

Commission of Inquiry

Montara Well Head Platform Uncontrolled Hydrocarbon Release

Submissions by Atlas Drilling (S) Pte Ltd and Seadrill Management (S) Pte Ltd in response to the Draft Preliminary Findings of the Commission

1. Atlas Drilling (S) Pte Ltd and Seadrill Management (S) Pte Ltd (**Atlas**) make the following submissions concerning the Draft Preliminary Findings provided by letter from the Commission dated 7 May 2010.

A Para 1.3 generally

2. Paragraph 1.3 of the Draft Preliminary Findings seeks to summarise the “direct and proximate causes of the blowout”.
3. In that regard, Atlas submits that the manner in which that summary is expressed in paragraph 1.3 (particularly, in subparagraphs b, c and d) could better distinguish between the differing responsibilities of PTT and Atlas for the failures, and in particular the fact that the failures of Atlas were at a secondary level and were contributed to by PTT’s own failures.
4. As was reflected in the evidence of Mr Gouldin and Mr Millar, Atlas accepts that there were respects in which its personnel might legitimately be criticised. Nevertheless, it is submitted that the manner in which that responsibility is expressed should avoid conflating the responsibility of Atlas with that of PTT. In that regard Atlas refers to the following matters.

B Role of Atlas in Cementing Operation - General Comment

5. The oral evidence before the Commission was to the effect that the cementing of the H1 well was supervised by PTT personnel without involvement of Atlas representatives. This is in accordance with the usual arrangements in the industry between drilling contractors and their clients. This evidence has been accepted by the Commission (1.137).
6. There was no requirement in the contractual arrangements or as a matter of good oilfield practice for the drilling contractor to have a particular level of knowledge of, or expertise, in cementing operations. This is because the client company, such as PTT, engages a specialist cementing contractor to assist it with those operations and places no reliance on the drilling contractor in relation to cementing operations.
7. The role of Atlas during the cementing operations was not to supervise PTT and its specialist contractor. It follows that there was a material difference between the responsibility of PTT personnel and Atlas personnel in relation to the failure to recognise that a wet shoe had been created. They did not "share" responsibility in this regard.
8. It was the obligation of PTT to recognise that there had been a wet shoe and raise that fact with the Atlas OIM on the Rig. PTT personnel (together with their contractors) were those who were required to have the expertise to recognise when there was a wet shoe.
9. It is not the case that the OIM is to be expected to have the expertise and experience to draw that conclusion. The OIM depends upon others to identify particular issues. The evidence before the inquiry does not go so far as suggesting that the role of the OIM included independently evaluating the cementing job (or that he had the expertise to do so) in the

absence of any issue being raised by PTT. Further, such matters were not specifically advanced in the oral hearings.

10. As to Mr Millar, while it was the case that he had the expertise to draw the conclusion that there had been a wet shoe, as has been submitted by Atlas (see paragraph 7 and 8 of Submissions of Atlas following Oral Hearings), the way in which he was provided with information by PTT meant that he was provided with, in some respects, a misleading (and optimistic) impression of the result of the cementing job. Mr Millar's commendable acceptance of some responsibility must, it is submitted, be seen in that context.
11. Accordingly, there was a material distinction between the failures of Atlas and the failures of PTT in relation to the recognition of the wet shoe.

C Paras 1.3b, 1.142 and 1.143

12. Paragraphs 1.3b, 1.142 and 1.143 set out what are said to be the conclusions in relation to the "wet shoe". In that regard reference is made to both Mr Trueman and Mr Millar.
13. In relation to Mr Trueman, it is important to note that in order to carry out his role, Mr Trueman was entitled to rely on the information and advice provided to him by those who were in charge of the activities being conducted, namely PTT. In that respect the following are relevant considerations:
 - a. There is no evidence to suggest that Mr Trueman received a de-brief or report from any PTT personnel as to what happened during the cementing process and what the implications might have been;

- b. The evidence given to the Commission confirmed that Atlas was not provided with any detailed reports regarding the cementing of the casing shoe by PTT or by Halliburton, although detailed reports were available;
 - c. The evidence shows that the Daily Operations Report (DOR) for 7 March 2009 indicated that there had been a float failure and that a volume of cement had been returned which was pumped back. However, the data in the report was capable of misinterpretation, particularly as to whether the volume of fluid returned was inclusive or exclusive of the original 9.25 bbls; and
 - d. The data in the DOR was incomplete in that it did not record matters such as the loss of pressure during WOC (from 1350 psi to 687 psi).
14. Insofar as Mr Millar was concerned, it is clear that he did not receive any more information than had been provided to Mr Trueman. In fact, as identified above some of the information Mr Millar did receive was misleading.
15. In the circumstances, it is submitted that the true nature of the information available to Mr Trueman and to Mr Millar was that the floats had failed, a volume of fluid had returned and been pumped back and the operation had then waited on cement. While, as Mr Millar freely accepted, the information was sufficient to have put him on notice that there may be a problem with the cementing job (which should have been followed up), it was not sufficient (on its own) to lead to the conclusion, other than as one possibility amongst others, that a wet shoe had in fact been created.
16. It is submitted that the draft of paragraphs 1.3b and 1.142 to 1.143 (while perhaps not intended to do so) appears to treat Atlas personnel as if they

