

EXHIBIT F

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VIA ELECTRONIC MAIL

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**Re: BP Privilege Log – Exponent Production
BELO – Vincent Culliver – N.D. Fla.**

Jason:

This is in response to your letter of March 13 regarding the privilege log BP provided for Exponent’s initial productions. As an initial matter, you continue to misstate the substance of our last meet-and-confer. Nonetheless, we continue to invite Plaintiff to propose any additional terms you believe would capture relevant, responsive, non-privileged information in the documents Exponent has released to BP.

1. Communications including “academics” and “third party consultants” like Dr. Gary Rand

You claim that BP waived any privilege that might otherwise apply by including “academics” on email communications with Exponent. But the “academics” referenced in your letter were themselves Rule 26(b)(4)(D) consulting experts. They therefore did not break any privilege chain. Additional information about those “academics” and their retentions by BP is included below.

BP also disagrees that “[t]he issue as to whether Gary Rand had a confidential relationship with BP has been previously resolved by Judge Cannon,” and that Dr. Rand’s inclusion on communications therefore constitutes a waiver of privilege. Your request for unredacted copies of communications including Dr. Rand (and identified in lines 523, 524, 525, 528, 529, 530, 532, 533, 534, 535, 536, and 537 of BP’s privilege log) is based on your attempt to misconstrue Judge Cannon’s Order (ECF Doc. 64) denying BP’s Motion for Protective Order Regarding Plaintiff’s Retention of Dr. Gary Rand. That Order cannot reasonably be interpreted as a blanket finding by Judge Cannon that BP’s communications with Dr. Rand are not privileged.

The Order noted that while “BP’s work on the NRDA could include work done in anticipation of litigation,” which would therefore be privileged, the record then before the Court was devoid of any correspondence, memos, or other concrete evidence demonstrating that BP discussed litigation strategies or confidential information with Dr. Rand in his capacity as a Rule 26(b)(4)(D) consulting expert. Examples of such communications are included on BP’s privilege

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log, but they were not part of the record before Judge Cannon when she issued that Order, and she therefore was unable to see that Dr. Rand was, in fact, involved in privileged communications.

With respect to the “academics” and “third party consultants” referenced in your letter, the table below includes information about certain of those individuals, including their affiliations, when they were retained, and by whom. These consulting experts were retained to prepare for and respond to natural resource damages litigation initiated by the federal and state governments. Other individuals referenced in your letter but not included in the table below were similarly retained and we are in the process of gathering related information. Of course, if we discover that any of the individuals identified in your letter break any otherwise applicable privilege chain, we will de-designate related communications accordingly.

<u>Name</u>	<u>Affiliation</u>	<u>Date Executed</u>	<u>Retained By</u>
Atlas, Ronald M.	University of Louisville	2010/09/01	BP
Battelle	Battelle	2012/07/30	Arnold & Porter
CardnoENTRIX	CardnoENTRIX	2014/05/12	CardnoENTRIX Master Services Agreement w/ BP
Di Toro, Dominic	HydroQual, Inc.	6/21/2010; Amended on 9/20/2010	CardnoENTRIX
Di Toro, Dominic	HydroQual, Inc.	2012/07/31	Arnold & Porter
Exponent	Exponent	2010/05/24	Exponent Master Services Agreement & Arnold & Porter
Gardinali, Piero R	Florida International University	5/17/2010; Amended 11/15/2010 and 2/28/2011	CardnoENTRIX
HydroQual, Inc.	HydroQual, Inc.		CardnoENTRIX
Jenkins, Kenneth D.	CardnoENTRIX	2011/10/03	Arnold & Porter
Jenkins, Kenneth D.	Integral Consulting Inc.	2015/05/28	Arnold & Porter
Johns, Mark W.	Exponent	2010/11/19	Arnold & Porter
Langdon, Chris	Oregon State University	2011/05/25	Arnold & Porter
Maki, Alan W.	Alan W. Maki & Associates	2010/12/13	Arnold & Porter
Neff, Jerry M.	Neff & Associates LLC	2010/06/12	Arnold & Porter
Parker, Keith R.	Data Analysis Group	2010/11/18	Arnold & Porter
Rand, Gary M.	Florida International University	5/7/2010; Amended on 9/22/201	CardnoENTRIX
SINTEF	SINTEF	2011/03/21	SINTEF Work Order & Arnold &

