

Testimony Before The Committee on the Judiciary

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Liability Issues Surrounding the Gulf Coast Oil Disaster

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Chairman Conyers, Ranking Member Smith and other members of the Committee, thank you for the opportunity to speak with you today. I am Rachel Clingman, and I am a partner in the law firm of Sutherland Asbill & Brennan. At present, I am working at Transocean to assist with the legal issues arising out of the April 20 accident. Transocean has only a small number of U.S. lawyers. Given the investigations, inquiries and litigation that ensued in the aftermath of the *Deepwater Horizon* accident, I was asked to manage Transocean's response. We have assembled a team to assure Transocean's full cooperation with the congressional and Coast Guard investigations into the accident and to represent Transocean in related litigation.

The last few weeks have been a time of great loss, sadness and frustration for all of us associated with Transocean. We feel anguish and compassion for the widows, parents and children of the 11 crew members – including 9 Transocean employees – who died in the explosion aboard the *Deepwater Horizon* and for those who were injured; and we feel the pain of those who evacuated and survived. The Company is committed to preserving the memory of those who were lost and to providing for their families. We are also making every effort to ensure that all of the needs of the survivors and their families are being met.

This Tuesday, Transocean held a memorial service at the Jackson Convention Complex in Jackson, Mississippi, bringing together the *Deepwater Horizon* crew members, their families and friends, colleagues, and many others who were affected by this tragedy. The grieving process for our employees and the families of those lost on April 20 will doubtless endure, but it is our hope that the service, and other efforts that we extend in the future, will aid the healing process.

I am here today to report to this Committee on the various legal issues facing Transocean.

First and foremost, Transocean is fully prepared to meet all of its legal obligations arising from the *Deepwater Horizon* accident. Most importantly, I want to assure the Committee that addressing and resolving the claims of Transocean employees who were injured – and those of the families who lost loved ones – is a top priority. We made a conscious decision to wait until after the memorial service to start discussions to avoid prematurely intruding into a critical period in each family's grieving process. Those discussions are now beginning, and it is our hope that we can resolve these claims fairly, amicably and quickly.

The *Deepwater Horizon* accident has resulted in myriad legal challenges for the both the courts and the companies and families represented here today. The litigation facing Transocean falls under the dual frameworks of both the Oil Pollution Act of 1990 ("OPA") and General Maritime

Law – including the Jones Act, which creates favorable presumptions for seamen like the workers on the rig.

As an overview, the OPA defines a responsible party and creates an efficient structure for all claims to be made against the responsible party. The General Maritime Law provides a framework for the claims of seaman and also provides a mechanism to limit damages in instances where a vessel is lost.

I will briefly address each and outline the steps Transocean is taking to meet its obligations.

OPA. As you know, in 1990 Congress enacted the OPA and created a mandatory and streamlined administrative process to compensate people and businesses for damages caused by oil spills and contamination. The OPA claims process enables anyone damaged by an oil spill to obtain compensation from a “responsible party.” Compensable claims include property damage, boat damage, loss of profits, loss of earning capacity and loss of subsistence.

Under this law, the United States Coast Guard designated BP as the “responsible party” under the OPA for the oil and gas flowing from the subsea well. BP accepted this designation and has testified that it will fund and pay all legitimate claims asserted in the administrative process and will do so regardless of the \$75 million limit. Based on media reports, BP has established the process and a fund and has started paying claims as received.

The U.S. Coast Guard designated Transocean as a “responsible party” under the OPA for any contamination from its mobile work space – the rig – on or above the surface of the water. Transocean accepts that designation, and while there has been no indication thus far of any contamination from the rig, Transocean stands ready to meet any legal obligations that arise from that status.

Because of the claims process established by Congress in response to prior oil incidents, it is unnecessary for individuals and businesses to file lawsuits. The Oil Pollution Act allows and requires each person or business to assert an administrative claim directly against the fund, and there is a well-publicized method to make such a claim. In fact, this congressionally mandated process allows someone to file a lawsuit only if and when BP either denies his or her claim or fails to settle it to the claimant’s satisfaction within a 90-day period. If a claimant is dissatisfied with the amount of compensation he or she is ultimately offered by BP under the OPA, then the law preserves their right to file a lawsuit at that point.

