

**THE DEEPWATER HORIZON TRAGEDY:
HOLDING RESPONSIBLE PARTIES ACCOUNTABLE**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

—————
JUNE 30, 2010
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ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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**THE DEEPWATER HORIZON TRAGEDY:
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ACCOUNTABLE**

WEDNESDAY, JUNE 30, 2010

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m. in room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

The CHAIRMAN. This hearing will come to order.

We welcome our witnesses, all of them, and others who might be in the audience.

Seventy-one very difficult, very painful days have passed since the enormous disaster in the Gulf began. And with every day that goes by, the economic and environmental damage grows worse and worse. While we don't know the exact number, experts estimate that up to 6.9 million barrels of oil have spewed out of the Gulf—out of the pipe, into the Gulf, wreaking one kind of havoc on coastal communities, workers' livelihoods, and fragile wetlands.

At the very heart of this—and the greatest environmental catastrophe in American history is what we're talking about—is something equally as important; that is, a very human tragedy. The explosion that occurred on the *Deepwater Horizon* oil rig on April 20 killed 11 workers, injured 17; since then, at least two more response workers have been killed on the job.

Like so many men and women in the Gulf region and in communities across America, they took pride in their jobs, worked hard at their jobs—hard jobs, indeed—and they loved their communities, they provided for their families, even if their work was not always appreciated or understood by outsiders and the rest of the world. It's that way in coal mining. It certainly is that way in the work that was done by these folks who were on those platforms.

For the survivors and loved ones, some of whom are here today, the nightmare is obviously just beginning. Put another way, it's far from over. Livelihoods have disappeared, and the fabric binding these families together has been torn, leaving a terrible sense of loss and incredible uncertainty.

I'm deeply disturbed by reports that different families will have access to, in fact, different relief, depending on their loved ones'

jobs and where they were killed. It is my understanding today that Transocean, the owner of the *Deepwater Horizon*, is seeking to limit its liability for this loss, in Federal court, under a legal loophole that is both unconscionable and outdated. Hence, part of the reason for this hearing.

Transocean's cold and calculated efforts to avoid taking full responsibility for their actions—or, rather, inactions—shines a very bright light on a serious problem, which is a lack of accountability and equal treatment under the law. We cannot allow that, in this Senator's judgment, to continue.

There are three simple questions that I hope we can answer at today's hearing. One, Do our maritime laws need to be updated? Two, Are all injured parties being treated fairly under these laws? And do the distinctions that allow for people to be treated differently make any sense at all? Are the parties—three—responsible for causing the harm being held fully accountable, or are they using outdated laws to escape paying their fair share?

Let me be clear. Employers whose negligence causes an employee or anyone else's death should be held fully accountable for the pain and the suffering they cause, regardless of where their death takes place. Companies that do harm should not be able to hide behind statutes from 1851, for heaven sakes, to avoid paying for the harm they have caused. And the courts should have the power to make an example of a company that disregards its workers' safety.

I firmly believe a consistent culture of workplace safety must form the bedrock of any serious and responsible industry. Whether you're operating a rig in the Gulf or, as I indicated, a mine in the coal fields of West Virginia, these core principles depend upon business doing the right thing, and governments, by the way, enforcing the law. And that cannot be allowed to change simply depending on the location of where the work is and was done.

Today's hearing is an important opportunity to hear from you, the families, who have been affected so painfully by this awful disaster. You have our Nation's heartfelt sympathy. We want to honor your loved one's sacrifice and make conditions safer for all workers. Your voice today, in the weeks and months ahead, is absolutely essential—again, the reason for this hearing.

Thank you for being here and for sharing your stories with the Committee today. I know full well that it cannot be easy. Please know that the Committee will continue to work on these issues to make sure workers and their families get the protections they deserve and make sure those who cause the harm are held fully accountable.

We have a fundamental obligation to bring real accountability and fairness to a system where it has been sorely missing. You have my commitment that we will do that.

I call on my very distinguished and very excellent Ranking Member.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. Well, thank you, Mr. Chairman.

Today, we are holding our second hearing in this committee on this tragic oil spill, and the 44th hearing in Congress since this

happened. We're going to talk about the result of the spill, the legal remedies, and the Jones Act. I want to, first, say, to Mrs. Anderson and Mrs. Roshto, that our hearts go out to you. What you have suffered, we know, is just unimaginable. We just hope that we can settle some things here that will keep, maybe, you from having to go through this type of experience, or others like this experience, in the future.

We are now looking at a leak that started over 2 months ago, and we're told that the leak will probably not really be stopped for another month and a half. To date, 140 million gallons of oil have leaked into the Gulf of Mexico. This is unacceptable, and clearly we need to be looking for ways to prevent this type of action in the future from happening, but also learn how to respond more quickly to mitigate the damage.

I want to talk about the Jones Act. I'm glad that you're with us, Mr. McCallister, because you have experience with trying to bring skimmers in to be helpful. And I want you to describe, later, the problems that you have encountered.

To date, over 20 countries have offered response vessels and expertise to assist in the cleanup of the Gulf, but, because of the 1920 Merchant Marine Act, known as the Jones Act, foreign vessels are prohibited from operating within 3 nautical miles of the U.S. coastline, except after going through an extended process for waivers. However, the waivers have not been granted for foreign skimmers to come within the 3 nautical miles, and that's where we need them right now.

Three days after Hurricane Katrina, the previous Administration waived the Jones Act so that foreign countries could send vessels in to help. Yet, despite the situation that we have, the Jones Act has not been granted any waivers in this oil spill, and we are seeing the oil seep onto the shores.

I have introduced Senate Bill 3512, the Waiver Act, cosponsored by Senators LeMieux, Cornyn, Isakson, McCain, Barrasso, Bond, and Sessions. This would just allow the waivers to occur immediately so that, obviously, under the auspices of the Coast Guard, these foreign vessels could come in and help with the mitigation of the damage. And with each hour that passes, such a waiver is one more hour that the communities in most need of assistance are forced to go without it. I hope that, frankly, the President will waive it on his own. He can do it. He should do it. We can get this hurdle out of the way right now. I introduced the legislation. I hope that we can pass it, because I think it will give some real help.

I want to also say that I think we can work together for planning for the future, but, as I have said before, I don't think we should stop drilling in the Gulf, where we have safely drilled for 40 years. I think we need to take the steps to assure that we do it safely, that we protect the Gulf, that we protect the shores, and that we protect the environment. I think we can do that, and I think we can do it in an expeditious way if we all work together. And I hope that's what we can achieve through these hearings and, hopefully, legislation.

Thank you, Mr. Chairman.

[The prepared statement of Senator Hutchison follows:]

PREPARED STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Thank you, Mr. Chairman, for holding today's hearing, which is our Committee's second hearing so far on the tragic oil spill in the Gulf, and the 44th (19 in the Senate, 25 in the House) in the Congress. Today we will consider the various legal remedies available as a result of the spill, as well as discuss the Jones Act.

On April 20, 2010, the *Deepwater Horizon* Mobile Offshore Drilling Unit exploded, killing 11 employees onboard the rig and causing the largest oil spill in U.S. history. To the widows of those workers who perished and are here with us today, Shelley Anderson, from Midfield, Texas, and Natalie Roshto, from Liberty, Mississippi, please know that my thoughts and prayers continue to be with you and the others who have lost a loved one on the *Deepwater Horizon*. I thank you for being with us during this difficult time.

It has been 72 days since the oil spill began. An estimated 140 million gallons of oil have leaked into the water of the Gulf of Mexico. We are told that the best chance for stopping the leak won't happen until mid-August when BP hopes to complete the drilling of two relief wells—almost 4 months after the leak began. This is unacceptable. We must learn from this tragedy and fix what can be fixed now, and continue to work to find solutions in those areas for which answers have not yet been found.

WAIVER Act

As many of our domestic resources are being exhausted, we need to look to our foreign friends for assistance. To date, over 20 countries have offered response vessels and expertise to assist in cleanup of the Gulf. Unfortunately, due provisions in the Merchant Marine Act of 1920, also known as the Jones Act, foreign vessels are prohibited from operating within three miles of the U.S. coastline.

Common sense dictates that three miles from the shore is the crucial area that needs protection from all types of response vessels. That is why there should be a temporary waiver of the Jones Act to allow foreign response vessels to join with their domestic counterparts to control and contain the oil leak—wherever they are most needed.

This is not without precedent. Just 3 days after Hurricane Katrina made landfall, the previous Administration waived the Jones Act for foreign response vessels to aid in the response efforts.

Yet, despite waiver requests, the Administration has not granted any Jones Act waivers, while oil continues to wash ashore along the Gulf Coast. That is why I have introduced S. 3512, the Water Assistance from International Vessels for Emergency Response Act (WAIVER), along with Senators LeMieux, Cornyn, Isakson, McCain, Barrasso, Bond and Sessions.

Our legislation would provide a temporary waiver of the Jones Act for a period of time associated with emergency response to the oil spill. I would prefer the administration take immediate action and not wait for legislation to grant a temporary waiver of the Jones Act so the Gulf can receive assistance from all resources at our disposal. After all, each hour that passes without such a waiver is one more hour that the communities in most need of assistance are forced to go without. But if it takes legislation, ours is ready to pass.

I am pleased that Fred McCallister, another Texas witness, was able to join us today. He requested a Jones Act waiver nearly 2 weeks ago (June 16) from the Coast Guard, and has yet to receive an acceptance or rejection notice regarding his request.

Mr. McCallister's Dallas-based company has contracted for 25 foreign-flagged oil spill response vessels which he wanted to bring to the Gulf to assist with 3 cleanup efforts. I hope he will describe the hoops and hurdles he has gone through in requesting a Jones Act waiver and hopefully we can learn from his experience and improve the waiver process, or rather, what appears to be a lack of process, one way or another.

Proposed Legislation

In addition to the lack of available resources to assist in the Gulf, the lack of a clear response plan from BP and the Administration is very troubling. For that reason, I am currently working with a number of stakeholders to develop legislation that would help ensure that responsible parties, including companies and Federal agencies, establish meaningful response plans to address any size spill on day one. We need to be able to better mitigate and control any spill so it does not amplify into the massive spill we see today in the Gulf.

By enhancing coordination efforts among the private and public sector in terms of response, response equipment and enhance research and development for oil response, my legislation will allow responders to "hit the ground running." I look for-

ward to working with my colleagues on what I hope can be a bipartisan solution to many of the ongoing problems we see today.

Again, I thank the Chairman for holding this hearing and I thank the witnesses for being with us today.

The CHAIRMAN. Thank you, Senator Hutchison.

We will now—neither Senator Lautenberg nor Senator Thune are here, and so, we will proceed to the witnesses. And——

Senator WICKER. Mr. Chairman?

The CHAIRMAN. Yes.

Senator WICKER. I understood I'd be allowed to make an opening statement.

The CHAIRMAN. You had that understanding with my esteemed——

Senator WICKER. Staff to staff, I think.

The CHAIRMAN. Staff to staff. Well, that means that Mr. Isakson also should have that right. OK. I hope it's short.

Senator WICKER. Yes, as are all of my statements.

[Laughter.]

Senator WICKER. But, I do appreciate the Chair indulging me.

**STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER. And thank you also, Mr. Chairman, for holding this hearing today on the ongoing catastrophe and related legal and regulatory impediments to the cleanup of our Gulf Coast.

I appreciate Mrs. Roshto and Mrs. Anderson being here today. It is under very unfortunate circumstances. Mrs. Roshto and her late husband, Shane, from Liberty, Mississippi, are constituents of mine. And my deepest condolences to both of these ladies, and to the other families involved.

As news of the drilling operation's safeguards omitted in the lead up to this tragic explosion come to light, I grow more and more troubled at the negligence exhibited by the responsible parties in the operation of *Deepwater Horizon*. I am aware that debates took place on this oil rig as to what safety precautions should be taken. And the ones who would cut corners seem to have won that debate. So, I'm eager to hear the testimony of both of these ladies today, and the testimony of the other witnesses.

We're also witnessing a tragic situation unfold with regard to the response. I had the opportunity, last weekend, to do another flyover of the impacted waters, and witnessed oil in Mississippi Sound for the first time, and in our passes near the barrier islands. Since my flight, we've witnessed the closures of several beaches, and almost all of our Mississippi Sound fishing grounds.

I also witnessed the lack of skimming equipment, during my flight. This is unacceptable. The Federal on-scene coordinator determined there was an insufficient number of skimming vessels engaged in the cleanup more than 2 weeks ago. This recognition should have spurred action. It did not. Only yesterday did the State Department follow, with their separate determination, and declared that we would, finally, accept the invitations of some of our foreign allies, in bringing their equipment here.

We still hear stories of domestic skimming assets sitting, unused. We also hear stories of delays of the Administration's ability to ac-

cept international assistance. We should hear stories of armadas of vessels protecting our coast. Unfortunately, this is not the case.

I understand there are many impediments to our plea for more skimmers. It took some time, but the Administration created an expedited waiver process for the Jones Act, and seven vessels have been approved for use in our waters over the past 48 hours. This is a start. The Administration could simplify this further by waiving the Jones Act for skimming vessels, as Senator Hutchison has mentioned, no different than the waiver provided for oilspill tankers responding after Hurricane Katrina. We need all domestic and international resources responding.

I understand there are additional obstacles through the Federal Water Pollution Control Act on skimmer discharge limits. Unbelievably, our pollution control laws are preventing us from cleaning up the pollution in our own waters.

We should not be discussing unresolved cleanup obstacles more than 70 days after the start of this disaster. This is clearly a failure of this Administration to fully grasp the extent of the disaster.

Mr. Chairman and Ranking Member Hutchison, my fellow members of the Committee, we need to work together to address the issues that are impeding access to these skimming vessels and equipment. We need to ensure the Administration is providing the proper waivers, and doing so in a timely manner. We need assurances that the State Department is resolving the reciprocity issue. We also need to know that the Clean Water Act is not one of the biggest obstacles to clean water in the Gulf of Mexico. Congress must review any bureaucratic obstacles to cleaning up this disaster, waive them in a responsible manner, and help restore our Gulf Coast. We can no longer afford to wait for action to occur. We owe it to the folks on the coast who have lost their livelihoods and lost their way of life.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

And we will go now—Senator Lautenberg is on his way, and he would need to make an opening statement, as well as Senator Thune, should he come.

Mrs. Shelley Anderson, we welcome you and would like to hear your testimony. And you need to turn the button on, and put that fairly close to your mouth.

Mrs. ANDERSON. I don't know how to turn the button.

The CHAIRMAN. That—you did.

Mrs. ANDERSON. Did? OK, thank you.

**STATEMENT OF SHELLEY ANDERSON, WIDOW OF JASON
ANDERSON OF MIDFIELD, TEXAS**

Mrs. ANDERSON. My name is Shelley Anderson. My husband is Jason Anderson, and he's a toolpusher on the *Deepwater Horizon*. We have a 5-year-old daughter, named Lacy, and a 17-month-old son, named Ryver. Our 8-month—our 8-year wedding anniversary is next month.

Jason has been a—distant on his last few hitches, whenever he would come home and whenever I would talk to him on the rig, and I would ask him what the problem was, and he would always tell me the same thing, that there's a lot of stuff going on, on the rig,

and that the walls were too thin, that he couldn't talk about it right then, and that he would talk about it when he got home. But, he never actually would talk about it when he got home, because it would just be something else for me to worry about, and Jason did not take care of me by making me worry about anything. I never had to worry about anything.

Jason also talked about his will, this last time home, all the way up to the point where I dropped him off at the airport to go get on the rig. We talked about our future together, what he wanted for the kids. We talked about how to plan. We made plans together. And now I have to plan for a future without my soulmate, without my husband, without my best friend. My children are never going to have their father back. Ryver's daddy is never going to throw him a football, and Lacy's daddy is never going to walk her down the aisle at her wedding. Jason will never be able to teach them how to ski or drive a car or take them hunting or all the other things that daddies are supposed to do. Jason's never going to be here again to put his arms around me and comfort me and tell me that everything is going to be OK, and make me feel like everything is going to be OK. Now all I have to do is worry.

I believe that our damages should be considered under the same standards as deaths that have occurred on land. And why damages to be different for a family—why damages to a family have to be different for deaths that occur on the—on an ocean rather than on land.

I'm concerned that the responsible parties will use every legal tactic and maneuver to delay our justice. In cases for those killed in the tragedy are lumped in with other cases for fishermen and landowners and businesses, in units of government, it could be years for our cases to be heard or resolved. I think I should be able to decide if I want to pursue my case alone or along with the hundreds of other claimants who have lost their income and property damage, but have not lost their husbands and fathers.

Our damages were sustained at the time of the explosion, and the property damage claims, which BP wishes to delay us, in a result of failure to control the spill and perhaps the dispersants being used in the ocean. These are separate and distinct cases from ours, and our husbands' deaths should not be handled as—they need to be separated.

We want to prevent the wives and families from ever being in our shoes. Just as I'm trying to teach my 5-year-old responsible behavior, I want to promote responsible behavior on the rigs. We are not special, but we are survivors of our husbands' lives. We want to be treated like any other survivor that's out there.

And we want you to act quickly on this. We don't want it to take years and years. And I know the legislative process can be slow, but we just can't afford to wait. We need to get this done. And we want the chance to be heard in a court, where the judge can be trusted by everybody.

Thank you.

[The prepared statement of Mrs. Anderson follows:]

PREPARED STATEMENT OF SHELLEY ANDERSON,
WIDOW OF JASON ANDERSON OF MIDFIELD, TEXAS

My name is Shelley Anderson. My husband is Jason Anderson. Jason, a tool pusher on the *Deepwater Horizon*, was killed in the April 20 explosion. We have a 5-year-old daughter, Lacy, and a 17-month-old son, Ryver. Our 8 year wedding anniversary is next month.

Jason was a bit distant in his last few hitches when we talked on the phone. I would ask him what the problem was. He always said the same thing, “. . . there is a bunch of stuff going on; I can't talk about it now. The walls are too thin. I will talk to you when I get home.” Only he never would because it would have made me worry even more. That was not the way he would take care of me. Jason also talked of his will and the things he wanted for us and our children. We talked of our future together and our children's future. Now, I have to plan for a future without my soul mate, without the love of my life, without my best friend. My children will never ever have their father back. Lacy's daddy will never walk her down the aisle at her wedding. Ryver's daddy will never throw him a football. Jason will never be able to teach them to drive a car, ski behind a boat, take them hunting, or the many other things a father teaches his children. Jason will never be here to put his arms around me to comfort me to let me know that everything is going to be all right and that I have nothing to worry about. Now nothing is right and all I do is worry.

