2004, within a year of when the issues arose with Complainant and Halliburton. The article was published in an internal KPMG publication called Current Oil and Gas Topics; it is a periodical that is shared internally and with clients. He still believes his article is accurate today. He was working on a Halliburton account when he published this article, and Halliburton is an oilfield services company. This article therefore is very relevant to Halliburton. At the time he wrote the article, he was not working on any other oilfield services clients, only Halliburton. In the article, he says that bill and hold scenarios frequently arise in the oilfield services sector. Bill and hold scenarios did not frequently arise with respect to Halliburton. This statement applies to the entire sector; with respect to Halliburton, bill and hold arrangements do not frequently arise. There are certain factors that make Halliburton unique such that bill and hold scenarios do not frequently arise. Halliburton is primarily a services company versus an equipment manufacturer and reseller to a customer. The term oilfield service companies encompasses a lot of different types of companies; there are companies that are primarily in the business of manufacturing tools and equipment just to sell to customers, and then there are companies like Halliburton that mainly manufacture equipment to use for their own services. They do not sell the equipment to the customer, as opposed to other business models where equipment is manufactured to a customer's specifications and then sold to the customer. Halliburton manufactures products as part of its service arrangement. Halliburton manufactures equipment based on their budget and not necessarily based on contracts with customers. The product is manufactured to generate Halliburton's services. The service is what primarily drives Halliburton's business.

His article states that an oilfield services company may complete the manufacturing of the customer's requested products, have them shipped to a company owned warehouse, and determine a fixed delivery schedule to the customer's warehouse. The company may obtain legal acknowledgment that the risk of loss has transferred. An oilfield services company might be able to recognize revenue immediately upon completing the manufacturing process and meeting all the bill and hold criteria. This is not Halliburton's situation; the situation described in the article is that there are certain criteria, either under SAB 104 or EITF 00-21.

Halliburton had other attributes with respect to its customer owned inventory that allowed it to recognize revenue, or cause him to believe there was delivery. The primary attribute was that it was written by a customer that they request the product be delivered to a customer site or a customer-specified intermediary site. The contract does not say that this site cannot be the seller's warehouse. There are certain criteria that must be met in order to have passed the risk of loss. First, the purchaser named in the purchase order, in FOB terms, requests that Halliburton deliver the product to Halliburton's warehouse, which, from an operational standpoint, is the closest point of demarcation for that well. The criterion that is most important is whether there has been delivery to a customer-specified intermediary site; this is directly out of SAB 104. Second, the insurance profile of the product must be examined and it must be understood whether Halliburton is insuring these products as they would their own inventory. The third question is whether there is a right of return. These are sub-definitions of delivery. One may look at these factors not only in their determination of whether a bill and hold analysis may be done, but also whether there was delivery. In some cases, delivery will not be met because in a bill and hold arrangement there may be cases where equipment is manufactured and never leaves the manufacturing facility. The two scenarios that might happen are that you either meet all four criteria of SAB 104 and you recognize revenue, or you do not meet all four criteria of SAB 104 and then you go through the additional seven criteria of bill and hold. If you do not meet all seven of those criteria for a bill and hold arrangement, then revenue is deferred.

When deciding whether to approve that delivery has been met, he also looks at undelivered elements, such as warehousing, and whether that would be considered either consequential versus perfunctory. He is not aware of the company changing its requested contractual language with its customers in order to meet a delivery requirement. He ran across several transactions that showed a customer's request to deliver the product to a

Halliburton warehouse. This request comes from both big and small clients. Title transfer is one of the criteria for revenue recognition; SAB 104 does not specify who has to request title transfer, only that it must be transferred. He believes it is not problematic for Halliburton to request that risk of loss be transferred such that they may recognize revenue. He does not believe that transferring title to somebody for accounting purposes would be fraudulent or manipulative.

Risk of loss is determined from the contract. The contractual language he saw was that the only retained liability that Halliburton had was gross negligence. It is a bailee relationship when only the right of gross negligence is retained. A second item that is in the contractual language is insurance on the products. Halliburton did not insure the products; the products were segregated from their own inventory and they were not insured by Halliburton, so it is an important component in the fact pattern. Another factor is from a right of return standpoint. There were no rights of return or rights of concession; in order to audit that, you go to the contract, because at the end of the day everything is gong to be governed by the contract. Once the equipment is in the warehouse, it is not Halliburton's responsibility, but the customer's.

CX 1, tab 73 is a Shell contract in which the company discusses not recognizing revenue. There are certain contracts with Shell where it was orally stated that Shell will take the risk of loss although on paper it says the risk of loss is with Halliburton. The company concluded that they could not meet the revenue recognition criteria for Shell, so that revenue was deferred. Shell is not the only customer that uses the Houma warehouse that Halliburton did not recognize revenue for. In the Houma warehouse, about five percent of the warehouse is customer-owned inventory. There is different language that goes into a contract where a customer is purchasing inventory that they are requesting Halliburton to deliver to a site other than the customer's. There are no contracts that are specific to a warehouse. There is standard language with respect to customer-owned equipment. On page six of CX 1, tab 73 there is an e-mail from Peter Duhand to Alan at Shell, dated 20 Oct 04. Duhand is the manager for Halliburton in Houma. Duhand, in the e-mail discusses how he has cut past the contractual requirements relative to customer owned equipment. He is familiar with the contractual requirements of Halliburton relative to customer-owned equipment. Generally speaking, customer owned inventory contractual requires transfer risk of loss and responsibility to the customer. There were a few instances where he saw communication from a customer saying they understand the transfer of risk of loss; there was no doubt that risk was not transferred in the Shell contract. The Shell contract was different from others because it did not have the gross negligence provision. The business practice at Halliburton is that they do not take responsibility for the inventory absent gross negligence. He is familiar with a bill and hold summary from October of 2005. In the Gulf Coast Shell situation, the company was deferring the revenue the entire time. Tab 65 of CX 1 is comprised of schedules; he has seen this before. It says that in Houma, $275,000.00 in revenue was recognized. He does not know if this is Shell revenue or what inventory it is comprised of.

He found an error in Halliburton's accounting; he believed that BASP was accounted for incorrectly in that they were consolidating. He did not find an error with the way the company was accounting for multiple-element arrangements, only with respect to the BASP joint venture. He knows Susan Wilrodt as an employee who used to work with Complainant in the technical accounting group. He does not recall if he discussed the accounting error with her, but he probably did, in addition to Millicent Chancellor and Kelly Youngblood. Youngblood did not have any resistance or indicate that they had not made a decision about whether they were going to go that route. There was never a situation where he recalls Youngblood saying that he understands that he believes there is an error but he is not convinced and they are going to go that route anyway.

The main problem with BASP was that the participatory rights of the minority interest partner were so intense as to effectively not give Halliburton any control over the joint venture. There was an error in that Halliburton consolidated the BASP joint venture. Consolidation indicates control, and Halliburton did not have control over that joint venture. He went to Algeria and spent two weeks at BASP and it was very clear that Halliburton did not control it; everyone in Halliburton agreed with this. He assumes that Muchmore did not disagree, but he never spoke specifically with Muchmore about BASP. Deconsolidation in the abstract can affect gross margins. Depending on the circumstances, it could have a positive or negative effect, based on how the numbers are analyzed.

Tab 70 of CX 1 is an e-mail from Susan Wilrodt. It is dated Saturday, 1 Oct 05, and refers to a meeting with Susan Wilrodt, Millicent Chancellor, and a man named Kevin. He does not recall this meeting or any meeting specifically with Wilrodt about multi-element contracts. He does not recall saying anything about finding an error in the company's accounting for multiple-element contracts. He does not remember any concerns about meeting EITF 00-21. Youngblood never told him that he did not think the company could meet objective evidence of fair value. Fair value must be shown for an undelivered element. In order to recognize revenue on a delivered element, one must be able to have evidence of fair value of the undelivered element. There is less of a focus on the delivered element; the focus in 00-21 is on the undelivered element, because that is the one that is more difficult to get. He does not recall any concerns on behalf of Kelly Youngblood or anyone else in the Halliburton accounting department that they could not meet that evidence of fair value with respect to the undelivered element. It was a complex process and a lot of work went into it, but he does not recall anyone other than Complainant having any real concerns that the company could find evidence of fair value of all of their elements.

EITF 00-21 must be complied with, but when there is an undelivered element, the first item that must be addressed is whether the undelivered element is essential or perfunctory. If it is clearly immaterial, then a fair value analysis does not have to be performed. If it is concluded that the undelivered element is significant or essential, then it must be determined whether there is evidence of fair value for that particular undelivered element or undelivered service before revenue may be recognized on the delivered element. In most cases, he found objective evidence of fair value. They found that they had performed that service for a customer several times on a stand-alone basis. This value was found in invoices; he looked at invoices for comparable services in the past.

EITF 00-21 must always be complied with; if you do not comply with EITF 00-21, you are not complying with GAAP. Complainant had approached him because Complainant was skeptical whether Halliburton would be able to provide fair value evidence of all their elements. Youngblood never mentioned it to him, only Complainant. He does not think that Complainant was unreasonable. He believes that Complainant was being professionally skeptical. Complainant had only been with Halliburton for a few months, so he understood that Complainant did not have a breadth of knowledge about the company's services.

Tab 11 and 12 of CX 1 includes a memo written by Youngblood to Nick Stugart regarding 00-21. He was not aware of this memo. In the memo, Youngblood opines that the company is going to have a difficult time meeting the requirements of 00-21. He was not aware that the company thought it had issues there. This e-mail was sent out on 4 Dec 05 at 10:39 PM and there is another e-mail the following day after noon from Youngblood to Complainant and others. It discusses working on the contract reviews. He was aware that Youngblood was doing backup on 00-21; he reviewed Youngblood's backup and discussed it with him. Youngblood mentioned that there were certain scenarios where they decided they could not meet the separability criteria and that they would have to defer. There were some scenarios where Halliburton could not get to separability under 00-21, and hence they deferred revenue on the delivered element.

Tab 12 of CX 1 is another e-mail dated Monday, 5 Dec 05 at 4:12 PM. It states that Youngblood visited with McCollum about the 00-21 analysis, and provides a recap of Youngblood's thoughts suggestions to move forward. He was not aware that instead of meeting the criteria for 00-21, they were just trying to document the best assumptions. What he became aware of through his audit work was that there was evidence of fair value for the vast majority of the transactions involving the 00-21 analysis. You can recognize revenue with just assumptions instead of meeting the criteria of 00-21 because the criteria of 00-21 require assumptions. 00-21 does not demand that there is an invoice. Halliburton was fortunate in certain scenarios that they had invoices for some.

He personally did not find Complainant to be uncooperative in terms of getting information, nor did he have a hard time dealing with Complainant. He did not feel that Complainant was not collaborative enough with him. Complainant did not avoid asking him questions or avoid communicating with him. He is not aware if Complainant actually ever said that delivery requires physical possession by the customer, but it appeared that is what Complainant believed. SAB 104 discusses an intermediate site, which he believes could be a Halliburton warehouse. One of the examples in SAB 104 in addition to the KPMG guidance actually uses the example of a company owned warehouse. About two weeks after this analysis was done, the SEC issued guidance to pharmaceutical companies. Pharmaceutical companies are asked by the government to create vaccines, but the US government does not have space to hold these vaccines. The SEC specifically stated that if the products are manufactured, even though they are not delivered, the revenue may be recognized. This was a special exception for companies that produce vaccines. When the SEC described that it was going to allow vaccine manufacturers to do this, they also said these manufacturers should be very explicit in their disclosure to the public of exactly what it was doing. Halliburton follows those disclosure requirements that the SEC sets forth. The requirements are that if something is material and would make an informed investor change their decision on something, then it must be disclosed. With respect to Halliburton recognizing revenue by calling delivery to a Halliburton warehouse delivery; this did not need to be disclosed to the public in filings because it was not material. Halliburton does not mention delivery when it comes to their revenue recognition in their public filings. This is not unusual for a services company.

The four elements of SAB 104, one of which is delivery, apply to all companies equally. However with a services company, the majority of their operations are for services. Thus, delivery is irrelevant to that particular revenue stream. Tab 65 of CX 1 states that revenue recognized on customer owned inventory totaled approximately $123 million. He does not know specifically why delivery would be the one element out of the four elements that Halliburton does not mention in its 10-K, but he knows that the vast majority of their operations are services to customers and not equipment. So the standard would be whether service had been effectively concluded for revenue recognition versus the delivery of the product. The disclosure requirements are to tell the public about your significant transactions, what it is the company does, and what the company holds itself out as. Delivery is not mentioned because it is not necessarily relevant to a service. Delivery of a product is not relevant when a person is providing services, but the other three criteria do exist is a services contract. Revenue recognition for product sales is relevant to investors.

KPMG's national office works with local audit teams. They provide training to engagement teams. He understands that part of Complainant's job was to communicate and to deal with KPMG, who are the external auditors. Communication with the external auditor is an important part of his job but the primary job description was Complainant's communications with the chief accounting officer. Communication with the auditor is more McCollum's job, not Complainant's, although it might make for a better relationship for Complainant to communicate with the auditor. He communicated with Complainant daily. He received a communication from Dennis Whalen, the lead audit partner, not to communicate with Complainant about accounting. He was not given a reason for this.

Complainant was senior to him. He viewed Complainant as someone he liked to talk to and could learn a lot from. He did not try to persuade Complainant to agree with anything; he was still trying to gather information and hear Complainant's perspective and the national office's perspective. He spoke with Complainant about SAB 104, EITF 00-21 and FIN 46. These were friendly conversations combining theory and practical applications. Ultimately, he and Complainant had different views on what the appropriate accounting policy would be. He felt that Complainant was very reasonable up until a point after all the audit work was done. He and Complainant were very collaborative throughout the entire process. The only thing he felt Complainant did wrong was disregarding the consultative nature of audit work. It was a situation where it was obvious Complainant was not going to change his position. He made up his mind about this issue early on. By the end of October, he did not think any of the concerns that Complainant raised could have been reasonably expected to involve violations of SEC regulations or rules.

Laura Lewis testified at hearing in pertinent part that:[41]

She is the senior manager of accounting at Halliburton for the northern US region. Her office is currently in Denver, Colorado. In early 2006, she was the manager of benefits accounting and risk management, and her office was in Houston. During that time, she led a project called the finance and accounting summit. Her responsibility was to organize a conference for all of the Halliburton accountants from all over the world to provide technical training focusing on motivation and rewarding leadership surrounding a theme called Culture of Excellence. She played a part in identifying presenters for that conference. She developed an agenda, and that agenda included a variety of different topics that were going to be presented. Some were break-out sessions; others were for the general audience. She had done a technical training course two years prior, so she had some experience with what some of the needs were for some of the accountants, what training they desired, and based on that knowledge and feedback and communication with other members of the organization, she put together an agenda on what would be presented. For some topics, there was a clear subject matter expert in the organization, and it would be obvious who was most knowledgeable on that topic.

The finance summit planning team had a steering committee, as well as an executive sponsor that was more active in everyday decisions. The executive sponsor was Nick Stugart. The steering committee was McCollum, Lynn Beatty, Stugart, and her. Complainant was initially scheduled to teach courses at the summit; he was to teach

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revenue recognition, a sub-break-out of that, multiple deliverables, which was another revenue recognition issue, and derivatives.

At some point, she developed concerns about whether Complainant would be available to teach the course, based upon his unresponsiveness and unavailability. He was not around and she needed to have the courses prepared and presented to be compiled and reviewed. Her e-mails were not being answered, and he was not in the office. She does not recall a specific e-mail to him only on revenue recognition. There were e-mails that went out to all the presenters. She was in Houston and would communicate with him via e-mail. He was not in his office. She does not recall if he ever failed to respond to an e-mail asking him to teach a course. She invited him to a kickoff meeting which was on 24 Mar 06. He did not accept the invitation and did not come to the meeting. She does not know what day she sent out this e-mail, but it would have been several weeks prior to the kickoff meeting. There were others that were not at the kickoff meeting; she did not replace those individuals. She sent a follow-up e-mail to those who did not attend the meeting giving them materials and telling them the requirements and what she expected of them. She sent some people binders and asked others to come by her office to pick them up and met with people on an individual basis. Complainant was not in the office; she was trying to prepare a course and he was not coming to work. She did not know why he was not at work and she was anxious because she needed to have an agenda with solidified presenters, and she needed the presenters to be on board. He was unavailable and not around the office. She did not know when he was coming back or if he was coming back. If she wanted her event to be successful, she needed to be sure that she had someone who was going to be available and around to teach the course. This was in March of 2006.

She originally expressed her concerns to Nick Stugart, her executive sponsor. Stugart said he would find out and get back to her. She eventually received an e-mail that said that Kelly Youngblood would be teaching revenue recognition in place of Complainant with assistance from Charlie Geer. RX 8 contains this e-mail. It is an e-mail starting from Stugart to McCollum stating that they were finalizing the instructions, and asking who he preferred for revenue recognition, and that he recommended Kelly Youngblood with the assistance of Craig Jones and Charlie Geer. McCollum responds that those individuals are fine, and then the e-mail is forwarded to her. This is how she learned that Youngblood instead of Complainant would be teaching the revenue recognition course. She was not given any other reason for the replacement of Complainant by Youngblood, other than this e-mail and response to her concerns to Stugart about Complainant's unresponsiveness and unavailability. This e-mail was the only communication she received. They did not have a replacement for the derivatives course so it was cancelled.

There were other reasons she was concerned about the revenue recognition course in particular in early March when she started communicating with Stugart about Complainant's unresponsiveness. When they compiled the agenda, courses were prioritized, and revenue recognition was their number one course. It was of greatest need for the accountants in training, and that was not something they were willing to cut. She knew that she had to find and instructor for revenue recognition. The course on derivatives, on the other hand, was filler, so there were different topics to use. It was not highly needed and it was not a topic that many people in Halliburton accounting even dealt with, so it was not an issue of who is going to teach derivatives, but rather whether they needed to teach it at all. Therefore they cut the course. It stayed on the agenda because it was not a high priority item, and ultimately, when they needed to finalize the agenda, it was cut and replaced. She sent Complainant an e-mail asking if he could confirm his availability to participate for the derivatives class. She did not receive a response so she cut the class. She did not cut revenue recognition because she did not get a response; she could not cut revenue recognition because it was an important course.

She did not cut Complainant from the summit because of his failure to respond or his unavailability, but rather she was attempting to voice her concern to her committee. She did not feel comfortable about having Complainant teach a course because he was not around. At that point, it was the directive from her committee to put Kelly Youngblood on revenue recognition. It was because she was concerned and she did not know what was going on and why he wasn't in the office, not because of his failure to respond to her. There was no particular incident or particular inquiry that he failed to respond to that caused her to cut him from the summit. It was the environment in total; she needed to prepare and she needed people to be available. She expressed her concern to the steering committee, who then told her to put Kelly Youngblood on revenue recognition. The meeting was approximately nine days after he was taken off revenue recognition. After he had been removed from revenue recognition, she e-mailed him asking if he was available to teach a course on derivatives, even though she felt he was unavailable. This was because she did not want to find a replacement for derivatives; she just wanted to cut it out of the program. She did not have any directive on the derivatives class. She originally had Complainant down to teach that class, but because she did not know his availability, she sent him an e-mail. When he failed to respond to that e-mail, she cut the course.

In March, she had a kickoff meeting with the presenters. At that time, she made a statement to them that their presentations would be reviewed for accuracy, compliance with legal or GAAP, and policies. As part of the process, they took a practice from when they had done a similar training session in 2004. For all training programs, they do a quality control review so someone else could look at the presentation and make sure it was logical and flowed, and that it was in compliance with policy and appropriate for what was being taught. She has no recollection of singling out Complainant by name when she made this comment.

She attended an instructional course on revenue recognition taught by Complainant during his employment. Her impressions about his effectiveness as an instructor were that he was not especially good, but he was not terrible. There was a little bit of confusion in some areas about how things would apply to Halliburton. A discussion came up from the group participating about how to apply one of the rules, so they started drawing an analysis on the boards. There was some disagreement, and they moved forward.

She knew at some point that Complainant had made a claim regarding accounting policy to the SEC, but she does not remember if she knew that before or after she cut his courses. Ultimately, she was not the individual who decided to take him off revenue recognition; she just forwarded her concern up the chain of command, and was directed to remove Complainant from teaching that course and to replace him with Youngblood. They did not give her a reason for this decision. Her concerns regarding his ability or availability to teach revenue recognition did not have anything to do with any concern that he would teach something that is different from company policy or practice. Her concern was that she needed to deliver a successful training course, and that would require her having an available trainer.

CX 68 is an e-mail to Complainant asking if he will participate in the Summit to teach the derivatives course. This e-mail does not suggest cancelling the course, but she was considering cancelling when she wrote that e-mail. If he was not there, then there was not going to be a derivatives course because there is no one else in the organization that knows enough about derivatives to teach the course. If he was available to teach the course, she would not cancel it. When she did not hear back from him, she sent a recommendation not the steering committee informing them there was no one available to teach derivatives, but that there were three other courses available to replace it. CX 82 is an e-mail to McCollum and her steering committee on replacing the derivatives course, and asking for recommendations. There is nothing in the e-mail about a decision on revenue recognition.

She worked close to Complainant's office and noticed he was not around. She sent out an e-mail to a group of individuals including Complainant, and he did not respond. He never accepted the meeting notice. She asked her committee what she should do based on Complainant's absence. They told her to replace him with Youngblood but did not tell her why.

Kelly Youngblood testified at hearing in pertinent part that:[42]

He is currently the director of external reporting and accounting research at Halliburton. Prior to that position he was the senior manager of global operations accounting. He held this position in 2005 and early 2006. He has been at Halliburton for 19 years in the finance and accounting area. He is currently located in the Oak Park facility; prior to that he was located in Lafayette, Louisiana. He has been at Oak Park since December of

[42] Tr. 807

2004, where the finance and accounting group is headquartered. Before that, he was primarily in field operations and accounting.

He was asked in 2005 by J.R. Sult to lead a study on customer-owned inventory. He knew at the time Sult had made comments that he had concerns about where customer owned inventory was stored. His group, global operations accounting, was the liaison between the different countries and Houston; he was the manager of that group. He had some discussions with Complainant during the course of the study about whether the company was satisfying the requirements of SAB 104 with respect to revenue recognition; they disagreed on the conclusion of the study. He believed that Complainant's opinion was too conservative. He consulted with others about the SAB 104 compliance issue. He discussed it Sult, Geer, who was in charge of external reporting at the time, Bryce Tawney, who was his direct supervisor, and KPMG. Sult, Geer, and the people at KPMG, John Christopher, Grant Switzer and Dennis Whalen, all agreed with his conclusions.

He did not do a formal analysis of materiality, but he did do some quick calculations. He determined that the amounts involved were not material to the company's financial statements. RX 56-A is the customer-owned inventory analysis; RX 56-B is an analysis of multiple deliverables. RX 56-B shows a schedule of the amounts involved in his customer-owned inventory study, dated 6 Oct 05.

After he and Sult had their initial meeting with Bryce Tawny to talk about this analysis, he developed a template that was sent out to the country finance organizations. This template included various columns that had to be populated, explaining how much customer-owned inventory was at the Halliburton facility, and what the status of that inventory was. They had to show how much of it had been in the customer's possession, and also note comments explaining the scenario and what caused Halliburton to be holding the customer-owned inventory in their facility. After providing the template to the field accountants, they held various conference calls with the different regions. They also had meetings with their division F&A personnel, as well as with some of their division operational personnel, to explain what they were looking for and to make sure they were going to complete it correctly. The information was consolidated and more conference calls were held, and they met with personnel in field operations and in Houston.

The schedule reflects the numbers that he compiled from the steps that he just described. He came up with a gross revenue number representing the total value of all customer-owned inventories in Halliburton warehouses. $124 million was recognized; the profit was $54 million, which represents the total profit from all customer-owned inventories in Halliburton warehouses that came in as a result of his study. In getting to his materiality assessment, he made two reductions in these numbers. The first reduction is labeled adjustments for delivered and returned items, which is the amounts of inventory that

Halliburton holds at its facilities that at one point had been in the customer's possession; they had been to the well site and then returned to Halliburton. There was never any issue as to whether there had actually been delivery into the physical possession of the customer with respect to that inventory. Following that reduction, there was $66 million in revenue and $27 million in profit. There was an additional reduction; it was labeled adjustments of inventory stored at customer locations, with revenue of $11.6 million and a profit margin of $5.7 million. That was inventory that Halliburton had possession of, but the inventory was at a warehouse that was owned by the customer. He felt it was appropriate to reduce the inventory in the materiality analysis because it was technically in the customer's possession. The largest amounts were at the Shell Aberdeen location, and in that particular example, they were the preferred product provider, and another company actually performed the service work. After these reductions, he came up with numbers representing total adjusted balance; revenue was $46,189,000.00 and profit of $21,435,000.00. With respect to his materiality analysis, the number that he came up with representing profit or net revenue with respect to customer owned inventory in Halliburton warehouses that had not been previously delivered into the physical possession of the customer was a little over $21 million. This represents a profit margin over a number of years.

These numbers account for transactions from 1993 to 2005. They requested a report of any customer-owned inventory at the facility and the oldest inventory dated back to 1993. With respect to the inventory that was not currently being purchased or just having been purchased, that inventory would have been billed by Halliburton and paid for by the customer. Once the inventory is sold to the customer, it is issued out of the Halliburton system because Halliburton no longer owned it. The inventory is segregated to a separate part of the warehouse and it would be manually counted.

Halliburton made some adjustments to its financial statements because of the problems with documentation on older inventory in some cases. As a result of the analysis, he took a sample of several contracts and found some cases where he did not feel that title had passed because the documentation was not in order, and he booked an adjustment at that time. It was not necessarily older inventory; it was inventory where the contract determination was not clear enough as to passage of title. Halliburton took a reserve of five million on the financial statements for this. When you take the 5 million out of the 21 million, he was left with approximately $16 million that was at issue. $16 million in profit would not be material to the financial statements of Halliburton. The total annual revenue of Halliburton at that time was about $20 billion.