Class Actions. The great majority of the lawsuits filed against Transocean over the last three weeks are not personal injury suits. Of the approximately 120 lawsuits, more than 80 filed against Transocean are class actions in which individuals and businesses seek payment for financial losses covered by the Oil Spill Pollution Act. Generally, the claimants in these lawsuits are fishermen, hotel operators, landowners, rental companies, restaurants and seafood processors, who claim a current or potential future loss of business in the aftermath of the oil spill. Many of these 80 lawsuits overlap, with lawyers seeking to represent the same classes of people. Florida property owners, for example, are included in the proposed class of at least three class actions lawsuits to date:

- *Nobles v. Transocean* (beachfront state of Florida property);
- *Douglass v. Transocean* (Pensacola private property owners); and

- *Dewey v. Transocean* (“All Florida residents”).

Louisiana residents who derive income from the coastal zone are similarly claimants in at least four duplicative class actions:

- *Alexie v. Transocean* (“Louisiana residents who live or work in, or derive income from the Louisiana Coastal Zone”);
- *Ivic v. Transocean* (“Louisiana residents who live or work in, or derive income from the Louisiana Coastal Zone”);
- *NOVA Affiliated v. Transocean* (“Louisiana residents who live or work in, or derive income from the Louisiana Coastal Zone”); and
- *Robin Seafood v. Transocean* (“Louisiana residents who live or work in, or derive income from the Louisiana “Coastal Zone”).

And overarching all, the class asserted by counsel in *Wilkerson v. Transocean* covers “All fishermen, oystermen, crabbers, shrimpers, and seafood processors who derive income and profits from the natural resources in the Gulf of Mexico and have sustained any loss or damages.”

The presence of many and various classes confuses the legal landscape and threatens to result in different treatment for litigants who are similarly situated. Multiple motions have been filed by both plaintiffs and defendants before the Judicial Panel on Multidistrict Litigation (“MDL Panel”) to establish a multidistrict litigation (“MDL”) proceeding to coordinate these claims.

Jones Act. General Maritime Law and the Jones Act provide seamen a right to sue and provides favorable presumptions. This applies to the crew members of the rig. There have been a number of Jones Act claims filed.

Limitation Action. In the meantime, as you know, Transocean has filed a maritime limitation of liability action in the U.S. District Court for the Southern District of Texas. This suit is based on the Limitation of Liability Act, last amended by Congress in 2006, that allows shipowners to define their liability in a situation like this to the post-accident value of the ship and its cargo. Based on our estimate of the value of the vessel, Transocean has requested an initial limitation of liability at just under \$27 million. The Limitation does not apply to claims asserted against Transocean under the Oil Pollution Act, 33 U.S.C. § 2701, *et seq.* Transocean has asked the Limitations Court to clarify the existing order to confirm that the Limitation does not apply to claims allowed under the OPA.

Transocean filed the Limitation action for several reasons. First, we believe that it is important to have a central venue for these actions and to maintain a degree of continuity and consistency in awards to plaintiffs that would not be possible if lawsuits go forward in courts throughout five states in various state and federal courts. For the same reasons, Transocean will urge the MDL Panel to establish an MDL proceeding in federal court in Houston, Texas, where the limitation action was filed. If all the lawsuits are in one place and adjudicated by one court that is fully apprised of all the relevant information, that will help ensure that damages are fairly and evenly awarded to plaintiffs who sustained similar injuries. Second, Transocean carries third-party

liability insurance with various deductibles applicable to claims following the *Deepwater Horizon* incident. Our underwriters instructed us to file such an action, and failure to do so could have resulted in the loss of insurance coverage to help pay claims.

Our priority. Transocean is committed to resolving handling all of these various, interrelated legal matters diligently, expeditiously and fairly. While we work to collect and preserve information and address claims and liabilities, we have foremost in mind our obligation to make sure that the demands of litigation do not divert attention from Transocean's overriding mission, in conjunction with BP, the Coast Guard unified command, government officials and other contractors involved, of stopping the leak; determining the cause of the April 20 explosion; and taking steps with you and the industry to make sure that this does not happen again.

Again, thank you for the opportunity to speak with you today. I look forward to the discussion and am happy to answer any questions you may have.