I believe our damages should be considered under the same standards as if the deaths had occurred on land. Why would the damages to a family be different if a death occurs on the ocean as opposed to inland?

I am concerned that responsible parties will use every legal tactic and maneuver to delay justice. If the cases for those killed in this tragedy are lumped in with the other cases for the fishermen, landowners, businesses and units of government, it could be years before our cases are resolved. I think I should be able to decide if I want to pursue my case alone, or along with the hundreds of other claimants—who have lost income and had property damaged—but have not lost husbands and fathers. Our damages were sustained at the time of the explosion—the property damage claims with which BP wishes to commingle and delay us are a result of a failure to control the spill and perhaps the dispersants being used in the ocean. These are separate and distinct cases from our husband's deaths and should be handled as such—separately.

We want you to prevent wives and families from ever being in our shoes. Just as I am trying to teach my 5-year-old responsible behavior, we want to promote responsible behavior on the rigs. We may not be special; but we are survivors of our husband's and father's life and we want to be treated like any other survivor.

Finally, I urge you to act quickly. I know that the legislative process can be slow, but this simply cannot afford to wait.

The CHAIRMAN. Thank you very much. That was powerful and eloquent.

Mrs. ANDERSON. I'm trying.

The CHAIRMAN. We now are honored to hear from Mrs. Natalie Roshto, from Mississippi.

**STATEMENT OF NATALIE ROSHTO, WIDOW OF SHANE ROSHTO
OF LIBERTY, MISSISSIPPI**

Mrs. ROSHTO. Good morning. Chairman Rockefeller and Ranking Member Hutchison and other members—

The CHAIRMAN. Would you pull that a little bit closer, Ms. Roshto?

Mrs. ROSHTO [continuing]. And other members of the Senate Commerce Committee, I want to thank you for allowing me to speak today on behalf of my husband, Shane Roshto, who was tragically killed in the *Deepwater Horizon* explosion April 20, myself, and our wonderful son, Blaine.

In the early hours of April 21, when I received the news of the explosion and fire, I never thought I would be sitting here. I never thought I would have to go home to a bright-eyed 3-year-old and

have to face the fact that his dad, and my husband, would never come home to us.

Every 3 weeks, when Blaine and I would give Shane our last love, send him off for 3 weeks, I always feared the helicopter ride, but never did this kind of tragedy ever come to my mind. But, through God's grace, family, and wonderful new friends, Blaine and I are making it through.

After all the safety schools, meetings, and fire drills, I just knew he was safe out there. When the events of the *Deepwater Horizon* explosion started to unfold, I asked myself, "Will I ever personally recover? What if he's out there and they just didn't look long enough?" As the days passed, Shane's absence became reality.

My husband took great pride in his job, loved his work and all his *Deepwater Horizon* family, but, most importantly, he knew that working out there provided a lifestyle for his son that most 22- and 21-year-olds could not provide. He loved us unselfishly, and provided a lifestyle that allowed me to attend college and also be at home with Blaine. During Shane's off weeks, he spent time every day with Blaine, passing on his love for the outdoors, hunting and fishing, and doing for others, most of all.

As the days passed, I asked, "Why? What happened?" The life Blaine and I knew was truly over. My love story had come to an end. Though he is a mirror-image of his dad, Blaine now has a void that will never be filled. There is no amount of money that Transocean or BP can pay to bring my husband back or return Blaine's father. However, because of this tragedy, I have, unfortunately, learned that, under current law, there exists a huge discrepancy in the way that the death of a loved one is valued on the high seas. It is my understanding that the value of a loved one who dies at sea is valued far less than a loved one who dies on land. I am not a lawyer, by any means, but the policy behind this law does not make any sense to me, and does seem unfair.

Under current law, because Shane died on an oil rig in Federal waters, Shane's death is limited to pecuniary damages, which essentially limits his loss to a value of his paycheck and funeral expenses. If Shane had died on land, the law would have recognized that Shane's life was more valuable, like the loss of society, the loss of love, affection, and care for Blaine, not only for Blaine, but for me, to help me, to give me ways to raise Blaine, to help me.

The whole concept of valuing someone's life seems very strange to me, in light of everything that has happened. But, since this remedy that I'm left with to hold the party responsible for Shane's death accountable, I want to make sure that Congress acts quickly to change current law to ensure that all victims of maritime damages are treated equally.

It should make no difference, in the eyes of the law, where a loved one is killed because of the wrongful acts of another. It should also make no difference whether the person killed worked as a seaman, contractor, or simply a passenger. The law should treat everyone the same.

I pray every day when I wake, and, at bedtime prayers with Blaine, that I can sit him down one day and be able to tell him his daddy was a hero, a hero to all oil field men and women, be-

cause his dad changed the heart and soul of those who place their business agendas over the importance of life.

In closing, I would like to ask that the next time you see a picture of the *Deepwater Horizon* in flames or hear about the oilspill, you think about this. The flow of oil will eventually be stopped. Slowly, the environment will recover. The Gulf, I pray, will continue to provide us with the oil and gas and many other things that we enjoy. But, the lives of the 11 men, their survivors, and the heroes of the *Deepwater Horizon* will forever be changed but an unfortunate tragedy that prompted changes in making the laws more equal for all maritime victims who die on the high seas.

Thank you for your time, and I will be happy to answer any questions.

[The prepared statement of Mrs. Roshto follows:]

PREPARED STATEMENT OF NATALIE ROSHTO, WIDOW OF SHANE ROSHTO
OF LIBERTY, MISSISSIPPI

Chairman Rockefeller, Ranking Member Hutchison, and other members of the Senate Commerce Committee, I want to thank you for allowing me to speak today on behalf of my husband, Shane Roshto, who was tragically killed in the *Deepwater Horizon* explosion April 20, myself and our son Blaine.

In the early hours of April 21 when I received news of the explosion and fire, I never thought that I would be sitting here. I never thought that I would go home to a bright eyed 3 year old and have to face the fact that his Daddy, my husband, would never come home to us. Every 3 weeks when Blaine and I would give Shane our last loves sending him off for 3 weeks, I always feared the helicopter ride, but never did this kind of tragedy come to mind. Through God's grace, family and friends, Blaine and I are making it through.

After all the safety schools, meetings, fire drills and safety regulations I just knew he was safe. When the events of the *Deepwater Horizon* explosion started to unfold I asked myself will I ever personally recover; what if he's out there and they just didn't look long enough? As the days passed Shane's absence became reality.

My husband took great pride in his job, loved his work and all his *Deepwater Horizon* family, but most important he knew offshore work provided the life he wanted for his son. He loved us unselfishly and provided a lifestyle that allowed me to attend college and to be home with Blaine. During Shane's off-weeks he spent time everyday with Blaine passing on his love for the outdoors, hunting and fishing and doing for others.

As the days pass I ask why? What happened? The life Blaine and I knew is over. My love story came to an end. Though he is a mirror image of his Daddy, Blaine now has a void that will never be filled.

There is no amount of money that Transocean or BP can pay to bring back my husband or return Blaine's father to him. However, because of this tragedy I have unfortunately learned that under current law, there exists a huge discrepancy in the way the death of a loved one is valued on the high seas. It is my understanding that the value of a loved one who dies at sea is valued far less than a loved one who dies on land. I am not a lawyer by any means, but the policy behind this law does not make any sense to me and does not seem fair. Under current law, because Shane died on an oil rig in Federal waters, Shane's death is limited to pecuniary damages—which essentially limits his loss to the value of his paycheck and funeral expenses. If Shane had died on land, the law would have recognized that Shane's life was more valuable.

The whole concept of valuing someone's life seems very strange to me in light of everything that is happened. But since this is the remedy that I am left with to hold the party responsible for Shane's death accountable, I want to make sure that Congress acts quickly to change current law to ensure that all victims of maritime disasters are treated equally. It should make no difference in the eyes of the law where a loved one is killed because of the wrongful acts of another. It should also make no difference whether the person killed worked as a seamen, contractor, or was simply a passenger. The law should treat everyone the same.

I pray every day when I awake and at bedtime prayers with Blaine that I can sit him down one day and be able to tell him that his Daddy is a hero—a hero to

all oilfield men and women because his death changed the heart and soul of those who place their business agenda over the importance of life.

In closing, I would like to ask that the next time you see a picture of the *Deepwater Horizon* in flames or hear about the oil spill that you think about this: The flow of oil will eventually be stopped, slowly the environment will recover, the Gulf I pray will continue to provide us with oil and gas and many other things that we all enjoy, but the lives of the 11 men, their survivors and heroes of the *Deepwater Horizon* will forever be changed. We can only hope that the legacy of this tragedy will be much more than a devastating oil spill, but an unfortunate tragedy that prompted changes in making the laws more equal for all maritime victims who die on the high seas. Thank you for your time and I will be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much—

Mrs. ROSHTO. And I would also like to introduce Courtney Kemp's testimony into the record.

The CHAIRMAN. That will be the order.
[The information referred to follows:]

PREPARED STATEMENT OF COURTNEY KEMP, WIDOW OF ROY WYATT KEMP,
OF JONESVILLE, LOUISIANA

Hello, my husband is Roy Wyatt Kemp, one of the eleven men killed on the *Deepwater Horizon* oil rig that exploded on April 20, 2010. I reside in Jonesville, Louisiana, with our two beautiful daughters, Kaylee, 3 and Maddison, 5 months.

I never thought I would be sitting before you today speaking on behalf of my husband and advocating to change a law that would affect my family and others. I appreciate the opportunity to tell you briefly about my husband and express my concerns regarding some issues that will affect many Americans.

First and foremost, Wyatt is a Christian, one who loved the Lord with all of his heart. He had a tremendous amount of faith and sought God's will on a daily basis. Wyatt and I began dating while in high school and we have been married for five and a half years. He was a wonderful father, husband, son, brother, and friend to many. He was an avid outdoorsman who enjoyed hunting, fishing, and spending time with his duck dog, Ellie.

Wyatt began working for Transocean Deepwater Drilling approximately four and a half years ago. He was only minutes away from completing his final shift as a Derrick Hand and was scheduled to come home the morning of April 21. He would have only been home for 2 weeks of his normal 3 weeks in order to return to the rig to join his new crew as Assistant Driller, a promotion he so deserved and one of which he was very excited. Wyatt was so proud of the *Deepwater Horizon* and the accomplishments it had made. Only a short time ago, the *Horizon* succeeded in drilling the deepest well in the gulf and second deepest in the world. Also, the rig was about to receive a safety award for commemorating 7 years without a single injury. It is because of this outstanding record that BP sought after the *Deepwater Horizon* because it was simply the best at accomplishing its goals and the crew aboard was outstanding in their field.

The main purpose of our being here today is to address the Death on the High Seas Act. This Act was passed in 1920 and spells out the limited benefits a family may recover from the loss of a loved one when death is experienced on the high seas. Because this Act is outdated and does not fit the needs of today, I am asking that you amend DOHSA in order to make companies accountable for gross negligence such as the incident on the *Deepwater Horizon*. By changing this Act, perhaps companies will be more responsible for their wrongdoings and this type of accident will be avoided in the future. It is time that we bring DOHSA into the 21st century.

Upholding safety regulations should be the number one priority on a rig. It is my belief that this terrible tragedy could have been prevented if only proper safety procedures had been followed. It is no secret the rig was behind schedule on this well due to the many problems they had experienced. However, the safety of its workers should not have been placed in jeopardy simply to bring in a well a few days early. Had these safety issues been resolved, the cost to the company would have only been measured in dollars and cents. The expense now is much greater as it cost eleven men their lives, eleven families their husbands, fathers, sons and brothers. How is it that the all mighty dollar has become more important than a human life?

It is detrimental to the southern states economy as well as our entire country when drilling in the gulf is discontinued. In the state of Louisiana there are two primary sources of income, agriculture and the oil and gas industry. If the moratorium continues it will be devastating to our already crippled economy, especially in the south. I understand, and want more than anything, that we need to know what happened that tragic night in the gulf in order to prevent it from happening again, but who's to say we will have all of the necessary answers in 6 months.

Because of the Moratorium, there are many who have already been laid off from their jobs in the gulf and thousands who worry every day if they will be next. So you see, even though my husband lost his life on an oil rig, I do not believe drilling should stop. Consider this, if a plane crashes, do we stop flying for 6 months?

Finally, I would like to address a new issue that has recently come to my attention. It is the proposed inclusion of the eleven families in the Multi-Jurisdictional Class Action Suit that has been filed on behalf of the fishermen, shrimpers, etc. who have been affected by the spill. While I sympathize with those who make their living in the Gulf waters and I feel they should be compensated, it is my belief that although the loss of the two groups resulted from the same tragic incident, the impact is totally different and should be handled accordingly. I believe you will agree that the affect this tragedy has imposed on fishermen is of no comparison to the loss the eleven families who lost loved ones have suffered. Please do not allow this group of trial lawyers who are working to incorporate the two succeed in doing so.

In closing, I would like to leave you with this thought; if the roles were reversed and you were standing in my shoes, would you be advocating changing a law that is so outdated and unfair? Would you be fighting to insure the livelihoods of many are not destroyed? My prayer is that you will make the right decisions regarding these matters so that no other families will have to endure the pain, grief, and suffering that my family is experiencing. You see, this is not about me; it is about honoring my husband and finding some type of justice for him and the others who lost their lives that tragic night.

Thank you.

The CHAIRMAN. And, of course, all of your statements will be automatically a part of the record.

That was a very—also a very powerful, probing, deep, eloquent testimony, and I thank you very much for that.

Senator Lautenberg, who is Chairman of the relevant Subcommittee, is here.

And if you have something you'd like to say.

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

And I thank Mrs. Roshto for her testimony. I heard enough of it to get some sense about the cost to your family and your well-being—has been as a result of what I will say is some questionable behavior on the part of BP.

And I want to express my condolences to all of those who have lost loved ones in the *Deepwater Horizon* catastrophe, including our witnesses—Mrs. Anderson, Mrs. Roshto.

Eleven men were killed when the BP rig exploded, and nothing is going to bring these people back. But, we can honor their losses by making sure that oil companies understand that a first responsibility of theirs is to protect the lives and well-being of the people that they have performing these tasks on these rigs.

In the weeks before the catastrophic blowout, BP repeatedly chose to cut corners and put worker safety on the back burner. BP ignored countless warnings from engineers and subcontractors about the troubles with the well, and even discounted an e-mail—they called it “a nightmare well.” Just 4 days before the blowout, one BP executive admitted that the company was moving forward

in the face of danger, and he said, and I quote, “Who cares? It’s done. It’s the end of a story. We’ll probably be fine.”

Mr. Chairman, I was one of the first Senators to visit Alaska after the *Exxon Valdez* crash, and I saw the destruction caused by that first—that oilspill firsthand. When the press coverage was intense—intense, Exxon issued a string of apologies, it promised to do right by the community, and it vowed to make sure the way of life these Alaskans knew would resume. But, as soon as the cameras were shut down, Exxon changed its tune. And I use this as an example. It fought the communities, the families, and the fishermen over every penny. Instead of making those victims whole, Exxon chose to make its lawyers rich. After 20 years—20 years of legal fights—Exxon succeeded in getting punitive damage claims reduced from \$5 billion to \$500 million.

And we’re not going to let history repeat itself in this instance. Transocean, the largest oil—offshore rig operator in the world, has already gone to court to reduce its liability for the Gulf disaster by citing an 1851 maritime law. And that’s why the \$20-billion fund that President Obama has established is so important.

Mr. Chairman, offshore drilling is a risky, dangerous, and imperfect practice, but it’s also highly profitable. And when oil companies enter into this practice, they have to be prepared to pay whatever price their—to make their victims whole. We can’t afford, any longer, to shield big oil from the costs of offshore drilling.

And again, I express my sorrow to those who lost a son, a brother, a father, or a friend in the *Deepwater* explosion. We want to hear our witnesses give us their views on holding the oil companies accountable.

And I brought this along to see—this is directly from the waters in the Gulf, and it wasn’t unclean bathers, it wasn’t fish specimens spewing pollution. This is it, as ugly as it is. And you see what happens when this carelessness—carelessness—took over. BP had a chance, in its initial decisions about what kind of a rescue system they would use, and it—they took the one that was supposedly less costly.

Thank you, Mr. Chairman, for the opportunity to issue a statement.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Mr. Chairman, thank you for holding this hearing.

I would like to first express my condolences to those who lost loved ones in the *Deepwater Horizon* catastrophe, including our witnesses, Mrs. Anderson and Mrs. Roshto.

Eleven men were killed when the BP rig exploded—nothing will bring these men back, but we can honor their loss by making sure oil companies don’t continue to take risks that jeopardize lives.

In the weeks before the catastrophic blowout, BP repeatedly chose to cut corners and put worker safety on the back burner.

BP ignored countless warnings from engineers and subcontractors about the troubles with the well and even discounted an e-mail that called it a “nightmare well.” Just 4 days before the blowout, one BP executive admitted that the company was moving forward in the face of the danger and said “who cares, it’s done, end of story, will probably be fine.”

Mr. Chairman, I was one of the first Senators to visit Alaska after the *Exxon Valdez* crash, and I saw the destruction caused by that oil spill firsthand.

When the press coverage was intense—Exxon issued a string of apologies, it promised to do right by the communities, and it vowed to make sure the way of life these Alaskans knew would resume.

But as soon as the cameras were shut off—Exxon changed its tune.

It fought the communities, the families and the fishermen over every penny. Instead of making those victims whole, Exxon chose to make its lawyers rich.

After twenty years of legal fights, Exxon succeeded in getting punitive damages reduced from five billion dollars to five hundred million dollars.

We can't let history repeat itself.

Transocean—the largest offshore rig operator in the world—has already gone to court to reduce its liability for the Gulf disaster by citing an 1851 maritime law.

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Mr. Chairman, offshore drilling is a risky, dangerous and imperfect practice—but it's also highly profitable.

When oil companies enter into this practice, they have to be prepared to pay whatever price to make their victims whole.

We can no longer afford to shield Big Oil from the costs of offshore drilling.

I want to again express my sorrow to those who lost a son, a brother, a father, or a friend in the *Deepwater* explosion. We want to hear our witnesses give us their views on holding oil companies accountable.

Thank you.

The CHAIRMAN. Thank you, Senator Lautenberg.

Our next witness is Dr. Tom Galligan, who is President, Professor of Humanities, at Colby-Sawyer College.

STATEMENT OF THOMAS C. GALLIGAN, JR., PRESIDENT AND PROFESSOR OF HUMANITIES, COLBY-SAWYER COLLEGE AND SCHOLAR ON TORTS AND MARITIME PERSON INJURY LAW

Dr. GALLIGAN. Chairman Rockefeller, Ranking Member Hutchison, and members of the Committee, thank you for inviting me to appear before you.