There are Aramco-owned products in some Halliburton locations in Saudi Arabia. The numbers associated with that inventory are not on the schedule. The finance and accounting employees in Saudi Arabia were confused on what he was asking for; they did not feel that their inventory met the definition of customer-owned inventory because the sale had initiated from the United States, a different legal entity from Saudi Arabia.

When it had arrived in Saudi Arabia, it was delivered to an agent. The agent took title when it arrived there and then the agent sends it to Aramco. Aramco takes physical delivery of it, and before Aramco has Halliburton perform the job, it is sent back to the Halliburton location prior to going to the well site. Therefore, there was some inventory at their facility, but because it had already been in Aramco's possession, they felt that they did not need to pick it up on their analysis. If he put it on the schedule in the gross number, it would have been reduced as delivered and returned to the client.

RX 56-B is a study on multiple-element arrangements. In the beginning of the study, Complainant was involved. They formed a task force team to review a large number of contracts. They had a kickoff meeting, and he asked Complainant if he would participate in that meeting to help do an overview of what the accounting requirements were for multiple-element arrangements; Complainant did that. There was a tremendous amount of work to be done in connection with contract review. He does not recall that Complainant assisted in the reviewing of contracts. He was asked to help at the kickoff meeting. Everyone at the kickoff meeting was expected to be there to help with the analysis through the entire duration. Complainant helped with the initial training, but after that Complainant was not involved in any of the contract reviews. If Complainant wanted to participate in the contract reviews, he would have been able to. At the very beginning of the study, he had some concerns regarding whether Halliburton was going to be able to establish fair market value for the service component of the multi-element arrangement contracts he was analyzing. He expressed his concerns in the status reports that he prepared. He also sent some e-mails about his concerns. He was eventually able to establish the fair market value for the undelivered service part of the multi-element arrangements in the situations where he was able to do so. As part of the analysis, he had a series of conference calls and meetings with their operational employees, and they were able to produce a lot of evidence to support the fair value. They were able to produce examples of where competitors would install Halliburton equipment, and vice versa. They had situations where the customer would install the equipment themselves, specific to the fair value of the undelivered element, which is the installation, they did a survey of all of their field operations and came back with pricing that was charged. The analysis showed that their rates were comparable to their competitors, and that they were consistent all over the world. During the analysis, approximately a dozen five inch binders were filled with information.

He had some discussions with people about the conclusions he was coming to in connection with the multiple element arrangements study. He spoke with McCollum, Geer, and Complainant, in addition to KPMG. McCollum challenged his conclusions because McCollum wanted to make sure he had good documentation in place to support his findings. He also had extensive discussions with KPMG about the analysis. Ultimately, everyone with whom he discussed his conclusions agreed with him, with the exception of Complainant. He spoke extensively with Geer about the multi-element arrangement study process while he was going through it. Geer was involved with reviewing some of the contracts.

He thinks he had a good relationship with Complainant; their offices were next to each other and they were friends. They spoke on a daily basis about both personal issues as well as work. He had a conversation with Complainant in which Complainant expressed his concern about a decline in the number of requests for assistance that was coming to his group. Complainant informed him that Complainant's group was not receiving as much e-mail traffic from the field as they had originally received. The e-mail traffic was requests for assistance from the field and technical issues that they needed support on. He does not recall specifically how he responded to Complainant, but basically told him that the field was looking for solutions and he did not feel that Complainant's group was always providing solutions. Complainant disagreed and said that he felt like his job was to be a decision maker. Complainant's nickname given to him by field personnel was "The Capital One No Man".

RX 10 is the revenue recognition training that he and Geer taught at the 2006 finance summit. He and Geer taught the course together and prepared the presentation together. RX 5 is an e-mail he recalls receiving. He sees Complainant's name, not in McCollum's message, but below in the forwarded e-mail from Cornelison. If Complainant's name had been deleted by McCollum before he forwarded the e-mail, he would have known anyway that it was Complainant who had gone to the SEC and made the complaint, based on topics that were mentioned in the e-mail. After this document hold notice was circulated, McCollum discussed with him how to deal with Complainant. McCollum approached him, and they were joined by Geer and Wilrodt. McCollum said that he knew this was going to be an uncomfortable situation but that they needed to treat Complainant the same way they had always treated him. After the e-mail circulated, Complainant was not at work very much.

He and Geer prepared and taught a revenue recognition course; it is represented in RX 10. This was for the finance and accounting summit of 2006. He put most of the presentation together, but Geer was involved in the reviewing and teaching. Paquette passed on a copy of a presentation that he and Complainant had done a year earlier, and some of those slides were used in his presentation. Other than providing these slides, Paquette did not help with the presentation. Page 11 of 43 in RX 10 says "customer contract reviews F&A responsibility". It states that F&A is now required to perform a thorough review of all new customer contracts and related purchase orders. There was a change in that finance and accounting was going to become involved in checking contracts. They determined that they needed to get the finance organization more heavily involved in reviewing contracts, so this slide was a reminder to the organization that they needed to be doing this. This determination likely involved McCollum. They wanted to make sure that their field operations were interpreting these contracts correctly, not just specifically for customer-owned inventory or multiple deliverables, but for any potential revenue issues. Up until this point Halliburton was not reviewing all of the contracts; some review was taking place but they wanted to set a rule that everything had to be reviewed by the finance organization. He knows that some regions requested to add employees because of this new rule, but he does not know how many have been hired. This requirement affects his current duties; he gets involved in more complicated contracts.

Page 12 of 43 in RX 10 states that the scope of F&A review should not be limited to US GAAP. The reason for this statement is that they want the finance personnel to look at the overall contract to make sure it is profitable and giving a sufficient return on investment. They want personnel to not just look at the contract from the perspective of accounting rules, but also the business perspective to ensure it is good for the company. F&A works very closely with business development personnel to ensure good decisions are being made about contracts. The rule to review all new contracts is a new requirement but having F&A being more involved with the operations side of the contracts is not a new development.

Page 13 of RX 10 is a chart. He was involved in the discussions on deciding what amounts were to be included on the chart. He attended meetings primarily with Christian Garcia, who is the vice president of operational finance. They wanted to make sure that they caught the larger problems that they could with the amount of staff available.

His current job title is director of external reporting and accounting research. He was given this job in June or July of 2007. His duties with the current title differ from what Complainant was doing. Complainant's focus was strictly on the accounting research and training side, where he also has external reporting responsibilities. Halliburton does not currently have anyone in Complainant's old job. Those duties were combined into the role he currently has now. He reports to McCollum.

He was asked to lead the team that started looking into some of the revenue recognition issues. The first document he created was the 26 Oct 05 memo. He called these the "white papers" in his deposition. CX 1, tab 28 is his memo. He knows that Complainant received at least hard copies of the memo because he reviewed it prior to the final version going out. He does not remember if it was sent through e-mail or if he just physically handed him a hard copy. RX 56 is a materiality schedule and has the 6 Oct customer-owned inventory schedule. This was done in the third quarter of 2005 but the inventory that they looked at dated prior to the third quarter of 2005. If the inventory was not in the warehouse, it would not be on this schedule. This would only include inventory that was at a Halliburton facility that was owned by the customer. The schedule is a snapshot of the customer-owned inventory at their facilities in the third quarter of 2005. The schedule shows the gross numbers, and then there is some detail of the adjustments or "peel-offs", to get down to what they thought was a true net number for the customer owned inventory. Anything that had been in the customer's physical possession was "peeled-off". The study was broken down into two different projects, one being delivery of customer-owned inventory, and whether delivery criteria was met. They did not want to overcomplicate this first analysis by including an analysis of EITF 00-21.

He believes the overall numbers are immaterial, but at the same time he believes that the company was in compliance with SAB 104, in that they delivered the inventory to a customer's intermediate location site, which is allowed in SAB 104.

Mark McCollum testified at hearing in pertinent part that:[43]

He is the senior vice president and chief accounting officer at Halliburton and has been at that position for just over four years. He has been the chief accounting officer for the duration of his employment at Halliburton. His responsibilities include overseeing the finance and accounting functions for the entire corporation.

He started his career with Arthur Andersen. He spent fourteen years with them in the audit practice. The last three years of his fourteen years he joined Tenneco and served as their vice president corporate controller. He did progressively different activities through the Tenneco organizations in mergers and acquisitions, and ultimately became the senior vice president chief financial officer of Tenneco.

RX 3 is an e-mail from Mr. Gaut to Mr. Whalen with a copy to him; it is how he initially learned that Complainant had filed a complaint to the audit committee of the board of directors. In his judgment, he had a need to know that the complaint had been made. As the chief accounting officer, he oversees all of the accounting and finance functions of the company. That includes the production of the financial statements of the organization, and because the accusations directly related to the accounting for the corporation, it was particularly important at this time because they were preparing their annual report for the shareholders.

Mr. Gaut directed his e-mail to Mr. Dennis Whalen, who was at KPMG. He was the lead engagement partner for Halliburton. He believes that Mr. Whalen had a need to know about this complaint being made to the board of directors. As the engagement partner for KPMG, he is responsible for auditing the financial statements. He believes the tenor of the letter that was sent to the audit committee points specifically at KPMG as failing to do their audit responsibilities in the particular areas that are cited. Thus, Mr. Whalen needed to know in order to ensure that they did not misstep in terms of the issuance of their opinion.

[43] Tr 873.

RX 4 is an e-mail from Mr. Cornelison, the chief legal officer of Halliburton to Mr. Gaut, him, and others, giving notice of the SEC opening an inquiry into the allegations of Complainant and describing documents that must be preserved and retained in connection with that inquiry. This is how he learned that Complainant had also gone to the SEC with a complaint. He did not have any knowledge prior to this time that Complainant had gone to the SEC in November of 2005.

RX 5 is an e-mail he sent on 8 Feb 06. He sent that e-mail to those particular recipients because of the request to hold documents that pertain to Halliburton's accounting treatment for variable-interest entities, revenue recognition, and bill and hold arrangements, and multi-element revenue arrangements. The individuals that he sent the e-mail to were either those of his direct reports or those that he was aware had been working on those particular issues or may have been individuals who he knew had specific responsibility for those issues, and also those who might have had some documents in their possession that needed to be retained. He told the group that received this e-mail that it was incredibly important that they retain all of these documents.

He did not mention Complainant's name in the text of the e-mail that he wrote. He merely forwarded Cornelison's instruction. He did not delete Complainant's name from Cornelison's e-mail because he did not think about the statement as it was related to the allegations of Complainant. At that point, everyone knew that it was likely Complainant that had raised those issues. He did not fail to delete Complainant's name with the intent to embarrass Complainant or to put him in a situation that would have been intolerable from his perspective. He took special measures following the notice to inform employees on how they should interact with Complainant during the course of the investigation. He felt that after this e-mail went out, there would be a certain level of discomfort in the office as a result of the situation. He went around and instructed individuals that Complainant had a right to ask questions and that they were in no way to treat Complainant in any manner other than business as usual.

He met with Complainant in July of 2005. This is the conversation that Complainant recorded. He was not aware the Complainant was tape recording his remarks at the time. He had that discussion with him because Sult had come to him with a copy of the TCP memo, and expressed frustration because the memo was coming out after the books had been closed. The accounting memo was signaling that there was some accounting that was in question as to the way that it had been done. Sult was frustrated abut the timing of the memo, as well as the fact that the conclusions in the memo had not been discussed with him. In July, they close the books for the second quarter. The earnings release is usually made available around the third week of the following month after the quarter closes. The memo likely came out a week before the earnings release, which is the period of time when they are going through all of their document preparation to support the earnings release. That is not the time when the company wants to be reopening the books and making adjustments, particularly for very small issues. This is why the TCP memo was problematic. Part of Sult's problem with the memo was that they had started examining the issue in April, so it had been percolating for a while.

He also had a recent communication with Evelyn Angelle before this discussion with Complainant. Angelle had also expressed frustration. She was aware that there were questions concerning the company's treatment of customer-owned inventory and the bill and hold issue, and she was frustrated because she was not being consulted and there was information floating around that her prior conclusions were incorrect. She felt somewhat discredited by the organization.

In the July 2005 discussion, he did not threaten Complainant in any way. He did not tell Complainant that if Complainant continued to raise concerns about accounting practices that the organization would close up and not work with him. He did not tell Complainant that if Complainant continued to raise questions about accounting practices that people would not trust Complainant. He did not tell Complainant that if Complainant continued to raise concerns about accounting practices Complainant would become irrelevant and isolated. He said that these things could be a possibility. He was trying to explain to Complainant that Complainant needed to build effective working relationships with others in the finance and accounting organization and be able to leverage those effective relationships so to be able to work collaboratively to get resolutions of accounting issues. In particular, if Complainant took a position that was contrary to a position that might have been taken by someone earlier, Complainant had an obligation relationally to go and talk to that individual and build a bridge to make sure that they understood their differences and possibly reconcile that difference and reach a conclusion. He told Complainant that this is how to build trust and is important to the job. He told Complainant that if people cannot trust him, then they will ultimately work around him.

He also spoke with Complainant about the importance of communications between himself and Complainant. He felt that because of the nature of the job, they needed to be in constant communication. He is responsible for the financial statements and needs to know about the issues that Complainant has. He told Claimant that he had not seen him much, indicating a lack of communication.

How decisions are made in his accounting group depends on the significance of the issue. If it is an immaterial issue, there might be certain groups involved to reach a conclusion. If an important issue is addressed, a larger group gets involved. He likes to work collaboratively. RX 59 is a presentation that he made at the finance summit in June of 2006. The subject matter is "becoming a trusted business partner". The things that he conveys in this presentation to the F&A group at the summit meeting relate to the things he was talking to Complainant about in July of 2005. Being a trusted business partner is one of the three core values that Halliburton has as a finance organization, as part of their culture of excellence. The summit was trying to encourage the company's employees to increase the value of the finance group in terms of support of the business and to also be more effective in the working relations that they have to become trusted business partners.

He is aware that Complainant testified that Complainant did not recall having discussions of any length with him after the July 2005 meeting. He believes he was in the country and in the Houston area for most of that time. He has a busy schedule. If someone wanted to reserve time to speak with him about an issue, his door is always open. His assistance is also fairly intense about managing his calendar. Everyone understands that to speak with him, they should call his assistant, who could book a meeting. He was never informed that Complainant wanted to meet with him; his assistant usually lets him know when people want to meet with him. He is aware of an e-mail from Complainant where he was trying to get some of his time. It was written in October of 2005. He replied to Complainant that he did not have any time. The e-mail from Complainant asked if he had any time in the next several days, which he did not. He was very busy with KBR at that time. KBR is 50% of Halliburton's business, and they had a contract in Iraq that demanded a lot of attention. There were also a large number of projects and joint ventures that they were reviewing. They were also beginning the early stages of the preparation and separation of KBR, which demanded a lot of his attention, particularly in the closing process, to assure that the books were correct. He spends most of his time at the Oak Park facility. Halliburton has another location in downtown Houston, and he usually spends one day per week there. However, at the time in question during 2005, he spent about 50% of his time at KBR. After responding to Complainant's e-mail, he did not hear from Complainant again requesting a meeting.

During their conversation in 2005, they discussed differentiating between more important and less important issues. He recalls telling Complainant that given that he had corporate responsibility for accounting matters over the technical research and resolution of accounting issues, that he wanted Complainant to prioritize his time toward working on those issues that were more material and more significant to Halliburton in total, rather than focusing on things that had an ultimate resolution of less than $5 million. They were discussing the Fiberspar issue and an adjustment that they recorded in the second quarter of 2005 related to Fiberspar. His recollection is that as he was discussing the need to build relationships and to not surprise people with accounting conclusions and to work with people, Complainant pushed back and said that people did not want to work with him because they do not like that he has bad news and do not want to accept it. His response was that Complainant cannot expect people to like when he states that the company is going to take a hit, especially when Complainant surprises them with that statement. It was his expectation personally and it was the expectation of his staff that they should always thoroughly document everything that they do. Thus, Complainant should expect push-back, which is part of the collaborative process, to make sure that they have thoroughly vetted the issue before an accounting is done.

He is aware of John Christopher's testimony about what Whalen instructed him with regard to interaction on technical accounting issues with Complainant. He also had a conversation with Whalen about that issue. Whalen approached him in his office and said that they were instructed by their counsel that they were not to work with Complainant on technical accounting issues during the pendency of the investigation. Whalen did not put this in the form of a request to him. Whalen did not indicate that KPMG would not be willing to work with Complainant once the SEC matters had been resolved. Complainant made allegations about KPMG as well as Halliburton; these allegations were serious. It went to KPMG's credibility as a firm in terms of providing their opinion on the fairness of Halliburton's financial statements. KPMG's unwillingness to deal with Complainant on technical accounting matters during the pendency of the investigations would not have prevented Complainant from providing input to Halliburton F&A personnel on technical accounting matters. Complainant's role was to assist in the resolution of Halliburton accounting issues and to support Halliburton finance and operational employees in that regard.

He learned that there was an issue regarding Complainant and the revenue recognition classes that were to be taught at the finance and accounting summit in June of 2006. Nick Stugart, who was one of his direct reports, approached him on several occasions wanting to know what to do. Stugart was aware of the investigation, and understood the dynamics that they were working with. It was his impression that Laura Lewis was asking Stugart, which is why Stugart was asking him. Several times Stugart mentioned to him that they needed a resolution as to who was going to teach revenue recognition. On 9 March he learned from counsel and the HR department that Complainant, through his attorney, had requested a six-month leave of absence. Both HR and legal indicated to him that they had concluded that they were going to be able to accommodate Complainant's leave of absence as a paid leave of absence, and that they would work out terms that were acceptable to Complainant and his attorney.

RX 15 is a letter from Complainant's lawyer to Rob Walls at Baker Botts requesting the leave of absence dated March 9th. He learned of that letter on March 9th. RX 8 is an e-mail from Stugart to him indicating that they are finalizing the classes and the instructors and asking him who was his preference to teach revenue recognition, and recommending Youngblood and Geer; he responded that that was fine. At this point, he knew that Halliburton had reached the resolution that they were going to accommodate Complainant's leave of absence. He received this e-mail and reasoned that if Complainant is not going to be in the office due to his leave of absence, then the instructor should be changed. He does not recall if he approved the leave of absence. As Complainant's direct supervisor, he had some input into the accommodations, but at some point HR and legal took over this issue. The request came from one lawyer to another. The legal department was heavily involved in this matter. The leave of absence did not become effective until 2 April, sometime after this exchange of e-mails.

He was on the steering committee that was overseeing the preparation work that Ms. Lewis and Stugart were doing for the F&A summit. He does not know if there was a "head" of the committee, but given that all of the work was being done primarily in the F&A department, he certainly had a significant say in the decisions, which is why he had to approve the change in instructor. The fact that Complainant filed a complaint with the SEC and made a report to the audit committee was not in any way a factor in his approval of the request to appoint Youngblood and Geer to teach the revenue recognition courses. There was a general concern for everything they taught that it needed to be in conformance with company policy. It was his hope that Complainant would be able to reconcile his view and come back and be part of the team and teach the course the way that the policy was laid out.

Complainant worked on a project called the Red Technology Alliance (RTA). Halliburton had some oil and gas properties for an extended period of time that were not very large. They were hoping to divest some of those properties and at the same time set up an investment fund that an outside group could use to develop those properties. It was important because Halliburton was ultimately trying to divest the properties such that they would truly be reflected as divested on the books, which meant that they had to leave the books or at least not be consolidated. Before they went to the market to be able to sell this potential deal to potential investors, they needed to understand the accounting ramifications of the legal agreements that might be struck in pulling that deal together. During the deal kickoff, they tried to assure that they evaluated all of the potential structures of the deal in order to ensure that they achieved at least nonconsolidation. Complainant was assigned to work on that deal. He received input from several people regarding the progress of this deal. Scott Willis, who was a finance employee and also responsible for this overall transaction expressed frustration that they were not moving as fast as they needed to in order to get the accounting conclusions. He also received several phone calls from Chris Gaut who was responsible for mergers and acquisitions expressing frustration that his part of the team was holding up the progress on getting the deal to market. His part of the team was getting to the technical conclusions on whether this could be a nonconsolidated venture. This was what Complainant was supposed to be advising on. The other person that he received feedback from was Grant Switzer with KPMG. Switzer expressed frustration that he felt that Complainant was vacillating on his accounting conclusions regarding consolidation. Switzer asked if he could step in and bring the issue to a conclusion. He called a meeting in late January for individuals on the accounting team. Complainant produced a memo immediately before the meeting. He went to the meeting; members of the KPMG team were there, as well as the team that was working on it from Halliburton. Everyone signaled that they were all in agreement; they made several changes that were requested to the document. Each individual signed off, including Complainant.

RX 42 is an e-mail from Complainant to several people, including him, regarding RTA. It was sent the same day as the meeting. This was the first draft of a consultation memo that Complainant got out. RX 41 is an e-mail from Complainant to him and others regarding HPM which is the same as RTA. It is dated 22 Jan and recommends a structure for the deal. He is not aware of any consultation memorandum from Complainant that preceded his 22 Jan e-mail to the group talking about concepts. Complainant was involved in this project a little over a month. He never removed Complainant from the project, nor did he ever hear that Complainant had been removed from it. He received some feedback from Charlie Geer during the time that they were working on the 00-21 issue that Complainant was not carrying his weight as a member of the team. Geer said that Complainant had made up his mind on the issues and so he did not see the value in going through all of the detail and would not help looking at the contracts.

RX 30 is a draft write-up of a meeting that he hoped to have with Complainant when he arrived back at work, which was expected in October, to close out his performance review for 2005 and set up objectives for 2006. This is part of the PPR process, which is the mechanism used internally to tack and document performance reviews. RX 30 is a partial document that he sent to HR and legal for review in advance of the meeting. He prepared this as a goal write-up he was going to have when Complainant returned to work from his leave. He had hoped that it would serve to document the discussion and gone into Complainant's file. It would have established the framework that he hoped that he would have gone into the PPR system. He would close out his comments on Complainant's 2005 performance, but particularly in 2006 as Complainant set out his objectives for the following year in terms of things he needed to accomplish and personal development. This memorandum was not in final form. The discussion with Complainant for which he anticipated this memo would be used never occurred, though he was expecting it to. Once it occurred, he was going to finalize it to make sure it comported with the exact discussion he had with Complainant. It would then go to HR who keeps personnel files; he does not keep the personnel files. He provided the draft of this memo to HR and legal because of the nature of the circumstances surrounding Complainant's leave; he wanted to ensure that he was clearly articulating exactly the issues that were there. He wanted to make sure that from legal and HR's perspective, that it was fair and balanced, and that there was nothing necessarily that could be deemed to be retaliatory, but rather to be constructive. The memo listed several objectives that Complainant was required to complete in 2006. Complainant and Geer would agree to them in order to measure Complainant's performance. It was his intent that Geer would sit in on this discussion with Complainant. None of the objectives were unreasonable or unfair. Most of the service groups within finance and accounting keep metrics in terms of how they are performing their jobs. He felt that keeping a log would help Complainant's group clear things faster and facilitate communication. He also requested that Complainant meet with Geer at least weekly to report on matters. He did not use the document in RX 30 for any purpose other than to prepare Complainant to return to work. It is not his expectation that Complainant would be surprised by any of these goals or objectives.

RX 18 is a letter dated 19 Sep 06 to Complainant from the human resources manager, Mr. McDougald, regarding the expiration of Complainant's leave of absence The letter states that Complainant's job title, duties, office location, and salary would remain the same; this was all true. Complainant's position would now report directly to Geer in the finance and accounting group. He sought the advice of internal counsel and HR when he made the decision to realign Complainant's reporting relationship from him to Geer because he did not want it to be perceived as being retaliatory. He wanted to realign the relationship for several reasons. During 2006, he was trying very hard to reduce the number of direct reports that he had. During 2005, he often had anywhere from ten to thirteen direct reports. He wanted to decrease that number so that he could more effectively develop and relate to each employee to address issues they had. He also wanted to make sure everyone had proper supervision. He also knew that Halliburton was beginning a separation from KPR which was going to utilize a significant portion of his time. During this time, Charlie Geer had been performing very well, so in December of 2005, he was promoted.

Halliburton has generic job titles that correspond to hierarchical levels in the organization. Geer, before he was promoted, was a senior manager, or a "K-band". Complainant was in "K-band" as well. Ms. Angelle, when Complainant was supposed to report to her before she got promoted, was in "L-band" which is a true director level, and one above "K-band". Geer was promoted to "L-band" in December of 2005. Complainant had a director title but was not at the director band level. This was because there were several individuals across the organization that has that disconnection. There are only so many different job levels within HR. They tried to frame the titles that they would use on their card to be in line with what the employee was overseeing. Typically, if somebody is charged with an area and they are the highest individual in that particular area, a director title is often appropriate to cover that. At the time Complainant started, he believes he may have had three different people who had a director title internally, but they were senior managers from a system point of view. Complainant was never promoted to a higher band level while he was at Halliburton. Charlie Geer was promoted because he was doing a good job. During the pendency of Complainant's leave of absence, Geer also covered the technical accounting areas and training. Geer is a very good manager of people and is well liked. He has developed a number of very strong individuals to move off into other areas of the company. He felt it would provide a good working relationship for Complainant. Geer had been supervising the technical accounting function during Complainant's absence. Geer is a very strong technical accountant. Geer also covered external reporting, technical accounting, and training. When Complainant was supposed to work for Angelle, she was responsible for external reporting.

In late 2005/early 2006, he had approximately ten direct reports. Today, he has five. In his judgment, reporting to Geer would not have impeded Complainant's ability to fulfill his responsibilities as the leader of the technical research and training group. Complainant would have had the same access to the organization that he would have had. He would have had the same responsibilities, and because of the collaborative way that he likes the group to work and the open-door policy that Halliburton has, Complainant would have had access to him if Complainant needed to have that. They would have sat in on meetings together and participated in resolving the same issues. There was not going to be any change to Complainant's duties and responsibilities other than the realignment of his reporting relationship. The fact that Complainant had filed a complaint with the SEC and taken his issues to the audit committee did not impact his decision to realign Complainant's reporting relationship.

One of the things he was concerned with was that he and Complainant were not communicating much. After the July meeting, he does not remember actually seeing or meeting with him very much. He was concerned that he was impeding Complainant's process, and he wanted Complainant to be successful. He felt that Geer, who was there everyday, could have worked more closely with Complainant and have more communication with him. He thought this would help Complainant build more successful relationships with people. He is not concerned with the issue of Complainant filing the complaint; he believed that when this was all over, Complainant could get himself aligned with Halliburton's judgment on accounting issues.