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<u>Name</u>	<u>Affiliation</u>	<u>Date Executed</u>	<u>Retained By</u>
			Porter
Stubblefield, William	Oregon State University	2010/09/20	Arnold & Porter
Swift Technical Group	Swift Technical Group	2010/09/30	Swift Master Services Agreement & BP

2. Communications including Melanie Edwards

You argue that communications including Melanie Edwards cannot possibly be privileged “because she was a statistician consultant” who does not “hold herself out as a litigation expert for BP” on her current employer’s website. You further speculate that it “is unlikely she was primarily providing confidential information to BP ... [and instead] was likely discussing data quality and statistical significance of environmental data.” Putting aside your mischaracterization of the applicable standard for determining whether a confidential relationship existed between Ms. Edwards and BP, it is unclear why you believe her role as a statistician somehow disqualifies her from qualifying as a Rule 26(b)(4)(D) consulting expert.

Ms. Edwards was employed by Exponent and served as a consulting expert for BP under the terms of Exponent’s Master Services Agreement with BP’s outside counsel, Arnold & Porter. She worked under the direction of BP attorneys and other consulting experts to prepare for and respond to natural resource damages litigation initiated by the federal and state governments. You offer no support for your contention that communications detailing Ms. Edwards’ opinions, interpretations, or analyses of data are discoverable and not privileged simply because she is a statistician whose function is to interpret data. Such argument is contrary to the well-established principle that parties cannot seek discovery into non-testifying experts’ analysis of data or information:

“And the protection of Rule 26(b)(4)(D) extends to any data or analysis Brown may have generated for BP’s counsel, as the rule guards any ‘facts known or opinions held’ by a non-testifying expert. *See Brasfield & Gorrie, LLC v. Hirschfeld Steel Grp. LP*, No. 2:20-cv-00984-LSC, 2021 WL 5449203, at *5 (N.D. Ala. Nov. 22, 2021) (holding Rule 26(b)(4)(D) prohibited party’s deposition of a non-testifying expert, because the party sought discovery regarding information reviewed and methodologies utilized, which related ‘precisely to [its] role as a non-testifying expert engaged in anticipation of litigation’).”

BP also disagrees that “exceptional circumstances” warrant discovery of otherwise privileged communications with Ms. Edwards because Plaintiff “cannot replicate that work 13 years after the spill.” While it is unclear what specific “work” you are referring to that cannot be replicated, all sampling data relied on by BP’s experts in this litigation has been publicly available for years, and Plaintiff is free to conduct his own statistical analysis of that data.

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3. Communications referenced on line 595 of BP’s Privilege Log

The document described in line 595 of BP’s privilege log is a continuation of the email string referenced in line 594 and initiated by Nathan Block (a BP in-house attorney), marked “CONFIDENTIAL ATTY WORK PRODUCT,” in which he requests information from others to advise the company on legal strategy. Your statement that “no attorneys are included in the exchange and the participants were discussing scientific data” is incorrect. If you have similar questions or concerns about other log entries, we would be happy to clarify and provide additional information. Going forward, we will be sure to note where BP counsel is included in earlier exchanges on the same email string.

4. Communications including government officials and cooperative work with NRDA trustees and the Unified Area Command

You accuse BP of asserting boilerplate and blanket claims of privilege over communications involving cooperative work or studies with the Unified Area Command (“UAC”) and NRDA trustees, but BP did not log or assert privilege over communications that included government officials or trustees or involved cooperative response work with trustees or the UAC.