were the supervisors of PTT's cementing operations. The evidence presented before the Commissioner was very clear that PTT was not reliant on Atlas to provide that level of expertise.

17. The role of Atlas personnel, rather, was to identify any safety issues that arose and in carrying out that role they were entitled to expect that if there was an aspect of the cementing operation that might give rise to concerns then it would be raised by PTT with senior Atlas personnel.

D. Findings at paragraph 1.3(c)

18. This paragraph contains a finding that Atlas ought to have ensured that a test of the cemented shoe was carried out. While, as stated above, Atlas accepts that its personnel could have recognised the problems with the cementing job and made enquiries of the PTT as to the integrity of the cementing job, that recognition does not necessarily suggest an obligation or capacity for Atlas to identify some particular remedial measure.
19. Neither Mr Trueman nor Mr Millar were cementing experts and Atlas was not engaged by PTT as an organisation with cementing expertise. While the information available to them was sufficient to have alerted Mr Trueman and Mr Millar to the possibility of a defect in the cementing job and prompted them to raise proper enquiries with PTT (as to whether further action was required) the particular step to be taken was a matter to be determined by those with specialist expertise in cementing.

E. Findings made by Commission at paragraph 1.3(d), 1.165 to 1.175

20. These findings deal with the failure to install the 13 3/8" PCCC on H1, and how that failure came to pass. However, a number of the draft findings, it

is respectfully submitted, go beyond what might be reasonably concluded from the evidence.

21. At paragraph 1.165 of the Draft Report it states that "it is highly likely that Mr Trueman (Atlas' Offshore Installation Manager) knew that this was happening". There is no direct evidence, in this regard, and the finding must necessarily be based on an inference.
22. As is clear from the context, however, such a finding could only be material if Mr Trueman was aware that the BOP was moved from the H1 well at times when he was also aware that the 13 3/8" PCCC had not been installed on the H1 well. It would not be enough for him to be aware that the "parking" had occurred when the BOP was not part of the barriers required for temporary suspension (as was the case with the H1 well under the changed suspension plan).
23. No PTT witness gave evidence to this effect and the draft proof of Mr Trueman is silent on the topic.
24. At paragraph 1.171 the Inquiry accepts the submission that "in all likelihood" someone from Atlas must have been aware of the non-installation of the PCCC on the basis this would have been apparent, such as when installing the 20" trash cap. Stated in this way, it is submitted, the draft finding suggests a failing on the part of Atlas personnel. In that regard, even if someone from Atlas had seen that there was no 13 3/8" PCCC in place, it does not follow that such a person would have known the cap *should* have been in place at that time and therefore was "missing". In the absence of some knowledge as to what barriers were required, in accordance with the drilling program, to be in place, the mere absence of a particular measure may have no significance to the casual observer.

25. This is particularly so given that the installation of the 13 3/8" PCCC was to be managed offline (1.170(b)) and that generally only the Roughnecks and occasionally the Assistant Driller would be available for carrying out offline activities (paragraph 25 of David Gouldin's supplementary statutory declaration). It is not the role of Roughnecks and the Assistant Driller to be familiar with which barriers are specified in the drilling program. Nor could it be expected that if such a person *did* observe that the 13 3/8" PCCC was not installed that they would also realize that this was contrary to the drilling program. The finding at paragraph 1.71, it is respectfully submitted, should be amended to reflect this position.
26. The Commission's recommendations in this part of the Draft Report (i.e. requirements for mutual sign off in relation to secondary barriers by persons of authority of the contractor and the client company) are sensible and practical.

F. Paragraph 1.64

27. The draft findings at paragraph 1.64, again deal with the information available to Atlas and PTT onshore personnel in relation to the cementing job but do not differentiate between that available to Atlas and that available to PTT.
28. In relation to Mr Millar, his evidence was that he carefully read and took note of the daily reports sent to him by the OIM (T180). There is no evidence to suggest that he did not read the DOR of 7 March 2009 with equal care and attention. Mr Millar candidly admitted that he did not give the return of fluids sufficient weight (even in light of the incomplete data provided to him). In that context, it is submitted a finding that Mr Millar

did not read the reports with a "modicum of care" would, with respect, overstate the position.