After the end of Complainant's six month leave, when the audit committee and the SEC reviews had been completed, he expected Complainant to return to work. Had Complainant returned to active employment at that time, he was prepared to accept him back into his department and work with him constructively going forward.

Halliburton has a general practice regarding serious violations of policy. Serious violations usually lead to a fairly immediate personnel action, which is another term for termination. He has terminated employees in the past for serious violations of policy. He considers disclosure of confidential company records and information belonging to Halliburton to be a serious violation of policy to the company. He recently learned that Complainant had taken with him on his company laptop a large volume of confidential finance and accounting documents. Had Complainant not been on leave, he would be within his right to take action and he would have terminated Complainant. He believes that if he were in a situation where he felt he needed to go to the SEC, he would have approached them to express his concern, and if the SEC felt that they needed documents, he would request that they open an inquiry to obtain those documents.

He was in favor of conducting the customer-owned inventory study that Youngblood coordinated. He thought it was very important that Youngblood go through the process that he described in his testimony about gathering facts in order to analyze compliance with SAB 104. He felt that when Complainant had presented the earlier information, Complainant raised a valid concern. He felt it was appropriate to readdress the issue because they did not have all of the documentation together. When the study was launched, he intended that Complainant would participate as a resource to Youngblood. He never told Complainant that he could not participate in that review. He heard from Geer that Geer was frustrated because Complainant was not carrying equal weight in terms of the workload and gathering all of the information. The study that followed involved both the issues of customer owned inventory and multiple element arrangements. After the July conversation he had with Complainant, he was never directly approached by Complainant again to tell him that there is no reasonable basis for the study's conclusions. He learned during the course of the study that Complainant had very strong objections to recognizing revenue under the circumstances that the study found was appropriate. He had many discussions over the course of the review trying to balance everyone's input and looking at all of the relevant and authoritative literature.

In his view, the definition of authoritative is those rules and regulations that constitute US GAAP that are promulgated by either the SEC as a body or any of the bodies that they supervise, which would include FASB and EITF. Non-authoritative materials include speeches and articles or books by professors; these are helpful but not authoritative. They would be persuasive, but not binding or precedential. The SABs, EITFs, and FINs are generally binding.

After Sult left in October of 2005, Youngblood and Geer communicated with him most often about the work that Youngblood was performing in his study. Geer's view was that Halliburton was properly recognizing revenue under SAB 104 for customer-owned product in its warehouses. He felt it met all of the revenue recognition requirements for recording revenue. He also communicated with KPMG about this issue; he spent the majority of his time with Dennis Whalen, and also had some conversations with Grant Switzer. John Christopher's testimony regarding KPMG's views on the issue is consistent with what he was being told by KPMG representatives that he was communicating with.

A direct sale in Halliburton's public disclosures relates to those situations where they sell equipment to one of their customers, particularly in areas where they do not have a service franchise in those countries. China and India are the two largest countries that Halliburton has direct sales into. Normally, direct sales involve equipment that Halliburton personnel would normally use to deliver servicing at a well site, but they are selling to someone else. Halliburton manufactures its own heavy equipment and sells it directly to their customer to use in their service operations. Halliburton does not make direct sales to Aramco; when they sell to Aramco, it is considered product sales. Product sales are covered by completion tools, and also include security DBS, which are drill bits, and some component of Barite sales that come out of their Baroid product service line. Completion tools are a component of product sales.

He agreed with the ultimate conclusions expressed in the two White papers prepared by Youngblood after the customer-owned inventory study and the multiple-element arrangements study. He is aware that Christopher's opinion about when income could be recognized on a product, even if there is a service element associated with that product. Christopher spoke of several circumstances where the service element is inconsequential or where a fair market value can be established for the service element. He agrees with Christopher's testimony.

EITF 00-21 requires an assessment of whether there is fair market value or inconsequential services. The nature of Youngblood's study was for Halliburton to take action to be in compliance with the EITF 00-21. Halliburton has some products for which the fair market value cannot be established for the service that is associated with that product. SAB 104 says that delivery generally occurs when title and risk of loss have passed to the customer under the arrangement in question. It is very difficult to separate the passage of title and risk of loss from delivery; they are connected issues. If there is delivery but not title or risk of loss passage, it is essentially a consignment sale. There are situations in which Halliburton does consignment sales, but they do not book revenue on those sales until title and risk of loss passes, even though delivery has already occurred. This is one of the reasons why Halliburton's disclosure does not address delivery, because he cannot say in all cases that there is delivery, but he can say that they record revenue when the title and risk of loss is passed. As a practical matter, in Halliburton's business when title and risk of loss pass, there is generally going to be delivery. In terms of total Halliburton business, joint ventures are not a significant part of Halliburton's business. They were a significant part of KBR.

During the time that Complainant was employed, there was a FIN-46 review occurring. He is aware of the testimony regarding Fiberspar and GMI, and how they were both either written off or written down. Neither of those decisions was driven by FIN-46. The write downs of both of those entities were for different reasons.

He never informed Complainant that he wanted the technical research area of Halliburton to function like the national office of an accounting firm. That statement would not have been consistent with his objective for what that group needed to be doing. In his mind, that group was to act as an advisor in terms of helping the organization to research and resolve accounting technical issues as they come up. A national office typically in a public accounting firm serves as a financial arbiter. They had the ability to override any decisions that the engagement teams in the field came up with. This is not what he perceived Complainant's role to be, and he never communicated that to Complainant. Complainant's role involved advising and then following through to help the organization find accounting solutions that helped it accomplish their business purposes. It was supposed to be solution-oriented.

There was a conference call about an earnings release and a reference to direct sales and some questions on the earnings call about why revenues were down when activity was up. He was a participant in this call. The issue was that as they were describing sequential activity from the quarter before the current quarter that was the subject of the call, there was a situation where revenues were down in the eastern hemisphere, although everyone knew that activity was up. The sales of equipment in the preceding quarter were higher than they were in the quarter that was being reported on. Thus, the decrease in direct sales caused the trend to look as if revenue was going down rather than up, which was really happening for their standard service and product sales. The direct sales were for large pieces of servicing equipment that are sold to another party who does the servicing with that equipment. He is aware of the testimony about the revenue recognition disclosure not covering customer-owned inventory. This was the case because Halliburton has $21 billion in revenue during this period of time. Half of that was related to ESG. They were trying to ensure that they covered the material revenue recognition policies which related to contract revenues, which are primarily related to KBR, as well as the ESG business. There is a logical point where it is no longer material to separately disclose things that do not have an impact on earnings.

He never told Complainant to let the revenue recognition issue go or to stay out of it. Halliburton has processes in place that are intended to ensure that its disclosures to the public are adequate. There are a significant number of policies and procedures that are disseminated to the organization to make sure that they account for transactions on a current basis. They also require on a monthly basis all employees in the field to be involved in reconciling all of their accounts, to assure they understand activity in relation to what is required. At the end of each reporting period, which is quarterly, they go through a process of not only checking their internal controls and making sure they are functioning properly, but also the external reporting group looks at all of their disclosures and documents. The auditors do a timely review. They also go through a Sarbanes-Oxley certification process that reviews internal controls and highlights important issues. They have a disclosure committee that meets to review all of their disclosures and details the activity of the quarter. Additionally, the internal audit group audits the process to make sure people are doing what they are supposed to be doing. Finally, they sit down with the board of directors and the audit committee and review the substantive issues that happen in each period, including prior period adjustments, any potential error corrections, and any highlighted areas of internal control that they are concerned about.

Halliburton does not disclose gross margins. They highlight operating income, which is below gross margin and includes all expenses. They highlight income from continuing operations, discontinued operations, net income, and earnings per share. Complainant provided testimony about a GMI write-down where he said he recommended one number and the write off was reduced to about $4.3 million. Complainant stated that he thought at the time there was a $5 million threshold above which matters had to be reported to the audit committee. This is not accurate; they reported everything that was over $2 million.

He reported the GMI write off in the first quarter of 2005 to the audit committee. After Complainant sent his communication to the audit committee raising certain issues, the audit committee hired legal counsel to conduct an investigation. The law firm was not anyone he had any relationship with. After the investigation concluded, he was not instructed by the audit committee, the board of directors, his boss, the CFO, or anyone else that it was necessary to make any changes to the way Halliburton was conducting its revenue recognition practices or dealing with FIN-46.

One of the things that Halliburton is trying to do is ensure that the revenue recognition policy encompasses a broad majority of the revenues that they record. It is not intended to encompass every single thing that the company does as a process of recognizing revenue. The company's view is that there are situations when delivery occurs but title and risk of loss do not pass. He cannot think of a situation within Halliburton where title and risk of loss pass but delivery does not happen as well. At that point, one accomplishes the revenue recognition process. He is comfortable with that because within SAB 104, it states that generally, delivery does not occur until title and risk of loss pass. SAB 104 says immediately following that typically title has passed and risk of ownership has passed when the product is delivered to the customer site or to the customer. He interprets the customer's delivery site as being a Halliburton warehouse because this is an intermediate site designated by the customer. His understanding of SAB 104 is that the language allows the purchaser to designate as a place of delivery an intermediate warehouse owned by the seller.

Halliburton reported all adjustments of over $2 million to the audit committee the second, third, and fourth quarters of 2005. He does not remember which ones those were. He knows that GMI and Fiberspar were reported as adjustments, and he also knows that there were some KBR and tax adjustments. There was also a $5 million adjustment on customer-owned inventory.

The investigation with respect to complainant started in 2006. He was not told to change any accounting practices or alter any practices as a result of the investigation. He does not recall if there was ever any internal audit performed in 2004, 2005 or 2006 that revealed any necessary accounting changes. He was not aware of the bill and hold issue coming up in 2004. He does not recall anyone in 2004 indicating that he company revenue recognition practices did not meet the bill and hold factors. He does not recall any accounting practices that were changed in 2004 with respect to revenue recognition.

He thinks that he first learned about Complainant's complaint when he received an e-mail from Chris Gaut. He learned of it as an audit committee complaint. When he found out about the audit committee complaint through the e-mail, it did not mention the SEC action. He was not aware of the SEC action at that time. The e-mail he received alerting him to the audit committee complaint he did not forward. He received a subsequent e-mail from Bert Cornelison, Halliburton's general counsel, which was a document hold notice, and he forwarded that. The document hold notice was received from general counsel at Halliburton. It said that the SEC opened an inquiry into the allegations of Complainant and that all documents related to the subjects at issue in the investigation should be withheld. The subject of the e-mail was "SEC investigation". He then forwarded the e-mail to a number of people in the accounting department.

He did not speak to every person he forwarded the e-mail to. He thought that it was possible that Complainant would take this positively, that the issues he was concerned about were being addressed. He was not aware that Complainant might not take the disclosure of his name in a positive light. He knew that after he sent the e-mail, Complainant had left the office. It dawned on him at that point that the e-mail made Complainant nervous, which was not his intention. This reinvigorated his effort to make sure that everyone else in the department understood their obligations not to make Complainant nervous. He was hoping that Complainant would be able to come back and return to business as usual. What he tried to do is make sure that he either spoke to the e-mail recipients individually, or to their supervisors. He encouraged everyone to speak to their direct reports. He did not think it was necessary for everyone to speak to him individually. He spoke to everyone on the recipient list that was his direct report, including Jay Gann, Charlie Geer, Nick Stugart, and Christian Garcia.

He and Nick Stugart were not intended to have a temporary reporting relationship. He was working at operations accounting, and after J.R. Sult left, he divided Sult's responsibilities between Stugart and Christian Garcia.

RX 29 is a position profile used by the recruiter that Angelle hired to place the position. It describes Complainant's position; it was not created by Complainant. It was created by Halliburton, and describes who the person who holds the position would report to. It does not say that the person would report to him, it says the position would report to the company's corporate assistant controller, which was Angelle's position. The job description did not change. Geer would be at a director level. In RX 29, Complainant is listed as a director, but the description was not purposely written for him.

He received an e-mail on 7 Feb from the CFO forwarding him a copy of the complaint that went to the audit committee; he did not forward this to anybody. At that point, he knew that Complainant went to the audit committee and what questions he raised. The next day he received an e-mail from general counsel indicating that an SEC investigation was being initiated into the allegations of Complainant. He made the connection that the investigation was about the same things raised in the audit committee complaints. He forwarded the e-mail so the recipients could read it and know what documents to retain. He personally felt that everyone would know what documents to retain because they were aware of what issues Complainant was concerned about.

He also forwarded the e-mail from general counsel, and intended to do so. He questions his decision to forward the portion of the e-mail that identified Complainant, but would not necessarily call it a mistake. He never had a chance to speak to Complainant. He did not call him, but tried to see him. He was not in his office. He never had an opportunity to apologize to Complainant. All of the recipients of the e-mail knew, either indirectly or directly, that Complainant had concerns with the issues mentioned in the e-mail. He did not personally verify this.

He was involved regarding the revenue recognition issue that Youngblood was working on in October of 2005. He did not see any of the backup documentation that was provided to justify their conclusions. He does not recall all of the research that he looked at but he certainly read the SABs. He testified about the "building relationships" seminar. He participated in a KPMG seminar about building relationships in May of 2007. He testified that he wanted more communication from Complainant. There was a time when he asked Complainant to meet with him, and Complainant did not respond. CX 81 is an e-mail in which Complainant asked him if he had time to meet the next day, and he said no because he was in meetings for several days. He did not say anything else in the e-mail or suggest a later date.

He does not recall speaking with Complainant at all in October, November, or December of 2005. At the end of the year, he was supposed to have an evaluation process initiated with Complainant. RX 30 is the draft memorandum about a meeting he was going to have with complainant. The meeting never happened. The evaluation remained incomplete because of Complainant's leave. The evaluations are called PPRs for human resources' purposes. PPR is supposed to be completed by the end of February for the prior year. The PPR reviews the employee's performance for the previous year and outlines a plan for the following year. These are all supposed to be done by February. It was scheduled by the time the e-mails regarding the audit committee and SEC investigations were sent out, but it had not been done. He conferred with counsel and human resources, and they agreed that it could be potentially viewed as retaliatory, so the PPR was cancelled.

CX 186 is an e-mail cancelling the PPR meeting which was set for 9 Feb. CX 185 is more e-mails about the scheduling of the evaluation. The purpose of these exhibits is to show the PPR was cancelled. He had some discussion with Mr. Jordan about the fact that KPMG refused to meet with Complainant. He expected that if Complainant would return to work, in late September or early October of 2006, he was going to go back to work with KPMG. It would have been assumed as a part of the accounting resolution process that KPMG would be interfaced with. This aspect of the job would be made very difficult if he could not talk to KPMG.

In the draft memorandum of RX 30, there is nothing referring to Complainant's communication with the external auditor. Complainant gave himself goals in January of

2006. He mentioned these goals in RX 30, which was the evaluation of how Complainant did against performance objectives. RX 30 shows some criticism of Complainant. A significant amount of frustration was expressed from the rest of the organization. They did not perceive Complainant as a team player, and Complainant was unprepared for some presentations in training. During the training he was also flippant about the seriousness of their topics and demeaning to the attendees. He felt both Complainant and Wilrodt were unprepared. He did not tell Wilrodt that she was unprepared because Wilrodt did not report to him; it was his expectation that Complainant, Wilrodt's boss, would do that. However, subsequently, in preparation for the finance 2006 summit, he made a big issue of not repeating those mistakes. His concerns in this memo have nothing to do with his decision to have Complainant report to Geer. It was his intent to give this information to Complainant when he returned. The information that he intended to give Complainant when Complainant returned back from his leave was critical of Complainant's performance prior to going on leave. He did not tell Complainant that KPMG would now agree to meet with Complainant and talk to him. KPMG did not tell him that they would agree to talk to Complainant. Prior to the document contained in RX 30, he did not document any of the criticisms in RX 30. He did not see any documentation that reflected any criticism of Complainant's performance prior to 7 Feb 06.

He received an e-mail from Nick Stugart regarding the training seminar. He had not told Stugart about Complainant's request for leave prior to receipt of that e-mail. He understood that Stugart was recommending Youngblood for revenue recognition training because Complainant was not being responsive to Lewis's requests to get involved in the summit preparation process and to get early materials and accept meeting notices for the kickoff meeting. It was his impression that Lewis was pressuring Stugart to try and figure out what to do. Lewis felt a significant amount of personal pressure to ensure that the summit was a success. At this time, no one in the organization knew that Complainant had requested leave.

In terms of being timely, Complainant did a poor job as far as his RTA duties. Had Complainant asked about his new reporting relationship if the PPR meeting occurred, he would have discussed it with Complainant. He never had a chance to communicate this information to Complainant.

He has terminated employees for violating company policy; he has never terminated an employee for violating any company policy regarding disclosure of documents. He would, however, fire someone for disclosing company documents. He would have recommended Complainant for termination while he was on leave. It was not proper for Complainant to give company documents to the SEC because he was not authorized to do so. He is not aware of any specific policy that says someone must destroy documents that they already have access to when they go on a leave of absence.

RX 35 indicates that the PPR meeting was scheduled for 9 Feb. He received notice of Complainant's complaint to the audit committee on 7 Feb, and he received notice of his complaint to the SEC when Cornelison sent the document hold notice to him on 8 Feb. The PPR discussion was set to occur the day after he received those e-mails. The timing of the PPR gave him pause. He discussed it with HR and legal and was not intending to treat Complainant adversely by not having the PPR discussion. It would not have been a positive performance review for Complainant. The normal consequence of not completing an individual's PPR discussion by the 15 Feb deadline is that the system precludes you from getting a merit increase. Complainant got this increase because HR overrode the system to make sure that it facilitated the merit increase for Complainant.

It was always his intention to have a feedback session with Complainant to set up constructive objectives to help Complainant in terms of personal development. RX 30 was his effort to put together documentation to allow him to have that kind of a discussion when he came back to work. The memo references the fact that Complainant will be reporting to Geer.

He was aware that the pharmaceutical companies were seeking guidance from the SEC back in 2005 or 2006, be he does not recall being aware of when the final decision came down. Revenue recognition is comprised of four points, but the SEC has issued over a hundred pages of documents to support those four points to provide examples and help companies figure out how to recognize revenue. It is very complex. He could equally cite that a vaccine ruling by the SEC for something that does not have anything to do with revenue recognition but has something to do with another accounting issue, and it is at least persuasive to the general principle of having to apply common sense to the rules.

Susan Wilrodt testified at hearing in pertinent part that:[44]

She works for Halliburton as the manager of benefits and risk management accounting. She has been in that job for eighteen months. Her prior position was manager of technical research and training. She reported to Complainant while he was there; before that she reported to Hill. She worked with Complainant from March of 2005 to February of 2006. She accepted her new position the first week of January 2006.

Complainant changed some of the focus of the technical research and training department when he succeeded Hill in that position. When she first started that position under Hill, they were more of a resource group. If people in the field had questions about how to account for something, they would contact them, and they would help them through the accounting. When Claimant came onboard, he wanted to change the focus of the group to be more like a national accounting firm; the field would develop a position on accounting issues and then send their opinion or send their results of their research to

[44] Tr. 1020.

them in a paper, and then they were to opine on them at a much higher level than what they were previously used to in the department. The change in approach was received by the field with confusion; they did not seem to like it. They constantly wanted assistance on how to account for things. Complainant acquired the nickname "Capital One No Man". The change in focus impacted the work flow from the field into the department. The requests started decreasing quite dramatically. This is one of the reasons why she accepted the position in the benefits and risk management accounting area.

She is aware that in late 2005/early 2006 Complainant had strong objections to certain accounting positions the company was taking with respect to customer owned inventory, multi-element arrangements, and FIN-46. She had some discussions with Complainant about this. She recalls receiving by e-mail a notice from McCollum instructing her to retain any documents she had related to those three areas because of an SEC investigation. If Complainant's name had not been mentioned in the text of the e-mail, she would have known who raised those issues with the SEC. McCollum had a discussion with her about her interactions with Complainant after the document hold notice went around the department. She cannot remember if it was that day or the next morning that they were called in. She met with Geer, Youngblood, and McCollum, and McCollum instructed them that this was a whistleblower act and they were to act the same way that they had acted before with Complainant, and that it could be considered retaliation if they treated him differently.

She does not recall having a meeting with John Christopher, Millicent Chancellor, and Kelly Youngblood concerning revenue recognition issues. CX1, Tab 70 is an e-mail sent by her. She does not remember what it was about. Tab 56 is a flow chart that she recalls. She does not recall Complainant changing that flow chart into anything more complicated. She remembers an issue coming up with respect to BASP, a joint venture. Complainant felt that it was a variable interest entity because Halliburton significantly controlled it. She did not agree that Halliburton was significantly involved in BASP; she disagreed with Complainant. Complainant's complaint was communicated to her as an SEC complaint. She does not recall making any comments to co-workers regarding Complainant. She felt it was Complainant's right to go to the SEC. She was not involved in all of the details of what Complainant was looking at, but she knew that Complainant felt very strongly about his position, and she thought he had a right to go to the SEC if that is how he felt.

Her office was in close proximity to Complainant's. After the e-mail came out, she did not see him around the office very often. They found out on Wednesday, and Geer happened to be in her office when the e-mail was released. Geer explained the process of what would happen and how the investigation would take place. Complainant was out of the office the rest of the week, and the following week as well. He was back the week after that, but because of her new job, she did not have an opportunity to talk to him.

Mark Traylor testified at hearing in pertinent part that:[45]

He is the director of finance for the Drilling and Evaluation Division at Halliburton. In late 2005/early 2006, he was the director of finance for the Digital Consulting Solutions division. He was involved in a project that is known as RTA, the Red Technologies Alliance. He worked the accounting side of the project. CX 80 is a meeting notice with a note from Peter Bernard stating that they are trying to finalize a business plan for Chris Gaut. This was in regard to the RTA project. Bernard was the president of Landmark and of the DCS division at the time. He was the management lead for the accounting function for that division. CX 80 is an e-mail scheduling a meeting for 8 Dec. The e-mail says "I would like [Complainant] to lead the group with options on financial structures which keep us from consolidating." At the time, Complainant's role in the project was as director of research and accounting and a FIN-46 expert. They were looking at a forming a joint venture that they did not want to consolidate. They wanted Complainant to provide some guidelines as to how they were going to structure the joint venture. When Bernard stated that he would like for Complainant to lead the group with options, Complainant provided some input with regard to how the joint venture should be structured. It was limited input. He did not lead that part of the discussion. Complainant was never in the lead accounting role in the RTA project. Complainant was a technical resource they were drawing from. At one point, he became aware that there were frustrations on the part of people involved in the RTA project with Complainant. He does not recall if he spoke with McCollum directly about complaints and frustrations regarding Complainant, but he knows that McCollum was aware of this frustration because McCollum became involved with the process for that reason. When McCollum became involved, he attended subsequent meetings that should have been at their division level and not involve McCollum; McCollum usually does not get involved in their business unless he must. McCollum attended a meeting that he called on 25 Jan 06. Complainant was never removed from the RTA project, nor was he ever stripped of his responsibilities on the project.

Complainant was not one of the leads for the accounting for the proposed RTA LLC. He was a consultant to help them draft an accounting memorandum. There was not necessarily a lead. To determine proper accounting, the analysis starts at a certain level and work its way up through the review process with the accounting research group. He and his controller sign off on it, run it by KPMG, then ultimately up to KPMG's national office. In terms of accounting for this proposed RTA, there were memorandums issued about the accounting for the proposed RTA. These memoranda were issued about the accounting for the proposed RTA. The memoranda were co-authored by Complainant and his controller, Brian Maloney, initially. The final memorandums were by Brian Maloney and John Taylor. Complainant, at one time, together with Maloney, was the lead in terms of drafting up the information concerning the accounting for the proposed

[45] Tr. 1030.

RTA; this changed after January of 2006. On 7 Feb 06 Complainant filed a complaint and KPMG would not speak with him.

They did not want to consolidate the proposed RTA. There are differences in accounting treatment for consolidation versus not consolidating. These differences were not a motivation in terms of not wanting to consolidate. It would not have an effect on gross margins because they were going to pick up their share of whatever the interest. They ended up using the equity method.

RX 45 is a memo to KPMG and to the project team regarding the joint venture accounting memo. Thus, as of 23 Mar 06, Complainant was still providing input on the RTA memo to both Halliburton and KPMG. He does not know if anyone responded to thee-mail that Complainant sent out.

Millicent Chancellor testified at hearing in pertinent part that:[46]

She has been employed at Halliburton for sixteen years. Prior to that, she was employed at Price Waterhouse. She worked at Price Waterhouse for 12 years as an auditor, and spent the last two years as a technical accounting advisor in the national office. Most of the large public accounting firms have offices who handle technical issues, and they basically provided advice to partners and managers around the world primarily on US GAAP.

Her current position at Halliburton is director of finance for the completion and production division. She sits on the management team for that division. They basically drive the strategy and manage the capital for the division, which is global. They work very closely with the geographical locations to manage the entire operation around the world. She had that same position when Complainant was employed by Halliburton. She had very limited one on one contact with Complainant. She took a course from him and they were probably in some meetings together, but she does not recall having one on one contact outside the revenue recognition course that she took.

The course was one offered by the technical accounting research and training department and was a day and a half course. She took this course in August of 2005 and it was taught by Complainant and his team, Susan Wilrodt and James Paquette. The teaching was split up amongst those three individuals. After she finished taking the course, she felt it was ineffective and discussed this with J.R. Sult. When questions were asked to try and get some clarity around how to apply what was being taught to a company, basically what was reiterated was what the book said. There was no outreach to try and understand the facts and circumstances and help the participants understand or apply the literature. She felt the purpose of the course was to apply the material to their facts and

[46] Tr. 1048.

circumstances of the company. She informed Sult that she thought the class was disruptive because questions were asked and then comments were made to make people think that they were currently accounting incorrectly. The way Complainant responded to questions that were asked that were specific about facts and circumstances was to simply quote the literature. It was misleading to answer a question about facts and circumstances by quoting literature. There were discussions regarding multiple-elements and when delivery occurred. She disagreed with Complainant and talked to him during the break. She though it was wrong for him not to explore the facts and circumstances of the company.