My name is Tom Galligan, and I am the President of Colby-Sawyer College, in New London, New Hampshire, and I have written and spoken frequently throughout the years on torts and maritime law, and was a Law Professor and Dean for 20 years before moving to Colby-Sawyer.

I'd like to talk about three issues: the outdated and limited damages available in high seas maritime wrongful death cases; the 1851 Shipowners' Limitation of Liability Act; and the availability and measure of punitive damages in admiralty.

Let me begin with wrongful death recovery by the survivors of seamen and others under the Jones Act. And this isn't the part of the Jones Act about waivers of the Jones Act; this is the part about recovery of a seaman in negligence actions, and his or her survivors, and others, under the Death on the High Seas Act.

Both of these statutes were passed in 1920, another era. As interpreted, neither of them allows recovery for "loss of society" damages to the survivors of those killed in high seas maritime disasters.

Now, what are "loss of society damages"? They are compensation for the loss of care, comfort, and companionship caused by the death of a loved one. They are compensation for the loss of the relationship itself. The majority of American jurisdictions today recognize some right to recover for loss of society in wrongful death cases, but not the Jones Act and not DOHSA. The Jones Act and DOHSA do allow the survivors of someone killed on the high seas

to recover their pecuniary or economic loss, but neither allows any recovery for the loss of the relationship itself. Thus, a surviving spouse or child may recover loss of economic support or funeral expenses or loss of services, like cooking or cutting the lawn, but the survivors recover nothing for the very real emotional loss of the loved one. And a parent who is not financially dependent upon a child who is killed on the high seas would recover nothing at all for that child's death.

Today, under the Jones Act and DOHSA, the relationship itself between the decedent and his or her spouse, child, or parent is treated as if it has no value. Senators, a spouse, child, or parent who loses a loved one suffers a very real loss, as we have heard, and the law, to be just, must recognize it.

Now, there's one exception to the rule barring recovery of loss of society under DOHSA, and that exception points up current inconsistencies in the law.

In 2000, after the Korean airline and TWA air disasters, you retroactively amended DOHSA to provide recovery of loss of society to the survivors of those killed in high seas commercial aviation disasters, but for anyone else killed on the high seas, including the 11 workers who died on the *Deepwater Horizon*, the survivors may not recover for the loss of society. The law should be the same for all.

Senator Leahy's proposed Survivors Equality Act of 2010 would appropriately amend DOHSA to include recovery for loss of society.

Now, tort law is concerned with corrective justice—with fairness, with consistency, and with compensation—but, it is also concerned with deterring unsafe behavior posing risks to people, property, and the environment. As the title of this hearing points out, law is concerned with holding people accountable. By not allowing recovery of loss of society, the applicable maritime law undercompensates. And if tort law undercompensates, it underdeters, because it does not hold those responsible accountable for all of the real, direct damages that they cause.

Now, undercompensation and underdeterrence and increased risk in the maritime setting is exacerbated by the Shipowners' Limitation of Liability Act. Originally passed in 1851 to encourage investment in maritime shipping and commerce, the Act allows a vessel owner to limit its liability to the post-voyage value of the vessel if the liability is incurred without the owner's privity or knowledge. The Act was passed before the development of the modern corporate forum and before the evolution of bankruptcy law. The Act's operation today can lead to drastic undercompensation for the victims of maritime disasters.

Senator Schumer's proposed bill, S. 3478, would repeal the relevant portions of the Limitation Act.

Finally, these cumulative problems of limited liability and maritime law might be alleviated by the recovery of punitive damages in cases involving egregious fault. Punitive damages are an additional way to hold people accountable. Twice in the past two and one half years, the U.S. Supreme Court has recognized the right to recover punitive damages in maritime cases. However, the Court has limited the recovery of punitive damages, in most cases, to a one-to-one ratio between the punitive damages awarded and the

compensatory damages awarded. In uttering that rule, the Court was quick to point out, however, that if Congress were to choose a different rule, the Court would have to defer to that different rule.

What does that ratio cap do? It deprives a judge or jury of the traditionally available availability to tailor a punitive award, within due process limits, to the particular facts of the case, including the level of blame-worthiness, the harm, the threatened harm, and the profitability of the activity.

Senator Whitehouse's proposed bill on maritime punitive damages, S. 3345, would restore that traditional ability to tailor a punitive award to the facts of the case.

Thank you for listening, and I'm happy to answer any questions. [The prepared statement of Dr. Galligan follows:]

PREPARED STATEMENT OF THOMAS C. GALLIGAN, JR., PRESIDENT AND PROFESSOR OF HUMANITIES, COLBY-SAWYER COLLEGE AND SCHOLAR ON TORTS AND MARITIME PERSON INJURY LAW

I. Introduction

Chairman Rockefeller, Ranking Member Hutchison and members of the Committee, thank you for inviting me to appear before you today. My name is Tom Galligan and since 2006, it has been my good fortune to serve as the President of Colby-Sawyer College in New London, New Hampshire, where I am also a Professor in the Humanities Department. From 1998–2006, I was the Dean of the University of Tennessee College of Law where I also held a distinguished professorship. From 1986–1998, I was a Professor at the LSU Paul M. Hebert Law Center in Baton Rouge, where I also held an endowed professorship. From 1996–1998, I also served as the Executive Director of the Louisiana Judicial College. At both Tennessee and LSU, I taught and wrote about torts and maritime law. I am the author or co-author of several books and many articles on tort law and punitive damages. Along with Frank Maraist, I am the author of three books on maritime law, one of which is and another of which will soon be co-authored by Catherine Maraist. I have also written law review articles on various aspects of maritime law and given countless speeches on torts and maritime law; and I continue to speak and write on those subjects. It is an honor to appear before you today.

The disaster in the Gulf of Mexico has already resulted in death, injury, environmental devastation, and economic loss to individuals, businesses, and governmental entities. Additional damage is occurring every day. The staggering consequences of the spill force us to ask whether applicable laws are fair, consistent, and up-to-date. Do they provide adequate compensation to the victims of maritime and environmental disasters? And, do our laws provide economic actors with proper incentives to ensure efficient investments in accident avoiding activities? Does our law appropriately hold tortfeasors accountable? Sadly, an analysis of the relevant laws reveals a climate of limited liability and under compensation.

The law under compensates, in part, because, the Jones Act and the Death on the High Seas Act (DOHSA), as interpreted, do not provide damages to the survivors of Jones Act seamen and others killed in high seas maritime disasters for the loss of care, comfort, and companionship suffered as a result of their loved ones' deaths. Aggravating the situation, some courts have inappropriately relied on those recovery denying rules to further limit recovery of nonpecuniary damages in other maritime cases. These failures to fully compensate raise basic issues of fairness and corrective justice. Is it right, consistent with modern law and values, and just to deny recovery for very real damages such as the loss of care, comfort, and companionship one suffers when a loved one is killed? In addition, the failure to compensate raises important issues concerning tort law, deterrence, and accountability.

If the law under compensates, economic actors, when deciding what to do and how to do it, face less than the total costs of their activities. This economic reality may, in turn, lead to under deterrence and increased risk. If the law does not hold people accountable, the risk of injury, death, and damage is increased. In the maritime setting, the climate of limitation is exacerbated by the existence of the 1851 Ship Owner's Limitation of Liability Act. That law allows a ship owner to limit its liability to the post-disaster value of a vessel, providing the relevant events occurred without the privity or knowledge of the ship owner. While punitive damages might make up

for the lack of deterrence in some areas, the deterrent role of punitive damages in admiralty is less significant because of the rule that limits the recovery of punitive damages to compensatory damages in maritime cases at a 1:1 ratio.

I will begin my analysis with a discussion of the legal fact that loss of society damages are not recoverable by the survivors of many who are killed in maritime disasters. In failing to allow recovery of loss of society damages—damages for loss of care, comfort, or companionship—maritime law is contrary to the rule prevailing in the majority of the states. Katherine J. Stanton, *The Worth of Human Life*, 85 N.D. L. Rev. 123, 130–31 (2009). Consequently, maritime law under compensates the surviving families of seamen and those killed in high seas maritime tort disasters. Congress has the chance and ability to change this state of affairs by amending the relevant statutes. Indeed Senator Leahy’s proposed 2010 Survivor’s Equality Act of 2010, S. 3463, would appropriately amend DOHSA to make loss of society damages recoverable.

Second, I will discuss the extension of the seamen and high seas no loss of society recovery rules to other maritime cases, thereby further limiting potential overall liability. Third, I will describe the anomalous high seas death rule that pre-death pain and suffering damages are not recoverable in a maritime survival actions where death occurs on the high seas. S. 3463 would supersede this anomalous rule.

Fourth, I will briefly explain how under compensation can lead to under deterrence and increased risk. Next, I will address the maritime doctrine of limitation of liability. Senator Schumer’s proposed bill, S. 3478, would repeal the relevant provisions of the limitation act and assure more adequate compensation and deterrence.

Finally, I will review the impact of maritime punitive damages rules on risk and deterrence. Senator Whitehouse’s proposed bill on maritime punitive damages, S. 3345, would improve those punitive damages rules by restoring the traditional ability to tailor a punitive award to the facts of the case.

II. Loss of Society in Maritime Wrongful Death Cases—Seaman and the High Seas

Loss of society damages are not recoverable in Jones Act wrongful death cases and/or in any case where death occurs on the high seas. This harsh legal reality is inconsistent with modern American law and does not fully or fairly compensate survivors for loss arising from the maritime wrongful death of a loved one. This no recovery rule is also inconsistent with the more progressive recovery available in high seas commercial aviation disasters.

A. Seamen

The analytical starting point in any work place maritime tort case is to determine whether an injured or deceased person was a seaman because that status determines the legal rights of the claimant and family members. A seaman is a person who does the work of a vessel, *McDermott International, Inc. v. Wilander*, 498 U.S. 337 (1991), and who has an employment-related connection to a vessel which is substantial in duration (more than 30 percent of one’s work time is spent on a vessel or fleet of commonly owned or controlled vessels), *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), and nature (the worker is exposed to the perils of the sea). *Harbor Tug and Barge Company v. Papai*, 520 U.S. 548 (1997). Maritime law treats a semi-submersible drilling rig as a vessel. *Marathon Pipe Line Co. v. Drilling Rig/Odessa*, 761 F.2d 229,233 (5th Cir. 1985). The moveable drilling rig is a vessel because it is “capable of being used as a means of transportation on water.” 3 U.S.C.A. § 3; *Stewart v. Dutra Construction Company*, 543 U.S. 481 (2005). The *Deepwater Horizon* was a moveable drilling rig and, therefore, under maritime law, it is a vessel. Interestingly, a permanently attached drilling platform, as opposed to a semi-submersible drilling rig, is not a vessel.

Assuming that the *Deepwater Horizon* was a vessel, workers with a substantial employment-related connection to the *Deepwater Horizon* would be seamen. A seaman has several possible claims against his or her employer: (1) the right to recover maintenance and cure; (2) the right to recover injury caused by the unseaworthiness of the vessel on which he or she served (a vessel is unseaworthy if it presents an unreasonably unsafe condition to the seamen on board); and (3) a Jones Act, 46 U.S.C.A. § 30104, right to recover in negligence against his or her employer. Frank L. Maraist & Thomas C. Galligan, Jr., *Admiralty in Nutshell*, 194–99 (5th ed. 2005).

1. Jones Act Negligence

The Jones Act incorporates the provisions of the Federal Employers Liability Act (FELA). 45 U.S.C.A. § 51. The Jones Act (through the FELA) provides certain survivors of seaman killed as a result of their employer’s negligence with wrongful death and survival action claims against the employer. Basically, a wrongful death

action is an action that compensates certain beneficiaries for the loss they suffer as a result of the death of the victim. A survival action provides recovery for the damages that the decedent suffered before his or her death.

Critically, what do the recoverable damages include and what do they not include in a Jones Act negligence wrongful death action? The survivors can recover any loss of economic support, any lost services, and other traditional types of pecuniary damages. That is they recover economic losses. The survivors *cannot* recover loss of society damages. That is, they cannot recover for the loss of care, comfort, or companionship caused by the death. Loss of society damages are, in essence, those damages survivors suffer as a result of the fact that the deceased is no longer there to share the joys of life with the them. Thus a surviving spouse may recover any loss of support (net of taxes and what the decedent would have spent on themselves) and loss of service, such as cooking or painting or cutting the lawn and any other economic damages. But the spouse recovers nothing for the loss of the relationship. Likewise, a parent who is not financially dependent upon a child who is killed would recover nothing.

The inability of the Jones Act seaman's survivors to recover loss of society damages in the negligence action does not result from the language of the Jones Act or the FELA. Rather, it is the combination of a 1913 decision of the U.S. Supreme Court, *Michigan Central R.R. Co. v. Vreeland*, 227 U.S. 59 (1913), which refused to recognize the right to recover loss of society damages under the FELA (and which actually predated the passage of the Jones Act by 7 years) and the result of the Court's reliance on that decision in *Miles v. Apex Marine*, 498 U.S. 19 (1990).

One might arguably understand and appreciate the *Vreeland* holding in an era when the law of wrongful death was still in its relative infancy; human life spans were shorter, and given the state of technology, industry, and law, accidental death was a more common part of the American landscape than it is today. However, to deny recovery of loss of society damages in a wrongful death case today is out of the legal mainstream and is a throwback to a past era. A spouse, child, parent, or sibling of a seaman killed in a maritime disaster suffers a very real loss of society and the law should recognize it.

Congress could easily remedy this state of affairs by amending 45 U.S.C.A. § 51, the FELA wrongful death statute, to state that recovery by a named beneficiary in a wrongful death action shall "include nonpecuniary damages for loss of care, comfort, and companionship." That amendment would bring the Jones Act and FELA much more into line with modern tort law regarding the recovery of damages in wrongful death cases, as well as the economic, social, and familial realities of today. Representative Conyer's proposed bill, Securing Protection for the Injured from Limitations on Liability Act, H.R. 5503, would, among other things, amend the Jones Act to make loss of society damages recoverable in seaman negligence based wrongful death cases.

2. Unseaworthiness

Moving from the negligence claim for wrongful death to the unseaworthiness claim for wrongful death, the general maritime law provides certain survivors with wrongful death and survival actions against a vessel owner (or operator under many circumstances) if the seaman is killed as a result of the vessel's unseaworthiness. If the death occurs on the high seas, then DOHSA, 46 U.S.C.A. § 30302, governs the recoverable wrongful death damages arising from the vessel's unseaworthiness. DOHSA limits recovery to "pecuniary loss." 46 U.S.C.A. § 30303. Thus, the survivors of seamen killed as a result of a vessel's unseaworthy condition on the high seas may not recover loss of society damages. Consequently, the spouse, parent, or child, who has no claim for pecuniary damages, recovers nothing for the losses caused by the death of a loved one and all of the issues raised concerning the inequity, incongruity, and antiquated nature of that limitation on recovery discussed above in conjunction with the Jones Act apply to DOHSA. One case worthy of note is *Rux v. Republic of Sudan*, 495 F.Supp.2d 541 (E.D. Va. 2007), which chillingly presents the operation of DOHSA. There, 56 surviving family members of the 17 sailors killed in the terrorist bombing of the U.S.S. Cole sued the Republic of Sudan under the Foreign Sovereign Immunities Act, 28 U.S.C.A. § 1605(a)(7), alleging that Sudan was at fault for providing material assistance and support to Al Qaeda, the group responsible for the attack. The court held that DOHSA applied and because non-pecuniary damages were not recoverable, 22 family members, including parents and siblings recovered nothing as a result of the deaths even though the court noted:

The court sympathizes greatly with plaintiffs, who continue to suffer terribly years after their loved ones died. But the court is bound to follow the legal precedent before it. Congress makes the laws; courts merely interpret them. Whether to amend DOHSA to allow more liberal recovery in cases of death

caused by terrorism on the high seas, as Congress did in 2000 for cases of commercial aviation accidents on the high seas, is a question for Congress alone. Accordingly, plaintiffs' IIED [intentional infliction of emotional distress] and maritime wrongful death claims are dismissed for failure to state a claim upon which relief can be granted.

495 F.Supp.2d at 565. *See also, Rux*, 461 F.3d 461 (4th Cir. 2006), cert. denied, 127 S.Ct. 1325 (2007); *Rux*, 672 F.Supp.3d 726 (E.D.Va. 2009). *See generally*, Ross M. Diamond, *Damage—Unequal Recovery for Death on the High Seas*, 45 Sept.—Trial 34 (2009).

Here, as in *Rux*, in addition to the general and very substantial reasons to allow recovery of loss of society damages in DOHSA cases, there is an additional analytical prong involving a 2000 amendment to DOHSA (referred to in the quote from *Rux* above) that points to the need to amend DOHSA. In response to several highly publicized commercial airline disasters—KAL 007 and TWA 800—Congress amended DOHSA to provide for recovery of nonpecuniary damages (loss of care, comfort, and companionship), 46 U.S.C.A. § 30307(a), for death resulting from “a commercial aviation disaster occurring on the high seas beyond 12 nautical miles from the shore of the United States . . . but punitive damages are not recoverable.” 46 U.S.C.A. § 30307(b). *See generally*, Stephen R. Ginger and Will S. Skinner, *DOHSA’s Commercial Aviation Exception: How Mass Commercial Aviation Disasters Influenced Congress on Compensation for Deaths on the High Seas*, 75 J. of Air Law & Comm. 137 (2010) (discussing the legislation and the jurisprudence). This amendment, which was made retroactive to the day before one of the relevant air disasters, brought DOHSA into the legal mainstream as far as the survivors of victims of commercial aviation disasters. But, while the survivors of the victims of a commercial aviation disaster on the high seas may now recover nonpecuniary damages the survivors of anyone else killed on the high seas may not. It strains reason to come up with a meaningful, rational principle to justify the differential treatment, other than the very real social and political turmoil that followed the high profile tragic air disasters. The disaster of the *Deepwater Horizon* is, of course, a similarly tragic event, which presents an opportunity to bring the law into some logical, sensible, compassionate symmetry. S. 3463 would make loss of society damages recoverable for the survivors of anyone killed on the high seas.

To add another relevant point to the analysis, OPA 90, 33 U.S.C.A. § 2701 *et seq.*, allows victims of oil spills to recover various damages, including removal costs, § 2702(b)(1); damage to real or personal property, § 2702(b)(2)(B); damage to natural resources used for subsistence, § 2702(b)(2)(C); and economic damages because of damage to property or natural resources even if the claimant does not own the property. § 2702(b)(2)(E). These rights to recover damages assure compensation to persons injured in various ways by an oil spill.