5. Documents and communications related to OSAT reports and addendums

You claim that communications related to OSAT reports and addendums cannot possibly be privileged, even if they involve comments about drafts from BP’s consulting experts and include BP counsel, but you fail to explain why. You appear to be claiming that BP waived any potential privilege over communications referencing OSAT-related work because the OSAT reports have been published. But just because BP undertook cooperative work with state and federal government agencies as part of the OSAT team chartered by the Federal On-Scene Coordinator (“FOSC”) does not mean that BP waived privilege over any and all confidential communications for the purposes of legal advice related to that work.

6. NRDA-related communications prior to June 2011

You request that BP agree to withdraw its privilege designations for all communications between BP and Exponent that pre-date June 2011, suggesting that would be a “fair compromise” that is “consistent with the Court’s prior holdings on Exponent-related discovery.” No such order supports your position or request.

Judge Cannon’s Order (EFC No. 63) denying Plaintiff’s Motion to Compel discovery from John Brown was limited to the record before the Court regarding when his work transitioned from response to NRDA work. Nothing about that Order supports your suggestion that communications with *other* consulting experts employed by Exponent before June 2011 are automatically discoverable and not privileged. And in fact, the record reflects that certain individuals at Exponent other than John Brown were retained prior to June 2011 to conduct

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privileged work at the direction of BP's NRD counsel. *See* Declaration of Brian D. Israel (ECF No. 91-2).

7. Request for further redactions

Regarding your request for BP to consider further redactions, BP already authorized Exponent to produce partially redacted versions of otherwise privileged communications. To the extent emails or other communications were withheld outright based on privilege, BP maintains its privilege assertions and does not believe Plaintiff is entitled to partially redacted versions of those documents.

8. Sufficiency of privilege log descriptions

We disagree with your suggestion that BP's privilege log descriptions are "evasive," devoid of required information, and constitute "blanket and boilerplate assertion of a 'NRDA' privilege." There is not a single entry on BP's log in which privilege is claimed over a document simply because it pertains to NRDA work without any additional explanation. The following are just a few examples of privilege descriptions referencing NRDA work that were included on the first page of BP's log:

- "Communication between client, client counsel and consultant regarding plan prepared at request of counsel in connection with, and/or anticipation of potential litigation arising from the Deepwater Horizon Incident, including but not limited to the NRDA."
- "Communication between client, client counsel and consultant regarding meeting agenda prepared at request of counsel in connection with, and/or anticipation of potential litigation arising from the Deepwater Horizon Incident, including but not limited to the NRDA."
- "Draft meeting agenda prepared by client and third party consultant at request of counsel in connection with, and/or in anticipation of potential litigation arising from the Deepwater Horizon Incident, including but not limited to the NRDA."
- "Communication between client, counsel and consultant regarding information prepared at request of counsel in connection with, and/or anticipation of potential litigation arising from the Deepwater Horizon Incident, including but not limited to the NRDA."
- "Analysis prepared by client and third-party consultant at request of counsel in connection with, and/or anticipation of potential litigation arising from the Deepwater Horizon Incident, including but not limited to the NRDA."

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These descriptions demonstrate that there is no basis for your claim that “[e]ach one of the 606 privilege designations on the first Exponent privilege log state that documents pertain to the ‘NRDA’ without any further explanation.” The Rules require that the nature of information withheld be described, but “without revealing information itself privileged or protected.” Fed. R. Civ. P. 26(b)(5)(A)(ii). That is exactly what BP aimed to do here.

In addition to detailed explanations as to why the withheld or redacted documents are privileged, BP’s log identifies the dates of the logged communications and information about the individuals involved in those communications, including their names and affiliations. Such information is more than sufficient to satisfy BP’s logging requirements. *See, e.g., In re Denture Cream Prod. Liab. Litig.*, No. 09-2051-MD, 2012 WL 5057844, at *9 (S.D. Fla. Oct. 18, 2012) (rejecting plaintiffs’ argument that the following privilege log description was deficient: “Correspondence from P&G employee to P&G employee regarding searches for Fixodent information and data and compiling same at the request of counsel for purposes of litigation.”).

Very truly yours,

/s/ Adam Jagadich

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