Evelyn Angelle testified at deposition in pertinent part that:[47]

She is currently vice president of investor relations for Halliburton. She joined Halliburton in April of 2003 as assistant controller, and held that position for two years. In that role she was in charge of external reporting, including SEC reporting, technical accounting matters and training, consolidation and income tax accounting. She has held her current position since April of 2005. Currently, she is responsible for all interactions with investors and analysts both buy side and sale side. She also handles the quarterly earnings calls and any sort of conferences or meetings they have with investors. She handles press releases for the company.

Before coming to Halliburton in 2003, she was employed at Ernst & Young. She worked there since 1988 in the audit practice. She is a CPA. She knew Complainant prior to their employment at Halliburton; they both worked at Ernst & Young. He was at the firm during two time periods. The first time she was his mentor in a counseling program. The second time he returned to the firm they did not have much interaction; they served different kinds of clients. The way the audit practice in Houston was set up is generally by industry groups. There was also a group that handled very small companies and clients. These were mostly not public clients, and generally very small. She served large multinational SEC clients; Complainant was assigned to the small company group.

She was involved in the hiring of Complainant at Halliburton. There was an opening for the director of technical research at the time Complainant applied because the person that was reporting to her in that position, Chris Hill, was promoted to controller of one of Halliburton's divisions of KBR. Someone at Halliburton told her that Complainant was looking for a job. When she heard that, she passed his name along to their executive search firm. She did not hear why he was seeking to leave Ernst & Young at the time. She participated in interviewing Complainant, and she and McCollum jointly made the decision to hire Complainant. Complainant was to report to her. Chris Hill also reported to her. The director of technical research and training function had been reporting to her and was going to continue to do so. After Complainant was offered his job, she was

[47] JX 1

promoted to her current role, Vice President of Investor Relations, and she moved to the corporate office. She did not work with Complainant directly on anything. She was in a different department.

During the time that she interviewed Complainant for the job at Halliburton, he recounted to her some experiences he had at Ernst & Young where he encountered a problem with the partner supervising his work on an audit. Complainant told her a long story about a small client he was serving. It was a public company, a manufacturing firm, and Complainant surfaced some revenue recognition issues. The partner on the account would not listen to him and did not agree with his findings. Complainant went around the partner and approached the board of directors of this client and talked about this revenue recognition issue. At the time, it seemed that Complainant was the type of person that wanted to get the right answer and was very ethical, so he wanted to make sure the accounting was proper. She has re-evaluated the situation, and sees that it is similar to what Complainant did at Halliburton. He made his decision about an accounting issue very much on his own and less in a collaborative environment. In public accounting, it is necessary to draw from your peers. It is vital to get many people involved in discussing technical issues. When Complainant explained the situation to her, it appears that he knew he was right and was not open to input from others.

She was not personally involved with what happened at Ernst & Young with Complainant. She based her testimony on what Complainant told her during the interview. The client was called Flexitallic; she also served that client at some point during her career. Complainant told her that when he complained about the audit, he went through the client route. He discussed with people at Ernst & Young as well, and those individuals, including the partner he worked for, disagreed with his conclusions. His concerns related to revenue recognition and possibly consolidation issues as well. Complainant did not tell her that Complainant's concerns were about the audit itself not being done correctly. It is possible that Geer was also a senior at Ernst & Young on the same client's account; she does not recall. She did not know that Steve Vonture was involved with the same client.

After Complainant came to work at Halliburton, there was an occasion where she spoke with him about a customer-owned inventory study that she had been involved in back in 2003. She initiated a meeting with Complainant because some people in accounting concluded a revenue recognition issue that she and Chris Hill had analyzed along with other auditors in 2003. Complainant had concluded that their conclusion was incorrect, and he sent out some e-mails to that effect. She initiated a conversation with Complainant because she was surprised that he did not seek to speak to either Chris Hill or herself to obtain the background on the matter before coming to a conclusion. It concerned her that Complainant did not approach her or Chris Hill about the conclusions of their study before concluding that she and Chris Hill had been wrong and publicizing that in the department. The process seemed unusual to her. When it comes to accounting issues, especially if someone else has already looked at it, you definitely want to get all of the facts concerning it and get an understanding of the facts that others had gathered and why they had drawn these conclusions. This did not happen, and it needed to in order to come to a reasoned opinion or judgment based on all of the available information.

The purpose of the conversation she had with Complainant was to address her concern about the process that he had taken in evaluating the appropriateness of this accounting transaction and the fact that his process was not including others who had gone down the same road and done an analysis on the transactions. He did not approach the situation in a collaborative fashion. There are many intelligent people at Halliburton and they have very good access to their auditors. The work that they did in 2003 involved a lot of people, not just members of the accounting department. They talked to the operations department to understand the nature of the transactions and how they worked, they worked with the legal department to look at the invoices, purchase orders and any contracts they had with the customers, and they worked closely with KPMG on each of these transactions that they reviewed. She was trying to explain to Complainant that before making a blanket conclusion, it is necessary and part of the Halliburton culture to have more of a collaborative effort and to really talk to people who knew all of the facts before coming to a conclusion perhaps prematurely. She discussed with Complainant the process of going about this sort of analysis, not if the conclusion was right or wrong. Complainant's response to her concerns was that her conclusions were just wrong. He felt very strongly about that, and thought about it in black and white terms. When she asked him why he did not approach her or Chris Hill, he responded that since they had moved to different departments, he did not feel that it was necessary. It was absolutely not her intention when discussing this with Complainant to threaten or intimidate him.

She felt it was important for Complainant to include others who had done work earlier on the same topic to be part of his analysis. She was not frustrated with Complainant because of the accounting conclusions he had reached or that they were counter to something she had done before. Her discussion with him was to counsel Complainant on the process he was going through and to suggest to him that he should work with other people within the organization and outside the organization as far as the auditors to help him reach the conclusions. She felt that Complainant did not use an adequate process to come to his conclusion. She felt that he was missing an important step. She was not concerned as to whether he reached a right or wrong conclusion; she only spoke with him about the process. When she spoke with Complainant about the bill and hold matters in his office, she did not say that he should not question conclusions. She said that it was okay to question things. She spoke with him about the process being more open and collaborative and getting all the facts. She does not recall saying anything to him about not being a team player, nor does she recall saying anything to him that the issue was not going to hurt her. From her conversations with Chris Hill, Complainant did not talk to him about these issues before the 1 Aug meeting. Her discussion with Complainant was before that meeting. She does not recall saying anything in the context of their paths crossing in Halliburton. She made a point that at Halliburton the employees moved around in different departments. She does not recall saying anything regarding her frustration in any way with Complainant for attacking or taking a different position from her review of some of the issues. The context of the meeting with Complainant was to discuss the process and the fact that Complainant did not gather all of the facts necessary before coming to a conclusion. The meeting was approximately 30 minutes long.

She did not feel publicly attacked by Complainant. She felt that complainant did not utilize an adequate process to come to his conclusion. She felt like Complainant was missing an important step; she did not discuss whether the conclusion was correct, only the process. She does not recall telling Complainant that it was a positive benefit for his career to report to McCollum.

She recalls that Sult had several concerns that he expressed. She does not recall evaluating if these concerns were reasonable or not. The meeting she had with him and others previously was to talk about the issues and learn about the background, and not to make any conclusions; she does not recall Sult making any conclusions.

During the analyst calls, she was not aware of any concerns that Complainant rose relating to these issues due to the sensitivity of some of the questions she was being asked. The questions that were asked in the analyst calls did not relate to anything Complainant was doing; it was a completely different issue.

She prompted the 2003 study to be undertaken. She was very new to Halliburton at the time. One of her old peers at Ernst & Young noted to her that one of the current trends he had seen in the SEC was that they were starting to look very hard in the oil field service arena for those types of registrants at revenue recognition issues, including bill and hold. Therefore, she felt it was important for her to understand if Halliburton had any exposure in that area or to see if there was a bill and hold or unusual revenue recognition situation and to make sure that they were accounting for them correctly. She did not learn of any specific concerns of the SEC; she was simply informed that revenue recognition for oil field service companies' registrants was a focus area of the SEC at the time. No one told her why the SEC was concerned with these issues.

She learned that Complainant filed a complaint with the SEC the Tuesday after the Saturday he wrote the letter; she does not remember the date. No one said anything to her about being upset that the SEC was investigating, but everyone took it very seriously.

They initiated a project to identify any potential revenue recognition situations that needed to be addressed through a training program to do this. She provided quarterly a rigorous training session for accountants at Halliburton. Ernst & Young helped Halliburton host an accounting update seminar in Houston. One of the topics was around revenue recognition and she and Chris Hill co-presented with Ernst & Young. They used the training to let people know what the rules were and also to let them know that they would be contacting people individually to begin this project, and they would be asking them to look for potential transactions that might fall within this category. Chris Hill led this project. He sent out many e-mails, made several phone calls to F&A personnel, and told people in operations about what they were doing. They gathered transactions that they identified as unusual, such as customer-owned inventory, and analyzed each of these individual transactions. They thoroughly examined each transaction. They looked at the invoices and the terms of the contracts, when title passed, where they were in the delivery process, where inventory was held, what the customer's intent was, and what their request was. She worked very closely with the legal department, including John Allen, to work through the legal issues as to when title and risk of loss passed. After each step, KPMG looked at each invoice to ensure that they concurred on what happened. KPMG was the external auditor at the time.

Generally, the big finding of the study was that there were not a lot of transactions that were falling within this category of customer-owned inventory or any sort of unusual revenue recognition. They looked at invoices from around the world and found several that fell into this category.

She is familiar with the Halliburton bill and hold decision tree in that Respondent's counsel showed it to her when they prepared for the deposition. She did not create the document. After her discussion with Complainant about the process that he was working through and getting to his own conclusion about customer-owned inventory, a group meeting was called. Sult, McCollum, and Chris Hill were there. The purpose of the meeting was to provide some background to Sult and others looking at revenue recognition on the project they had performed in late 2003. Sult, at the time, was the controller of the energy services group. Sult likely pushed back on some of the conclusions because that is natural in any sort of accounting discussion because they want to get to the right point. There were a number of people at this meeting, and a lot of debate within the discussion what the rules did or did not provide for.

In the areas of bill and hold, customer owned inventory, and revenue recognition, the rules are not straightforward; they are complex and many things must be taken into consideration before drawing a conclusion. It requires professional judgment. Sult was at this meeting and expressed concerns, but he did not come to any hard conclusions nor did he express any definite opinions during the discussion, to her recollection. Complainant was also at this meeting but did not participate; he remained silent. She was not aware at the time that Complainant was recording the meeting, nor was anyone else aware of it who was present at the meeting.

She received a copy of the complaint that Complainant sent to the Halliburton board of directors regarding his objections to certain accounting practices in which the company was engaging. She received this from Chris Gaut, the CFO of the company, to whom she reports. In her judgment based on her job responsibilities, she needed to know that the complaint had been filed with the board of directors. It is important for her in her role to know what is going on with the company. Had she received the complaint without Complainant's name on it, she absolutely would still have known that it was Complainant that filed the complaint. The same tone of the letter was used by Complainant when she met with him to discuss the issue. It was black and white and the conclusion was as he saw it and there was nothing more to discuss for him. At no time before Complainant left the company did Gaut, McCollum, or anyone else in a position of responsibility ever indicate to her that they intended or desired to take adverse action against Complainant because he had made the complaint to the board of directors and the SEC.

She is familiar with McCollum and of his professional abilities. She thinks he is very technically competent and above average. He is very knowledgeable about accounting matters and has a lot of experience within the industry. He is also very good about networking within the industry and has contacts at many other places. He works well with the auditors and knows when it is appropriate to draw on others to help reach conclusions on difficult topics. Regarding his management style, he has an expectation that the people who report to him work together as a team. He encourages them to work together as a team and to form relationships with operations and other support functions such as legal to make sure that they always come to the appropriate conclusions. This is in order to get all of the facts, to get the experts together, work with the auditors and other professionals to obtain technical expertise so that they may come to the appropriate conclusion. She believes that McCollum is of the highest character and level of integrity. She has no reason to believe that McCollum would intentionally make misrepresentations on Halliburton's financial statements.

She knows Charlie Geer; he is no longer at Halliburton. Many agree with her that Geer is one of the best technical accountants they have ever met. He has excellent research skills and is precise when he goes through the analysis and gathering facts. RX 29 is a position profile. The criteria listed on the exhibit appear to be the kinds of things that one would have told the executive search firm was important to the job of director of accounting research. The profile lists both duties and responsibilities and skills necessary for the job. There is a theme about working closely with management, other groups within accounting, external auditors, establishing relationships and working in a collaborative way to resolve technical accounting and reporting issues. The main theme is that Halliburton needed someone who was operating in a style of someone that could go out and gather information, use all the smart people that the company has at their disposal and to come to the appropriate conclusion.

She was a presenter at the finance and accounting summit meeting that was held in June of 2006 at the Woodlands. She presented motivating and rewarding work environments. "Culture of Excellence" is a concept within Halliburton that started in the finance division. Gaut fostered it and asked several of those who reported to him to help develop it. It focuses on the employees to assure that they deliver the highest quality work product. They do that by focusing on several different things, including developing career progressions and technical expertise as well as building relationships within the organization.

She receives phone calls from investors and she answers their questions. If an investor called and asked her about physical delivery, she does not think she would do anything other than point them to the press statement that they made in July that talks about the complexity of revenue recognition and the use of each situation. It is difficult to outwardly state what constitutes physical delivery. She did not contribute to the press statement made in July. If she were to examine physical delivery, she would take into consideration title transfer and when risk of loss passes.

Chris Hill helped her in her revenue recognition analysis. She understood from a conversation with Chris Hill that Complainant did not speak with him. She was not aware that Chris Hill and Complainant e-mailed each other on some of these issues, and does not recall if Chris Hill said that to her. If she were to find out that Complainant and Chris Hill had communicated on some of these issues, she would have to understand the details of those communications in order for her to change her feeling that the process was not followed. She is not familiar with whistleblower situations.

She did not author the position profile contained in RX 29. She agrees that the person that holds this position would be somebody that the auditors would want to have audit interaction with.

Chris Hill sent a memo to Complainant and James Paquette that says: "This is a summary that Evelyn and I prepared on the 00-21". She does not remember this document nor does she have anyway of telling if that was the actual attachment to the e-mail. Chris Hill was the person that was supposed to look into 00-21. They addressed revenue recognition in 00-21 separately from customer-owned inventory in 2003.

She does not remember why she was looking at SAB 101 in August of 2003. She does not remember what the Fiberspar issue is or what the result of the discussion was of equity method versus percent voting share. She does not remember Halliburton taking a fairly substantial write-off for Fiberspar. She does not recall seeing anything from Complainant about Fiberspar. She does not recall ever learning from anyone that Complainant had raised the Fiberspar issue and that had led to a write-off. With respect to Welldynamics, they were concerned that it was not generating enough cash flow to justify the book value that it was reporting on Halliburton's books. She did not know that Sult asked Complainant to look into this issue. She has no recollection of telling Complainant that he did not need to look at it; she does not remember the last meeting she had when she was still in accounting. She does not remember Chris Gaut sending her an e-mail asking why the Fiberspar conclusions that were reached when she was still in the accounting department were wrong.

When she was in the accounting department, she helped kick off a program to oversee the adoption of FIN 46. There was a separate team for KBR, and she was more involved in the ESG side.

An e-mail from Chris Hill dated 20 Apr 05 to J.R. Sult, copied to Complainant and James Paquette says "J.R., [Complainant] asked me to send you a short note on the FIN 46 analysis that we did at adoption." At this time, Sult was the controller of the Energy Services Group. The report does not look familiar to her.

She was not aware that Complainant was critical of her work. She knew he reached a different conclusion than she and Chris Hill with respect to customer-owned inventory. She was not aware that one of Complainant's complaints was that Halliburton did not properly adopt FIN 46. She had insight into accounting errors that were identified by the company because every quarter they hold disclosure committee meetings. They documented any errors that they found, quantified them, and evaluated their impact on the financial statements. They shared this information with the board of directors. She therefore had insight into that on a quarterly basis and saw that none of those were material to their financial statements, either individually or on aggregate. She does not recall whether Halliburton wrote off some numbers as a result of not adopting FIN 46 properly.

When she was in her position in the accounting department before Complainant was hired, one of her duties involved technical issues; the person in charge of technical accounting reported to her. Before Complainant, this person was Chris Hill. It has been a long time since she has examined the bill and hold issues; she has been out of accounting for several years. If she had some time to answer the question, she would do some research and compare the rules to the example provided to see if she took any issue with the example. She had personal knowledge that the SEC was interested in this issue from what her colleagues told her about it. A document that states that there is a presumption that goods are delivered to the customer's place of business does not mean that that is an absolute. It is merely a presumption that is difficult to overcome.

One of her jobs is to do the quarterly earnings calls. There is a transcript service that records the call. She does not know if this is published on the internet. The transcripts are sold; they are not on the Halliburton web site. She recalls moderating the 25 Oct 05 call. She does not recall a question regarding concerns about revenue recognition matching activity. Wicklund is an outside analyst for the Bank of America. At the time this call was made, Chris Gaut was the chief financial officer and executive vice president of Halliburton; he still is. Lamotte is an outside analyst for JP Morgan. He asks whether there were countries other than China that had big export sales. He addresses this question to Andy Lane, the executive vice president and chief operating officer. She does not recall if this was Lane's position at the time of the call; there was a time when Lane was running KPR. She does not recall whether after this call Lamotte changed his recommendations on whether to buy Halliburton stock. He currently has Halliburton as a hold, but she does not remember the timing of when he had that recommendation.

An article dated 26 Oct 05 is entitled "JP Morgan cuts Halliburton to Neutral from Overweight." It states: "New York – JP Morgan cut defense contractors Halliburton to neutral from overweight, citing concerns over management credibility and execution. The broker told clients that while it would characterize these issues as problems of perception, it believes it will take a couple of quarters of improved results for confidence to come back." This report was solely based on their international revenue growth. If it is looked at from a quarterly basis during that period and a couple of quarters before, North American revenues were showing a steady increase; revenues outside of North America were lumpy. This is just related to the energy services group and not to KBR.

Analyst calls are a significant event for Halliburton and many people listen in including investors and shareholders. She is not aware of them being available on the internet for people to sometimes watch, but they are all web cast and they offer a replay of the web cast on their website for seven days following the event. It is an important event for investors so that they may follow Halliburton's progress on a quarterly basis and make their investment decisions.

When the public looks at stocks available to them, they have certain facts that are public that they have at their disposal. It is up to them to make decisions on their expectations for future earnings of the company. The company does not provide guidance on revenue projections. They provide historical revenues. The public may look at financial statements, revenue, and whatever else they have available to them. During the analyst call, in response to Wicklund's question, Gaut responds: "our operating activities in the third quarter here are substantially higher than they are in the Middle East and Asia, through the first quarter of this year. So the activity is up substantially from the run rates that it had in the prior second quarter. What we're talking about is trying – the question was comparing the third quarter to the second quarter. There's no question we're operating at a much higher level than we were previously."

Andy Lane stated during the conference call: "in general, primarily this is a DFE division, although some of the other divisions have occasional direct sales. This is why we classify direct sales as selling equipment, the local service providers and markets that we do not directly compete in for their own services." Direct sales are the highest in the drilling information evaluation division, particularly in the logging divisions, sometimes in SPERY, also sometimes in the fluids division and cementing. Halliburton manufactures equipment and generally sells it to companies that they do not provide services. Almost all of Halliburton's revenues relate to the provision of services. The direct sales are in those divisions where they provide services typically, but they are actually selling the equipment. Normally, they have the equipment for themselves. They make money by providing services to the customer. Direct sales are actually manufacturing that equipment and selling the equipment to a customer. This often results in lumpy sales, and it is always international. This impacts revenues from period to period. Saudi Aramco is a significant customer of Halliburton. Zero percent of their business with Halliburton is direct sales because they provide services to Aramco. They provide logging and cementing services but do not sell them equipment directly. The areas where they sell direct sales of equipment are typically the biggest countries, mostly in India and China.

She was present for the first quarter 2006 conference call. She does not remember anything specifically discussed about direct sales. There are transcripts available but they are somewhat inaccurate. Halliburton does not approve or authorize the transcripts as being an accurate depiction of what was said. It would not surprise her to learn that there were many references to direct sales at the time. Complainant did not raise the issue of direct sales. There is no revenue recognition issues related to direct sales. A direct sale is a piece of equipment that Halliburton performed services on and derived revenue from the services. In the case of a direct sale, they are selling the equipment to someone and not providing the services. This is the definition of direct sales with respect to how they speak about it externally on their quarterly calls.

She recalls being in a meeting on 1 Aug 05 where Sult, McCollum, Chris Hill, Complainant, Bryce Tawney, and she were all present. She has never listened to the tape recording of the meeting; she did not know at the time that the meeting was being recorded. She remembers discussing revenue recognition; Sult was part of this discussion. She does not recall him being concerned that revenue recognition and direct sales issues could be used to manipulate a PSL's numbers. Direct sales in the way they refer to it externally were not discussed at the meeting.

She does not remember specifically Sult's concerns about physical delivery. He had different concerns that he expressed. She does not recall evaluating if Sult's concerns were reasonable or not. The purpose of the meeting was to talk about the issues, learn about some of the background and not to make any conclusions. She does not recall him making any conclusions.

A memo documenting the analysis performed on revenue recognition for Gulf Coast CPS Offshore Equipment was sent to her; she does not recall if she provided comments or helped edit the document. KPMG receives a copy of these types of documents. Before they are filed, these documents start out as drafts. They circulate among the various people that are going to be looking at it and signing off on it for comments. She does not recall whether this was circulated to her for comment before it was turned into its final form and went to the files.

The memo states the following: "In Halliburton's situation with custom orders for offshore deepwater as described below, the equipment or materials is often stored in the customer's owned inventory by Halliburton where it is shipped to the well site. As such, we have analyzed whether these types of transactions are considered delivered or would be subject to the conditions that must be met for bill and hold type transactions. The SEC's additional guidance with respect to delivery and performance in SAB 104 provides the examples with common questions and the SEC's response to these situations for instances when delivery has been manufactured for a customer, when inventory has been manufactured for a customer but the customer has not taken physical possession of the inventory. The SEC describes conditions that must be met in order to recognize revenue when the customer has not taken physical possession of the inventory. These types of transactions are referred to as bill and hold transactions."

If something is shipped at the customer's request to a place by common carrier that is not necessarily their facility, and they have taken title and risk of ownership, that is a situation to consider before one gets to the bill and hold rules. This could be a situation where the product goes to a third party warehouse or a Halliburton warehouse. Sometimes in these situations there is a section of a Halliburton warehouse that is segregated specifically for the customer. She does not know if the customer has a night watchman there to protect their goods. She does not know if there are customers there physically inspecting the materials themselves. She does not know how the product gets to the warehouse or leaves the warehouse.

She received an e-mail from Chris Gaut that had Complainant's complaint to the SEC attached to it. The analyst calls did not relate to any of Complainant's concerns.

She is on the disclosure committee. The disclosure committee meets quarterly and reviews disclosures made in the quarterly periodic filings with the SEC, both 10Qs and 10Ks. She is on the committee because she is in investor relations and she needs to know what is being publicized. They meet quarterly and discuss issues that have occurred during the quarter, anything that is unusual, or a unique transaction that might occur, such as selling a business.

Robert Charles Muchmore testified at deposition in pertinent part that:[48]

He is currently employed as a consultant doing part time contract work for Halliburton. The contract is for four years and started on 1 Mar 07. Prior to 1 Mar 07, he was the Vice-President of Financial Controls for Halliburton. He held that position for

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approximately four years. He was employed as a controller and chief accounting officer prior to that. He started that job in August of 1996. He was employed before that as the ESG financial manager for Europe and Africa, based in London; he was there for seven years. Before that, he had various jobs at Halliburton going back to 1978. He has been at Halliburton for a little over 29 years, always in the financial or accounting arena. Prior to working for Halliburton, he worked for two and a half years for Arthur Andersen in their Dallas office as a staff accountant. Before that, he was at SMU.

Under his current contract, he is paid on a monthly basis. He is asked to commit 20 hours per week to Halliburton. He works primarily out of his home and no longer has an office at Halliburton; he had an office until about July of 2007. That office was located at Bellaire; he has been located at about three different sites.

As vice president of financial controls he reported to Chris Gaut; Gaut was the CFO of Halliburton. When he was the controller and chief accounting officer, he reported initially to Gary Morris, who was CFO, then Lou Raspino, who was vice president of finance. Then it was Doug Foshee, who was CFO, then Chris Gaut as CFO.

Under his current consulting arrangement, he has a fixed fee retainer for up to twenty hours a week of work. Work after that is paid on an hourly basis. He receives $25,000 per month. Some weeks he performs a full twenty hours, other weeks he does not. Some weeks he will perform forty hours of work and then not perform any work the following week. He averages approximately five to ten hours per week. He is not working anywhere else or working for clients other than Halliburton. He is in the process of trying to relocate to Manhattan because that is where is partner is. He anticipates doing work for clients other than Halliburton. He has had discussions with several different companies that have told him to contact them. As of now, the only work he has done has been for Halliburton. His contract allows him to do work for other clients; it is not an exclusive arrangement.

Typically, he reports to Chris Gaut; that is also who he takes his assignments from. He has done some work for their Enterprise Risk Management. He meets with the financial controls group periodically to talk about what they are doing, and some of the projects that were in process when he left. He meets with the internal audit vice-president who took over some of his old responsibilities on a periodic basis just to give her guidance and give his opinion. He has done quite a bit of work on the president's leadership excellence program, which is a senior management development program that he was executive sponsor for before he left Halliburton, and he has retained that position since then. This does not involve any accounting issues at all.

It was his choice to go into this consulting contract; he approached the company on it. It was not his choice to go from the position of controller and chief accounting officer to vice-president of financial controls. Doug Foshee spoke with him about the job.

Sarbanes-Oxley was coming about and new things like disclosure committees were being discussed by the SEC. The certifications were beginning to start so there was an area for development. The position was not higher or lower; he reported to the CFO and had the same salary and compensation structure. McCollum replaced him as chief accounting officer.