G. Paragraph 1.78

29. Similarly, it is submitted that this paragraph should distinguish between the role of Atlas and the role of PTT in the cementing operation or to recognise the difference between the information supplied to Atlas and that held by PTT.

H. Paragraph 1.79

30. Paragraph 1.79 of the Draft Preliminary Findings states:

"Inexplicably, Mr Millar did not deal with the cementing of the casing shoe in his pre-hearing Statutory Declaration except in passing."

This sentence carries with it the, with respect, unwarranted, implication that Mr Millar or Atlas were not completely frank or forthcoming in the information provided to the Commission. Such an implication, it is submitted, would be unfair to Atlas, and in particular Mr Millar who, according to the Commission's findings, was "candid and forthright".

31. In this regard, Atlas reiterates that:

- a. The Commission accepted that Atlas personnel were not involved in the cementing of the casing shoe (1.137);
- b. Mr Millar's statutory declaration was provided by Atlas on a voluntary basis. Although Mr Millar was eventually summonsed to appear before the Commission (on 11 March 2010) the statutory declaration was signed and provided to the Commission on 23 February 2010. Indeed, Mr Millar's evidence was proffered to the Commission at a time when the Commission had informed Atlas that it did not intend to call Mr Millar;

- c. The statutory declaration (given the circumstances of its creation) did not respond to a specified list of questions or issues identified by the Commission (as did the statutory declarations of other witnesses);
 - d. Prior to the provision of the statutory declaration, Atlas had already supplied the Commission with significant documentary evidence concerning the cementing operation. In particular, the Atlas Report (which was provided to the Commission on 5 February 2010) contained a significant discussion of the cement job and, ultimately, identified deficiencies with that job as a root cause of the uncontrolled release (Atlas report, page 45);
 - e. The Inquiry acknowledged the impressive "candour and forthrightness" with which Mr Millar gave his evidence (Draft Preliminary Findings paragraph 1.80); and
 - f. Mr Millar had no specific expertise as regards cementing.
32. In light of the above the use of the term "inexplicably" in paragraph 1.79, it is submitted, carries an unnecessary implied criticism of Mr Millar and Atlas. For that reason, it is submitted, the sentence should be removed.

I. Paragraph 1.141

33. This paragraph refers to the Atlas DOR as the basis for criticism of both Mr Trueman and Mr Millar (see paragraph 1.142).
34. The summary given of the DOR of 7 March 2009 in this paragraph, however, is not completely accurate and confuses the Atlas DOR with other contemporaneous documents. For example, the DOR does not make clear that *"the 16.5 bbls which returned consisted of the 9.25 bbls of displacement*

fluid ... and 7.25 bbls of cement (mixed with hydrocarbons) from beneath the float collar".

35. Rather, the DOR is ambiguous as to whether the volume of fluid returned was inclusive or exclusive of the 9.25 bbls of displacement fluid.
36. Moreover, no contemporaneous document produced to the Commission makes any attempt to hypothesise that the volume of fluid returned included a mixture of cement and hydrocarbons.
37. It would be preferable, it is submitted, for the Commission to refer to the actual terms of the DOR in this section.

J. Paragraph 1.144

38. Paragraph 1.144 states that Mr Gouldin

"accepted with commendable frankness that both Mr Trueman and Mr Millar should have identified the problem with the casing shoe and taken action with respect to it."

This observation, it is submitted, somewhat overstates the position. Although Gouldin acknowledged that the over-displacement of the cement job on H1 was evident from the Atlas 30 Hour Report and the Daily Drilling Report of 7 March (T165) he also states that it was reasonable to conclude from reading the Daily Drilling Report that although there was trouble with the cement job, it had in fact set a competent barrier (T135). Mr Millar's frank, and candid, acceptance that he could, and should, have identified a problem with the cementing job should not be converted into a finding that he had a primary authority or responsibility for the cementing job.

K. Paragraph 1.153

39. Paragraph 1.153 states that Atlas should not have “abdicated responsibility for well control” to PTT and, by implication, suggests that that it in fact what Atlas did. Whatever criticism may legitimately be made of Atlas, it is submitted, it would be unfair to conclude that it “abdicated” any responsibility it had. Decisions were made based on the information supplied and available to Atlas at the time as well as in reliance upon the conclusions reached by PTT as the party carrying out the cementing operation.

40. It is also submitted that the finding (at 1.154) that Atlas failed to take all reasonable steps to discharge its safety role comes unacceptably close to a finding that Atlas breached its statutory obligations. This draft finding, it is respectfully submitted, goes beyond the Commission’s terms of reference. The Commission is, it is submitted, confined to making findings of fact, not as to the satisfaction of common law or statutory duties.

