INSURANCE INFORMATION INSTITUTE

110 William Street, New York, NY 10038 • 212.346.5500 • Info@iii.org • www.iii.org

July 19, 2010

The Honorable Jim Oberstar
Chairman, House Committee on Transportation
And Infrastructure
2365 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

Thank you once again for the opportunity to testify before the House Committee on Transportation and Infrastructure's June 9, 2010, hearing on the "Liability and Financial Responsibility for Oil Spills under the Oil Pollution Act of 1990 and Related Statutes."

It has recently come to my attention that my testimony may have been misinterpreted and that this misinterpretation may have influenced language in the drafting of H.R. 5629, the "Oil Spill Accountability and Environmental Protection Act of 2010." Specifically, in Section 3 of the June 29 draft, the Act would increase the minimum level of proof of financial responsibility for an offshore facility to $1.5 billion.

The rationale for the increase to $1.5 billion figure has been upon occasion traced back to my testimony in which I discuss the current insurable limits of liability for offshore operators. However, the $1.5 billion figure from my testimony is a maximum available limit for third-party liability coverage for the largest of operators, not a suggested limit for certificates of financial responsibility (COFR).

On page 6 of my written testimony I state the following about limits of third-party liability coverage:

"In terms of capacity, the typical third- party liability limit purchased by large operators is approximately $1 billion."

On page 12, I reaffirm my prior statement:

"As discussed earlier in this testimony, the typical maximum available limit of third-party liability coverage in the offshore energy market today is approximately $1 billion and with perhaps as much as $1.2 billion to $1.5 billion available under some circumstances."

My statement is clearly distinct from any comment on the appropriate limits for a COFR. Consequently, the use of the $1.5 billion figure in the draft

legislation is inappropriate. Indeed, there are several problems associated with adopting a $1.5 billion proof of financial responsibility in the legislation current under consideration:

1. The $1.5 billion figure in my testimony is for total per incident third-party liability coverage available in the private insurance market for large offshore operators. Such a figure therefore should not and cannot be construed as the necessary or available COFR limit for operators of all size;

2. Such limits are not available (or affordable) to smaller operators;

3. There is not sufficient capacity within the offshore energy insurance industry to provide $1.5 billion in coverage limits to all operators;

4. The size of the COFR requirement should reflect the size and nature of the drilling operation, rather than applying a uniform COFR across all operators;

To summarize, imposing a $1.5 billion proof of financial responsibility requirement on all offshore operators is not feasible. There simply does not exist anywhere near enough capacity in the insurance sector to meet such a requirement.

It has been my pleasure to provide input on this very important issue. Consequently, I hope that the clarification of my testimony provided above is of use to the Committee as it continues to consider the details of this legislation.

If you or your staff have any questions or comments, please do not hesitate to give me a call at (212) 346-5520 or to send me an email at bobh@iii.org.

Sincerely,

Robert P. Hartwig

Robert P. Hartwig, Ph.D., CPCU