He was subject to an SEC order. The issue the SEC was investigating was revenue accruals on unapproved claims on long-term construction contracts. They were looking into whether revenue was being recognized too early. The SEC eventually admitted the accounting was correct. There was a cease and desist order because the SEC felt that they did not disclose the revenues they had accrued early enough. They did not publicly disclose that they were recognizing revenue early. He suggested that they were waiting until the claims were over and resolved. The issue was whether it was consistent with what Halliburton had been disclosing publicly.

It is his understanding that the issue he is to testify about at this deposition is how Halliburton views materiality. He had a chance to speak to Mr. Jordon, Halliburton's attorney about his testimony. There is no reason he would not be able to testify about this issue accurately today. In preparation for his deposition, he went back and looked a t a schedule that they used for defining significant deficiencies and material weaknesses. He reviewed some of the memos that were written regarding their GAP, treatment on customer owned inventory, multiple deliveries, and he did research to remind himself of what the issues were on the Baroid Algerian joint venture deconsolidation.

When he did research on Baroid, he looked at the revenues of the joint venture for the past several years, as well as their operating income. He looked at the numbers between 2004 and 2006. The Baroid joint venture in Algeria went back as far as 2002 or 2003. He also looked at some schedules that they maintain on customer owned inventory and the analysis of that and their ongoing monitoring of that. These schedules were maintained by the global accounting group at Halliburton based in Bellaire. The main schedule he looked at started in Q3 2005 and showed interim periods up to the second quarter of 2007. It was not all periods. It was not continuous between Q3 2005 and 2007. There were several quarters that were not listed. The only quarter that he recalls making some notes on was Q3 2005. He looked at the gross profit range on al the quarters that they had listed. He does not remember any schedules for customer-owned inventory for any quarters other than the third quarter of 2005. He looked at some detailed schedules that had 5 to 600 lines. He looked at them briefly to see the methodology that they were using. He does not remember which schedules Q3 2005 covered. He does not know who did Q3 2005. The global operations accounting group did the schedules that he looked at regarding the first and second quarters of 2007. Ed Smart sent the first and second quarter schedules, but he does not know who actually worked on it. He did not perform any work on the first or second quarter schedules of

2007. He did not perform any work regarding the third quarter 2005 schedule of customer-owned inventory.

He looked at some schedules for defining significant deficiencies and material weaknesses. Those are terms under the PCLB relating to Sarbanes-Oxley. These schedules covered 2005 and the same schedules were used in 2006. He prepared these schedules; they were the only ones used during that two year period.

He reviewed some memos written regarding GAP, customer-owned inventory, and multiple deliverables. These memos were authored by Kelly Youngblood. He does not know when they were done. He did not perform work on those memos. He did the schedules for the significant deficiencies and material weaknesses probably sometime in the first half of 2005.

The schedule is used to identify thresholds that need more analysis. They used a threshold range of 3 to 5 percent as a formula with respect to pre-tax income. This range came from a study prepared by the controllers' leadership roundtable of what various companies were using in regard to how they were defining material weaknesses under Sarbanes-Oxley. He does not remember the number that he used for pre-tax income but it ranged from 81 to 136 million. They set a threshold for looking at any errors, further materiality, at 75 million. That is where they would analyze it to determine whether there was a material issue. Anything less than 75 million was deemed to be immaterial. This was done on a yearly basis. To the extent that they use a numerical threshold, the threshold may go down on a quarterly basis.

He does not recall any specific instances at Halliburton where he advocated a certain item as indicating a material weakness. He does not recall any situations with respect to a tax issue coming as a result of the Dresser purchase. It was never determined to be a material weakness by anybody because it was not reported as such.

After material weaknesses were discussed, he did not disagree with any analysis of whether something was a material weakness. He cannot remember any disagreement that he had with any employee at Halliburton regarding materiality. It sounds like an issue that probably did come up at some point in time. He does not recall an instance in the end when he did not agree with respect to a conclusion regarding materiality.

His analysis of the 2005-2006 schedules for defining significant deficiencies and material weaknesses was based on the 2005 plan number. This would not cover any years before that. If the financial numbers were less in previous years, the material weakness threshold would be less. He did not look at any of the numbers for 2004 or earlier in preparation for this deposition.

The revenue he saw for the Baroid joint venture in 2004 was 45 million; 61 million in 2005, and 65 million in 2006. The operating income in 2004 was 4 million, 7 million in 2005, and 10 million in 2006.

He did not apply any of the variable interest entities to BSP once it was determined it was not one. None of his analysis is based on the VIE rules. Participating rights are those of other shareholders. They have control of many different operations and they had a super majority or could block votes even though Halliburton had a majority of the stock. This is in relation to the Baroid joint venture; they were eventually owned by Sonatrach, which is the national oil company of Algeria. They had controlling rights even though they did not have a majority share. They could block capital and had decision making power on the operating budget. They had to approve contracts over a certain amount. Because of these participation rights, there was no obligation to consolidate. The entity was consolidated and then it was unconsolidated, determining that they were in error to consolidate it.

Operating income and revenue are not the same as pre-tax income, but operating income is normally the substantial part of pre-tax income. Operating income will not always be less than pre-tax income; it can be but it is not, normally. Operating income is not the same as EBITDA. They can be very close, normally. He never determined what the pre-tax income was with respect to the Baroid joint venture in 2004 through 2006; he used operating income. He believes that operating income was a reasonable approximation of pre-tax income.

Halliburton was significantly involved in the operations of the Baroid joint venture. The Halliburton joint venture representatives were on site often, although others had the ability to veto or override decisions. The joint venture representatives were part of Sonatrach and the national oil ministry. If the numbers had been deconsolidated from the very beginning, this would have improved ESG's gross margins. This is because they only put in the operating income and it flows down through revenue.

He had a discussion with Chris Chevalier at Halliburton in preparation for his deposition. Chevalier is the director of financial controls. He arranged for information to be sent to him, but he personally did not tell him anything that he relied on. Chevalier reminded him of the 75 million threshold which he verified as correct. He was remembering a lower number, but after he saw the schedule on his computer, it was 75 million. The document was done on his computer and he found it on his computer; he did not change it at all from the time he had drafted it in 2005. He does not think the number had been lower than 75 at any draft of these schedules that occurred in 2005. He does not recall whether the 75 million was increased. It was done mid year 2005, so there was not much change after that.

With regard to customer-owned inventory or bill and hold, the total amount at issue was approximately 124 to 125 million of revenue in the third quarter of 2005. The related gross profit to that was 54 million. They then made adjustments to that to subtract off goods that had gone out to the rig and been returned by the customer for it to beheld because they were not ready for it. They subtract off the customer-owned inventory which they had deferred revenue on. There were several other adjustments and that got down to customer owned inventory which was what they felt was the true customer owned inventory. They did not do the analysis. It was 46 million in revenue and 231 million in gross profit at the end of September of 2005.

He had discussions with Complainant relating to bill and hold while they both worked at Halliburton. He did not do any technical analysis of the issue. He was in multiple meetings where the technical issues were discussed, but he was not the person doing the technical analysis. He does not know how much money is at issue with respect to the bill and hold issue that Complainant made. He does not know whether Complainant agrees that the numbers he gave are all that at stake with respect to bill and hold. He has forgotten many of the details of his conversations with Complainant regarding Complainant's issues with bill and hold.

There was an analysis done in the third quarter of 2005 of the amount of customer-owned inventory. The total amount was 124 million that was equivalent to revenue, and 54 million that was gross profit. The maximum potential of bill and hold was 46 million of revenue. Inventory is not automatically sent to the customer's rig. The customer tells the company to take it out to the rig because they do not want anything out on the rig that they are not ready to use. On occasion, they order it out to the rig but are not ready for it, so they send it back. There is very little of this type of inventory that Halliburton does not get paid for. He agrees that Halliburton should not recognize revenue for items that the customer is not obligated to pay for. However, he has not seen any of their sales documentation written that way; most of the contracts are customized. Without seeing the contracts, he is sure that in most instances in which the items come back from the customer, the customer was obligated to pay for it. If he saw the contracts, and they stated that Halliburton had to reimburse the customer, that might change his opinion, but he has never seen a contract with that language in it. He worked in the completion products area before he went to ESG so he is very familiar with the business. He does not, however, know these contracts, but neither does Complainant.

Regarding the Baroid joint venture, he has very seldom seen an instance where they had barite that belonged to the customer at their site. He does not know whether that was included with respect to the amount at issue of customer-owned inventory. For Baroid, it would not be unusual to have a contract that required Halliburton to buy back base oils or hold mud at the end of the well. They maintain a reserve or an allowance for those situations. He does not know what that allowance is but there is a methodology for computing that, which is computed every month. He does not, however, know the exact number. He does not think that the number is required in Halliburton public filings. He does not know whether any sales connected to service or Saudi Arabia are included within the amount at issue of customer owned inventory.

The Baroid joint venture purchased most of its barite through Halliburton. He does not recall how much the Baroid joint venture was purchasing in terms of products and services from Halliburton. Gross margins would improve if there was deconsolidation. Baroid had an operating income; with deconsolidation, gross margins would decrease and gross margin percentage would improve the amount of the operating income. Based on the size of the numbers, the amount of improvement due to deconsolidation would be miniscule. Halliburton had operating incomes well over a billion dollars, and over 20 billion including KBR. Five to ten million dollars would hardly affect the margins. He did not consider what would have happened to the gross margins reported by Halliburton if they had not included the Baroid joint venture, had it not been deconsolidated.

There was a Dresser tax issue that he likely spoke about with McCollum. Halliburton reported the significant deficiency to the audit committee multiple quarters. The amount in question was 43 million; this was not viewed as material; he did not view it as material. He probably suggested that there ought to be a significant write-up to justify it not being viewed as material. The number was in the range that he felt documentation for his reasoning on it was needed. It was in the range that it might be material.

If he was to go back and look at the numbers prior to 2005, it would be difficult to determine what the customer-owned inventory or bill and hold issue was prior to 2005. It would be impossible because one cannot know what was in the warehouses that belonged to a customer in the past. There was never a change in accounting while he was the chief accounting officer to the guidance regarding customer owned inventory or bill and hold.

When the SAB 101 first came out in 1999 or 2000, they did some work to identify if they had any bill and hold. There was no change to how Halliburton handled its accounting with respect to customer-owned or customer-held inventory as a result of SAB 101. They did have bill and hold, and a lot of people did not understand it, so they did not identify these things that they subsequently identified when they discussed customer-owned inventory. There was some actual bill and hold inventory in the Dresser Equipment group before they disposed of it. He does not know if there was bill and hold going on that people did not see. He believes that, based on Halliburton's continuing practices, there probably was some bill and hold. He does not know how much bill and hold there was that was not recognized as bill and hold. He does not know when people started to fully appreciate bill and hold as it was at Halliburton. Accounting policy was not modified but Halliburton taught people and gave them better instruction on what to do. This probably occurred around 2004-2005. Some of this may have been triggered because of the issues raised by Complainant. They provided instruction by raising awareness on what to be looking for, and they probably deferred more revenue, and people started understanding it better. They issued some revised accounting procedures and polices sometime during the 2004-2005 time frame.

He recalls reading an article on bill and hold written by John Christopher; he does not recall when he saw this document for the first time. This did not trigger anything; they were already doing a lot of accounting training when this article came out. Bill and hold scenarios do arise, but in his opinion, not frequently. The Christopher article says that they arise frequently, but does not define "frequently". He knows who Christopher is; at the time he was a manager at KPMG on the Halliburton account. Halliburton is in the oilfield services sector. He does not recall if he received the article from Christopher; he knows he obtained it from someone in KPMG. He does not recall disagreeing with any part of the article. Christopher was on the Halliburton account, so he was familiar with their business and did not state that he felt Halliburton had issues with bill and hold. He has not spoken with Christopher about the bill and hold issue; that would be part of his job, however, as an audit manager on the Halliburton account.

He is partly familiar with EITF 00-21. He cannot confirm that it was in the third quarter of 2005, but there was an analysis of the issue at Halliburton sometime during 2005. He recalls that bill and hold was considered separately from EITF 00-21; they were two different projects. When they first analyzed bill and hold, he was not part of the group that did the analysis. He received some of the reports or documentation of the team discussions of the team that performed the analysis, so he was aware of their methodology.

SAB 104 used to be SAB 101. The SEC established specific criteria that a seller must meet to recognize revenue for a bill and hold transaction. He agrees that these are criteria that Halliburton must establish before it can recognize revenue on a bill and hold transaction. The risks of ownership must of have passed, the buyer must have a commitment to purchase, and the buyer, not the seller, must originate the request that the transaction be on bill and hold. A relevant factor is that the customer requests bill and hold and the buyer must have a substantial business purpose; the seller would be Halliburton. Delivery must be for a fixed date; in most cases, Halliburton did not meet that with respect to the bill and hold transactions it was recognizing revenue for. This requirement will be generally difficult for an oilfield services company to meet due to the variable nature of the movement of timeliness and milestones for oilfield development.

The third quarter of 2005 was the first time that one would be able to calculate how much revenue had been recognized in a particular quarter on a customer-owned inventory or bill and hold. After the third quarter of 2005 there were some instances of sales being recognized if they were in conformance with SAB 104. All of the sales have not been researched. It is not worth the cost of doing the research when it costs $500.00 to understand if a $2000.00 sale should have been recognized; this is allowed under SAB 99. Complainant was saying that the company was not adhering to SAB 104, among other things. It was clear that Complainant believed that the company had intentionally violated SAB 104. Some people in the company disagree with that assessment.

He believes that Complainant truly believed that the company was intentionally violating 104; an intentional violation of GAAP is not necessarily material. In his judgment, companies can intentionally and knowingly say that they are not going to comply with GAAP and it would not be material. This is a standard item that is reported to the audit committee by the external auditors for all companies. In Halliburton's case, he does not know if it is reported to the auditors that the company is not in compliance with SAB 104. Under the rules, if the company did not feel bound by SAB 104, it would be important to report it to the audit committee. He does not feel that this should be publicly disclosed; it does not have to be publicly disclosed. Most companies in some way are not in compliance with GAAP, but it is generally not disclosed because it is immaterial. He is not aware of any decision made by Halliburton that it is not going to fully comply with SAB 104. He knows that they are making a regular effort to monitor it. If there is a lack of compliance with SAB 104, no one has indicated to his knowledge that this is because SAB 104 is too expensive to comply with.

In determining a material weakness for the company under Sarbanes-Oxley, lack of management and integrity would be taken into consideration. Management weakness can be material. If there is a lack of management integrity with respect to complying with the various rules that apply to public disclosures, this could be considered material if it was determined to be a material weakness. He is not sure whether management integrity is a factor in determining materiality regarding financial statements.

Halliburton uses Accounting Research Managers on a regular basis; they are reliable to his knowledge. They are considered authoritative; he generally does not use them. According to SAB 99, there is no numerical threshold for materiality. A percentage is not dispositive and cannot be substituted for a full analysis. Many factors go into a decision as to whether something is material. He believes that the integrity of management would tell you whether you would even look at the report if you did not believe the numbers were reliable. He does not think that you can relate management being unethical to whether an error is material. If you were told upon receipt of a report that management lacks integrity, this would influence your reliance on that report, but that does not necessarily mean that the report is wrong.

One of the factors or emphases of SAB 99 is whether there is evidence that management has intentionally misstated items. It says that in assessing materiality of a misstatement to the statements as a whole, one should consider not only the size of the misstatement but also the significance of the segment information to the financial statements taken as a whole. It is foreseeable that potential investors will rely on gross margin percentages or gross margins generally in terms of viewing whether Halliburton is an appropriate investment or not. It is definitely the case that there is some amount of uncertainty where reasonable minds will differ with respect to materiality. There is judgment applied to it.

He felt that Complainant was being too black and white on the issues and that his views were outside of the reasonable range. This opinion is based upon his involvement and knowledge of other issues Complainant was discussing, and also his own discussions with McCollum and Gaut. He did not discuss the bill and hold issue with KPMG. He had specific conversations with people at KPMG that led him to believe that Complainant was being unreasonable. Dennis Whalen, the audit partner, felt that Complainant was being totally unreasonable. Whalen said that Complainant could not see anything but black and white and that he was nitpicking things. He did not give specific examples. Many people were of the opinion that Complainant only saw things in black and white; this was consistent even outside of KPMG and Halliburton. In accounting, there is a range of reasonableness, but Complainant was at one extreme. In the end, his accounting judgment was dead wrong. Everything he brought up, they ultimately did not need to correct. He is not saying that if someone disagrees with someone else, that they are automatically unreasonable. There is simply a point in time when something has been vetted through the company, through many different people, discussed in various meetings and among various committees, with auditors and national auditing offices, and one should not continue to bring up the same issue. This occurred on a number of different topics; Complainant had a pattern of bringing up topics over and over again, all of which had been vetted, and Complainant was the only one on his end. Other issues include multiple deliverables, customer held inventory, and joint ventures. It is not the position as Complainant initially expressed that he believes is unreasonable. Rather, it is the fact that Complainant kept raising the issue after it had been vetted and that he does it with multiple issues.

He does not recall having a conversation with Complainant discussing bill and hold issues and a fraud triangle. He does not know what a fraud triangle is. He does not recall ever mentioning the phrase "fraud triangle." He never felt that McCollum did not want to change the way they were doing bill and hold accounting be because of damage it might do to McCollum. He never voiced that opinion or anything like that. He would agree that it would be improper if McCollum made a decision about the company's accounting policies based upon whether it would help or hurt his career, but these decisions are not made in isolation, or only by McCollum. McCollum does have a great deal of influence, however. Chris Gaut has more influence inside of Halliburton that McCollum.

The view he holds is that most of their customer-owned inventory is not bill and hold, that they have made delivery under the contract terms, and there are few transactions that would get to the point of being bill and hold versus just normal sales. Title passing does not mean there is not bill and hold, but it is one of the biggest criteria. They look at the four criteria in SAB 104, all of which must be met. One of those criteria is having a fixed delivery date. The criteria for whether a transaction is bill and hold are as follows: (1)

persuasive evidence of an arrangement; (2) delivery has occurred or services have been rendered; (3) the seller's price to the buyer is fixed or determinable; and (4) collectability is reasonably assured. If all four of these have occurred, you can never have bill and hold. When Christopher says in his article that bill and hold arises frequently in the oilfield services sector, he is wrong in that it does not occur frequently. Halliburton does have some bill and hold, and they defer the revenue on those; this does not occur frequently. Halliburton has deferred fifty to sixty million dollars in revenue. This is not a large amount when one considers that Halliburton does 10 billion a year in the Energy Services Group.

What constitutes delivery depends on the contract. Many times the customer will ask Halliburton to deliver the product to a Halliburton warehouse, depending upon the contract. All customers do not request delivery to the Halliburton warehouse. If there is a sale in conjunction with a service, and something is delivered to Halliburton's warehouses even if the contract does not call for it to be delivered to the Halliburton warehouse, this is not considered delivery by Halliburton. The process used by Halliburton is that the only time they do not send it through a bill and hold analysis is when the contract calls for it to be delivered to Halliburton. This process was set up around 2005. If Halliburton does not want to store the product for the customer, the customer cares because often the customer does not have facilities at the location. They have facilities on their rigs, but they do not want the product on the rig until they are ready for it. The inventory is segregated and the customer assumes the risks of ownership. If the inventory gets destroyed in the Halliburton warehouse, the customer must still pay for it. Research was done with the risk management group and they could find no instance where they had reimbursed a customer for any inventory destroyed in their warehouse. He does not know of any instances in which Halliburton got to the bill and hold analysis of SAB 104 and agreed that they met all of the criteria for early revenue recognition. There are instances where Halliburton believed that delivery had not yet occurred, and they defer revenue. In most cases, they are doing exactly what the customer wanted done at the warehouse as they asked for it; instances where they found they were not doing what the customer requested, they change the terms and conditions on future orders.

Halliburton does not recognize revenue based upon items that are not delivered unless it meets all the criteria for recognizing as a bill and hold. Other than the Dresser contract, he has never seen a situation where Halliburton took the position that it could recognize revenue when there had been no delivery. Halliburton's position is that delivery has occurred, the seller's price to the buyer is fixed or determinable, and there is a specific price allotted to the actual good. Often, the customer orders the parts directly from the manufacturing plant for delivery to Halliburton's site. There is a contract that calls for delivery to Halliburton; this is a written contract or a purchase order. They went back and determined whether there is a contract that calls for delivery to Halliburton in each instance, and they found a few that were not that way, and they deferred the revenue when they discovered them.

He does not know if all of the contracts were researched. Halliburton has methods to determine whether something should go through the bill and hold analysis even if they do not know what the contract says. Many contracts are based upon their standard terms and conditions, and they know what those are. If the contract is based upon these terms and conditions, then they do not have to look at those because they already know what the terms and conditions are. There is also often a master service agreement or master contract with a customer, and that prevails. He does not recall ever seeing a situation where the company recognized revenue on a bill and hold situation when they should not have. He has not looked at all of Halliburton's contracts. He therefore does not know whether Halliburton is actually complying with SAB 104 with respect to all of the contracts, but he trusts that people did the work. There were thousands upon thousands of contracts.

Some contracts back in 1999 and 2000 called for delivery to the Halliburton warehouse. There were probably some that did not and Halliburton was still recognizing the revenue. This is what he meant when he said that people were not recognizing bill and hold and that they did not completely understand it. In Halliburton's contracts, title usually passes on shipment; sometimes title passed upon the goods reaching its destination. Halliburton has service contracts, where parts are delivered to the Halliburton warehouse and held until they are needed. There are service contracts where this happens and Halliburton recognizes revenue upon delivery to the Halliburton warehouse. The current process is to ensure or make a determination that in each one of those instances the actual contract calls for title to pass to the customer at the time it is delivered to Halliburton. This was not the process in 2004. Prior to 2005, there was a lack of understanding of some of SAB 104. This led to a lack of compliance.

An SEC order was issued that affected him; he agreed with that order. It started with a New York Times article. Due to a change in business in some of their engineering and construction businesses, they started accruing claims that were deemed collectible under the rules of SOP 81-1 in 1998. Their prior disclosures had been that they did not accrue claims on change orders, even though they had done so in a few cases, but the number of claims had been minimal prior to that. They were not properly disclosing what they were doing in their accounting policies disclosure. The SEC found that the revenues were consistently applied during all the periods and it did not impact any comparisons between periods. He decided to become a party to a consent order to resolve the situation. Gary Morris was another Halliburton executive that was named in this SEC action; he did not agree to a consent order; he fought it and eventually won. There was no question at the end about whether the accounting procedures that were being employed were appropriate. The SEC found that all of the financial statements were correct and there was only an issue with the disclosures. He personally paid the $50,000.00 fine regarding the cease and desist order from the SEC. Halliburton did not reimburse him.

Regarding multiple element arrangements, in some cases, the company in those arrangements actually defers recognizing revenue until the service that is associated with the product is completed. It depends on whether the company is selling a service or a product. If the company is selling a multilateral, which is the joining of two well bores into one, the company determines that it is the only one that could install their equipment. In those cases, they are actually selling the service of installing the multilateral, whereas with packers and completion equipment, they may install it or the customer may install it. Often these are strung together with multiple tools and parts, and the company may end up with some customer or competitor's tools, and a competitor may end up with the company's tools. There is not always a guarantee that the company is going to install it. They price the product and the installation differently in those kinds of situations. The price books are separate and every line item is detailed whether it is the product or the service. Often, the service may come at a later date, and of the customer may put out to bid the service work at a later date. Prior to installation, they recognize the goods and products that have been delivered.

He has never seen customer-owned barite in one of Halliburton's locations; it is not common. The company would not recognize revenue on barite that is not customer-owned until it was delivered. Once it is delivered, it is customer-owned. The Baroid joint venture in Algeria changed its accounting position with respect to whether it should have been consolidated or unconsolidated. It was the external auditors that brought up an issue after they examined the joint venture documents regarding whether Halliburton truly had control.

One of the elements under SAB 104 for recognizing revenue in a bill and hold situation is that there must be a fixed delivery date. This element must be applied in an industry such as Halliburton's, but you also have to look at the industry and what is commonly done and what customers expect. In most cases, there is not a bill and hold situation so if there is no evidence of delivery, they normally do not recognize revenue if they do not have a fixed delivery date. If it has been delivered, then it is not a bill and hold situation. When an item is delivered depends on the customer and the progress at the well site. This can be somewhat unpredictable. This is why Halliburton agrees to a date that they will have it in their warehouse ready for them to take.

Relatively small numbers can present issues of materiality if there are issues such as intentional misleading of management. Certain disclosures must be made depending upon whether certain departures were made consistently or whether it is being selectively applied to meet numbers. It is circumstantial and all of the facts must be examined. Whether to disclose something requires a judgment regarding whether it would have changed the public's judgment as to whether they would invest in Halliburton.

All revenue recognition is generally timing issues, regarding whether revenue is recognized today or next quarter or the following quarter. These are not concerns about whether phantom income is being reported. It is all going to be real revenue at some point in time. In situations such as Enron and Worldcom, the issues that led to those companies' collapse involve reporting of false revenues that were not actually earned. They involved fraudulent entries on the books, and not the kind of timing issues involved in the instant case. There were some instances where it was determined that income was improperly booked, and those entries were reversed. In any individual instance or viewed cumulatively, none of these situations approached materiality. With regard to the variable interest entities, the joint ventures, and whether the accounting should be consolidated, these decisions do not have any impact on net income. If it is consolidated, the amount of earnings that relate to the minority shareholders is taken out. If it is not consolidated only the earnings in net are taken to start with. Either way the earnings are netted out that apply to the minority shareholders.

