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(Rev 07-89)

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# Memorandum

OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMM

**TO** : Bryant VanBrakle, Secretary

**DATE:** May 30, 2003

**FROM** : Commissioner Joseph E. Brennan

J.E.B.

**SUBJECT** : Docket No. 02- 15; Summary of Oral Presentation

On April 3, 2003, the Commission announced that interested persons would be permitted to make oral presentations to individual commissioners concerning Docket No. 02-1 5. At the request of counsel for Norwegian Cruise Line, a meeting took place on May 29, 2003 from approximately 10: 15-1 1: 15 AM in the office of Commissioner Brennan at the Federal Maritime Commission, 800 North Capitol Street, NW, Suite 1032, Washington DC 20573.

Please include the following summary of the presentation in the record of this proceeding,  
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The meeting participants were:

Joseph E. Brennan, Commissioner, Federal Maritime Commission

Steven D. Najarian, Counsel to Commissioner Brennan

William N. Myhre, Attorney, Preston Gates Ellis & Rouvelas Meeds LLP on behalf of Norwegian Cruise Line.

Mr. Myhre made the following observations in relation to the proposed rulemaking in Docket No. 02-15:

Norwegian Cruise Line (NCL) has a strong commitment to its passengers and shares the Commission's concern that consumers have adequate protection. As an example, when NCL cancelled cruises following an accident on board one of the company's ships earlier this week, NCL refunded passenger fares and provided a voucher for a future cruise.

By way of background, in the late 1960s, vessel owners that had operated in transatlantic trades found their ships displaced by commercial jet service and began to experiment in the U.S.- Caribbean cruise market. Cruise passengers had no recourse for advance deposits when voyages were cancelled due to lack of ticket sales, by foreign-based cruise companies that had no assets in the U.S. This situation led to the passage of the financial responsibility statute in 1966.

The statute requires evidence of financial responsibility or, in the alternative, a bond or other security. In 1993, because of the heavy reliance on bonding and to provide greater flexibility, the statute was amended to remove language requiring dollar-for-dollar coverage.

There have recently been a half-dozen cruise-line bankruptcies. There has been adequate financial security to refund passengers in these cases. Even if the proposed rule had been in place, it would have made no difference in the outcome in any of these.

Even most American Classic passengers will receive refunds for three reasons: credit card company refunds; private insurance; and bankruptcy-proceeding priority for consumers, by which consumers enjoy a priority (up to \$2,100) over other unsecured creditors.

These three factors provide additional consumer protections, which were not present in the 1960s when the statute on passenger-vessel financial responsibility was passed.

The requirement of posting a bond with the FMC has, as intended, discouraged fly-by-night operators from getting into the business and has protected passengers.

Removing the \$15 million ceiling will have negative effects. Perhaps the ceiling needs to be updated to a level such as \$25 million to account for inflation, but it should not be removed completely.

If the FMC requires 110% coverage under its new rule, that would represent a very significant reduction in working capital for the cruise lines, because any bond would have to be fully collateralized. Such a requirement would disproportionately benefit the largest operators, giving them a further competitive advantage over their competitors. The smaller operators would not have enough capital to add vessels at the same pace in order to compete with the larger lines.

Currently, credit card processors undertake a risk analysis in deciding whether or not to deal with a merchant. They will take steps to protect themselves, all of which will benefit consumers who will receive refunds, even for advance purchases made outside of the 60-day window described in the proposed rule.

Travel insurance covering cruise line defaults is widely available today, unlike the situation when the financial responsibility statute was passed. The availability of such insurance has increased following the September 11<sup>th</sup> attacks. Industry publications reported that some 50% of travelers purchase travel insurance immediately following September 11<sup>th</sup>, and that figure has only increased since then.

The industry today is mature and has permanent operations in the United States, making consumer redress in the event of non-performance available in a way that it was not when the financial responsibility statute was enacted in 1966.

There were almost eight million passengers last year in the North American cruise market. Commissioner Brennan asked Mr. Myhre how he defines the word “adequate” in the statutory language calling for “adequate financial responsibility.”

Mr. Myhre responded that the term “adequate” was intended as a threshold test and must be seen in the context of the statute’s passage in the 1960s, when foreign-based vessels would cancel voyages after receipt of fares, leaving passengers with no recourse.

The statute was passed to address that problem and to weed out the fly-by-night operators which it has done very successfully.

“Adequate” does not mean dollar-for-dollar coverage, as is evidenced by the 1993 amendments in particular, and because there are other financial protections available to consumers.

The proposed rule will in effect require passengers “to purchase insurance,” because consumers would be paying higher prices for cruises, since cruise lines would pass on to the passengers the higher costs of dollar-for-dollar coverage required under the proposed rule. If the current ceiling on coverage were maintained, those passengers who were more risk adverse could buy additional insurance protection, whereas, if the ceiling were removed, every passenger would get full coverage – and would be forced to pay for it through higher ticket prices- whether he or she wanted the coverage or not.