But, critically, OPA 90 does not apply to personal injury or wrongful death claims. *See generally, Gabrick v. Lauren Maritime (America), Inc.*, 623 F.Supp.2d 741 (E.D. La. 2009)(OPA does not cover bodily injury claims damage). Consequently, the survivors of the seaman (or others) killed on the high seas as a result of negligence or unseaworthiness do not recover for loss of society while the persons whose property was damaged or who lost profits do recover. This is not to say that recovery for damaged property or lost profits is not appropriate, it is merely to point out that currently recovery of economic loss is more readily available than recovery for loss of a loved one.

I have noted above how a possible amendment to the Jones Act would deal with the seaman’s negligence claim; DOHSA could also be amended to delete the word “pecuniary” before “loss” in 46 U.S.C.A. § 30303 and to add the language, “including nonpecuniary damages for loss of care, comfort, and companionship” after “loss” and S. 3463 would do exactly that.

III. Seaman’s Survivors Wrongful Death Claims Against Third-Parties and Non-Seaman Wrongful Death Claims

The beneficiaries of a seaman killed on the high seas may have claims not only against the vessel but may also have general maritime tort claims against other parties, such as manufacturers, contractors, or others. Likewise, the survivors of non-seamen tortuously killed on the high seas may have maritime wrongful death claims. But by definition, if death results on the high seas (or is caused by events on the high seas) then DOHSA applies and nonpecuniary damages would not be recoverable.

As noted, if workers, who are not seaman, are killed as a result of a maritime disaster on the high seas, DOHSA would also govern their survivors’ recovery which would be limited to pecuniary damages, as currently defined. The amendments to

DOHSA, proposed in S. 3463, making nonpecuniary damages and pre-death pain and suffering damages recoverable, would apply to those claimants as well.

Concomitantly, if the death occurs in territorial waters, nonpecuniary damages would seem to more likely be recoverable. *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974) (allowing the survivors of an LHWCA worker killed in territorial waters to recover loss of society). See also, *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1995) (allowing the survivors of a non-seafarer killed in territorial waters to rely on state law to seek recovery of loss of society damages). Thus where one dies may be more relevant to recovery than other critical circumstances, such as the injury to the relevant survivors.

Notably, if a worker is killed on a *stationary drilling platform* located over the high seas, as opposed to being killed on a semi-submersible mobile rig, state law normally would govern his or her tort recovery rights against third persons and state law very probably would mean survivors could recover loss of society and pre-death pain and suffering damages from third persons in a wrongful death action. This is because the Outer Continental Shelf Lands Act, 43 U.S.C.A. §(a)(2)(A), adopts the laws of each adjacent state as the governing law on OCS platforms, which are treated as islands in an upland state (recall that platforms, unlike rigs, are not vessels). See generally, Frank L. Maraist & Thomas C. Galligan, Jr., *Admiralty in a Nutshell*, 323–27 (5th ed. 2005); *Alleman v. Omni Energy Services Corp.*, 580 F.3d 280 (5th Cir. 2009). Thus the measure of recovery in a fatal injury action on an off-shore oil or gas production facility (a rig or platform) would depend upon whether the relevant vehicle was a platform or a rig, even though the job that the killed worker was doing and the cause of the death was exactly the same. The point is that the potential recovery would illogically and unfairly depend upon happenstance not substance.

IV. Expanded Under Compensation

As noted above, the fact that the survivors of seamen and anyone killed on the high seas cannot recover for loss of society damages under compensates and is inconsistent with the current majority rule in America. Aggravating the situation, some courts have actually extended the scope of the Jones Act and DOHSA no recovery rules beyond their express reach and have applied them to limit or deny recovery in other maritime contexts. In *Moragne v. States Marine Lines, Inc.*, 389 U.S. 375 (1970), the U.S. Supreme Court created a general maritime law action for wrongful death that filled some of the gaps in maritime wrongful death law and that provided recovery in some cases not covered by DOHSA and the Jones Act. Then in, *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974) the Court held that the *Moragne* claim allowed the survivors of an LHWCA worker killed in territorial waters to recover loss of society damages. In so holding, the Court's decision was consistent with the modern American majority rule allowing recovery of loss of society in wrongful death cases. Thereafter, the Court, in *American Export Lines, Inc. v. Alvez*, 446 U.S. 274 (1980), held that the spouse of an injured long shore worker could recover loss of society of consortium in a case where the worker was injured but not killed.

However, 2 years before *Alvez*, the Court began a trend of liability limiting decisions ostensibly based on Congressional intent. In *Mobil Oil Corporation v. Higginbotham*, 436 U.S. 618 (1978), the Court refused to allow the survivors of someone killed on the high seas to rely upon the *Moragne* claim to recover loss of society damages because those damages were not recoverable under DOHSA. The Court decided that because Congress had spoken to the subject in DOHSA (limiting recovery to pecuniary damages), the Court was not free to supplement the recovery through the general maritime law. The trend to extend liability limitation was on. Thereafter, in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), the Court refused to allow the plaintiffs in a high seas death case to “borrow” state law to supplement DOHSA recovery. The limitation trend continued.

Then, in *Miles v. Apex Marine Corporation*, 498 U.S. 19 (1990), the Court considered a case involving a seaman killed in *territorial* waters. There, a seaman was brutally murdered by a bellicose fellow crew member, who repeatedly stabbed the decedent. The decedent's mother sued the employer alleging, among other things, a Jones Act negligence wrongful death claim and a *Moragne* general maritime law wrongful action claim arising out of an unseaworthy condition of the vessel (the presence of the bellicose seaman). In a somewhat surprising decision, the Court refused to allow the mother to recover her loss of society damages on the unseaworthiness general maritime law wrongful death claim. The Court reasoned that when Congress enacted the Jones Act in 1920 and incorporated the FELA, it must have been aware of the *Vreeland* decision, holding that the FELA did not authorize wrongful death recovery for loss of society damages, and so Congress must

have incorporated that holding in the Jones Act as judicial “gloss.” *Id.* at 32. The *Miles* Court then reasoned that since Congress supposedly did not intend to allow recovery for loss of society damages in a Jones Act based wrongful death claim for negligence, such damages were not available in a general maritime law (*Moragne/Gaudet*) wrongful death action based on unseaworthiness. This was because, the Court said: “It would be inconsistent with our place in the constitutional scheme were we to sanction more expansive remedies in a judicially created cause of action in which liability is without fault [unseaworthiness] than Congress has allowed in cases of death resulting from negligence.” *Id.* at 32–33. *See generally*, David W. Robertson, *Punitive Damages in U.S. Maritime Law: Miles, Baker, and Townsend*, 70 La. L. Rev. 463 (2010). The *Miles* decision was, of course, arguably inconsistent with the spirit, if not the holding, of *Gaudet* and *Moragne*, and scholars have criticized it. *See* Hon. John R. Brown, *Admiralty Judges: Flotsam on the Sea of Maritime Law?*, 24 J. Mar. L. & Com. 249 (1993); Robert Force, *The Curse of Miles v. Apex Marine Corp: The Mischief of Seeking “Uniformity” and “Legislative Intent” in Maritime Personal Injury Cases*, 55 La. L. Rev. 745 (1995). Moreover the Supreme Court has twice refused to extend the holding of *Miles*. *Atlantic Sounding Co., Inc. v. Townsend*, 129 S.Ct. 2561 (2009) (recognizing right to recover punitive damages in case alleging the arbitrary and willful failure to pay maintenance and cure); *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199 (1995) (allowing the survivors of a non-seafarer killed in territorial waters to rely on state law to seek recovery of loss of society damages).

However, despite the scholarly criticism and the Court’s failure to extend the holding of *Miles*, some lower courts have relied upon *Miles*, *Tallentire*, and *Higginbotham* to limit recovery of nonpecuniary damages in maritime cases that do not fall under those holdings. For instance, in *Scarborough v. Clemco Industries*, 391 F.3d 660 (5th Cir. 2004), the fifth circuit said that loss of society damages were not recoverable in any wrongful death action involving a seaman, even when the claim was against a third party, who was not the decedent seaman’s employer or the owner of the vessel on which he or she was killed. In *Doyle v. Graske*, 579 F.3d 898 (8th Cir. 2009) (boat passenger and spouse brought action in admiralty for personal injuries and loss of consortium damages sustained in boating accident off the coast of Grand Cayman Island when steering linkage disengaged), the court held that general maritime law did not allow loss of consortium recovery for the spouse of a non-seafarer (non-seaman/non-longshore worker) injured, as opposed to killed, on the high seas. *See also*, *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398 (9th Cir. 1994). And, in *Tucker v. Fearn*, 333 F.3d 1216 (11th Cir. 2003), the court, again relying upon *Miles* held that the father of a minor killed in a sailboat accident in Alabama territorial waters could not recover loss of society damages under the general maritime law. In *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995), the court relied on *Miles* to deny recovery of punitive damages in a case involving the alleged arbitrary failure to pay maintenance and cure. Of course the Supreme Court abrogated the holding of *Guevara* in *Atlantic Sounding Co., Inc. v. Townsend*, 129 S.Ct. 2561 (2009) (allowing punitive damages).

Of course all courts have not extended *Miles* beyond its holding. *See*, *Kahumoku v. Titan Maritime, LLC*, 486 F.Supp.2d 1144 (D.Hawaii 2007) (law entitles LHWCA worker to recover punitive damages in maritime tort case); *Clark v. W & M Kraft, Inc.*, 2007 WL 120136 (S.D. Ohio 2007) (loss of consortium recovery claim available for seaman’s spouse and son against third party); *In re Consolidated Coal Co.*, 228 F.Supp.2d 764 (N.D.W.Va. 2001) (loss of consortium recovery claim available for seaman’s spouse against third party); *Rebardi v. Crewboats, Inc.*, 906 So.2d 455 (La. App. 1st Cir. 2005) (punitive damages available).

The fact that some courts have not extended *Miles* beyond its holding and some have done so results in inconsistency. But, more importantly, the fact that courts have extended *Miles* increases the number of cases in which the law fails to recognize the reality of injury and loss and in so doing either fails to compensate for that loss at all or, at best, under compensates. The extension of limited liability and under compensation expands the general climate of limited liability in maritime tort cases and hence maritime disasters. The extensions increase the possibility of under deterrence and the potential for increased and inefficient risk. Amending the Jones Act (actually the FELA) and DOHSA, to allow recovery for loss of care, comfort, and companionship would solve the problem because the amendments would do away with the language upon which courts have relied to limit recovery and increase risk.

V. Survival Action Pre-Death Pain and Pain and Suffering

Additionally, shifting from the wrongful death claim to the survival action claim, the Supreme Court in a case that did not involve a seaman has refused to allow recovery of pre-death pain and suffering as part of a survival action claim if death

occurs on the high seas. *Dooley v. Korean Air Lines Co., Ltd.*, 524 U.S. 116 (1998). The law does allow the Jones Act seaman's survivors to recover for pre-death pain and suffering. See, David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 32 Tul. Mar. L.J. 493 (2008). Thus, *Dooley* does not apply to those seaman claims but in any case covered by *Dooley*, involving a death caused by events on the high seas, no matter how much the decedent may have suffered before his or her death, those damages are not recoverable.

To remedy this situation, Congress could amend the law to not only make loss of society damages recoverable, as suggested above, but also to make pre-death pain and suffering available in maritime survival actions. S. 3463 would do exactly that by making damages for pre-death pain and suffering recoverable.

VI. Under Compensation Leads to Under Deterrence and Increased Risk

Critically, in terms of the subject of this hearing—holding industry accountable—if the law under compensates, it will, by definition, under deter which will lead to lower than optimal investments in safety. Lower investments in safety and accident avoidance can lead to increased risk. This is true because when deciding what to do and how to do it, the rational economic actor will consider the costs of its activities. To the extent that a person does not have to pay a cost, it is much less likely to take that unpaid cost into account when deciding what to do and how to do it. As Judge Guido Calabresi so ably noted many years ago in *The Costs of Accidents: A Legal and Economic Analysis* (1970), one of the costs economic actors must consider is the costs of accidents. The costs of accidents are just as real and important as the costs of goods, the costs of raw materials, and the costs of labor. The critical importance of encouraging actors to take account of accident costs is also at the heart of Judge Richard Posner's important law and economics scholarship and jurisprudence on negligence. See, e.g., Richard A. Posner, *A Theory of Negligence*, 1 J. of Legal Stud. 29 (1972). This truism about taking account of accident costs is also the crux of Judge Learned Hand's famous negligence formula that provides that one is negligent if the burden or cost of avoiding a loss is less than the probability of the loss occurring times the anticipated magnitude (or value) of the loss if the loss arises and the actor fails to incur the burden, i.e., the costs of accident avoidance. Put algebraically as Judge Hand himself did, one is negligent if $B < P \times L$ and the actor does not avoid the loss by making the investment in safety. Interestingly Judge Hand originally articulated his famous and influential negligence formula in a maritime tort case. *United States v. Carroll Towing Co.*, 159 F.2d 169, 173 (2d Cir. 1947).

If a person does not take account of the costs of accidents when deciding what to do and how to do it, he or she will under invest in safety. Of course, compensatory damages are based in corrective justice and are designed to make the plaintiff whole—to put him or her in the position he or she would have been in if the wrong had never occurred. Professor Douglas Laycock has called it the “plaintiff's rightful position.” Douglas Laycock, *Modern American Remedies* 14 (1985). However, compensatory damages also play another role in the regulation of American tort law because tort law not only compensates, it also deters unsafe conduct. And compensatory damages play a critical role in deterrence. Damages in tort cases force people to consider the costs of accidents when making decisions about engaging in risk. Moreover, as I have written:

In addition to forcing actors to pay some accident costs, compensation performs a second efficiency related function. The tort system operates as a data bank providing actors access to information on the number of accidents that do occur, the damages that accident victims suffer, and the dollar value of those damages. In this regard the “fault” system facilitates actors' ex ante [beforehand] calculations by providing them with the data they need to calculate the value of the damages that their activities impose on others. Given a large number of similarly situated actors, over time damages paid might be expected to somewhat equal the actual value *ex ante* of an activity's accident costs But in order for our current system to operate most effectively, some real relationship must exist between the accident costs society wants the actor to consider beforehand and the damages we force the actor to pay after the fact. The damages we award to compensate plaintiffs in personal injury cases and the categories of accident costs we want actors to consider ex ante should highly correlate. If actual damages awarded in tort suits do not reflect the costs we want actors to consider ex ante, but the system relies upon those actual awards as a “definition” of accident costs, then the system will not optimally deter. If the damages awarded in tort suits are less than the total costs we want actors to discount ex ante, we are encouraging people to consider less than all of the costs of that

activity and to over-engage in it. Likewise, if we overcompensate accident victims we are encouraging actors to under-engage in the activity.

Thomas C. Galligan, Jr., *Augmented Awards: The Efficient Evolution of Punitive Damages*, 51 La. L. Rev. 3, 25–29 (1990) (footnotes omitted).

To reiterate, to the extent tort law does not adequately compensate, it under-deters and contributes to a more dangerous world than people have a right to expect. And, in the maritime setting the law under compensates because it does not compensate for loss of society in seaman and high sea death cases (other than commercial aviation disasters) and because courts have extended those no recovery rules to other maritime contexts. Of course maritime disasters and oil spills can cause more harm than injury and death. They cause damage to the environment and that damage to the environment devastates lifestyle, culture, and global well-being. It harms everyone.

Moreover, there is evidence that environmental disasters can have devastating mental health effects. See, *Brief Amici Curiae of Sociologists, Psychologists, and Law and Economic Scholars in Support of Respondents in Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605 (2008)(No. 07–219) at 8. In natural disasters the effects typically subside within 2 years, *id.* (citing Catalina M. Arata et al., *Coping with Technological Disaster: An Application of the Conservation of Resources Model to the Exxon Valdez Oil Spill*, 13 J. Traumatic Stress 23, 24 (2000)). But, technological disasters resulting from breakdowns by humans “consistently have social, cultural and psychological effects that are both more severe and longer-lasting.” *Brief Amici Curiae of Sociologists, Psychologists, and Law and Economic Scholars, supra* at 8 (citations omitted). The effects are particularly acute where the disaster impacts renewable resource communities like fisheries. *Id.* at 9. These effects manifested themselves in the Prince William Sound community in the wake of the *Exxon Valdez* spill in: chronic feelings of helplessness, betrayal, and anger; high rates of anxiety, depression, and post-traumatic stress; increased health care demands; increased crime rates; and more. *Id.* at 13–18. These injuries were very real and absent some compensation or device to force actors to consider them when deciding what to do and how to do it (*i.e.*, some device to hold them accountable), they will not be forced to do so, tending toward under deterrence and increased risk.

While OPA 90 provides liability for removal costs, property damage, economic loss, and more, it does not cure the problem of under compensation and under deterrence to maritime personal injury and wrongful death cases because it does not apply to maritime personal injury and wrongful death cases. The under compensation resulting from the current state of maritime personal injury and wrongful death law and the serious emotional harm that can result from a maritime, environmental disaster is not only unfair and inconsistent but it will potentially lead to increased risk. These economic realities are exacerbated in the maritime setting by the existence of the 1851 Ship Owner’s Limitation of Liability Act.

VII. Limitation of Liability

The Limitation of Liability Act, 46 U.S.C.A. §30501 *et seq.*, applies to these events. Originally passed in 1851 to encourage investment in maritime shipping and commerce, the limitation act allows a vessel owner (and some others) to limit its liability to the post-voyage value of the vessel if the liability is incurred without the privity or knowledge of the owner. 46 U.S.C.A. §§ 30505(a), (b), and 30506(e). And, the owner is entitled to retain any hull insurance. One may justifiably wonder whether an act passed at a time before the modern development of the corporate form (and other liability limiting devices) and the evolution of bankruptcy law is still salient; however, limitation is still extant as a matter of maritime law. The vessel owner creates a fund equal to the post-accident value of the ship (not including the hull insurance). The claimants then share the fund in proportion to the value of their claims. Personal injury and wrongful death claimants share with other claimants but if the vessel is a seagoing vessel and the fund is not adequate to provide the personal injury and wrongful death claimants with recovery equal to \$420 times the gross tonnage of the vessel, the owner must provide the difference, up to \$420 per ton but no more. 46 U.S.C.A. § 30506(b).