Before he retired, he was, in his position as vice-president of financial controls, a member of committees that had oversight responsibility for identifying issues within the company that might be material with respect to the financial statements. He was a member of the internal control committee that reviewed internal controls. They also looked at any errors that had been identified during the quarter to determine what the control deficiencies were and if there were other potential errors relating to that control deficiency. The internal control committee had about 15-20 people on it, and then there were normally 10-15 guests that came. It had operations, accounting, and procurement materials. It had a wide variety of people throughout the company, and it allowed them to discuss issues and determine if anybody had differing views on any conclusions. The committee met at least once per quarter. The issues during the 2005 time frame that Complainant that were ultimately raised with the audit committee were discussed and reviewed by the internal control committee during that time frame. He was a member of the disclosure committee, which reviewed the filings. The committee also looked at all out of period errors over $2 million to determine materiality to the current financial statements, as well as to the periods which would have been impacted. He was a member of the Halliburton CEO/CFO certification meeting where the results of all other committees were reviewed with the CEO and CFO. In his role as vice president of financial controls, he had responsibilities under the Sarbanes Oxley statute. He was there to ensure that the company had adequate processes where the CEO and CFO could take comfort to make their certifications and the company could make its certification. In that role, part of his responsibility was to have raised issues internally if he felt there was something being done inappropriately on the accounting side.

He recalls speaking with Complainant about some of his concerns about the accounting practices of the company. He does not occur the exact date this occurred. They discussed multiple elements, customer owned inventory, bill and hold and joint ventures.

He was already familiar with what was being done in those areas based upon discussions in internal control meetings and talking with some people who were working on the projects. There were a few items that were new to him, and those were the ones that he was more concerned about to ensure that they had been considered by the company. After he met with Complainant, he spoke with Chris Gaut, the CFO, to make sure he was aware of these issues. Gaut was aware, and he knew that they had been discussed in making up the conclusions. Gaut asked him to meet with McCollum, which he did. McCollum went through in more detail some of the efforts that had been done, and said that any of the items that were new to him, McCollum was fully aware of them and discussed them at length.

After meeting with McCollum, he concluded that there were no accounting issues that he saw with the company. He had a follow up meeting with Complainant to let him know what he had done regarding Complainant's concerns. He told Complainant that he felt that there were no issues with accounting, and that several people felt Complainant was far too black and white on how he approached things. He encouraged Complainant to speak with McCollum, and to see if they could resolve their differences. He told Complainant that if he felt strongly on his opinions, he could contact the audit committee of the board with regard to the company's whistle-blower provisions under Sarbanes-Oxley. He did not have the impression that Complainant was accepting the explanations that he was providing.

Complainant proposed a change in the reporting; Complainant wanted to report to him so that would be independent of the chief accounting officer. This did not make sense to him from an organizational standpoint because he has never seen that, and it was not what he was supposed to be working on or focusing on. Complainant's job was to assist McCollum in ensuring that Halliburton got the right accounting, so it did not make sense for Complainant to report to him. If he had supported Complainant's desire to report to him instead of McCollum, this would not have resolved these issues Complainant was raising. The issues were still there because he did not agree with Complainant; it would have made the situation worse to change the reporting relationship.

He has a lot of respect for McCollum. He has never seen McCollum do anything that was intentionally wrong. When he spoke with McCollum about Complainant's concerns, McCollum described how he felt Complainant was doing with his job duties. McCollum was very frustrated because he did not feel that Complainant was focusing on the current things that were coming up that McCollum and the company needed researched, and that Complainant was spending all of his time trying to reconstruct the past. At some point in time, Complainant submitted a complaint to the audit committee of the board of directors. After that occurred and after his complaint was filed with the SEC, he discussed with McCollum how McCollum wanted Complainant to be treated by the people in the finance and accounting part of the company. He wanted Complainant to be treated like any other employee, with respect, and McCollum expressed concern that he did not want employees to take any actions derogatory to Complainant because McCollum was fearful that they could become involved.

It was generally known in the F&A department, by the time Complainant filed his complaints with the board of directors and the SEC, that he had been very critical of the company's practices in the three areas about which he complained. He spoke with Charlie Geer and Kelly Youngblood; he does not recall anyone else.

In an excerpt from the Oil IT Journal, the dissent cites John Gibson, Halliburton's energy president, as stating "Sarbanes-Oxley is the most ridiculous thing I've seen. We are spending more time doing certification processes that don't improve internal control or the quality of anything. It is a letter signing activity that appears to be blame assignment as opposed to change in corporate commitment to integrity. If shareholders could see how much money is being spent to say 'I'm honest', they would be appalled." He was not present when these remarks were made. He does not agree with those remarks, and neither did anybody in executive Halliburton management, other than John Gibson.

He has a handle on how the whistle-blower protections are supposed to work. He was on the Code of Business Conduct Committee that dealt with fraud investigations and HR discrimination. He has seen some of these things going on a Halliburton. He has never seen a situation where the whistle-blower's name was e-mailed to a group of people as being the whistle-blower and describing the actions taken by the whistle-blower. Whether he would take this action depends upon circumstances surrounding the situation. He has seen various situations where they had to disclose the name of the individual who was making the complaint to the various people involved in the investigation. These situations involved some code of business conduction violations, and one whistle-blower. He believes that once the company begins trying to protect documents, a complainant's name may have to be disclosed for proper investigation. This is necessary for the company to fully vet the issue and understand which employees have certain documents.

It is not policy to go to the SEC for immaterial items. His experience when he was in Europe and Africa was that they did not give the customer credit for certain products they did not use because quite often they were customized and the company could not use them for anyone else. He does not know what kind of number that would represent in terms of Halliburton's overall revenues.

He recalls J.R. Sult brought up revenue recognition at the ICC meeting as a common issue in the industry. This was part of the reason for looking at revenue recognition. He is vaguely familiar with a taped discussion involving Sult discussing revenue recognition and bill and hold. If at that point he was on the Internal Control Committee, he was probably at that meeting. He does not know what Sult was discussing regarding export sales because the field locations that are being held accountable for their budgets have no impact on when they can get it through the manufacturing plant and delivered.

He recalls discussing BSP, the Algerian Baroid joint venture, with Complainant. He knows that Complainant believed that BSP should not have been deconsolidated primarily based on the belief that Halliburton owned 60% of the entity and that Halliburton was significantly involved in the entity's operations. He recalls Complainant expressing these concerns.

Halliburton had controls in place to ensure that the "peel-offs" are properly reported and supported during the third quarter of 2005. The information is collected from hundreds of locations, so there is no assurance that every location followed the rule exactly. He knows that quarter to quarter they also monitor to determine whether there are significant differences so that they can go back and investigate to ensure the information was accurate in the past. It would not necessarily surprise him to know that Complainant, in doing some of his research in bringing these issues up, found out that a lot of the peel-offs were just estimated.

The Halliburton Intranet Page states in pertinent part that:[49]

Employees of Halliburton may contact the Board of Directors via this website. They may call, write, or e-mail. Complaints relating to Halliburton's accounting, Internal accounting controls or auditing matters will be referred to members of the Audit Committee. Other concerns will be referred to the Chair of the Management Oversight Committee. All complaints and concerns will be received and processed by the Halliburton Director of Business Conduct. Employees may report their concerns anonymously or confidentially. Employees' confidentiality shall be maintained unless disclosure is (1) required or advisable in connection with any governmental investigation or report; (2) in the interests of the company, consistent with the goals of the company's Code of Business Conduct; or (3) required or advisable in the company's legal defense of the matter.

E-mails from Complainant to the Halliburton Audit Committee dated 4 Feb 06 state in pertinent part that:[50]

Complainant feels it is his duty to alert the audit committee of Halliburton's failure to properly adhere to and implement effective controls to address the provisions of FIN 46, SAB 104, and EITF 00-21. Complainant believes there are numerous departures from GAAP and KPMG has failed to properly perform its duties by potentially filing materially misleading financial information with the SEC.

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[49] RX 1
[50] RX 2

E-mails between Chris Gaut, Dennis Whalen, and others, dated 4 Feb 06 and 7 Feb 06 state in pertinent part that:[51]

The e-mail sent on 4 Feb 06 described in RX 2 was forwarded to Chris Gaut from Richard Mize, stating that a copy is being forwarded to Robert Crandall. Chris Gaut then forwarded the same e-mail to Dennis Whalen on 7 Feb 06, with carbon copies sent to McCollum and Angelle.

An e-mail from Bert Cornelison to Chris Gaut and others dated 8 Feb 06 states in pertinent part that:[52]

The Ft. Worth office of the SEC opened up an inquiry into Complainant's allegations. The company is therefore required to preserve and retain the following information: All documents, work papers and electron data in their possession or control pertaining to their accounting treatment of variable interest entities, revenue-generating bill and hold transactions, and multiple element revenue arrangements. In addition, their normal retention guidelines are suspended and they must retain all such information until further notice. This e-mail was sent by Bert Cornelison to Chris Gaut, Mark McCollum, Jim Bullock, Richard Mize, Dave Lesar, and Margaret Carrier.

An e-mail from McCollum to Jay Gann and others dated 8 Feb 06 states in pertinent part that:[53]

It is important that the recipients of the e-mail retain all documents, including e-mails, drafts, and other trash not yet destroyed, related to any of the issues raised in the e-mail contained in RX 4 until the matter is resolved. This e-mail was from Mark McCollum, and forwarded the e-mail contained in RX 4 to Jay Gann, Charlie Geer, Kelly Youngblood, Nick Stugart, Henry Jazdzewski, Nadeem Ashfaq, Susan Wilrodt, Complainant, Steven Vontur, James Paquette, Millicent Chancellor, Bryce Tawney, Mark Traylor, Christian Garcia, and Chris Hill.

A statement from James Paquette, dated 13 Feb 07, states in pertinent part that:[54]

He is of sound mind to make the statement; the statement is based on personal knowledge and is true and correct. He is employed with the Technical Accounting Research division of Halliburton's finance and accounting organization and reported to Complainant until he was granted administrative leave, at which point he reported to Charlie Geer.

[51] RX 3
[52] RX 4
[53] RX 5
[54] RX 6

After Complainant filed his complaints with the audit committee and the SEC, McCollum asked Paquette to inform him of the active accounting issues within the Technical Accounting Research group. He told McCollum that the group was working on an accounting memorandum for RTA. McCollum expressed surprise that RTA was still an active issue. McCollum requested that Paquette keep him apprised of the status of any other current or future accounting issues on which members of the Technical Accounting Research group were working. McCollum's request was limited in scope to information concerning projects or assignments on which any members of the group were working. It was his impression that McCollum's request signaled that he and Complainant were not regularly communicating, and due to this lack of communication, McCollum wanted Paquette to keep him advised of the accounting issues being handled by the group.

Shortly after McCollum's request, McCollum advised Paquette that he would report directly to Geer while Complainant was on administrative leave. Geer assumed responsibility for the Technical Accounting Research group at that time, and Paquette never had occasion to report any accounting issues to McCollum as he requested. He instead reported the accounting issues that arose within the group to Geer.

An e-mail from Laura Lewis to Mark McCollum and others dated 13 Mar 06, with attachment, states in pertinent part that:[55]

Lewis sent an e-mail to McCollum, Lyn Beaty, and Nick Stugart regarding the finance summit agenda. She attaches the proposed agenda for the finance summit. She addresses the breakout sessions with the proposed SME's and presenters on the second tab. She is holding the date for the SME and Presenter kick off meeting on 24 Mar. Once she receives approval from the recipients of the e-mail, she will invite the necessary people to the meeting.

The attachment to the e-mail shows a schedule of topics and presenters and activities for the 2006 finance and accounting summit.

E-mails between Nick Stugart, Mark McCollum, and Laura Lewis, dated 15 Mar 06, state in pertinent part that:[56]

Stugart sent an e-mail to McCollum stating that they are finalizing the classes and instructors, and asks McCollum who he prefers to teach the revenue recognition course. Stugart suggests to McCollum Kelly Youngblood with the assistance of Craig Jones and Charlie Geer. McCollum responds to Stugart agreeing with his suggestion of who should teach revenue recognition, and Stugart forwarded this response to Laura Lewis.

[55] RX 7
[56] RX 8

E-mails from Laura Lewis to Charles Muchmore and others regarding Technical Reviewers for 2006 Finance and Accounting summit, dated 28 Apr 06 stated in pertinent part that:[57]

The recipients of the e-mail were selected to help provide technical expertise for the finance summit. They received a majority of the presentations for the Finance Summit and put together a technical review team. The recipients are to review the presentations and contact the subject matter expert (SME) for any required clarifications and to obtain speaker notes and outlines. This e-mail was sent from Laura Lewis to Rick Hansen, Charles Muchmore, Sonia Scott, Jamie Spexarth, Guillermo Beltran, Dale French, Mary Swafford, Susan Wilrodt, Susan Ponce, Jessie Montez, Bryce Tawney, Craig Wendt, Kelly Youngblood, Wes Arnold, Patricia Parr, James Paquette, Helga Cotgrove, Christian Garcia, Lyn Beaty, and Mark McCollum on 28 Apr 06. Lewis sent out another e-mail that day to Charles Muchmore, David Demski, Cathy Mann, Rick Hansen, Sonia Scott, Paul Hanks, Charlie Geer, Susan Wilrodt, Michael Haigh, Glenn Little, Monika Lim, Bryce Tawney, Vanessa Couch, Dale Davis, Chris Ing, James Paquette, Jamie Spexarth, Kyle Pounds, Ken Haddad, Kelly Youngblood, Ed Smart, Craig Jones, Edward Porter, and Dennis Sprigs, informing them that an e-mail went out to assign their presentations for technical review.

An e-mail from Mike McDougald to William Bedman and others, dated 29 Sep 06 stated in pertinent part that:[58]

Complainant received a "Focal Point Increase" on 1 Apr 06 for 4.5% which was the budgeted amount. His 2005 PPR has been closed out with an ME rating. They will start a 2006 PPR when he returns. This was sent by Mike McDougald to William Bedman, Bert Cornelison, Mark McCollum, and Carl Jordan.

A Screen Capture from the Halliburton personnel system reflecting a 2006 bonus payment states in pertinent part that:[59]

Complainant received a one time payment off-cycle bonus in the amount of $19,466.25 for the 2005 incentive plan CVA. It was paid in February of 2006.

[57] RX 9
[58] RX 12
[59] RX 13

***An e-mail from Mike McDougald to McCollum dated 21 Feb 06, with attachment, states in pertinent part that:*[60]**

McDougald is attaching to this e-mail a list of employees in McCollum's division that are eligible for nomination for the 2006 CVA Plan year as of 1 Jan 06. Participation in the plan is completely discretionary and subject to the approval of senior management. The attachment is a list of individuals that are eligible; McCollum is asked to designate employees that should not participate in the Plan. The list includes Complainant as well as other eligible individuals.

***A letter from Phil Hilder to Rob Voyles, dated 9 Mar 07 states in pertinent part that:*[61]**

It confirms Voyles and Hilders' telephone conversation that it is Complainant's desire to be placed on paid administrative leave given the current environment and circumstances involving the SEC investigation.

***A letter from Mike McDougald to Complainant dated 30 Mar 06 states in pertinent part that:*[62]**

It is a response to Complainant's request for paid administrative leave. Halliburton agrees to grant Complainant leave for a period of up to six months. The leave will be effective 2 Apr 06 and will be considered for the benefit of ESG. During the six month period, he will maintain his current salary and benefit status, but he will not be required to perform any services during his leave. He will not have access to the Company's computer networks for his e-mail or other communications. He must full cooperate with the SEC investigation and if he needs access to any documents or information from Halliburton to cooperate with the SEC he should contact William Bedman in Halliburton's legal department. He may contact McDougald if he wants to end his leave earlier. Halliburton's policies regarding leaves of absence are attached.

***A screen capture from the Halliburton personnel system reflecting a Focal Point salary increase states in pertinent part that:*[63]**

Complainant received a 4.5% Focal Point increase in his salary.

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[60] RX 14
[61] RX 15
[62] RX 16
[63] RX 17; much of the information contained in this exhibit is illegible due to poor reproduction quality.

A letter from Mike McDougald to Complainant dated 19 Sep 06 states in pertinent part that:[64]

It is in regard to the expiration of his leave of absence. Complainant's leave of absence expires on 1 Oct 06 and Halliburton expects him to return to work on a fulltime basis on Monday, 2 Oct 06. His job title, duties, office location, and salary will remain the same. His position will now report directly to Charles Geer, Director of External reporting in the Finance and Accounting department. Since his annual performance review was not completed due to his leave of absence, Geer or McCollum will review job expectations with Complainant upon his return to work.

A letter from James Rytting to Carl Jordon dated 28 Sep 06 states in pertinent part that:[65]

The conditions under which Halliburton has offered a return to employment appear to another adverse employment action taken by Halliburton against Complainant. They have no reason to believe that the circumstances that lead to the decision to place Complainant on administrative leave have changed and as a result, they believe the terms of the administrative leave should be continued.

They would like an up to date copy of Complainant's entire personnel file, a copy of the response Halliburton filed to Complainant's complaint to the Department of Labor, a copy of the Audit Committee's findings, and any report to the SEC investigation made by Halliburton or the audit committee. They also point out that the explanation in Human Resource's letter regarding the reason Complainant did not receive his annual performance review is mistaken. The deadline for the review was 15 Feb 06 and Complainant went on administrative leave on 2 Apr 06.

A letter from Mike McDougald to Complainant dated 3 Oct 06 states in pertinent part that:[66]

Complainant was advised by letter dated 19 Sep 06 that he was to resume his responsibilities on Monday, 2 Oct 06 due to the expiration of his paid administrative leave of absence. He did not return to work nor did he communicate directly with finance and accounting management or him about his decision not to report. He has been on leave for six months which is the maximum amount of time authorized. The matters for which Halliburton accommodated his request for leave have been concluded. Thus, his continued absence from work is unauthorized and as of 1 Oct 06 he is placed on indefinite leave without pay. Since the continuing absence is unauthorized, Halliburton

[64] RX 18
[65] RX 19
[66] RX 20

reserves the right to terminate his unpaid leave at anytime and require that he return to work in order for him to maintain employment with the Company.

A letter from Mike McDougald to Complainant dated 10 Oct 06 states in pertinent part that:[67]

Halliburton has received formal notification from the US Department of Labor that it has determined, after investigation of his claims, that he has not been retaliated against for engaging in protected activity and that his complaint has been dismissed. In light of the Department of Labor's findings rejecting his retaliation claim, as well as the conclusion of the Audit Committee's investigation and the closure of the SEC inquiry, there is no justification for his continued refusal to return to work. He is expected to return to work no later than 18 Oct 06 and failure to do so will result in his employment be terminated for unauthorized absence and job abandonment.

A letter from Phil Hilder to Mike McDougald, dated 12 Oct 06 states in pertinent part that:[68]

There are two justifications for why Complainant should not be expected to return to work. First, Complainant is appealing the notification from the Department of labor. Second, Complainant has no reason to believe that Halliburton's representations to the SEC were based on an independent investigation of any depth or thoroughness. Complainant has not seen any evidence that his conclusions regarding Halliburton's accounting were mistaken. Until shown otherwise, it is their position that the SEC decision to close the investigation was due to incomplete or inaccurate representations by management and/or the audit committee.

The letter asks that Halliburton provide Complainant with the results of its internal investigation and the information that the Audit Committee and Company provided the SEC.

A letter from Carl Jordan to Phil Hilder, dated 17 Oct 06 states in pertinent part that:[69]

They do not intend to respond further to the correspondence dated 12 Oct 06. They will not engage in argument about different views concerning accounting issues raised by Complainant and his obligation to return to work. The SEC determined that the accounting matters raised by Complainant do not warrant further inquiry. Complainant may appeal that determination, but his right to do so does not in any way restricts

[67] RX 21
[68] RX 22
[69] RX 23

Halliburton's right to require that he return to work if he desires to continue his employment.

A letter from Complainant to Mike McDougald, dated 17 Oct 06 states in pertinent part that:[70]

Halliburton has stipulated that he return to active employment under unreasonable conditions. He was demoted to report to Geer, and the termination of the SEC inquiry does not indicate that Halliburton's accounting practices or disclosures are accurate. He is also appealing the DOL's determination on the basis that the investigation failed to properly address the issues raised in the complaint.

There is substantial evidence that Halliburton and KPMG violated GAAP. The company ignored his requests to provide the results of its internal investigation to the questionable accounting practices. He cannot professionally or ethically return to his job because he believes Halliburton intends to continue violating securities laws.

He tenders his resignation as of 17 Oct 06.

A letter from Complainant to Robbins, Umeda & Fink, LLP regarding a position with the firm and related e-mails between Complainant, Christian Duke, and others, dated 5 Jun o5 and 1 Feb 07 states in pertinent part that:[71]

Complainant is looking for opportunities to apply his accounting knowledge and skills and is applying for an investigator position at Robbins, Umeda, & Fink. An e-mail from Christian Duke to Complainant asks for his availability to discuss his resume and the position for which he applied. This e-mail was forwarded to James Rytting and then to Jane Faber.

A Robbins, Umeda & Fink LLP Pay Record dated 9 Apr 07 states in pertinent part that:[72]

Between 28 Jul 06 and 2 Apr 07, Complainant was paid a total of $147,425 by Robbins, Umeda & Fink.

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[70] RX 24
[71] RX 25
[72] RX 26

The Intellectual Property Agreement of Halliburton Energy Services, Inc. dated 21 Mar 05 states in pertinent part that:[73]

Complainant, during his employ at Halliburton, agrees that as soon as he creates any composition or process of a matter relating to Halliburton, they will submit it to the Intellectual Property Department of the Company. Upon termination of the employee, all titles of the inventions are assigned to the company.

Complainant agrees that he shall not during his employment or after his employment, use for himself or divulge to others any secret or confidential information, knowledge, or data of the Company, obtained as a result of his employment unless authorized. Al notes and documents compiled by him or made available to him while employed by the Company concerning company activity shall be the company's property and shall be delivered to the company on the termination of Complainant's employment.

Complainant's résumé states in pertinent part that:[74]

He has over eleven years of experience in technical accounting and financial reporting. He worked at Halliburton as the director of technical accounting research and training starting in March of 2005. He was the senior audit manager at Ernst & Young from January 2003 until March 2005. He was the internal audit lead at Marathon Oil Corporation from September 2001 until January 2003. He was an audit manager at Mann, Frankfort, Stein & Lipp, LLP from June 1999 to August 2001. He was an audit senior at Ernst & Young from August of 1995 to June 1999. He received his BBA in Accounting at the University of Houston and is a certified public accountant.

The Position Profile for Director of Technical Research and Training Position states in pertinent part that:[75]

The director of technical research and training will have ultimate responsibility for staying abreast of new and existing accounting pronouncements, evaluating their impact on the entire organization and assisting with implementation of new requirements and the application of existing rules on new and pending issues.

The duties and responsibilities include working closely with management and external reporting groups, developing technical training presentations, being a liaison with other accounting groups, improving accounting areas and supervising technical research in the accounting department. He is responsible for various projects and for fostering teamwork. He is to help implement department goals and meet regularly with the

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[73] RX 27
[74] RX 28
[75] RX 29

assistant controller, chief accounting officer, vice president of tax and chief financial officer to formulate new accounting pronouncements and evaluating their impact on the company.

The person who fills this position must have a four year degree from an accredited college, be a CPA, have 7 years related experience in public accounting, and have leadership qualities.

A Draft Memorandum of a 2005 Performance Review and 2006 Expectations for Complainant dated 28 Sep 06 states in pertinent part that:[76]

The memorandum is anticipation of a meeting to finalize the 2005 PPR process, which remained incomplete due to Complainant's leave. The memo is authored by McCollum and was copied to McDougald and Geer. It states that Complainant did not meet McCollum's expectations on several of the primary objectives they had agreed upon. First, Complainant was to provide guidance and tools to the organization to help them understand and proactively deal with technical accounting issues. This was not done in a timely matter and issues often took months to resolve. Complainant also reversed his conclusions several times before reaching a final conclusion. Next, Complainant was to work on developing positive working relationships with both F&A and business customers. McCollum did not feel that Complainant met his expectations. Complainant was asked to keep McCollum apprised of his activities on a regular basis, but McCollum rarely saw Complainant. McCollum heard a significant amount of frustration expressed from other members of the organization that Complainant was not easy to work with, would not respond timely, and a lack of help from him with finding workable solutions to business problems. When they needed to do detailed contract reviews, the rest of the staff perceived that Complainant was not a team player because he chose not to help in those studies. Complainant was asked to provide informational presentations on technical accounting issues to the F&A organization. Complainant and his team did a good job of hosting a number of technical sessions and traveled to do some training internationally. Based on feedback, however, the effectiveness of the presentations was questionable. The presenters were thought to be unprepared and demeaning to attendees.

McCollum outlined several expectations for Complainant for the remainder of 2006. Complainant must complete his 2006 objectives by 16 Oct 06 to be approved by Geer and McCollum. Complainant must provide a detailed written staff report on his activities to Geer on a bi-weekly basis. All technical questions proposed to Complainant must be logged in. Complainant must meet weekly with Geer to verbally report his progress and activities. Complainant will plan a large-group GAAP technical accounting update to be held sometime in mid-December. Complainant will work on a GAAP Fundamentals II course and prepare a Relationship Development Plan.

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[76] RX 30

E-mails between Gary Paver, Complainant, Sandra Wright, and Lars Torbensen regarding feedback on Revenue Recognition training state in pertinent part that:[77]

Complainant sent an e-mail to the participants of the revenue recognition training thanking them for their attendance and emphasizing the importance of the content taught during the course. Complainant requests feedback from the participants such that he may improve future training presentations.

Complainant received feedback from Sandra Wright. One issue she noticed was that there are a lot of theoretical requirements that will need to be applied to the varied and complex business arrangements of Halliburton, many of which the company has not yet thought about in enough detail. She asks if it is their intent that each country should be working through these issues separately or if there is likely to be a revenue recognition central point available to work through each issue on a global level an develop guidance.

Complainant received feedback from Lars Torbensen. He thought the training was very theoretic but also involved very "heavy" material. The examples should have related to Halliburton real life examples and not hypothetical problems that people cannot relate to. Complainant raised a lot of problems that he did not have solutions to, and most of his slides were very busy and hard to read.

Complainant received feedback from Gary Paver. Paver's main criticism of the training was that it did not have many real life examples for the oil service sector. Seeing real analysis of an issue and the proposed outcomes make it easier for people to translate theory into practice. Looking at real examples makes it easier for the F&A employees to understand the theory rather than reading the FASB or the EITF statements. Many came away from the course very confused. Many of the things that he said are at odds with what the employees have been asked to do in the past and interpretations are different to the advice previously given. The rules have become muddied during training.