L. Paragraph 1.240 to 1.241

41. The Draft Preliminary Findings conclude that there is “reliable evidence” for the proposition that Atlas personnel succumbed to a mistaken view of the integrity of the well. However, the only evidence referred to appears to be Trueman's draft proof (**Draft Proof**). In that regard, as submitted below, caution should be exercised as to with the extent to which firm conclusions can be drawn from the Draft Proof.

M. Paragraph 1.262

42. Paragraph 1.262 refers to the SIMOPS regime in the context of the cementing operation.

43. The evidence given to and accepted by the Commission was that the cementing of the casing shoe was carried out by PTT and Halliburton and that Atlas had little or no involvement in that process (see paragraphs 1.133 - 1.137). In those circumstances, while the level of communication between Atlas and PTT may be legitimately criticised, in relation to the cementing operations there were in fact no simultaneous operations being carried out.
44. Accordingly, it is submitted, the SIMOPS regime is irrelevant to the cementing operation.

N. Paragraphs 1.290 to 1.291

45. Paragraph 1.290, with respect, unfairly criticizes the degree of expertise in cementing of Atlas personnel in circumstances in which the contractual arrangements between Atlas and PTT did not require Atlas to ensure that personnel with expertise in cementing were on hand to supervise the cementing operations, nor to second guess the conclusions reached by PTT and Halliburton on the success of the operation. PTT were not reliant on Atlas to provide that level of expertise.
46. In those circumstances, there was no requirement for Mr Trueman or Mr Millar to have greater knowledge or expertise in cementing than they already had and no reason, it is submitted, to conclude that their level of expertise requires review.

O. Reliance on the draft proof of evidence of Phil Trueman

47. Finally, Atlas notes that the Draft Preliminary Findings place significant evidential weight on the draft proof of evidence of Phillip Trueman (**Draft**

Proof). In that regard, it is submitted, any findings based on the Draft Proof adequately reflect its preliminary, incomplete and untested nature.

48. In that regard, it is submitted that, in relation to any conclusions based upon the Draft Proof, the Commission should expressly recognise and its finding should reflect, the following matters:

- a. Mr Trueman was not called as a witness to the Commission and he did not provide a detailed signed, sworn or declared statement to the Commission;
- b. The Draft Proof is incomplete and preliminary in nature (as is apparent on its face). The contents of the Draft Proof were gleaned during the course of a telephone conversation with Ms Trina Storm of Clayton Utz on 11 December 2009. This conversation was intended to be an initial information gathering exercise. Mr Trueman did not have the benefit of reviewing any relevant documents during the course of this conversation. It was not anticipated at this time that the Draft Proof would be provided to and relied upon by the Commission. The Draft Proof is in effect hearsay, being the solicitors recording of what was said by Mr Trueman in this telephone conversation;
- c. The Draft Proof was sent to Mr Trueman with highlighted questions to seek clarification and confirmation of the accuracy of several of the statements made during the telephone conversation. Mr Trueman did not answer many of those questions and there was no opportunity to test Mr Trueman's answers and his recollection of events; and
- d. The Draft Proof was not subject to examination or cross examination and is therefore untested. As was apparent during the

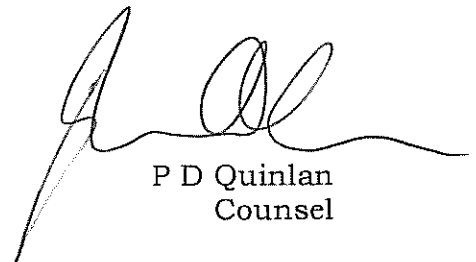
course of the Commission's hearings, the evidence provided by a witness under examination and cross examination can be significantly different to the evidence contained in that witness's signed statement.

49. The dangers of relying on unsigned and unfinalized statements have been noted by the Courts in a number of occasions (see *CE Heath Underwriting and Insurance (Australia) Pty Ltd v Daraway Constructions Pty Ltd* (unreported, Vic Sup Ct, Batt J, 3 August 1995), at [92]; *Citrus Queensland Pty Ltd v Sunstate Orchards Pty Ltd* [2008] FCA 1364 at [118]).
50. While the Commission may legitimately make use of the Draft Proof, Atlas submits that there is a need for caution in making definitive findings on the basis of the Draft Proof, particularly where the Draft Proof is the sole evidence relied upon to support this finding or where there is other evidence which is contrary to that contained in the Draft Proof.

Dated 18 May 2010



C G Colvin



P D Quinlan
Counsel