OPA 90 has its own liability limitation scheme and the applicable limit in this matter seems to be \$75,000,000. While the Supreme Court has not considered the matter, lower Federal courts have held that the OPA 90 supersedes the limitation act on OPA 90 claims. See, *e.g.*, *Complaint of Metlife Capital Corp.*, 132 F.3d 818 (1st Cir. 1997); *In re Southern Scrap Material Co., LLC*, 541 F.3d 584, 595 (5th Cir. 2008) (*dicta*); *Gabrick v. Lauren Maritime (America), Inc.*, 623 F.Supp.2d 741 (E.D. La. 2009).

But, as noted, OPA 90 does not apply to personal injury or wrongful death. Thus the Limitation of Liability Act is applicable in a maritime disaster to allow a vessel

owner to limit its liability for personal injury and wrongful death claims. Clearly, this liability limiting device can lead to drastic under compensation to the victims of maritime disasters. Repealing the relevant portions of the Limitation of Liability Act would, of course, cure the problem of under compensation and under deterrence in general. Senator Schumer's proposed bill, S. 3478 would do exactly that.

VIII. Maritime Punitive Damages

The under compensation and under deterrence resulting from the dated, inconsistent no recovery rules described above and the Limitation of Liability Act might be alleviated by the availability of punitive damages; however, the U.S. Supreme Court in *Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605 (2008), held that punitive damages in most maritime cases are limited to or capped by a 1:1 ratio between the punitive damages awarded and the compensatory damages awarded.

Punitive damages are damages in addition to compensation which are designed to punish and deter. They are only awarded where the plaintiff has proven fault; compensatory damages are awarded; *and* the plaintiff proves that the defendant's conduct was worse than negligence; *i.e.* it was intentional, willful, wanton, or reckless.

But how could punitive damages potentially alleviate the under deterrence caused by under compensatory damage awards?

It is common ground among legal scholars and economists that inefficient behavior will not be deterred unless actors are forced to internalize all of the costs associated with their activities. Although adequate deterrence may generally be achieved through an award of compensatory damages, an award of punitive damages may be necessary to achieve complete deterrence in cases in which compensatory damages fail to fully account for the costs of a tortfeasor's actions.

Brief Amici Curiae of Sociologists, Psychologists, and Law and Economic Scholars, supra at 2.

The U.S. Supreme Court has twice in the last two and one half years held that punitive damages are recoverable under general maritime law. *See, e.g., Atlantic Sounding Co., Inc. v. Townsend*, 129 S.Ct. 2561 (2009); *Exxon Shipping Co. v. Baker*, 128 S.Ct. 2605 (2008).

After these two decisions punitive damages are arguably available in seaman related cases given the holding in *Townsend* that a seaman may recover punitive damages under the general maritime law arising out of the arbitrary and willful failure to pay maintenance and cure. But punitive damages have not been traditionally recoverable in DOHSA cases. The matter will now be the subject of future argument and litigation. Notably, however, the potential absence of punitive damages in cases involving deaths for which no loss of society and/or no recovery of pre-death pain and suffering are available may inadequately deter those who engage in activities that may cause injury or loss of life because it can result in an undervaluing of human life and the tragic ramifications when it is lost. *See, Thomas C. Galligan, Jr. Augmented Awards: The Efficient Evolution of Punitive Damages*, 51 La. L. Rev. 3 (1990).

Additionally, even if available, the Court in *Exxon Shipping Co. v. Baker*, limited the amount of punitive damages recoverable in maritime cases to a 1:1 ratio between the punitive damages awarded and the compensatory damages awarded. Justice Stevens was among the dissenters and of one of the reasons for his disagreement with the majority was that maritime law was under compensatory.

The majority noted that studies did not indicate a "marked increase" in the frequency of punitive damages over recent years. *Id.* at 2624. It also noted that the dollars awarded had not grown over time in real terms. *Id.* And the Court pointed out that the mean ratio of punitive damages to compensatory damages in the cases studied was less than one to one. *Id.* But the Court was apparently concerned with the potential unpredictable spread between high and low punitive awards and it was that concern which prompted the decision to generally limit the ratio of punitives to compensatories to 1:1. *Id.* at 2625. Critically, the Court pointed out that the case before it involved conduct which was worse than negligence but not malicious. *Id.* at 2631. It also noted that the activity was "profitless" to the tortfeasor. *Id.* The decision and the ratios should arguably not apply to cases involving higher levels of blameworthiness or "strategic financial wrongdoing." *Id.* n.24.

Whatever one might argue about cases to which the *Exxon Shipping Co. v. Baker* 1:1 ratio should not apply, I believe that most lower court judges sitting in admiralty cases would apply the ratio to maritime cases they decide due to a concern about being overruled. The ratio cap then deprives a judge or jury of the traditionally available ability to tailor a punitive award, within Constitutional due process limits, *see BMW of North America v. Gore*, 517 U.S. 559 (1996), to the particular

facts of the case, including the level of blameworthiness, the harm suffered, the harm threatened, the profitability of the activity, and other relevant factors. Indeed one wonders if the 1:1 ratio aspect of *Exxon Shipping Co. v. Baker* would have been decided the same way if another maritime environmental disaster had occurred before the decision.

Senator Whitehouse's proposed bill, S. 3345, would restore the traditional ability to tailor a punitive award to the facts of the case by providing: "[I]n a civil action for damages arising out of a maritime tort, punitive damages may be assessed without reference to the amount of compensatory damages assessed in the action." The effect of the proposed amendment would be to increase the deterrent impact of punitive damage awards in maritime cases.

While the Supreme Court has never considered the issue, several courts have held that punitive damages are not available under OPA 90. *See, e.g., South Port Marine LLC v. Gulf Oil Ltd.*, 234 F.3d 58 (1st Cir. 2000); *Clausen v. M/V NEW CARISSA*, 171 F.Supp.2d 1127 (D. Ore. 2001). *See* the discussion in: Wright, Roy, Stephens, and Colomb, *BP Deepwater Horizon Gulf of Mexico Oil Pollution Disaster, Preliminary Analysis: Law, Damages, and Procedure* May 2010 (Available from Louisiana State Bar Association and the authors). The cited decisions say that OPA 90 preempts maritime law and therefore punitive damages are not available in a case involving maritime law and OPA 90. Interestingly, OPA 90 actually provides that it does not affect admiralty or maritime law. 33 U.S.C.A. § 2751(e). Moreover, OPA 90 does *not* provide that punitive damages are not recoverable; it is merely silent on the subject. And both *South Port Marine LLC v. Gulf Oil Ltd.*, 234 F.3d 58 (1st Cir. 2000) and *Clausen v. M/V NEW CARISSA*, 171 F. Supp.2d 1127 (D. Ore. 2001) were decided before the Supreme Court's affirmation of the right to recover punitive damages in *Townsend* and *Exxon*. Indeed in *Exxon*, the Court refused to find that the Clean Water Act, 33 U.S.C.A. § 1321 *et seq.*, which was silent on the subject of punitive damages, precluded the recovery of punitive damages under maritime law. Finally, OPA 90 does not, as noted, apply to personal injury and wrongful death claims. Consequently, any preemptive affect OPA 90 might have on punitive damages in personal injury and wrongful death cases would seem to be limited.

IX. Conclusion

Recovery in maritime tort cases is under compensatory. The failure to allow recovery of loss of society damages in seaman and high seas maritime wrongful death cases (other than commercial aviation disasters) is unjust, dated, inconsistent, and out of alignment with current values. The rules not only fail to compensate but they arguably lead to under deterrence and increased risk because economic actors do not have to take those risks into account in deciding what to do and how to do it. S. 3463 remedy that injustice. The extension of those rules beyond the contexts in which they arose exacerbates the problems and extends the climate of liability limitation. This risky state of affairs is aggravated by the 1851 Ship Owner's Limitation of Liability Act, the relevant parts of which S. 3478 would repeal, and the potential positive effect of punitive damages is limited by the 1:1 punitive damages to compensatory damages rule of *Exxon Shipping Co. v. Baker*. S. 3345 would restore traditional flexibility in maritime punitive damages cases. As noted and as the various proposed bills referred to herein show, amendment and reform is both possible and necessary. The tragedy in the Gulf of Mexico provides a sad but necessary opportunity for our Nation to reconsider our law and make it more just in the aftermath of this disaster.

The CHAIRMAN. Thank you very much, sir.

And now Mr. Fred McCallister, who is Vice President of Allegiance Capital Corporation.

STATEMENT OF FRED McCALLISTER, VICE PRESIDENT, ALLEGIANCE CAPITAL CORPORATION

Mr. McCALLISTER. Good morning, Senators. It's an honor to be here before you.

I'm here to just tell you a story about my experience with trying to solve a problem, that seemed obvious to me on its face, which was that we needed additional equipment in the Gulf of Mexico to deal with the oilspill.

I—by—my day job is to provide financial advisory services to small/mid-sized companies. I had a client in Mississippi who approached me, in May, and said, “BP is needing additional vessels in the Gulf, particularly housing vessels.” They knew we had some experience with vessel transactions. Partially as a favor and partially as doing work for my client, we began to put together some vessels, some foreign flag vessels that we saw that were needed. Quite honestly, Senators, at that time I didn’t have a full appreciation of the Jones Act. The kind of transactions we handle typically do not involve the Jones Act. And so, we put together proposals, submitted them through their current channels at that time, which were subcontractors to BP.

The subcontractors’ initial response to those proposals were very positive. These are vessels that are suited for this activity, and they put them forward to BP.

After that, we got radio silence—my client did. We then saw all of the news regarding the need for skimmers. We saw Billy Nunn Gusser, we saw Governor Bob Jindahl down there, trying to jerry-rig devices to clean up the spill, and we just could not reconcile the two things we were seeing. It was—on one hand, we had vessels that we thought were appropriate for the cleanup; on the other hand, we saw these governmental entities down there, struggling, trying to do whatever they could to defend their coast.

So, we put together a skimmer package and submitted it to BP. Same response.

After my client got frustrated and would not—could not get a response, I took it on myself. I’m from the Gulf region, my wife is from the Gulf region, I have property on the Gulf, I have family on the Gulf. We’ve lost—we lost homes in Katrina down there. So, it’s a very personal issue to me, as well, because I understand the Gulf-centric culture down there, and the Gulf-centric economy.

So, we then started to raise a question. We made a public dialogue out of it. And certainly, when we got into the media, we started at least getting calls from BP, but could not get any kind of meaningful dialogue going as to why they weren’t using these types of vessels.

So, after trying to educate myself, for the last month, on what’s going on in the Jones Act, we took it on ourselves to make a Jones Act waiver filing, actually went through to—we went to—first, to Admiral Thad Allen’s office. He—about the same time we made that filing, the expedited process was—press release—was issued. Didn’t have a lot of guidance in there, but it certainly directed us to Rear Admiral James Watson’s office, so we immediately made our waiver request to his office.

Since then, we’ve had no response whatsoever, even after multiple inquiries as to the status. Senator Hutchison’s office has made inquiries on our behalf, and did get some feedback, so we at least know that they have our request in their hand and that it is in some stage of process.

When we initially tried to contact them through—ourselves—we got unanswered phones, no voice mail. We did get a callback after calling the press contact at the office, and the response that we got was, “We’re in the process of creating forms. We don’t know the timeline.” We asked how many vessels—skimmer vessels are still

available—U.S.-hull skimmer vessels, because that's a trigger for waiving the Jones Act. The answer was, "We are working on that, but it's not public record, it's not something we can release to you."

So, the bottom line is that, at this stage of the game, we're quite frustrated with the fact that we haven't had waivers issued, we haven't had even any response. BP is going to have to be the ultimate accountable party for using this equipment. But, also, from our perspective, if the States want to take issues into their own hands, which a lot of them are saying that they need to do—Mississippi, Louisiana, Florida—that they are not going to want to use equipment that's impaired with some sort of cloud of being illegal under the Jones Act or some risk of some sort of injunction against using this equipment in the Gulf.

So, I—what I'm here today to ask the Committee to do is to support the Jones—this limited Jones Act waiver. I have no reason to ask that the Jones Act be gutted. It's not—I don't know that that's appropriate. But, certainly for this situations—in situations like this, we need to be able to take the expertise from the other parts of the world, because what we're doing in the Gulf, by sinking this oil rather than floating it and skimming it with the right equipment, is not the right thing to do. No one else in the world does this. And I—I'm concerned that, consistent with BP's behavior, this is being done in their financial interest, to keep the oil below the surface, out of sight, out of mind, and amortize this cleanup over 10 or 15 years, rather than attacking it with the right equipment and—getting it to the surface and extricating it from the Gulf.

Thank you very much.

[The prepared statement of Mr. McCallister follows:]

PREPARED STATEMENT OF FRED MCCALLISTER, VICE PRESIDENT,
ALLEGIANCE CAPITAL CORPORATION

Thank you for this opportunity to speak to you this morning.

As an advisor and broker who works exclusively with closely-held and privately-held companies, I was contacted by one of my clients who currently supplies equipment to BP via United States Environmental Services asking that I and my firm, Allegiance Capital Corporation, help them in identifying specialty vessels that could be used for worker housing in the Gulf.

Allegiance Capital has contacts worldwide through a network of marine brokers who have many different types of vessels available. We found a few unique vessels, mainly Greek cruise ships that also were car carriers. These ships could carry 500 or more workers with all of the amenities of a cruise ship, but also had a large car carrier deck where booms and smaller boats could be stored and oil clean up work could be performed. As we became engaged in this work, the need for skimmers became apparent. We quickly discovered that the total availability of skimmers in the world was around 2,000 specialty built vessels, some for deep water and others for closer in to shore work and that most of the vessels in the U.S. that were available were already deployed in the Gulf. We found that this was a little bit like moving all the fire engines in the country to one area leaving other areas in the country somewhat exposed. As a result, we assembled a fleet of 25 skimmers, boom deployment vessels and two housing and equipment ships. Information is provided in the packet we assembled for you.

Proposals were provided on June 5 (40mm gallons ago) via the established channels through which our client is currently supplying equipment. The BP subcontractor was excited about the vessels being a good fit but could not get a response from BP. After our client tried every possible avenue they could, they turned to us for assistance. Allegiance Capital then began to reach out to BP's subcontractor, who had procured equipment for BP in May, with the results being the same, no response. With growing frustration we started a public discussion regarding the issues we were facing.

BP's PR department called me within hours of being contacted by CNN and within a couple of days put me in touch with the Team Leader for vessel procurement, Veronica Brown.

Veronica Brown called me on a Sunday, June 13, before my CNN interview on Monday the 14th and promised that our vessels would get expedited consideration.

We submitted the proposals to Veronica Brown on Monday June 14 (25mm gallons ago), and were promised they would be reviewed on an expedited basis. To date, we have received no meaningful response.

Even though the Jones Act was not raised as an issue, we became aware that BP may need to request a Jones Act waiver if they wanted to utilize our equipment. Given that BP has the need, the standing to make a request, and the ear of Adm. Thad Allen, we were satisfied that BP would make the request when needed.

With a continued lack of response from BP and the news from the states, parishes and counties that they needed skimmers and were going to take matters into their own hands, Allegiance Capital took it on itself to submit a request for a Jones Act waiver. Our request was first submitted to Adm. Thad Allen's office on June 16.

After learning that Adm. Allen had issued a press release on June 15 saying that he was providing guidance to ensure expedited Jones Act waiver processing, we began trying to contact the numbers that had been provided in the press release to learn about the new guidance. After 2 days of unanswered phones, not even a voice mail, and one conversation with a press contact at Adm. Thad Allen's office, we received a call from a Lt. Petta who had called us at the press contact's request. Lt. Petta told us on June 16 that there are no procedures set up as yet for the waiver process; that they were working on the forms, but could not provide any other guidance or provide a copy of Adm. Allen's guidance referred to in the press release. We also asked if they could provide the number of U.S. hulled skimmer vessels, given that "an adequate number of U.S. hulled vessels can not be engaged" is a trigger for a Jones Act waiver. On this subject we were told this was not public information. In spite of this lack of direction, we filed our request with Rear Adm. James Watson's office on Monday June 21, as was generally directed in the press release.

To date we have not received any correspondence relative to either of our requests. Through the efforts of Todd Bertosen of Senator Hutchinson's office, we were told that our request is being reviewed by Matthew Weakley of the Unified Area Command Center Critical Resource Unit. We have e-mailed Mr. Weakley for questions and status updates but have not received a response. Mr. Weakley informed Mr. Bertosen that one of our non-skimmer vessels will be rejected because there are U.S. vessels that can fill the need. This is not the case given that there are no U.S. hulled vessels with both boarding and ferry capabilities in the U.S. We will respond to this anticipated rejection if and when they engage in communication.

We have heard on many occasions that Jones Act waivers have not been requested. Even though that is an incorrect statement, it begs the question as to why the company with the most standing to make such a request, BP, has not made requests for waivers for these specialized vessels when there are no more U.S. hulled skimmers available.

The explanation is that BP has chosen to "disperse and sink" the oil rather than to "surface and collect" the oil. Sinking and emulsifying the oil keeps the problem out of site and better serves BP's financial interest than does removing the oil from the water. By sinking and dispersing the oil, BP can amortize the cost of the clean up over the next 15 years, or so, as tar balls continue to roll up on the beaches, rather than dealing with the issue now by removing the oil from the water with the proper equipment. As a financial advisor, I understand financial engineering and BP's desire to stretch out its costs of remediating the oil spill in the Gulf. By managing the clean up over a period of many years, BP is able to minimize the financial damage as opposed to a huge expenditure in a period of a few years.

There are arguments on both sides of the dispersants debate and unfortunately, the cost of this grand and unprecedented experiment they are conducting with the environment and people of the Gulf will not be fully determined for another 20 years.

Even if BP continues to refuse to utilize specialized equipment for remediating the oil, providing a Jones Act waiver for these specific purpose vessels will allow other governmental entities such as states, parishes and counties the option of utilizing this type of equipment to defend their shores.

I, therefore, respectfully request the Committee's support of the following actions:

- Continue to support BP's efforts to close and cap the *Deepwater Horizon* Well but not at the expense of removal and recovery of existing oil in the gulf.
- Take all steps necessary to force BP to recover and remove oil from the surface of the Gulf.

- Take steps to cause BP to stop using sinking agents and dispersants so that the oil remains on the surface where it can be identified, tracked and removed.
- *Cause the Jones Act to be waived for specific efforts of oil removal and recovery, thereby paving the way for foreign equipment and experts to assist in the Gulf.*
- Force BP to focus on removal and recovery efforts in both shallow and deep water zones.

Thank you for your consideration of allowing a Jones Act waiver for these specialized vessels.