E-mails between Complainant and McCollum dated 30 Jan 06 and 1 Feb 06 state in pertinent part that:[78]

McCollum made some changes to Complainant's PPR objectives. Complainant accepted the changes and provided comments addressing his efforts to achieve his objectives during the year.

[77] RX 31
[78] RX 32

Complainant's PPR Results Form states in pertinent part that:[79]

It shows Complaint's performance expectations with handwritten edits and corrections.

Complainant's PPR Results Form states in pertinent part that:[80]

It shows Complainant's performance expectations with the handwritten edits noted in RX 33 typed in.

Calendar Entries for meetings scheduled for 9 Feb 06 state in pertinent part that:[81]

On 7 Feb 06, at 8:24 A.M. Beverly Babb scheduled a meeting with McCollum and Complainant regarding Complainant's PPR in McCollum's office on Thursday, 9 Feb 06 between 10:30 and 11:30 A.M. As of 7 Feb 06 at 8:25 A.M. both Complainant and McCollum accepted the meeting invitation. On Tuesday, 7 Feb 06 at 5:03 P.M. Beverly Babb cancelled the meeting.

An Ernst & Young Performance Review dated 17 Jun 04, states in pertinent part that:[82]

Complainant's work at Ernst & Young was reviewed by Douglas Regnier, Todd Zuspan, Robert Rohweder and Emily Madison, all senior managers.

Complainant's accomplishments include being instrumental to the resolution of complex accounting issues that required consultation with multiple partners. His strengths include his strong research and analytical skills, his diligence and integrity. He is people oriented and has obtained many new clients. He builds good relationships with his clients and has a very approachable personality such that clients trust his guidance on issues. He has meaningful conversations with clients that add to the value of the company's services.

To be more effective, Complainant should obtain facts and reliable data before forming conclusions and follow through on commitments made. He should also document conclusions in the work papers after the issues have been resolved. He should focus on developing the ability to resolve and close matters down in the most efficient manner, including the correct timing of involvement of the partner on the account. Complainant needs to demonstrate the ability to gather appropriate facts and apply the literature to those facts to develop the appropriate resolution. He needs to be more organized and evaluate his workload to determine if his client load may need to be reduced. He could

[79] RX 33
[80] RX 34
[81] RX 35
[82] RX 36

increase his value to the client and audit review by deepening his knowledge of the industry and specific industry issues.

Complainant is interested in the development of the EGM group and is looking for ways to improve the Group's morale. He is very conscious about staff development. Overall, he is an asset to the firm due to people skills and his diligence in his duties.

Improvement is needed in his teamwork and openness, professional expertise, quality and knowledge sharing, client focus, economics and growth, and project management. He is effective in the area of people development.

Complainant's demeanor was defensive and he had difficulty working together as a team and at times was unwilling to work through issues. He did not always treat others respectfully and not follow through on commitments made to other engagement team members. The engagement team members trusted Complainant's judgment, viewed him as a mentor, and followed his lead. Complainant makes an investment in development of himself and others and delivers tough messages. He appropriately identified issues, however, he consistently developed strong views and relied on the partner and review team to develop alternative solutions that he would then critique. He had difficulty considering new ways of doing things and other colleague's perspectives. Deadlines on certain engagements were consistently missed.

An annual review for Complainant for 2001 from Mann, Frankfort, Stein & Lipp states in pertinent part that:[83]

The roundtable discussions centered on certain specific comments. First, the group was concerned about Complainant's focus on job engagements during the busy season. It was perceived that Complainant arrived late and left the job several times when the staff or seniors on the job did not know where he was or how to reach him. It was mentioned that communication between Complainant, the client, and the partner were not as expected. The staff and others who worked with him during the year thought he was not a team player. Complainant stated in a memorandum that these comments were perceptions of others and not necessarily realities. He also stated that he would work toward developing his relationships with others and improving his professional performance.

This exhibit contains a performance review Complainant on his work with a client named Ameriforge during December of 2002. The reviewer was disappointed in Complainant's overall management of the engagement from an efficiency standpoint. He does not understand why Complainant spent so much time on the project since the reviewer himself directly performed 80% of the work on this project. Some of the work performed had to be completely redone due to poor documentation.

[83] RX 37

In a letter from Gerald Foster to Carl Jordan dated 2 Oct 06 states in pertinent part that:[84]

The complaint filed by Complainant under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002[85] was investigated and determined to have no merit. Attached to this letter is another letter to Complainant's counsel at the time describing the secretary's reasoning behind the findings. The secretary found a failure of Complainant to make a prima facie showing of a violation of the Act because Complainant did not suffer any adverse employment action.

A letter from David Peavler to Albert Cornelison dated 21 Sep 06 states in pertinent part that:[86]

Peavler, the assistant district administrator for the SEC, terminated the investigation into Complainant's complaints against Halliburton, and no enforcement action was recommended to the commission. This letter was addressed to Cornelison, the Executive Vice President and general counsel for Halliburton Company.

A meeting notice for a 20 Feb 06 meeting states in pertinent part that:[87]

A meeting is scheduled for Monday, 20 Feb 06 at 1:30 PM at the Oak Park Conference Room. The scheduled attendees include Mark McCollum, Mark Traylor, Scott Willis, Brian Maloney, Christian Garcia, Grant Switzer from KPMG, and John Christopher from KPMG.

An e-mail from Complainant to McCollum and others dated 22 Jan 06 states in pertinent part that:[88]

The e-mail is regarding HPM and consolidation considerations. He believes the current arrangement and its legal form is problematic because of the design surrounding the economics and voting rights of the variable interest holders. To avoid consolidation under the provisions of FIN 46, he suggests the legal structure be a limited partnership with Halliburton acting as the general partner.

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[84] RX 38
[85] 18 U.S.C. 1514A
[86] RX 39
[87] RX 40
[88] RX 41

An e-mail from Complainant to McCollum and others dated 25 Jan 06 states in pertinent part that:[89]

Complainant attached a memo for discussion purposes at a meeting to be held that day. The purpose of the memo is to provide information concerning GAAP and document technical consultation and research efforts related to accounting and SEC matters that are relevant to Halliburton. The subject of the memorandum is accounting for the proposed Halliburton project management venture.

An e-mail from Complainant to McCollum and others dated 1 Feb 06 states in pertinent part that:[90]

This memorandum is an accounting for the proposed Red Technology Alliance, LLC. It attaches an analysis of rights afforded the members in Red Technology Ventures and how this effects the voting rights of non-managing members compared to their economic interests.

An e-mail from John Taylor to Grant Switzer and others dated 17 Mar 06 states in pertinent part that:[91]

He has attached to this e-mail a revised RTA accounting memo to address the KPMG comments. Halliburton is considering forming a new legal entity, RTA, along with outside investors to pursue a business plan of investing in upstream oil and gas projects benefiting from the products, services, and technologies of Halliburton. RTA will be managed by an affiliate of Halliburton who will be responsible for conducting the day – to-day business activities. RTA will maintain a sufficient amount of equity at all times to carry on its principal operations without additional financial support. As a group, the at-risk equity owners will have the ability to make decisions about RTA's activities and RTA will not have equity that does not absorb RTA's losses or receive RTA's benefits.

E-mails between Complainant, John Taylor, Mark Traylor, Brian Maloney, and others dated 23 Mar 06 states in pertinent part that:[92]

Complainant does not believe that just because the entity will be investing in the development of oil and gas properties, it constitutes a developing stage enterprise. Developing stage enterprises are defined by efforts that hope to produce returns for the entity's investors. A salient characteristic of a non-developing stage enterprise would be

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[89] RX 42
[90] RX 43
[91] RX 44
[92] RX 45

the creation of profits that would inure to the investors. With respect to the RTA venture, Complainant believes that once the pilots are approved by the board and considered capital projects, RTA would no longer be considered a developing stage enterprise and as a result, it would need to ensure it has sufficiency of equity at risk to fund the entity's ongoing activities.

The Accounting for Proposed Red Technology Alliance LLC memorandum dated 24 Mar 06 states in pertinent part that:[93]

The first question asked is upon formation, whether RTA would be considered a variable interest entity pursuant to the provisions of FIN 46. In response, the memo states that RTA will maintain a sufficient amount of equity at all times to carry on its principal operations without additional subordinated financial support. As a group, the at-risk equity owners will have the ability to make decisions about RTA's activities, and RTA will not have equity that does not absorb RTA's losses or receive RTA's benefits. The next question asked is whether RTA LLC is within the scope of EITF 04-05. Upon review of the proposed term sheet and based upon the fact that RTA will establish and maintain a capital account for each member in accordance with tax accounting principles, they believe that RTA should be viewed as a limited partnership for purposes of applying GAAP and therefore is within the scope of EITF 04-05. The third question asks as a managing member, whether the company would be required to consolidate RTA based upon the provisions contained in EITF 04-05. Based upon discussions with those individuals involved with the formation of RTA, they believe that although the non-managing members will not have specific kick-out rights over the managing member, the non-managing members will have the substantive ability to liquidate RTA which if exercised to the fullest extent will have the same effect on managing member as a removal right. They believe that the existence of substantive liquidation rights overcome the presumption that the company would be required to consolidate RTA as managing member in accordance with the provisions of EITF 04-05.

The Accounting for Proposed Red Technology Alliance LLC memorandum dated 12 Apr 06 states in pertinent part that:[94]

It is identical to the memo in RX 46, with the addition of one question. The fourth question asks whether PSL services are variable interests. Service contracts with service providers are not variable interests if (1) fees are for services provided and commensurate with the level of effort required to provide those services; (2) fees are at or above the same level of seniority as other operating liabilities; and (3) service contracts are subject to cancellation provisions. HES services will be at market rates; HES invoices will be at

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[93] RX 46
[94] RX 47

the same level of seniority as other payables and HES services will be subject to normal cancellation provisions.

The Accounting for Proposed Red Technology Alliance LLC memorandum dated 28 Apr 06 states in pertinent part that:[95]

It is identical to the memo in RX 47, with the addition of one question. The fifth question asks whether RTA meets the scope expectations to FIN 46. There are nine exceptions to the scope of FIN 46 such as not-for-profit organizations, registered investment companies, and governmental organizations. They do not believe RTA meets the scope exceptions as it does not fall under any of the nine exceptions.

The Accounting for Proposed Red Technology Alliance LLC memorandum dated 24 May 06 states in pertinent part that:[96]

It is identical to the memo in RX 48, with the addition of one question. The sixth question asks whether Halliburton has a controlling financial interest in RTA. They reviewed the LLC agreement and based on the fact that the contractual agreement between HES and RTA can be terminated at any time if dissolution rights are exercised and that HES will not have exclusive authority over all decision making related to the operations, HES does not have a controlling financial interest.

E-mails between Brian Maloney, Mark McCollum, and Mark Traylor, dated 1 Jun 06 state in pertinent part that:[97]

McCollum sent an e-mail to Brian Maloney asking him to send McCollum a copy of the latest version of the memo on the accounting for the RTA project. He also asks if Maloney received an e-mail or communication from Complainant that expressed Complainant's agreement or disagreement with the conclusions in the memo as it currently stands. At the meeting in January, Complainant expressed his agreement with the conclusions. McCollum does not believe the substance of the conclusions have changed but heard indirectly the Complainant may have subsequently retracted his agreement with the conclusions.

Maloney sent McCollum the latest draft of the RTA memo. Maloney did not hear anything or receive anything from Complainant as to whether he agreed with the conclusions in the 1 Feb memo. Complainant wrote the 1 Feb memo and it has been edited twice. The revisions are simply responses to KPMG's request to add documentation supporting the original conclusions.

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[95] RX 48
[96] RX 49
[97] RX 50

The Accounting for Proposed Red Technology Alliance LLC memorandum dated 1 Jun 06 states in pertinent part that:[98]

This memo appears to be identical to the memo in RX 48.

The Accounting for Proposed Red Technology Alliance LLC memorandum dated 26 Jun 06 states in pertinent part that:[99]

This memo also appears to be similar to the memo in RX 48 with the addition of more factual documentation supporting the conclusions.

The Accounting for Proposed Red Technology Alliance LLC memorandum dated 14 Jul 06 states in pertinent part that:[100]

This memo is the same as the memo in RX 52 with further explanation and documentation as to how and why certain conclusions were reached.

An e-mail from John Christopher to Mark McCollum and others dated 21 Jul 06 states in pertinent part that:[101]

John Christopher received formal approval from the KPMG National Office on the accounting memo for RTA.

An article from Current Oil & Gas Topics, winter 2004, states in pertinent part that:[102]

It is an article written by John Christopher from KPMG entitled "Bill-and-Hold Transactions in the Oilfield Services Sector". Bill-and-hold transactions generally refer to scenarios where revenue is recognized after a seller has substantially completed its obligations under an arrangement, but prior to the buyer, or common carrier, taking physical possession of the goods. Bill and hold itself is not a GAAP violation but has been associated with incidents of financial fraud. Bill and hold scenarios frequently arise in the oilfield services sector. Many of the products that the oilfield services companies manufacture and deliver are extremely capital intensive and will be manufactured and ready for their fixed delivery dates without regard to any changes in the development plan. Companies must meet all bill and hold revenue recognition criteria. They must apply the separation model described in EITF 00-21. According to SAB 104, if the

[98] RX 51
[99] RX 52
[100] RX 53
[101] RX 54
[102] RX 55

undelivered element is both inconsequential or perfunctory and not essential to the functionality of the delivered element, it would be appropriate to recognize revenue on the arrangement at the time of delivery and accrue the cost of providing the services related to the undelivered element. The SEC's guidance on whether an element is inconsequential or perfunctory is related to whether that element is essential to the functionality of the delivered product. The documenting and concluding on the accounting for bill-and-hold arrangements involves a great deal of research and having to make several judgmental decisions. It is a lengthy and complex activity.

E-mails between Complainant, David Johnston and others regarding accounting issues with notations by Complainant state in pertinent part that:[103]

These e-mails discuss the TCP transactions. A question came in from the UK asking how to account for certain items and whether revenue could be recognized. Differing opinions were offered and it was concluded the revenue could be recognized. Most of the comments notated by Complainant are illegible, but generally, he disagrees with the conclusion that the revenue could be recognized.

A memorandum written by Respondent's counsel summarizing the contents of an Audio Recording produced by Complainant states in pertinent part that:[104]

Complainant produced four discs which contain audio recordings of several meetings and conversations. The meetings took place on 18 Jul 05, 1 Aug 05 and 20 Jan 06. Much of the dialogue is unintelligible.

The first disc records a meeting with Complainant, McCollum, and Charles Muchmore to discuss tax reporting issues from 2002. During the second part of the meeting, Muchmore leaves and the conversation is between McCollum and Complainant. McCollum told Complainant that they do not communicate frequently enough and stresses that Complainant should make an effort to communicate with him more. McCollum told Complainant that e-mail is a bad way to communicate within an organization as large as Halliburton. There may be honest disagreement between reasonable people and an e-mail trail on a technical issue can be used out of context.

McCollum told Complainant that if Complainant does not work on communicating well within a political organization, he will sour his relationship with people and it will be harder to do his job. He referenced Complainant's experience with the revenue recognition issue and McCollum reminded Complainant that he should go and speak with those who originally did the work before reaching the conclusion that they are wrong. McCollum told Complainant that his memo is good and his conclusions are appropriate.

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[103] RX 57
[104] RX 58

However, the fact that Complainant issued the memo before completing discussions with people who previously worked on the issue causes people who were involved with the issue to feel like they cannot trust Complainant.

Complainant must attempt to reconcile his conclusions with the conclusions of others within the organization. Complainant did not approach Angelle on the revenue recognition issue and he also did not examine all of the previous documentation on the revenue recognition conclusion before forming his own opinion. McCollum informed Complainant that if he wants to be successful at Halliburton, he must get other people involved, even if he already feels he has reached a correct conclusion. If Complainant does not do this, then the organization will close up and not work with him.

Complainant did not work well with J.R. Sult. Complainant should not raise issues days before the end of the quarter. McCollum told Complainant that he spends too much time on non-material issues. McCollum told Complainant that if Complainant attempts to run over the process, the process will run over him. Relationships will be damaged and people will stop trusting Complainant. Complainant will find himself irrelevant because people will work around him.

The 1 Aug 05 conversation with Sult, McCollum, Angelle, Hill, Complainant, and Tawney was recorded but the quality was poor. Generally, Sult wants to discuss revenue recognition and bill and hold. It is a tool used by some PSLs to hit targets at the end of the quarter but not in a devious way. Complainant was asked by employees in the UK to provide guidance on revenue recognition. Complainant did not have background on bill and hold so this meeting is to lay framework for a background on bill and hold and also what the company needs to look at when proceeding. Chris Hill did not find anything that stated that a SAB 101 analysis was done when it first came out. Most people were looking at when title was transferring on goods. The contract states, essentially, that if Halliburton stocks a product for its customer, and the customer does not use the product within one year, the customer is considered to have purchased the product. It will remain stored in the Halliburton facility, but the customer is considered to have purchased it.

KPMG was heavily involved in this; KPMG told Halliburton that they needed to focus on the terms of the contracts to understand when title passed, because title passage is a difficult issue. The way they articulated it to the field is that if the product has been delivered, there is not a bill and hold situation. If title has passed, there is not a bill and hold situation. There is a bill and hold situation only when there is inventory that the client has paid for but the company has not delivered.

The business practice is written around what constitutes delivery. Delivery, according to Complainant is generally not considered to have occurred unless the product is delivered to the customer’s place of business or to another site designated by the customer. What they need to do is decide if they want to conclude differently on the delivery criteria. The earlier conclusion was that they have arrangements and delivery that has occurred legally.

On 20 Jan 06 a KPMG audit results review meeting was held; in attendance at this meeting was Grant Switzer, John Christopher, and Dennis Whalen from KPMG, and McCollum, Complainant, Christian Garcia and Bill McLean from Halliburton.

There were no material issues in the audit. Regarding revenue recognition, KPMG tested the contracts and documents and no major issues were found. Revenue recognition should remain a major focus for the company. More revenue recognition guidance and instructions will be put forth in the fourth quarter; some instructions were sent out last quarter. KPMG will now require clients to report non-GAAP accounting policies; KPMG will determine whether these non-GAAP policies are of consequence.

KPMG has started a process of leveraging international audits. There will be no audit differences in the fourth quarter. There was no significant change in company accounting policy and there was no difficulty in performing the audit. KPMG has not developed any relationship that would impair their independence.

A training presentation by Mark McCollum entitled "Becoming Trusted Business Partners" states in pertinent part that:[105]

A trusted business partner has proven character and business acumen, and builds effective relationship and maintains technical competence. To build character, one must be ethical, selfless, genuine, consistent, and courageous. Trusted business partners invest outside time with their customers, are positive courteous and supportive, and listen. They operate with a sense of urgency and under-promise and over-deliver. They exceed their commitments and give credit to others.

Technical competency is important because it is promised by Halliburton's core values, it is expected by those served by the company, it is needed because of rule complexity and proliferation, and it is also required by their regulators. In order to maintain technical competence, the company will engage in higher standards in recruiting and proactive employee training and development. Employees are encouraged to find and fix compliance culture and benchmark the company's activities against world-class standards. They actively rely, recalibrate the effectiveness of processes and reports and foster a culture that demands superior performance.

In order to demonstrate business acumen, one must understand the basic nature and strategy of Halliburton. One must provide timely and accurate financial insight by cross-referencing data relationships and dependencies and identifying cost issues and trends. It

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[105] RX 59

is important to understand policies and practices and the implications of non-compliance. One must be proactive and offer new ideas to achieve business goals, and also anticipate future issues based on financial trends.

A trusted business partner is one who is a person of absolute integrity; is service oriented and not motivated by self interest; brings wisdom and judgment to bear on business decisions; can make technical ideas practical ones; inspires others through their passion for success; operates with a sense of urgency; and provides levels of service that exceed expectations.

For a trusted business partner to succeed, he must outline and execute a relationship development plan and improve usefulness of financial reports. They must focus on service quality and champion technology use to minimize data mining and maximize analysis. A trusted business partner encourages boundary-less organization thinking and execution and throws support behind strategic initiatives. They provide personal development plans for themselves and their staff and also identify and implement local sources of technical and non-technical training.

In order to measure success, examine whether the trusted business partner is respected by those they support; asked to join discussion; able to explain numbers; making news rather than reporting it; and whether they are respected for their input.

The PPR History for Complainant states in pertinent part that:[106]

Complainant was given performance objectives and explained what he would do and the support he would require to achieve those objectives. They are dated 12 Jan 06, 16 Jan 06, 20 Jan 06 and 30 Jan 06.

Complainant's Report to the SEC and attachments state in pertinent part that:[107]

Tab 5: Article from the Wall Street Journal Online dated 26 Oct 05
J.P. Morgan cut defense contractor Halliburton to neutral from overweight, citing concerns over management credibility and execution. The broker told clients that while it would characterize these issues as problems of perception, it believes it will take a couple of quarters of improved results for confidence to come back.

[106] RX 62
[107] CX 1; this exhibit contains over 100 attachments separated by numerated tabs. Pursuant to the Judge's order that only those pages cited to in brief will be included in the record for all exhibits over 25 pages, only those tabs less than 25 pages cited to in brief will be considered part of the record. Tabs over 25 pages that are cited but do not include specific page citations will not be included in the record.

Tab 6: Halliburton Q4 2005 Earnings Conference Call Transcript
There are various handwritten notes written on the transcript throughout.
The call occurred on 27 Jan 06 at 10:00 AM with Evelyn Angelle, David Lesar, Christopher Gaut, Andrew lane, James Stone, Geoff Kieburtz, James Wicklund, James Crandall, Scott Gill, Dan Pickering, Robin Schumacher, Michael Urban, Ken Sill, and Kurt Hallead. The discussion included overall operating performance and financial results, strategy and business outlook for 2006, and a question and answer session.

Tab 7: Halliburton Company Q1 2006 Earnings Conference Call Transcript
There are various handwritten notes written on the transcript throughout. The call occurred on 21 Apr 06 at 11:00 AM. The participants included Evelyn Angelle, Dave Lesar, Chris Gaut, Andy Lane, James Wicklund, Daniel Henriques, Jim Crandall, Ken Sill, James Stone, Dan Pickering, Scott Gill, Roger Read, and Geoff Kieburtz. During this call, they discussed overall operating performance and financial position, followed by a review of the regions and their business outlook for 2006 and beyond. There is also a question and answer session.

Tab 8: E-mail chain between Kelly Youngblood, Complainant, and others
Sri Krishnan contacted Steve Clifford regarding a situation in Saudi that he needed help understanding. Clifford then contacted Complainant and alerted him that there is a potential Bill & Hold situation in Saudi and the local F&A manager is requesting guidance, and asked Complainant to provide input. Complainant responded with a series of questions and answers to provide the feedback requested. Complainant and Krishnan exchanged several more e-mails concerning the questions and answers Complainant provided.

Kelly Youngblood sent an e-mail to Complainant and Susan Wilrodt stating that the legal department modified their business practices to help avoid any future revenue recognition issues. Youngblood asked Complainant and Wilrodt to review documents and provide suggestions. Complainant responded with his concerns regarding the application of the concepts within the F&A organization and F&A's responsibilities beyond the contract terms to ensure that revenue is booked appropriately. He is concerned that the term "direct sale" is being applied too broadly. Also, a right of return policy does not need to be formalized contractually in order to require consideration. Complainant finds it odd that the company would record revenue on a direct sale when they have not physically delivered the product. Also, it appears that it is intended to address the risk of loss, however, substantively; it cannot override the application of GAAP to the remaining arrangement elements and terms.

Tab 10: Excerpts from "Financial Reporting Developments" and an e-mail chain
Contractual arrangement terms that give customers the right to future purchases of additional products or services from a vendor for an amount below market value, in addition to the current products and services being purchased, generally should be

considered an element in a multiple element arrangement. Arrangement consideration should be allocated using the relative fair value method when possible, unless a delivered unit of accounting is required to be reported at fair value and marketed to market in each subsequent reporting period, pursuant to GAAP. The Task Force considered whether methods other than the relative fair value method or the residual method could be used to allocate arrangement consideration, but ultimately did not include a provision allowing their use in EITF 00-21.

Complainant and others exchanged numerous e-mails concerning the status and effects of the Global Volume Discount Programs. Complainant wanted to assure that the company was in compliance with GAAP. An analysis needs to be done to quantify the potential impact of the Global Volume Discount Programs on the financial statements and whether it is an element considered under EITF 00-21.

Tab 18: E-mail chain between Hank Schuelke, Complainant, and others

McCollum forwarded an e-mail from Bert Cornelison stating that the Ft Worth office of the SEC opened an inquiry into Complainant's allegations, asking the recipients of the e-mail to please retain and preserve documents, work papers and electron data concerning accounting treatment of variable interest entities, bill and hold transactions, and multiple element revenue arrangements. Complainant forwarded this e-mail to Schuelke to confirm he received that communication.

Tab 23: E-mail chain between Sult, Complainant, and others

Complainant requested feedback from the participants in his course on revenue recognition. Lars Torbensen responded that the training was interesting but that Complainant did not provide enough examples that related to Halliburton. Gary Paver responded that Complainant did an excellent job, but he would have liked if Complainant had provided more real life examples for the oil services sector, and many people came away from the course very confused because what Complainant said was at odds with what they were asked to do in the past.

In a separate e-mail chain, Steve Cowe sent to numerous recipients the electronic version of the material Complainant and James Paquette presented. John Houston then sent a list of issues to the group that they highlighted during the training course. They concluded that they will continue recognizing revenue in line with current policies and established guidelines.

Tab 27: E-mail chain between Kelly Youngblood, Complainant, and others

Youngblood sent a copy of the EITF 00-21 memo on 8 Jan 06 with some revisions to the initial draft to Grant Switzer and John Christopher. This e-mail was copied to Nick Stugart, Charlie Geer, Christian Garcia, and Craig Jones. Youngblood also sent this to Mark McCollum on 10 Jan 06 in preparation for a meeting they scheduled for the following morning. Finally, he sent it to Complainant and Paquette on 13 Jan 06. The memo is attached to each e-mail

<u>Tab 28: E-mail chain between Youngblood, Craig Jones, Hang Bui, Danelle Vanderzyden, and others</u>
This is a photocopy that was cut off so it is difficult to read; it appears that Kelly Youngblood sent a KPMG memo entitled the "white paper" to Grant Switzer, John Christopher, Mark McCollum, J.R. Sult, John Allen, Mark McCurley, Bryce Tawney, Charlie Geer, Millicent Chancellor, Craig Jones, Hang Bui, Danelle Vanderzyden, Complainant, and Susan Wilrodt.

<u>Tab 47: E-mail from Camaron Thorson to Jamie Spexarth, Complainant, and John Christopher</u>
Thompson heard that Spexarth and Complainant were looking for information on PPI; a copy of the company's initial analysis when the investment was made is attached.

<u>Tab 48: Consultation draft memo</u>
This memo was from the Director of Technical Accounting Research and Training on 24 Aug 05. It was sent to McCollum, Sult, Larry Land, Lyn Beaty, and Toby Baggett. It was regarding AR Securitization Structure and an Evaluation of the Proposed Amendment for FAS 140.

<u>Tab 49: E-mail chain between Complainant, Sult, McCollum and others</u>
Complainant sent an e-mail to McCollum and Sult attaching a memo regarding the Sale of Receivables to Par Avenue Receivables Corporation and Blue Ridge Asset Funding Corporation. Sult replied asking if it was possible for traditional recurring receivables securitization to be conducted through a QSPE. Complainant responded that it is possible in this situation.

<u>Tab 50: E-mail from James Low of KPMG to Stephen Dabney and others</u>
This e-mail chain concerns AR securitization. Various questions are proposed and answered by members of Halliburton, KPMG, and other participating organizations. There are illegible handwritten notes on some of the pages. The main issues that are discussed concern the transfer of financial assets and how, when, and whether this may be done.

<u>Tab 51: E-mail from Wendy Hall</u>
Wendy Hall sent Bruce Metzinger, Jerry Blurton, and Chris Hill an e-mail on 27 Oct 03. The e-mail requests talking points on an article that appeared in Platt's Oilgram News, dated 27 Oct 03. According to the article, an obscure Texas bankruptcy mushroomed into a high-stakes battle over prime acreage in the Barnett Shale natural gas play, which "would bump Halliburton to the end of the line as far as getting paid," which posed a

large threat to Halliburton. The article states that "Halliburton has exposed itself … to potential unwinding of that off-balance-sheet finance deal."

Tab 52: E-mail chain from Susan Wilrodt, Complainant, and others

There is an issue regarding how KBR is addressing CTA regarding legal entities in which the assets and liabilities have either been mostly liquidated or transferred to another entity. ESG has generally waited until a legal entity was liquidated to recognize the CTA; Complainant was asked to research whether this method was correct.

It was concluded that if they want to start writing CTA off before they liquidate it as a company, they need to define "substantially complete"; currently there is no written business policy or practice that they know of that sates when they should write CTA off. Complainant states that 85% was Ernst & Young's interpretation of "substantially complete" criteria. He does not think the requirement is defined by a legal interpretation and should be guided by substance over form.

Tab 53: E-mail chain between Complainant and Christopher Stalder and others

This e-mail chain concerns KBR hedging. Stalder states that currently KBR is using the "matching critical terms" method for calculating effectiveness. It discusses the inappropriate application of FAS 133 and using as a method of assessing hedge effectiveness.

Tab 54: E-mail chain and attachments between Henry Jazdzewski, Janet Knapp, Complainant, and others

A CTA report was sent from Knapp to Jazdzewski. Jazdzewski then e-mailed Complainant and informed him that the majority of the CTA comes from the former Dresser units as they were treating a few of their foreign operations as non USD functional.

Tab 56: Bill and Hold Decision Tree

This decision tree directs F&A employees on how and when to recognize revenue for bill and hold situations. When title passes and the customer does not have a right of return, revenue is recognized.

Tab 58: Training Presentation on Bill and Hold

This is a series of rules and policies regarding whether to recognize revenue in bill and hold situations for Halliburton. There are extensive handwritten notes on the presentation pointing out perceived inaccuracies.

Tab 60: Draft Memo Re: UK TCP Perforating Guns Revenue Recognition

This memo provides questions and answers regarding an arrangement between Halliburton and Shell to manufacture TCP equipment, store it in the Halliburton UK warehouse, and deliver it upon request of the customer. The first question asks whether the arrangement is a service transaction with multiple deliverables that involves both product and service elements. The arrangement appears to be a multiple deliverable arrangement that involves both product and service elements. Next, it is asked what the appropriate revenue model for assessing the delivery of products and services relative to the arrangement is. Delivery of products is evaluated using the Completed Performance model because the customer generally realizes all of the value at once when the product is physically delivered to the customer. The next question asks whether the equipment has been physically delivered upon shipment to Halliburton's UK warehouse. Revenue recognition relative to the equipment element generally would not occur until it has been physically delivered to the customer. Delivery of an element is generally considered to have occurred only when the company has fulfilled its obligations related to that element and the customer has realized the value of the element. Next, the memo asks whether the bill and hold criteria have been met. This is a bill and hold situation, however, revenue cannot be recognized because the bill and hold criteria have not been met. Finally, it is asked what the appropriate criteria are to evaluate whether the company can recognize revenue for amounts billed to the customer for equipment manufactured that they ultimately do not demand. The company would need sufficient evidence to support the extinguishment of the liability.

Tab 62: See RX 55

Tab 63: ESG Business Practice – Revenue Recognition & Revenue Accruals
This is the Energy Services Group's business practice guide for revenue recognition and revenue accruals. It establishes the requirement for recognizing revenue and recording revenue accruals.

Tab 69: E-mail from Complainant to Grant Switzer and John Christopher
In this e-mail, Complainant provides an excerpt from SEC AAEE No. 1819 that emphasizes physical possession.

Tab 97: Draft Memo – Revenue Recognition; Gulf Coast CPS offshore equipment
This memo has many handwritten notes. This issue considered is the timing of revenue recognition for long-lead time and special order CPS equipment used in offshore wells, which is stored in a Halliburton warehouse prior to delivery at the well site. Based on strict requirements in determining revenue recognition in a bill and hold situation for inventory that is being stored for the customer, revenue associated with certain special order and customer sales orders cannot be recognized until the products are delivered to the customer's designated shipping location described in the source documents governing the transaction.

The Halliburton job offer letter to Complainant dated 28 Feb 05 states in pertinent part that: [108]

Halliburton offered a job to Complainant as a senior manager in accounting on 18 Feb 05. He will report to Evelyn Angelle. His salary is $9,583.34 paid on a semi-monthly basis. He has benefits including receiving shares of stock, participating in the performance pay plan, and is eligible for the company's group benefits. He may participate in the company's retirement savings plan, contribution plan, and vacation plan. His employment is contingent upon passing a drug test.

A letter from Complainant dated 17 Oct 06 to Halliburton regarding his return to work states in pertinent part that: [109]

Halliburton stipulated that Complainant return to active employment under unreasonable conditions. He considers reporting to Charlie Geer a demotion. The Company cites the SEC's decision to terminate its initial inquiry into his allegations and DOL's initial determination that the Company did not violate Sarbanes Oxley as justifications for not extending terms of his administrative leave, yet the SEC inquiry does not indicate that Halliburton's accounting practices or disclosures are accurate. There is substantial evidence that Halliburton and KPMG violated GAAP. Halliburton ignored Complainant's request to provide him with the results and analysis of the audit committee regarding the questionable accounting practices. He believes Halliburton will persist in violating securities laws by filing inaccurate and misleading financial information. Professionally and ethically, he cannot return to active employment under these conditions. He tenders his resignation as of 17 Oct 06.

A letter from the SEC to Hilder & Associates dated 3 Nov 06 states in pertinent part that: [110]

They received Hilder's letter in which he clarifies points made in his memorandum entitled "Questionable Accounting Practices of Halliburton, Inc.". They believe to have a thorough understanding of Complainants concerns and would like to interview Complainant on 14 Nov 06 at 9:30 AM.

[108] CX 19
[109] CX 22
[110] CX 23

An audio CD documenting a 1 Aug 05 meeting with Sult, McCollum, Angelle, Tawney, and Complainant provides in pertinent part that:[111]

The recording quality is very poor and it is difficult to comprehend what the parties involved are saying. Generally, they seem to be discussing revenue recognition practices, bill and hold situations and the criteria required, and how this affects underlying contracts. They discuss delivery, title, and risk transfer, and how this affects inventory.

The transcript of the above exhibit states in pertinent part that:[112]

Sult called the meeting to discuss revenue recognition and predominantly bill and hold situations. Revenue recognition is divided into three categories, first, bill and hold, second, multiple element arrangements, and third, direct sales. Multiple element arrangements are a tool used by some of the PSLs to hit some of their targets at the end of a quarter or at the end of the year. Complainant was asked by employees in the UK to look at a new contract that they had recently put in place for a customer. When SAB 101 came out, there was no bill and hold analysis that was done at Halliburton.

Sult was in Kazakhstan in one of the Halliburton warehouses with Richard Stucky, the area manager. He showed Sult an entire wall covered in bags of barite and informed him that Halliburton already billed and collected for that inventory. Sult assumed that the bill and hold criteria were met. In some foreign locations, the contracts state that Halliburton will stock certain materials for customers because the customers do not have warehouses in the area. The contract states that if the materials are not purchased within a year or picked up, it is considered purchased by the customer.

Information they received from several sources was that on drill bits, they did not bill the client until the bits were consumed. If they had bits sitting out unused, they were still considered Halliburton inventory, and the customer would be billed for them, but Halliburton had an obligation to take them back.

At the end of 2003, they looked at each individual location and went over the contractual terms to see if title had passed to the customer. There was a heavy focus on the contractual terms and whether the customer had any rights regarding selling the inventory back to Halliburton. KPMG was heavily involved in this process. They helped Halliburton understand what they needed to focus on when they had certain storage situations. They discovered that much depended upon when title passes. Business practice defines a bill and hold transactions as situations where they billed the customers but the products have not been delivered to the customer and are being stored by ESG at the customer’s request. It says delivery generally is not considered to have occurred

[111] CX 25
[112] CX 26

unless the product has been delivered to the customer's place of business or another site specified by the customer.

Sult believes that delivery and title are two different issues. Physical possession constitutes delivery and when Halliburton is in physical possession, he defers to the bill and hold factors. Complainant believes that in the UK situation there would be an explicit obligation for Halliburton to deliver to the well site, and that obligation brings into question EITF 00-21 issues as to whether that obligation can be separated from the manufacturing. Even if the bill and hold criteria are met, there must still be stand alone value for the equipment. Hill believes that the others are trying to go the route where they will not recognize revenue until the equipment is installed, but there are many situations were the inventory is sold but require storage for the customer, and revenue is not recognized.

The crux of the issue is delivery. The question is whether the criteria of the conditions for recognition and delivery exist when the product itself is completed which results in the delivery being considered to occur at a point of time rather than over a period of time, although the point in time is when the product is physically delivered to the customer. The way McCollum reads it is that delivery is not necessarily equivalent to physical possession.

According to Sult, in the portions of the services industry that fit the manufacturer package, their common practice is that the product is manufactured, the client purchase and pays for it, and then it sits in the shipping yard waiting for the client to pick it up and take it to its well site. The issue is how precise the delivery date has to be.

An audio CD documenting a 20 Jan 06 meeting on a KPMG audit with Switzer, Whalon, Christopher, McCollum, Garcia, and Complainant provides in pertinent part that:[113]

The conversation is inaudible due to the poor quality of the recording.

A transcript of the above exhibit states in pertinent part that:[114]

The company and KPMG have been doing more work over the last few years regarding fraud. They interview senior management, particularly outside of accounting, do more test work and more work around agency payments. This year they had more emphasis around contract reviews, particularly customer contracts, revenue recognition, and joint venture accounting. They are not aware of any material issues at this point. There are no significant issues regarding accounts receivable and inventory. Regarding non-wholly

[113] CX 27
[114] CX 28

owned investments, the company has put a lot of effort into tightening up the accounting around that and the significant deficiencies are now remedied.

There are a few minor issues regarding revenue recognition. It is still an area that should be a central focus because it is higher risk than other areas. They are trying to put out instructions and guidance to the field on customer owned inventory. They sent out instructions a quarter ago on bill and hold scenarios and EITF 00-21.

They address non-GAAP accounting policies. This is a new requirement that they have to monitor any non-GAAP accounting polices they may institute. This stems from policies that when originated were inconsequential but over time became more significant.

Regarding internal controls, there are significant deficiencies from the previous year. Leases were remedied this year as well as joint ventures. They remediated to the point where it is below significant deficiency and there are no other significant deficiencies to bring up at this point.

They discussed where they stood in their global reporting from their KPMG international team. They are doing better than in the past. There are no issues to report currently. KPMG started a process of leveraging audit services for some of their audits this year both domestically and internationally. They are seeing good results from that are looking forward to doing as much and more on leveraging with audit services in the future. No audit differences were identified during their audit or during the 5th quarter. There were no corrections of prior period errors with the exception of the patents and process which was actually an upward P&L adjustment during the 4th quarter related to some old patents that had been expensed and should have been capitalized.

There were no significant changes in the company's accounting policy during the quarter. There were no disagreements with management, they are not aware of any consultations with other accountants and there were no difficulties encountered in performing the audit. They are not aware of KPMG developing any new relationships that would impair their independence; they are not aware of any KPMG partners or employees being hired by Halliburton.

Garcia provided personal feedback to Complainant. He told Complainant that the first thing Complainant tends to do is go right for the most conservative point of view. He looks at a great deal of literature and has extensive knowledge, but other employees struggle to receive a balanced point of view. Complainant states that people come to him with questions and they do not have knowledge of the rules or any understanding of the significant judgments that must be made. Complainant states that he is not here to make all of the judgments or decisions. He is there to make sure people who ought to know appropriate literature understand the significant judgments and assumptions they are responsible for. He feels that people want to put that responsibility on him. Complainant took the position at Halliburton because the company informed him it would be like the national office for a public accounting firm. Local audit teams would go to national for technical guidance. When he tells people they cannot recognize revenue in certain situations, and they try to bypass him by saying that the company has always done it that way, he cannot allow that.

An audio CD documenting a meeting with McCollum, Muchmore, and Complainant provides in pertinent part that:[115]

Much of the conversation is inaudible, it generally is a discussion on the company's accounting between McCollum and Muchmore, and then a conversation between McCollum and Complainant regarding Complainant's performance.

A transcript of the above exhibit states in pertinent part that:[116]

There is a significant deficiency in taxes. McCollum believes they are large but not material. They booked and deferred taxes on asbestos; it went through the income statement and now it has to come out of retained earnings; they effectively "double dipped" it. There is a $6.3 million deficiency for UK taxes; that is not significant as $10 million is the threshold. If they have any other acquisitions they must be more diligent in getting them onto their processes and monitoring them.

McCollum believes that he and Complainant need to have more communication. Claimant must take the initiative to pursue McCollum. Halliburton is different than Ernst and Young in that it primarily dealt with small companies giving it fewer communication issues. They generally had a lack of politics around communications because that does not fester in that sort of environment. Halliburton is significantly larger and therefore has communication issues. E-mail is a very poor form of communication because it is impersonal and sets unreasonable expectations about response times. People misconstrue e-mails, and also, once an e-mail is sent, it never goes away and a trail created by an e-mail string can cause trouble because things will be pulled out of context. Complainant must be extremely circumspect about the use of e-mail to communicate. He should try to talk to people face to face.

Complainant must try diligently to form relationships with people. Without proper communication in a political organization such as Halliburton, it becomes difficult to form good relationships with people. Failure to communicate and build relationships will cause people in the organization not to trust him. Regarding the issue of revenue recognition, a lot of work was done by a smart people who engaged in honest dialogue

[115] CX 29
[116] CX 30

and who engaged KPMG and their national office, and ultimately reached a different conclusion than Complainant. Complainant should have talked to the people involved and recognized the alternate conclusion and try to reconcile his views with it. He must be politically sensitive to the realities of working in a political organization. He must be able to reconcile his views with others and engage in open and honest dialogue to do so.

McCollum is not concerned with the issue or conclusions. McCollum is more concerned about informing Complainant about the process; McCollum questions the process by which Complainant arrived at his conclusions. If Complainant does not develop relationships and work with other people in reaching conclusions, then the organization will close up on him.

An audio CD documenting a meeting with McCollum and Complainant provides in pertinent part that:[117]

The quality of the recording is poor. Generally, McCollum and Complainant discuss Complainant's work and the processes by which he reaches conclusions. Complainant must recognize that building relationships with others and taking the reasonable conclusions of others into consideration is important. McCollum emphasizes a continuing need for better communication between him and Complainant.

A transcript of the above exhibit states in pertinent part that:[118]

Complainant needs to address issues in a timelier manner. Certain issues must be run to ground quickly; McCollum will help him prioritize if they could communicate more. McCollum is not asking Complainant to compromise his ethics, but rather he wants Complainant to be politically sensitive and aware of other people's feelings. Technically competent people can reasonably reach different conclusions based on the rules. If he does not communicate with others when researching his conclusions, the process will run over him, and he will become irrelevant because people will work around him. Complainant is not doing this to intentionally hurt anyone, he is just trying to do the right thing and move forward. This has nothing to do with trusting Complainant's competence, but rather trusting him politically. He cannot act from self motivation or self aggrandizement. He must involve others such that the organization as a whole can be successful. If he does not, others may think that he does not find them to be technically competent.

The rules of accounting are too complex for any one person to be an island of technical competency. He should try to understand why others reached a different conclusion, as this is important in many aspects. It is difficult to manage this organization because of its

[117] CX 31
[118] CX 32

size and it requires getting everyone to work together. When one person is doing their own work and stepping on people's toes, they could become destructive.

Not everything is black and white and reasonable people come to different conclusions. An important aspect of being a good technician is the ability to listen to get all of the facts. Complainant is willing to discuss different ideas, but with the Fiberspar issue, he felt that others were challenging ever aspect of his conclusion as if he was not on the team. McCollum encourages Complainant to have good communication with him and let him know about his frustrations.

One of the things that put people on the defensive is to approach them after you have already reached a conclusion that the company has to take a hit. People fight taking a hit and will not roll over and ignore it. He believes that this is something Complainant can do because people respect him both with regard to his technical competence and as an individual. Complainant needs to focus on using his knowledge and research abilities in the context of Halliburton's needs.

SEC Staff Accounting Bulletin (SAB) No. 99 – Materiality states in pertinent part that:[119]

It was issued by the US Securities and Exchange Commission on 12 Aug 99. It expresses the views of the staff that exclusive reliance on certain quantitative benchmarks to assess materiality in preparing financial statements and performing audits of those financial statements is inappropriate. Misstatements are not immaterial simply because they fall beneath a numerical threshold. Certain registrants have developed quantitative thresholds as rules of thumb to assist in the preparation of their financial statements. Auditors have also used these thresholds in their evaluation of whether items might be considered material to users of a registrant's financial statements. The use of a percentage as a numerical threshold may provide the basis for a preliminary assumption that a deviation of less than the specified percentage with respect to a particular item on the registrant's financial statements is unlikely to be material. However, quantifying the magnitude of a misstatement is only the beginning of an analysis of materiality, and it cannot appropriately be used as a substitute for a full analysis of relevant conditions.

SEC Staff Accounting Bulletin (SAB) No. 101 – Revenue Recognition in Financial Statements states in pertinent part that:[120]

It was issued by the US Securities and Exchange Commission on 3 Dec 99. It summarizes certain of the staff's views in applying generally accepted accounting principles to revenue recognition in financial statements. The staff provides this

[119] CX 45
[120] CX 46

guidance due in part to the large number of revenue recognition issues that registrants encounter. If a transaction is within the scope of specific authoritative literature that provides revenue recognition guidance, that literature should be applied. Based on these guidelines, revenue should not be recognized until it is realized or realizable and earned. The staff believes that revenue generally is realized or realizable and earned when (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the seller's price to buyer is fixed or determinable; and (4) collectability is reasonably assured. Delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or another site specified by the customer. If the customer specifies an intermediate site but a substantial portion of the sales price is not payable until delivery is made to a final site, then revenue should not be recognized until final delivery has occurred.

SEC Staff Accounting Bulletin (SAB) No. 108 states in pertinent part that:[121]

It was issued by the US Securities and Exchange Commission on 13 Sep 06. It expresses the staff's views regarding the process of quantifying financial statement misstatements. The staff is aware of diversity in practice. The interpretations in this SAB are being issued to address diversity in practice in quantifying financial statement misstatements and the potential under current practice for the build up of improper amounts on the balance sheet.

An e-mail from Laura Lewis states in pertinent part that:[122]

The e-mail was sent on 28 Mar 08. Certain individuals scheduled to participate in the finance summit missed the kick off meeting. She sent them templates to be used for the finance summit. She requests the participants' bios and course summaries to be sent to her. Another e-mail was sent that day asking Complainant to confirm his availability to participate because Lewis scheduled him to prepare a course on derivatives.

An e-mail from Mark Traylor states in pertinent part that:[123]

The e-mail is regarding an accounting proposal for proposed Red Technology Alliance, LLC. Complainant sent him a draft memo and requests comments and questions. Traylor responded that the draft was very good and has no further comments. He also states that when drafting and finalizing the actual LLC agreement, they must ensure the language regarding the rights of Halliburton as manager and of investors as non-managers is consistent with the term sheet and the attached memorandum.

[121] CX 48
[122] CX 68
[123] CX 76

Meeting notifications dated 8 Dec 05 to 22 Feb 06 state in pertinent part that:[124]

A meeting was scheduled for 8 Dec 05 from 1:00 PM to 3:00 PM to finalize a business plan for Chris Gaut to send to potential investors for the O&G joint venture, with the correct structure they can support. They need everyone in this group to attend this meeting to discuss legal, tax, and financial structures, as well as possible organizational make up options. He would like Complainant to lead the group with options on financial structures which keep them from consolidating and David Forson to be prepared to discuss legal structures requirements relating to the financial options. They need to come to a final recommended structure that he can take to Chris Gaut soon. Jim Buckingham will send the current Draft Business plan for review before the meeting. Complainant accepted the invitation to the meeting.

A meeting was scheduled for 20 Jan 06 from 2:30 PM to 4:00 PM regarding the revised HPM term sheet. A current draft of the HPM term sheet with the modified language to provide substantive dissolution rights to the LPs which was discussed the previous week.

A meeting was scheduled for 25 Jan 06 from 5:00 PM to 6:00 PM regarding the HPM venture. Participants are to call in.

An e-mail from Mark McCollum dated 16 Oct 05 states in pertinent part that:[125]

Complainant e-mailed McCollum on 16 Oct 05 at 9:15 AM stating that he is aware that McCollum is busy, but would like to speak with him the following day. McCollum responded on 16 Oct 05 at 9:27 PM that he is unavailable because he will be in meetings for the next several days.

An e-mail from Laura Lewis to Mark McCollum, Christian Garcia, and cc to James Paquette regarding the agenda for the finance summit dated 5 Apr 06 states in pertinent part that:[126]

She understands that he spoke with Paquette that morning and recommended replacing the derivatives class with an intangibles class. Based on feedback, she already moved forward with having supply chain present on centralized materials management and supplier relationship management. There are still options for a class on intangible; it can be developed as a back up, a repeat session can be pulled, or the course she just added can be cut.

[124] CX 80
[125] CX 81
[126] CX 82

An E-mail from John Christopher dated 21 Jul 06 states in pertinent part that:[127]

He just received formal approval from the KPMG National Office on the accounting memo for RTA.

A letter from David Peavler of the US Securities and Exchange Commission to Albert Cornelison of Halliburton Company states in pertinent part that:[128]

The investigation has been terminated and no enforcement action has been recommended to the Commission.

A letter from Mike McDougald of Halliburton's Human Resources Division to Complainant states in pertinent part that:[129]

Complainant's leave of absence expires on 1 Oct 06. He is expected to return to work on a fulltime basis on Monday, 2 Oct 06. His job title, duties, office location and salary will remain the same, he will now report directly to Charles Geer. His job expectations will be reviewed with him upon his return to work.

An e-mail from Complainant to the Board of Directors dated 4 Feb 06 states in pertinent part that:[130]

Complainant feels it is his duty and obligation to report information that he believes constitutes a failure by KPMG to properly perform their audits. He believes that they potentially filed materially misleading financial information with the SEC. He believes that KPMG failed to identify control weaknesses and failed to identify numerous departures from GAAP that should have been identified and addressed in prior years. Despite his efforts to highlight these issues to the auditors and others within the organization, his concerns have been ignored. He believes that these issues are significant and hopes this information will protect the interests of investors and employees of Halliburton.

A meeting notice and list of individuals states in pertinent part that:[131]

The meeting is scheduled for 9 Feb 06 with Complainant and McCollum from 10:30 AM to 11:30 AM. The meeting was then cancelled.

[127] CX 130
[128] CX 165
[129] CX 167
[130] CX 177
[131] CX 185

There is also in this exhibit an unidentified list of individuals named marked confidential. According to the exhibit list, this is a list of the nominees eligible for the 2006 CVA plan.

An e-mail from Beverly to McCollum states in pertinent part that:[132]

A meeting was scheduled for 9 Feb 06 from 10:30 AM to 11:30 AM with McCollum and Complainant. This meeting was cancelled.

Complainant's counsel's PowerPoint presentation states in pertinent part that:[133]

According to SAB 104, revenue generally is realized or realizable and earned when all of the following criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) seller's fee is fixed or determinable; and (4) collectability is reasonably assured.

To recognize revenue, the above factors must be met, or the bill and hold factors must be met. In both cases, the EITF 00-21 must be adhered to.

The SEC's bill and hold criteria are as follows: (1) risks of ownership must have passed to the buyer; (2) buyer has made a fixed commitment to purchase the goods, preferably with written documentation; (3) buyer requests bill and hold, and must have a substantial business purpose for doing so; (4) fixed schedule for delivery of the goods; (5) seller must not have retained any specific performance obligations; (6) ordered goods must have been segregated from seller's inventory; and (7) equipment must be complete and ready for shipment.

Halliburton's approach to recognizing revenue requires the following factors to be met: (1) title passes; (2) customer assumes risks of ownership and rewards of ownership; and (3) collectability is reasonably assured.

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[132] CX 186
[133] CX 221