BP Timeline

Spill rate 1.6mm gallons per day

Saturday, June 5th—ship proposal sent to USES via Chain
 Wednesday, June 9th—skimmer proposal sent to USES via Chain
 Friday, June 11th—call from Ray Veatore, BP Public Relations
 Saturday, June 12th—Call from Mark Truxillo, BP Acting Team Lead Equipment Logistics
 Sunday, June 13th—proposals for ship and skimmers sent to BP, Mark Truxillo
 Sunday, June 13th—call from Veronica Brown, BP Team Lead Vessels
 Monday, June 14th—proposal for ship and skimmers set to BP, Veronica Brown
 Wednesday, June 16th—waiver request sent to Adm. Thad Allen’s office
 Monday, June 21st—waiver request sent to Rear Adm. James Watson’s office

SUPPLEMENT TO COMMERCE COMMITTEE TESTIMONY—JUNE 30, 2010

Presented by: Fred McCallister, Allegiance Capital Corporation

I. Introduction:

1. Allegiance Capital represents European based foreign flagged, highly specialized marine equipment and the experts that have the scale and capacity to effectively participate in the removal of the surface oil in the Gulf.

2. We are testifying to express our deep concerns as to why BP continues to resist the use of an armada of specialized oil recovery and removal vessels that today are parked in foreign ports awaiting the opportunity to help.

3. We believe key to minimizing the continued damage to our marine environment and the economies of the Gulf States is the removal the oil rather than dispersing and sinking the oil. The only certain way of limiting the impact of the spill is to:

- successful closure and capping of the well, and;
- the recovery of the 3,500 sq. miles of oil currently on the surface of the Gulf.

II. Key elements to this effort require this Committee’s understanding of:

1. BP’s current policies in the Gulf can be characterized as:

“Disperse and Sink” Policy

- The unprecedented use of dispersants and sinking agents being used below the surface as well as on the surface to cause the oil to break up and sink, or remain below the surface has the following benefits for BP:

- Dramatically reduces the measurability of the spill and therefore reduces the amount of statutory damages and royalties that can be assessed against BP. (BP faces fines and penalties related to the Oil Pollution Act of 1990 and the Clean Water Act. Of note is the fact that under the Oil Pollution Act BP may be held responsible to pay an 18.75 percent royalty for all oil lost from the well. Also, under the Clean Water Act BP may be fined \$4,300 for every barrel of oil released into the Gulf.)

- Allows BP to conduct its clean up as tar balls arrive on the shores in the marshes of the Gulf over the next 15 years rather than removing the oil in a few concentrated months.

“Keep in Control” Policy

- BP has kept control of all aspects of the oil recovery and cleanup efforts. This policy was highlighted by their eagerness to establish the \$20 Billion Dollar Escrow Fund as a gesture to our government in return to be allowed to continue

to operate with policies that are in the best interest of BP but not in the best interest of the environment and the Gulf region.

“Defer and Delay” Policy

- By deferring action, BP can delay cost today and amortize the cost over future years with less impact to BP’s shareholder value.

“Out of Sight, Out of Mind” Policy

- by keeping as much of the oil below the surface as possible they are keeping the magnitude of the spill from being apparent to us all.

III. A few key data points:

- Experts today estimate the collective area of the patches of oil on the surface of the Gulf is 3,500 square miles (the equivalent of 2,240,000 square acres). The largest foreign oil recovery vessels can, if operating on a 24 hr shift, remove and recover 170 square acres per day. This equates to 13,176 vessel days. Reduced to practical terms, should the well stop flowing oil into the Gulf today, and should the vast amounts of oil not re-suspend itself, and if we immediately deployed the six of the world’s largest oil recovery and removal vessels, the effort of removing the surface oil from the Gulf would take 6 years.
- Pursuant to our National Contingency Plan, or NCP, which is the Federal Government’s blueprint for responding to both oil spills and hazardous substance releases, Section 300.310(b) states: “as appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. *Sinking agents shall not be used.*”
- Oil suspended below the surface will, at unpredictable times, move to our Gulf shorelines and marshes below the surface making surface removal impossible. This situation currently exists and will magnify itself exponentially if the continued use of sinking agents are allowed. Some of our best experts are predicting that these problems could last for several years.
- Surface removal of the oil is the only way to mitigate the problem with certainty. BP’s policy of “Out of sight, Out of Mind” promoted through their use of sinking agents must be stopped and re-focused on surface recovery and removal of the oil. For the past several weeks we have worked closely with our foreign oil removal experts and carefully responded to BP’s questions, only to find ourselves caught up in BP’s “Defer and Delay” and “Disperse and Sink” policies. As a result we have been told by BP that they are studying the problem and analyzing the available resources. As of today BP has not engaged in meaningful discussions about the equipment we have offered. This is why we are here today asking for the Committee’s intervention to this situation.
- Our foreign partners and their governments have, as early as 4 days after the *Deepwater Horizon* explosion, offered equipment and technical expertise to address this environmental disaster. Should BP’s actions be allowed to continue we will truly be facing a very long term environmental disaster in the Gulf.

IV. We ask the Committee to take the following actions:

- Continue to support BP’s efforts to close and cap the *Deepwater Horizon* Well but not at the expense of removal and recovery of existing oil in the gulf.
- Take all steps necessary to force BP to recover and remove oil from the surface of the Gulf.
- Take steps to cause BP to stop using sinking agents and dispersants so that the oil remains on the surface where it can be identified, tracked and removed.
- *Cause the Jones Act to be waived for specific efforts of oil removal and recovery, thereby paving the way for foreign equipment and experts to assist in the Gulf.*
- Force BP to focus on removal and recovery efforts both shallow and deep water zones.

By taking such actions this committee can initiate a global response to this massive disaster. By any measure, continued delay will cause unnecessary damage to our marine environment, wetlands, and to the citizens of the Gulf Region.

We continue to stand by waiting for someone in control to give us the opportunity to respond. Our vessels and experts can be in the Gulf Region within days.

In the supplemental information we have provided you will find information describing in detail the types of equipment and technologies available. We stand ready

to work with this committee in any way that you find helpful in order to address this most important problem.

The CHAIRMAN. Thank you very much.

I'm going to ask a question, Mrs. Anderson, Mrs. Roshto, that's—is—will be hard on you, emotionally, but which is extraordinarily important for setting the whole concept of what we're discussing here, and that is the meaning of the word "loss of society." Each of you, in your testimony, talked about it, but there's a little difference between giving testimony and between answering questions about that.

So, you know, your husbands were working offshore, on a mobile oil drilling rig. They were working under maritime laws that, as you indicated, yourselves, don't apply to those of us who work on land. These laws have a variety of names, like the Merchant Marine Act, the Death on the High Seas Act, and the Limitation of Liability Act. Professor Galligan and other lawyers in the hearing room can tell us more about these laws.

But, the bottom line has to do with accountability. And when people get killed or injured on a mobile offshore oil rig, they can't hold companies accountable in the same way as if it had happened on land. But, the key to all of that, it seems to me, is the meaning of the word "loss of society," which, if you present that to the American public, they don't really know what one means by that.

You uniquely, both of you, understand that fully. You've talked about that. But, I would like to have you again stress what that means, in terms of your families, the adjustments that you have to make, what you're going through, the pain and suffering aspect of all of this. It's very important that we understand that very closely.

So, Ms. Anderson, I don't want to put that burden on you or Ms. Roshto, but, Ms. Anderson, could you please say—respond to that?

Ms. ROSHTO. Go ahead.

Mrs. ANDERSON. It's a—the loss of the love of my life. It's very hard to explain, but I will try my best, and, with Jason's help, maybe I can convey it to you.

It's everything. It's his touch. It's being able to talk to him. It's being able to confide in him, and him confide in me. It's being able to ask for his advice in something, not just to—how to mow the grass or how to—when to take out the garbage. It's not just that. It's having him sit beside me in church, and, when he understands the message, he holds my hand. It's the one person—Jason is the one person that I knew would always be there for me, no matter what. Even if he disagreed with me, he would still be on my side, and somehow we would come up with a compromise together.

It's not just a job. Jason loves his job. But, his job as a husband and his job as a father, too. All of those things are gone.

I don't—I'd give it all back and—to have him come home, even if he was jobless. If I could just have him come home, and—I know that that can't happen. He—he's everything. He's the breath in my lungs. He's the beat of my heart. He's the skip in my step and the—the dances that we shared together, all—it's all gone.

I am trying to convey that to you as best that I can, but the love that I have for Jason is more oil that's spilled out in the Gulf than anything. It's more water that's on the Earth, more air that's here in this room. It's more than anything.

Thank you for letting me say that. Thank you for letting us be here.

The CHAIRMAN. Thank you very, very much.

Mrs. Roshto.

Mrs. ROSHTO. A loss of society consists of the positive benefits that derived from Shane's existence. What would he have contributed if he would have survived, in terms of support, assistance, training, comfort. And in that, what Shane would have not only provided for me, but for Blaine, the moral support that he could give a son. I can give support to Blaine, I can tell him, you know, "You hit the ball right, son," or, you know, "You played good today." But, it's different coming from a father to a son.

The support that Shane—that now I have to pay somebody to mow my lawn, I now have to pay somebody to come in and fix what breaks at my house; whereas, when Shane was home, the 3 weeks he was home, he dealt with that, he fixed it, he did it. Now I have to spend extra time making sure that what I do around the house is done right, or now I have to make sure that I'm giving Blaine the support of both parents, a father and a mother. I celebrated Father's Day this year. I mean, now I am the mother and the father.

And that's what a loss of society, to me, is—a loss of his assistance and support. He supported me. Shane, when he decided to go offshore was because I got pregnant. He stayed offshore to put me through school. I went to school every day of the week, but I was at home with my son every day of the week. Shane stayed offshore to provide a lifestyle for that. That's the type of support that I lost.

I didn't get to just receive my diploma from college because of the accident, but he stayed offshore to provide a lifestyle for that. And that's the support that I lost. That's the loss of society, to me.

The CHAIRMAN. I thank you both very, very much.

Senator Hutchison.

Senator HUTCHISON. Well, Mrs. Anderson and Mrs. Roshto, you have been so compelling, and I appreciate that you have come here to talk about your personal problems with the lack of conformity and understandable laws that would affect your future. So, thank you for putting that in such personal terms.

I want to ask Professor Galligan just about how we got to this point, where the Limitation on Liability Act put this bifurcation of rights in place, between land and sea, and the different liability that can be assessed to the different entities. And let me just ask you to put it in perspective, also, in conjunction with what other countries do. Is there this type of confusion in the law in other countries, or limitations that would make it a norm in the maritime industry, or are we unique in that?

Dr. GALLIGAN. Let me try to answer it this way. You said the limitation law and then talked about the damage differences, so let me start with the damage differences and then move to the limitation law.

I think we arrived at having different measures of damages, for several reasons. One is history, is—as the law of wrongful death was evolving, both on land and at sea, in the latter part of the 19th century and the early part of the 20th century, it was a different world. Workplace death was, sadly, much more common than it is today. The law's view of children and family members focused

much more on the economic than it did on the familial/relational aspect.

Albeit at that same time, land law was evolving to begin to recognize loss of society damages. But, what happened was that the Jones Act—and the same Jones Act that Mr. McCallister's talking about, but, again, a different section—and the Death on the High Seas Act were both passed in 1920. It really was a different time.

Since 1920, land law has evolved to predominantly allow loss of society damages, but maritime law, in the case of the Jones Act and the Death on the High Seas Act, have not. And I think one of the reasons is, is that you have not comprehensively gone back and looked at the comparison between the two schemes—land-based law, maritime law, territorial waters, high seas.

The one time that you really did go back and look at it was 2000, after Korean airline and TWA, and, at that time, you amended the law to make loss of society damages more common.

Now, shifting to limitation. Limitation of Liability is, again, 1851, passed to encourage investment in maritime shipping and commerce. Other countries do also have limitation of liability acts. There's an international convention on limitation of liability. I wish that I had more carefully gone back and looked at international law for this hearing than I did, and I'd be happy to supplement any answers I give.

But, it is a hodgepodge of different approaches. The international convention is based on monetary units, not dollars, based on types of damages. So, there are differences.

I would say, though, in looking at an—even if it is a norm in the maritime industry, the question is, Is that norm sensible and fair today? And my answer would be that it is outdated, and that, too, deserves your reconsideration.

Senator HUTCHISON. Thank you. I just want to say, Mr. McCallister, I think you laid out the problem very well, and certainly, from your personal experience, it's clear that there is no intention whatsoever to make it easy to waive the Jones Act in this response.

In fact, I want to clarify the record, because I was a little confused by earlier opening statements. There has been no Jones Act waiver within the 3 nautical miles of the coastline to date in this accident. And that is a fact. I know that you have had that same experience, but it was confirmed to me by my staff, that the ships that are available can go in the international waters, they just can't come in within the 3 nautical-mile limit. Is that your understanding, as well?

Mr. MCCALLISTER. That's correct, Senator. And my understanding is that, yesterday, there was actually some waivers issued for the vessels that have been working outside the 3-mile limit but now need to come to port. And so, for those specific vessels, my understanding is that there has been a waiver issued for the—for those vessels. And I don't know what that number is.

Senator HUTCHISON. But, you have still not heard anything with your offer of skimmers, is that correct?

Mr. MCCALLISTER. That's correct. We have not.

Senator HUTCHISON. OK. With that, then, I thank you very much, all of you, for adding so much to our body of knowledge.

Thank you.

The CHAIRMAN. Thank you, Senator Hutchison.

Senator HUTCHISON. Oh, Mr. Chairman, could I submit, for the record, the editorial from the New Orleans *Times-Picayune* today, saying, "Cut Red Tape and Get More Skimming Vessels to the Oil Spill"?

The CHAIRMAN. So ordered.

Senator HUTCHISON. Thank you.

[The information referred to follows:]

CUT RED TAPE AND GET MORE SKIMMING VESSELS TO OIL SPILL: AN EDITORIAL

The Times-Picayune—June 30, 2010

U.S. Coast Guard Adm. Thad Allen talks like he understands how crucial skimming vessels are to removing oil from the Gulf of Mexico before it washes ashore. More skimming vessels are needed to remove oil from the Gulf of Mexico.

"Skimmers are our critical mass right now," he said recently. "We need to put those wherever we can get them. And we want to get them from wherever they are available."

But Adm. Allen, who is the national incident commander for the oil spill, hasn't backed up those words with action. According to BP's most recent estimate, 433 vessels are collecting oil from the runaway oil well, but only a third of them are designed specifically for oil skimming.

In the meantime, vessels that could be used to clean up the massive amounts of oil are being blocked by a sea of red tape. There are 850 skimmers in the southeast United States and 1,600 nationwide, but the Oil Pollution Act of 1990, which requires regions to maintain levels of equipment such as skimmers, is preventing some resources from coming to the Gulf. The Jones Act, a maritime law designed to promote U.S. shipping interests, is complicating efforts to get foreign boats here.

"It is hard to believe that the response is this anemic," Sen. George LeMieux of Florida said on the Senate floor last week. "It is hard to believe that there is this lack of urgency or sense of purpose in getting this done."

The government isn't alone in showing a lack of urgency. BP has declined an offer from Shell to bring an oil recovery boat that is sitting idle in Alaska to the Gulf. "Nothing would prevent it from working right now in the Gulf of Mexico," said Curtis Smith, a Shell spokesman. "It remains available in the event that BP reconsiders."

BP's refusal to accept help from Shell is frustrating. Doug Suttles, BP America's chief operating officer, told *The Times-Picayune* last week that the company "threw everything at" the out-of-control well. But everything apparently doesn't include the Nanuq.

As for the Oil Pollution Act, Adm. Allen says that discussions are going on within the administration about how to free up equipment. That's a change from the admiral's initial position, when he said that leaving other areas vulnerable was one of his biggest concerns. Given the scope of this disaster, it's hard to understand why the government hasn't moved more quickly from discussion to action.

When it comes to the Jones Act, even less is happening. Adm. Allen has promised to process waivers to the act quickly, but so far none have been granted. The admiral has downplayed the effect of the law on the cleanup, but the experience of Ecoceane, a French company with a fleet of skimming boats, suggests that it is an impediment. Eric Vial, the company's President, said it sold nine boats to a Florida contractor so that the Jones Act wouldn't be a factor. Those boats could have been in the Gulf much sooner, he said.

Sens. Kay Bailey Hutchison and John Cornyn of Texas, along with Sen. LeMieux, have proposed legislation to temporarily waive the Jones Act for oil spill response vessels, and that's a reasonable step in the face of this disaster.

Local officials who have been begging for more skimmers shouldn't have to wait for help because the Federal Government refused to deal with bureaucratic barriers.

The CHAIRMAN. Senator Wicker, you're next, but I also notice that Senator Thune has come, and he is Ranking on the relevant Subcommittee.

So, when we come to you, you get an extra 2 minutes to sort of say something, and then also ask your questions.

Senator WICKER.

Senator WICKER. Well, thank you.

And let me say, to Mrs. Anderson and Mrs. Roshto, we all appreciate your testimony, and we appreciate the difficulty that you must have had in coming here. You shouldn't have to be sitting there, talking about legal points. But, it has become necessary.

I think everyone here would agree that you're entitled to equal treatment under the law. And to the extent that your claim is not deemed as valuable as the claim of other people in like circumstances, we appreciate the difficulty you had in coming here and bringing that to our attention, and we appreciate it. And I hope there is a remedy for you, and I believe there is.

Let me just ask, with regard to Mr. McCallister's testimony, How long now have you been pursuing this waiver?

Mr. MCCALLISTER. The waiver filing—first waiver filing, with Admiral Allen's office, was on June 16.

Senator WICKER. OK, so 2 weeks. And how many different offices, corporate and government, have you contacted or been to?

Mr. MCCALLISTER. Just a—probably a fairly accurate guess would be about eight.

Senator WICKER. OK. And have you calculated the potential oil that could have been skimmed if these hurdles had not been in place, had you been able to skim at your capacity each day?

Mr. MCCALLISTER. Well, Senator, I have not added that up entirely. The—each one of the skimmers that we proposed—and these are relative to the largest skimmers that can be made available, which we currently have available now, that's come available to us within the last 2 or 3 days—but, the skimmers that were proposed originally will skim about 3,500 gallons per hour, and we have a fleet of 25 of those that we proposed to be made available.

So, in addition to that, there are very large skimmers with higher capacity. The skimmers are very efficient. They are specialized vessels that, you know, unlike what you see, which is dragging boom behind boats and gathering up and either burn or trying to siphon off the oil, these are skimmers that actually collect the oil in the belly of the vessel, run it through a weir system, and separate the oil from the water. So, these are highly efficient, specialized vessels.

Senator WICKER. Now, once that separation is made, what is then done with the water?

Mr. MCCALLISTER. Well, the water that's clarified can go back into the Gulf if it's—you know, meets the standards to go back into the Gulf. But, it—but, these particular vessels are not—they don't have centrifuges on them, like the—you know, like Kevin Costner's centrifuge that they're trying to get approved, so the water would have to be treated before it can go back in the Gulf. But, the bulk of the oil is separated, so you can treat lightly contaminated water, take the bulk oil and either process it or dispose of it, as appropriate.

Senator WICKER. Yes. Well, you know, we've all developed a degree of expertise, which is growing daily in this two-and-a-half-month tragedy. It seems astonishing to most people, but environ-

mental statutes sometimes are preventing us from cleaning up the water, because not all of the water that is discharged back into the Gulf is 100 percent oil-free. But—

Mr. MCCALLISTER. Correct.

Senator WICKER—to me, if we can accept a process where 100 percent of the oil is taken out of the water and only—and the water that is put back in only contains 1 or 2 percent, then, to me, you have a 98 percent or 99 percent success rate.

The CHAIRMAN. Senator Wicker, I—

Senator WICKER. We ought—

The CHAIRMAN—I don't—

Senator WICKER—we ought to be—

The CHAIRMAN—mean to disrespectful, sir—and you can ask any questions you want—but, it is fully my impression that this hearing is about the two young women, and others similarly suffering, and what—how they are to be treated, under different sets of laws, in a much more fair manner. I thought the point of this hearing was to have—to share in their grief, to share in their solution to the problem that they face, as opposed to an analysis of the environmental cleanup. I think that's the subject of the hearing, but it doesn't—

Senator WICKER. Well—

The CHAIRMAN—seem to me to be appropriate to their—

Senator WICKER. Well, my questioning—

The CHAIRMAN—suffering.

Senator WICKER—my questioning is over, but I would simply point out to the Chair that a great deal of Mr. McCallister's testimony was about his frustration. And the Ranking Member also has expressed her frustration about the process. So, I was merely following up on comments that were already made. But, I—

The CHAIRMAN. Well, we all share that.

Senator WICKER. But, my questioning is over.

The CHAIRMAN. We all share that. But, the point, to me, is the two very courageous young women who have no husbands.

I thank you, and I go to Senator Isakson. He's not here.

Senator Pryor? Not here.

Senator Begich.

**STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Thank you. Thank you, Mr. Chairman. And thank you for redirecting the conversation, because that's what I came to at least hear and listen.

I sympathize with your loss, your two losses, but also the nine other families that need also be recognized. And I sympathize with your story, because I lost my father in a tragic plane accident when I was 10. My mother was 34, had to raise six kids—four boys, the youngest being four. So, I sympathize with you a great deal.

And so, today—and I'm glad, again, Mr. Chairman, you redirected the conversation, because I appreciate Mr. McCallister's issues, and I hope that the Administration works forward and moves all the equipment. They're doing an incredible job.

But, I want to dive into the issue that we hear, and that is really, How do we ensure proper compensation? And there is no real compensation that can be done in numbers.

Someone from Alaska, myself, I saw what the *Exxon Valdez* did. We had waited 20 years for resolution. We had no loss of life, but—except, we had loss of life over 20 years. Twenty percent of the people who waited patiently for their claims to be settled—took 20 years—twenty percent of them died in that process, waiting.

I am hopeful, whatever we do here and on the floor of the Senate, that we do not have that same delay, not only for those, as you've mentioned in your testimony, of those who lost business in—impact—but specifically to the 11 families that lost life. And so, hopefully we will get focused on this issue in a way that really makes sure the laws are equalized.

And I think, Professor, you gave an interesting comment, and I just want to ask you this question. And I'm a new member to the Senate. I'm going to claim this for as long as I'm here. And I'm from Alaska, so I get a double. And so—and I don't want to be cynical, but we're going to make a lot of great statements. People like me are very passionate about making sure people get just compensation. Because, I can tell you, in our loss, we did not. And that was, you know, 30-plus years ago, as an individual or a family. So, I'm anxious—and this will—you're going to step—I'm going to ask you to step out a little bit here on it—and that is, even though the laws have not been changed in so many years, and we tinkered with them a little bit, some years ago, do you think there's the political will to get beyond the debate of liability caps and torts and all that that's—you know, "trial lawyers versus corporate America" debate that I have a feeling this will fall into, which is really too bad, because it's really about people? It's about ensuring that families get what they deserve with what's owed to them for their loss. Do you think, honestly, that we can get, in this political body, beyond that debate, which will be trial lawyers versus corporate America and who represents who?

Dr. GALLIGAN. I—you are asking me to step out—

Senator BEGICH. Darn right. People who come and testify, at least while I'm here, and I'm sitting here, are going to do that.

Dr. GALLIGAN. I certainly hope that you can get outside that debate. I think the issue, when we talk about loss of society damages under the Death on the High Seas Act, or we talk about it under the Jones Act, or we talk about it on land, I couldn't speak more eloquently than Ms. Anderson and Ms. Roshto spoke about how real that loss is. So, I don't think that's about lawyers who represent primarily plaintiffs or lawyers who represent primarily defendants, and I don't think that's about business in corporate America. I think that really is about people and about holding other people accountable.

I would say this—and now I'm really out on the limb—if there's—

Senator BEGICH. I like that.

Dr. GALLIGAN—some other reason to protect some industry or some business, I don't think it's right—moral statement by the professor—to do it at the expense of people who suffer a very, very real loss. It should be a separate issue.

Senator BEGICH. Well, I appreciate that. And I didn't mean to put you on the spot, but I am very sympathetic, and want to make sure these laws are corrected. Because it's unfair that, as very eloquently spoken, that, you know, on land versus on sea, there are two different methods, which doesn't seem logical at all. And I think to the American people it doesn't make sense—not only to the 11 families, but to the American people, in general, it just doesn't make sense. And sometimes things we do around this place don't make sense. And this is a moment, probably, that we can make some sense here, and do the right thing in quick order.

Again, I come from two ends of the equation, someone who was 10 years old, who lost a father, to sitting here and looking back at what happened down at *Exxon Valdez*, and saw what it took, for 20 years. And then, when it finally made it to the Supreme Court, in my personal opinion, the victims got ripped off. They went from \$5 billion down to 500 million. And then Exxon waited and argued over paying the interest that was due on that 20 years. So, that's just not right.

And so, again, your two testimonies were passionate—without doubt, convincing to me. And I recognize that you don't want to be lumped in, but you want to have that choice. You make that decision of how you will gather that compensation and that just result, but, at the same time, not in a delayed action. So, I really appreciate your two testimonies.

Professor, thank you very much.

Mr. McCallister, I didn't have anything for you, because I think we could take your issue off record and go figure it out. But, this is what I came to hear, were these three. So, no disrespect to you.

Thank you all very much.

The CHAIRMAN. Thank you, Senator.

Senator LeMieux.

**STATEMENT OF HON. GEORGE S. LEMIEUX,
U.S. SENATOR FROM FLORIDA**

Senator LEMIEUX. Thank you, Mr. Chairman.

I want to extend my condolences to you, Mrs. Anderson and Mrs. Roshto, and thank you for being here. I know it must have been incredibly difficult for you to talk today about your loss and how much your husbands mean to you. And, to echo the comments of my colleague from Mississippi, Senator Wicker, we all believe that there should be equal justice under the law. There is no reason that your losses should be treated differently than losses that occur when someone has a tragedy like this on the land versus on the water.

So, I hope that we can work, Mr. Chairman, in a bipartisan way to address that, going forward.

Now, Mr. Chairman, we do have Mr. McCallister here. And if you will indulge me, I do want to speak to him about this issue of skimmers, because, this tragedy is an ongoing tragedy that has been described by some as "a slow hurricane." And the reason why is that, for a state like mine, in Florida, this oil is washing onshore. We are creating victims every day, maybe not as pronounced as Mrs. Anderson and Mrs. Roshto's experiences. But, for example, domestic violence is going through the roof in northwest Florida right

now, because of the stress that this situation is causing on people. People have anguish in their eyes.

When I was in Pensacola on Monday, I talked to people there who are seeing all this oil wash up on the beach and ruin their way of life. People move to Florida because they love the water. And it's not just a recreational thing for us, it's part of who we are in Florida, like it is in many other Gulf states.

I have tremendous frustration about the lack of these skimmers. Now, I've been talking about it for weeks. And this is not a Democrat or Republican issue. This is an issue of getting the job done.

Now, you talked about trying to get a waiver of the Jones Act. Senator Hutchison and I have legislation to waive the Jones Act. We've been told by the Coast Guard, we don't need it. But, the truth is, is that there have been 64 offers of foreign assistance, and 7 accepted. The Coast Guard now says that they will be accepting 22 offers. We have 2,000 skimmers in this country, domestically, yet only 400 are in use. The Coast Guard and EPA signed an Executive Order, which I'm thankful for, yesterday, to waive the restrictions on domestic skimmers to bring them to the Gulf of Mexico. But, that's 70 days into this. And we need more help.

There's a ship right now that's steaming to the Gulf—it's actually, probably in the Gulf, that you probably have seen on television, called "A Whale." It's the world's largest skimmer. It's bigger than an aircraft carrier. It can do more work in a single day than half of the skimmers that are out there, combined. And it doesn't yet have approval to do this work.

So, I want to thank you, Mr. McCallister, for bringing this issue. I want to thank our Ranking Member for having you come and testify here today, because this oil, Mr. Chairman, is going to have profound effects upon the Gulf Coast states. It's not going to just affect them for months. It's going to affect people for years.

It's not only people losing their ability to make their wages. You know, in Florida and other Gulf states, these folks make their living, for the whole year, between Memorial Day and Labor Day. And no one is coming to the beach anymore because of this. Plus, what's it going to do to the seafood industry? What's it going to do to the folks who work on these offshore rigs? Are they going to be able to continue their way of life?

This disaster is having a profound effect upon my state, as well as Mississippi, Alabama, Louisiana, and Texas. And we just need to see some more urgency, Mr. Chairman.

So, if today is not the day to talk about this, I would ask, and I think other colleagues would join me, sir, that we have another hearing to talk about the lack of response, and what we can do to create a sense of urgency. I know it's something that you care about. And you've been passionate, Mr. Chairman, about this government, when it has the responsibility to do its job, whether it's a coal mine disaster or this disaster, that the government does its job.

So, I would respectfully suggest that maybe on another day we could have a hearing to talk about that more fully.

And I thank you for calling this hearing today.

The CHAIRMAN. Thank you Senator.

And, Senator Lautenberg, you're next.

Senator LAUTENBERG. Thank you, Mr. Chairman.

And, once again, we appreciate the difficulties, to Mrs. Roshto and Mrs. Anderson, in having to review your personal pain. But, we thank you for doing it. And each of you has made a comment—OK, point it in the right direction—the—each of you—Mrs. Roshto, you said that your husband said that he was worried about all the mud they were losing from the well, and pressure the men felt to deliver more oil quickly. I quote you correctly here. Mrs. Anderson, husband said, Jason, that “There’s a bunch of stuff going on, and I can’t talk about it now. The walls are too thin. I will talk to you when I get home.”

So, each one of your husbands worried about the safety of the rig. Fair enough? Do you think that your husbands would have been—thought they would have been punished for speaking out about this?

Mrs. Anderson?

Mrs. ANDERSON. I don’t know if he would have—Jason would have been punished, per se, if he had spoken out. I know that Jason would have spoken out if he felt like he wasn’t going to be able to come home. He would not have done anything that would have prevented him from coming home. He would have not done anything that would have harmed anyone.

Senator LAUTENBERG. OK. But, he was—but, said that he “can’t talk about it.” So, he indicated that there was concern about—

Mrs. ANDERSON. There—yes. He very much so indicated that he was concerned about something, and just didn’t want me to worry about it. He didn’t give—

Senator LAUTENBERG. Mrs. Roshto—

Mrs. ANDERSON—want to give me something else to worry about.

Senator LAUTENBERG. Thank you.

Mrs. Roshto, your husband indicated that he was worried about the mud they were losing from the well, and felt that it was unsafe for them—those on the rig. Is that correct to conclude?

Mrs. ROSHTO. I don’t think he ever felt personally unsafe, per se, to the point to where he would have—

Senator LAUTENBERG. Endanger, yes.

Mrs. ROSHTO. Yes, endangered. But, he did, numerous times—the last time he was home, the weeks leading up to the accident that he was on the rig. There were many conversations that we had that we had never had before. He had never shown more concern on the rig than he had on this hole.

Senator LAUTENBERG. Thank you.

Mr. McCallister, hundreds of American vessels have responded to the cleanup. A number of foreign vessels also assisting in the cleanup efforts. However, there are a number of American vessels standing by, waiting to be called. Now, do you think that we ought to give preference to American vessels, American workers in the Gulf Coast cleanup, or should we look to competition between foreign flags and American flags?

Mr. MCCALLISTER. Senator, to the extent that we have the types of vessels and the quantities of vessels that are U.S.-hulled, we should use them. We have to keep in mind that there are a couple of factors.

One is that the types of vessels that we're talking about are not commonly available in the U.S.—

Senator LAUTENBERG. Well, I—

Mr. MCCALLISTER—specialized—

Senator LAUTENBERG.—I think it's fair to say that Admiral Allen, who is making the decisions about that—and everyone seems to agree that he's really thorough, that he's on the job. I know him, as the Coast Guard Commandant, for some years. He's a man whose judgment is beyond question. So, do you think he's wrong here to say that we ought to move over to the foreign vessels?

You know, I was stunned to read—to reflect on your testimony—“Ships could carry 500 workers or more, with all the amenities of a cruise ship.” Well, that strikes me as not being very impressive, I must tell you. I was on a cruise ship, and they—someone who's working every day to get something done as important as removing this oil doesn't need those amenities. And I think that it's quite clear that we're looking, here, at bringing this large cruise ship to house workers—say the Jones Act is the only reason this proposal has been rejected. But, that doesn't seem to be the case. It's not because the Jones Act has its limitations to a couple of miles off coast, and they can be called upon. But, I think the challenge to Admiral Allen's judgment, who has shown incredible leadership in this terrible situation, leaves us scratching our head and wondering what it is.

Do you have any experience in operating—I know you work for a fund, or own a fund, however, do you have any experience in operating or owning skim vessels or cruise ship vessels?

Mr. MCCALLISTER. No, sir.

Senator LAUTENBERG. Mr. Chairman, we have problems here. And we have two women who survived enormous pain. My mother was 37 when my father died. I had already enlisted in the Army; I was 18. And the pain of my father's death was incalculable in any way. He didn't make much money. It wasn't his money, it was his presence that counted. It was his part of the family. It was being dad to two kids. That's what it was. And not to recognize pain and suffering at—if some is working at sea or someone's working on land—strikes me as being incredulous.

Thank you very much, Mr. Chairman.

Thank you both, again, for your testimony.

The CHAIRMAN. Thank you, Senator.

And now Senator Thune.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman. I want to thank you and our Ranking Member for holding today's hearing.

And I also want to thank our witnesses for joining us. In particular, Shelley Anderson and Natalie Roshto, who are testifying today.

As we look for ways to stop and clean up this spill, we cannot lose sight that not only is this an economic and an environmental tragedy, but it's a human tragedy, first and foremost. And we can't lose sight of the 11 lives that were lost during the explosion of that rig.

So, we thank the two wives for being with us today and for honoring their husbands' memories by joining us as we look for ways to improve the industry and the government response to this tragedy.

Mr. Chairman, British Petroleum has publicly declared that they are the responsible party. It's critical that they be held to account for the environmental/economic damages caused by the ongoing oil spill in the Gulf. Victims, like the two wives who are with us today, must be made whole as fairly and quickly as possible. Beaches and marshes must be cleaned, and local economies put back on strong economic footing.

It is equally important that the Federal Government response is adequate to address the ongoing concerns in and around the Gulf. And we also need to look at ways that we can cut through the red tape, some of which has been mentioned today, and provide as much flexibility as possible to local governments as they are dealing with this tragic spill.

It's important, Mr. Chairman, that Congress take the necessary steps to prevent such an accident from occurring in the future. And of course, it's widely discussed that Congress may turn to an oil-spill response bill soon after the 4th of July break. I'm hopeful that we can find bipartisan policy solutions that will speed up the clean-up efforts, minimize potential for future spills, and address the concerns that are raised here today by the wives of the two gentlemen who were lost.

So, Mr. Chairman, I don't have any questions. I think the subjects have been covered fairly well here. I just wanted to express my condolences to these two ladies, and welcome the other members of the panel, as well, and thank them for the input that they provided on what is a very difficult and ongoing and tragic circumstance for, not only that area of the country, but our entire country.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thune.
Senator Vitter.

**STATEMENT OF HON. DAVID VITTER,
U.S. SENATOR FROM LOUISIANA**

Senator VITTER. Thank you, Mr. Chairman.

I'll be brief, as well. But, I just wanted to express three things.

First of all, I join with everyone in expressing our deep condolences to Mrs. Roshto and Mrs. Anderson. You have helped highlight that there is a clear injustice here. So, I look forward to working with others to solve that on a bipartisan basis. But, we certainly continue to hold you all up in our prayers, and your families, and the families of the other victims, very, very much so.

Second, I certainly want to join with Senator LeMieux in suggesting that it would be an appropriate topic for a further hearing to talk about the Federal response. I think, in many different ways, the Federal response has been, and remains, inadequate. I don't think we have enough assets on the problem. That's one of the major inadequacies. And I don't think that's fundamentally a Jones Act issue. I think that's an aggressiveness/Federal-response issue, because I talk to a lot of folks, with significant assets ready and

waiting to go, who have not been deployed. And 90-plus percent of those are domestic assets. So, I join with Senator LeMieux in suggesting we look further into that, Mr. Chairman, because, unfortunately, that's an ongoing issue.

And third, and finally, I have a particular concern and, I guess, question for Mr. McCallister about the cruise ship proposal. My experience in coastal Louisiana is that there are businesses right on the coast, from the Texas border to the Mississippi border, devastated economically by this event. They certainly include a lot of hotels, a lot of catering services, and a lot of folks who can provide, right on the coast, all of those resources. And I think it's fair and reasonable that we look to them first to mitigate their losses, before we do anything else. So, I am really at a loss for the immediate need for major use of cruise-ship-type vessels.

Mr. MCCALLISTER. May I respond, Senator?

Senator VITTER. Certainly. And I'm sorry I missed your testimony, but if you can lay out what the evidence is, or the study is, that supports the need for that.

Mr. MCCALLISTER. Well, I appreciate your raising the question again, because it's—even though I may have used the term “cruise ship amenities,” what we're talking about here is a vessel that has boarding accommodations and also has a ferry deck. And the reason that this particular vessel could be useful in the Gulf is that you have a very large parking area on the bottom that could be used for equipment storage, boom transportation, boat storage, animal rescue, that type of thing.

And it was also—this particular vessel was submitted, initially, in response to a request for boarding vessels. So, you know, we didn't conceive that this was a vessel that was needed, of our own design, and try to throw it at them. This was actually something that was an out-bound request from BP through environmental—U.S. Environmental Services. And so, we tried to respond with a vessel that could house people with respectable accommodations, but also provide an excellent work platform that could move up and down the coast, as necessary.

I agree, 100 percent. You know, taking away jobs or taking away economic opportunity is not a good thing. These vessels can be manned by local labor force and local workers, and that would be the intention. But, certainly, if this type of vessel is not needed by BP, you have no argument from me. I'm not trying to push it on anyone. They requested a boarding vessel. We did the work, brought them something for them to consider.

Senator VITTER. Well, just two things. First of all, I understand your description of the vessel. We're not talking about cruise ships—

Mr. MCCALLISTER. No.

Senator VITTER—or two shows nightly. I get that.

Mr. MCCALLISTER. Exactly.

Senator VITTER. Second, quite frankly, the fact that BP put out some solicitation about some category of ships doesn't boost my confidence.

And I'll tell you this anecdote. Very early on in the event, when I was in Grand Isle, which is our only inhabited barrier island, they had just closed the beaches on Grand Isle during the summer,

at their peak season, because of this event. So, at their peak economic season, Grand Isle was being shut down. At the same time, BP starts pulling in temporary housing—

Mr. MCCALLISTER. Right.

Senator VITTER—to put on Grand Isle, when every hotel and motel in sight has just been emptied out. So, I just offer you that one anecdote to suggest that the fact that BP may have asked for it at some point doesn't necessarily bolster my confidence. And I would encourage us all, again, to look to the areas and the people hit economically by this event, and give them the business first, and mitigate their losses first.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Vitter.

I want to return to the two people who I think this is—or, the three people who I think this hearing is about.

And I have to, in a sense, apologize. I understand the Ranking Member—people have rights to ask who they want to a committee hearing, but this was not my idea of what the Committee hearing was going to be. My idea was, it was going to be about you two fine young women. And the professor here, who knows about the law, and how we can make this right, which is our business as a committee. The other is also our business as a committee, but it was not, in my judgment, our business today. And I apologize, if you feel others have been sort of talking past you, because that's not fair. I've been to many coal mine disasters in my life, and when you're dealing with people who are hurting, you focus on the people who are hurting, and the investigations take place, and all of that happens, but you focus on the people first. That's my—at least, that's my code of conduct.

I want to ask something which doesn't make a lot of sense to me. There's a sort of difference in emphasis. A lot of people have said that Transocean spent a lot of time and money on safety training for their employees. Transocean says that its safety goal is an incident-free workplace, all the time and everywhere.

They evidently were—they won a safety award in 2008, were about to receive an award for going 7 years without a lost-time accident. Then—so, that's sort of over here.

Then over here, what we're trying to do now is to figure out what went wrong on April 20. The investigations aren't complete, but what we are trying to learn is that—BP and Transocean, with the approval of Mineral Management Service, MMS, that particular government agency that nobody had ever heard of until this oil-spill, and now everybody has heard of them, and they've heard of them with an enormous amount of disapproval—but, they decided, in a sense, to cut corners to get the job done quickly—BP and Transocean.

The drilling project was, in fact, behind schedule, and it was, in fact, over budget. So, BP wanted it done, because it was losing money—my interpretation of it. So, my question to each of you would be, Do you have any thoughts about whether oil rig workers get pressured to cut corners or engage in unsafe practices?

And I ask this question because it's exactly what happens in coal mine country. It's just exactly what happens.

Mrs. ANDERSON. I think if anybody is going to be in business, they're going to be in business to make money or they're not going to be in business very long. As far as my specific husband being pressured to do anything, I don't know that for a fact. I would—I do know that my husband, Jason, would not do something that would prevent him from coming home. If he knew about it, and he knew that it would prevent him from coming home, which is his number-one goal every time, is to—just to come home, he wouldn't participate in something that would prevent him from coming home.

The CHAIRMAN. Mrs. Roshto?

Mrs. ROSHTO. I personally don't think Transocean acted unsafely on purpose. My husband never—he had actually stopped a job, not too long ago, because of some things that were going wrong. And he did not lose his job. He always felt he could go to Transocean.

Now, let me say—Did I say BP? No. He went to Transocean, and told Transocean, you know, there was a problem. And he was able to stop the job.

Now, the weeks leading up to the accident, I do believe that Shane felt unsafe at times. He never—the words never came out of his mouth, and he never said, "I feel unsafe." From the conversations that we had, I gathered that he was unsafe.

I don't think that it was intentional on behalf of Transocean or BP. I believe that calls that were being made from higher above were forcing Transocean to have to cut corners, because of the contract they have. I do believe that it was coming from higher above, and the trickle-down effect was causing Transocean to have to cut corners.

The CHAIRMAN. Ms. Anderson, would you agree with what she said?

Mrs. ANDERSON. Yes, sir, mostly. I just would like to say that if somebody was cutting corners, and they think that the price of my husband's life is worth a battery not being changed or a boatload of drilling mud being unloaded sooner, they are strongly mistaken.

The CHAIRMAN. Yes, see, because, to me, it doesn't—it really doesn't matter if there is pressure.

Mrs. ANDERSON. That's right.

The CHAIRMAN. If it comes from on the rig, from the people there, or if it comes from, you know, Great Britain, or anywhere else. Pressure that comes from within a corporation comes from within a corporation, and the corporation is responsible, if that pressure does come, no matter in what way it comes. And that's why I think the consideration of how you are to be treated is so incredibly important.

I make the assumption that there was unsafe practice. I've just heard too much evidence. I'm not a scientist, I'm not—you know, but we have people on this committee, behind me, staff, who are experts in these matters, and I think there's a concern that there was unsafe hurry.

What I would ask to you, Professor Galligan, is to sum up what you think we ought to do, as a committee, to solve the problems as best as we possibly can—and of course, we can't do that entirely, but financially we can—of these two very courageous young women.

Dr. GALLIGAN. Well, I think, first and foremost, you ought to take a look at the Death on the High Seas Act, which does not allow recovery of loss to society damages for the survivors of victims who are killed on the high seas. And you ought to change that to allow loss of society damages to be recoverable, as Senator Leahy's bill proposes.

I would also encourage you to take a look at the Jones Act, as Representative Conyers' bill, which is in the House side, amends the Jones Act to also allow loss to society damages for seamen, and that would really line up everything so that it really was consistent.

I would urge you to seriously consider Senator Schumer's bill on the Limitation of Liability Act, and ask yourselves whether or not that Act, passed 160 years ago, when the world was a very different place, is still needed, is still essential, is still fair, and whether America ought to be a leader in saying, "We need to hold the maritime industry accountable." I would point out, on that regard, that we have many foreign ships who come to our courts and seek to limit their liability under the Limitation of Liability Act.

And third, I would ask you to consider the Exxon case, and the one-to-one ratio between punitive damages and compensatory damages in maritime punitive damages cases. That case decided an issue solely of maritime law. And let me repeat what I said before. The majority opinion says, "If Congress thinks another rule is appropriate, it is within Congress's power to articulate that rule." So, it is within your power.

And I would also remind you, as you well know, that that decision was uttered about 2 years ago, before something like the *Exxon Valdez* happened again. And now it has happened again.

The CHAIRMAN. I thank you for that, very much. It's a phenomenon, and an unfortunate one—and maybe it's not just us, in America, maybe it's people elsewhere—but, we—as a country, we do hold lives to be precious. We are shamed when things go wrong. We do find wrongness in companies. And it's always after something bad has been affected. I come from West Virginia, where the whole coal mining situation is—you have a disaster, and then, all of a sudden, people get together and we pass mine safety laws. And we did that several years ago. And there was the first Federal mine safety laws in 30 years. I'm embarrassed by that fact. Now we've had another disaster, with 21—now 31 people—or, actually 29, in that particular incident, but 31, in effect—have died. And once again, we're going to pass mine safety legislation.

And you ask, "Why can't we do it before?" And what I think you discovered, partly, is that there is tremendous pressure on corporations to make profits, and that that has its consequences—that has its consequences. And the consequences have been eloquently expressed by these two distinguished and courageous women.

I would now ask unanimous consent to put two statements in the record of the hearing. I ask that—and this will be done—a short statement by Shelley Anderson's lawyers, Ernest Cannon and Ben Barnes be put in the record.

[The information referred to follows:]

PREPARED STATEMENT OF ERNEST CANNON AND BEN BARNES
ON BEHALF OF SHELLEY ANDERSON

We have a sincere concern about the rights of those who died and were injured aboard the *Deepwater Horizon*. Almost a century ago, Congress enacted the "Jones Act" to protect those who were injured working on offshore vessels because of their hazardous occupation and because of their vital service to our economy. The Supreme Court of the United States and many appellate courts have recognized the need to protect seaman as wards of the court for these very same reasons.

Unfortunately, there are those who caused the explosion, the deaths and the injuries who are attempting to use other legislation called multidistrict litigation to frustrate the rights given by the Jones Act and the courts and to delay the injured and the families of the dead from enforcing those rights.

In the two months since this tragedy occurred, BP and Cameron have done everything in their power to prevent the victims from pursuing their rights in the forum of their choice and have instead filed motions to stay all proceedings against them until a committee called a MDL committee meets in Idaho in July. They have asked that committee to join all of the seaman's cases to those of the commercial fishermen, landowners and countless municipal and states claims. Instead of the judge or judges that were randomly assigned the cases, BP and Cameron want one judge appointed by that committee to hear all of the cases. It is reported that they have even lobbied for one judge by name. They are so convinced that their tactics will work that they have filed court papers saying it is a virtual certainty that these cases will be consolidated into the MDL.

If BP and Cameron get the results they want to achieve, it will be many years before any of these families are able to enforce the rights which Congress has given to them. Combining the families' cases with thousands of other cases in front of one judge cannot possibly serve the ends of justice.

We cannot allow these claims to be combined with commercial claims such as the claims in the *Exxon Valdez* tragedy which 20 years later are still not resolved. We cannot allow these claims to be combined with all other claims in an MDL as was done in the Toyota acceleration cases where the dead and injured will not see a courtroom for years.

The only solution is to allow Jones Act Seaman and their families the right to choose whether they want to be a part of the MDL. Therefore, I propose that seaman can opt-in or out of the MDL. This is the only way to fairly protect the rights of those who have given their lives and their livelihood as result of this tragedy.

The CHAIRMAN. Is Senator Klobuchar coming in? Otherwise, I'm going to give closing remarks.

[Pause.]

The CHAIRMAN. I'm going to give closing remarks.

This oilspill—

Senator Klobuchar, you're welcome to say what you want.

[Pause.]

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. I'm sorry. I was at the Supreme Court hearing.

Thank you. And thank you for your patience. Thank you, Chairman Rockefeller, for your patience.

I did an event in my state last week, and it was a little unrelated to the liability issues here you're talking about today. But, in some ways, it's completely related. And it was about the migratory birds, which no one's really dealt with yet, but we have 13 million birds, many of them from my State, and a half a million that are going to be heading down to the Gulf. That's where they make their home in the winter. As the oil goes into the marshes, we have no idea the effect it's going to have on all of these waterfowl. And the concern here is that they won't react to oil in a marsh. They react to predators, but not to oil in a marsh. And we can't exactly hold

up a sign and said, "Go to Texas instead, or go to Mexico instead." So, it's just one example of what you don't expect to be happening.

And obviously, there are much greater losses. And I appreciate—I heard, from my staff, about your testimony, and thank you very much for that. And I'm very, very sorry for your loss.

What I wanted to ask about, actually, was something that has a strange relationship to Minnesota. And that was the *Exxon Valdez* case, because it was a Minnesota law firm that represented the fishermen in that case. And so, I'm very well—there's a—aware of it. There's, in fact, a book, that I helped to edit at one point, called "Cleaning Up," about that trial and what happened with that case.

And I know that it took over 20 years, and 32,000 people saw damages delayed and slashed. Eight thousand of plaintiffs died before they ever got paid. I know Senator Begich asked some about that.

But, my question is if you think that there is a way to structure the law that we're looking at so that the companies are incentivized to pay claims in a timely manner?

Any ideas? Dr. Galligan?

Dr. GALLIGAN. Well, I—I'll start by saying that one way is to make the law clear. And so, the clearer the law is, the better able a company is to pay damages. So, if a company faces law that's unclear, then it doesn't know what the damages are. I think the Death on the High Seas Act here today presents an excellent example. People know there are bills that are pending, but they haven't been passed yet, and so, I think they're probably waiting to consider what Congress does. So, moving quickly on that would be important.

Another way, Senator, is to make punitive damages available for the arbitrary or willful failure to pay claims on time. Maritime law does that in the case of what's called "maintenance and cure," which is when a seaman is hurt and she or he has a right to recover a payment for maintenance and medical expenses until they reach maximum medical cure. If the employer arbitrarily or willfully doesn't make those payments, then punitive damages are available.

It's a little bit, Senator, like in bad-faith insurance cases in many States, when an insurer doesn't pay a claim, that there are penalties or attorney's fees that will be available.

So, those are certainly all vehicles that you could consider to use to encourage the timely resolution and fair settlement of claims.

Senator KLOBUCHAR. Mr. McCallister, do you have anything to add?

Mr. MCCALLISTER. No.

Senator KLOBUCHAR. OK.

Mrs. ANDERSON. I do—

Senator KLOBUCHAR. OK.

Mrs. ANDERSON—if you don't mind.

Senator KLOBUCHAR. No, that would be very good.

Mrs. ANDERSON. With my husband and what we have gone through, our loss was absolutely instant. And in 20 years, my—if I've done my job correctly, my kids are going to be self-supportive in 20 years. They're going to be 25 and 21. They should be able to

be fine by themselves. We don't want to be lumped in with everyone else. We want the choice to go where we want to go to file our claims. And our loss was instant.

I'm not a lawyer, I don't know about the laws, but it seems to me the easiest way to pay all this is to get your checkbook out and write the check and be done.

Senator KLOBUCHAR. I would agree.

Mrs. ROSHTO. Can I say something—

Senator KLOBUCHAR. And I know we need to do some amending of the Death on the High Seas Act, as well, given the difference with—we had a hearing on this in my Judiciary Committee—but, about the difference with the airlines, and how that's handled, and use those same standards over—which I think would be helpful.

Yes, Mrs.—

Mrs. ROSHTO. Thank you.

Senator KLOBUCHAR—Mrs. Roshto.

Mrs. ROSHTO. The core of all this—I mean, really, I think—we lost 11 men that day, 11 men that we cannot bring back, 11 men that all had children, that their children will never be able to have fathers again. But, if—after this law is passed and it is made clear to these companies—not just BP, not just Transocean, any offshore drilling company—if it made clear to them that they, from the very begin with, will be held accountable in the end for these men's lives, I think that if they know that from the very begin with, that they will be safer, to begin with. Because they knew—they knew the law. They knew that they could just throw these men out there and just, you know, give them a little safety every now and then. And if something happened, they didn't think that we would be sitting here today, doing this.

Senator KLOBUCHAR. Right. So, it goes into a cost-benefit—

Mrs. ROSHTO. Right.

Senator KLOBUCHAR—analysis.

Mrs. ROSHTO. That's right. If you make them know, from the very begin with, that they have to be safe, I think that our men ultimately would be here today, in the end.

Senator KLOBUCHAR. Yes. I thought about this when we had a hearing—Chairman had a hearing on the Toyota issue, and—remember, with their brakes, and that they—they actually calculated in and were cheering when they had to pay less money when they worked with the regulatory agency on how much they owed. And it was a really good example of how companies actually make a cost-benefit analysis and think, "Oh, it's going to cost me less. So, that's great, so I don't have to worry about it anymore." And I think you're exactly right, that we look at this right now, understandably, to compensate Mrs. Anderson and others for their losses, and the wildlife of Minnesota, and everything else. But, we have to also look at it as a preventative measure. So.

All right. Well, very good. I really appreciate it. I don't want to hold up the Chairman any longer.

And thank you so much for being here today. We look forward to working with you.

The CHAIRMAN. Thank you, Senator Klobuchar.

And you did, in fact, come over from a rather important hearing. So, we're glad that you cared enough to come.

Let me just—in closing remarks, we earlier talked about Courtney Kemp, and I have now, as you know, put her statement in the record, but it's interesting what she says in her testimony. She says, "It is my belief that this terrible tragedy could have been prevented, if only proper safety procedures had been followed," close quote. Pretty direct.

The cost of following safety rules—these are my words, not hers—have been a few dollars—would have meant a few dollars for BP and Transocean. Cost of cutting corners and rushing the job was 11 human lives and goodness knows what other kind of tragedy for those who were injured.

Ms. Kemp asks us to, quote—says to us, "How is it that the almighty dollar has become more important than a human life?" and that closes her quote.

So, what I would say to the two of you, and then, Mr. Galligan, to you, over the next few weeks we're going to be working very hard on legislation to address this problem that we've been discussing this morning, and to come to a resolution, such as you have all, in different ways, suggested to us, because it's a matter of national necessity, and it has everything to do with the quality of lives, the way others look at their futures, not just—and also the way you look at your future in—which will be more painful than for others.

Various committees will be working on this, and it will be difficult to juggle that. But, I think our focus on this will be very clear. This committee obviously will be playing a key role in this process.

So, our top priority is to make sure that safety always comes first on an oil rig—and elsewhere, for that matter, over what we have jurisdiction. And if safety doesn't come first, and people are injured or killed, we're going to update our laws to make sure that companies can be held fully accountable. That is the view of this particular Senator and, I think, the view of the great majority of those on this committee.

I thank all of you for taking your time to come here. You came distances. You've testified quite marvelously in public. You've done an enormous amount of—I would say, especially to the two wonderful young women, you've done an enormous favor to everybody who works in the businesses that your husband worked in. And you've—what you've spoken about, I think will be a comfort to all families, whether their husbands died or were injured or not, simply by the way you said what you said, the passion and the righteousness and the rightness of what you said.

And so, know that, as you go home. Really understand that, that you made a tremendous difference here today.

We will do the right thing by you, I promise you that.

This hearing is adjourned.

[Whereupon, at 11:50 a.m., the hearing was adjourned.]