02-07

ORIGINAL

Goldbelt

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Mr. Bryant L. VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, NW, Room 1046
Washington, D. C. 20573

May 10, 2002

Dear Mr. VanBrakle

I want to formally lodge my Company's protest against the proposed rule which will eliminate the availability of self-insurance for small cruise ship operators, and limit those who can provide a guaranty. This is Docket No. 02-07.

I am President of Goldbelt, Incorporated, the sole shareholder of Glacier Bay Marine Services, Inc. and Glacier Bay Park Concessions, Inc., which are doing business as Glacier Bay Cruiseline, Inc. (GBCL). Goldbelt is currently the guarantor of GBCL's customer deposit liability, and has been so for several years. I understand the Commission's concern for protecting customer deposits, however, the sudden change of policy will cause a significant financial hardship to GBCL, which could force us to discontinue operations. Escrowing the deposits is not an acceptable alternative. GBCL begins selling cruises up to 9 months prior to the operating season. GBCL uses the deposits as working capital, enabling it to properly prepare for the operating season, which for us is from May through September. Many of the costs of operations are incurred prior to commencement of the operating season, and the Company needs a way to pay for these costs. Examples of costs which are related to the operating season, but which must be funded prior to the operating season are:

1. Debt Service on vessels
2. Annual overhaul costs in preparation for the season
3. Marketing and reservation department costs
4. Non-vessel personnel costs

These costs could total 30 to 40% of the cost of operations for the entire year.
Goldbelt currently provides a line of credit to GBCL to help fund off-season operations, however, it is not sufficient to cover all necessary costs.
Glacier Bay is not financially strong enough to maintain a separate line of credit, and even if it could, the additional interest costs related to a line of credit unduly increase-operating costs.

The proposed rule suggests that we must obtain a surety bond to guarantee the deposits. Preliminary quotes from our insurance broker indicate that the cost of this bond will be between $150,000 and $200,000. Being that we have already set prices for this year, there is no way to recover these additional costs. Even if we could re-price, the small cruise ship market has declined considerably since 9/11/02, and such a price increase could seriously affect our ability to fill the ships.

Since this ruling only affects Glacier Bay Cruise Line, and one other small cruise line, we would like to suggest that this ruling, if it is absolutely determined to be necessary, be phased in over a period of two years to enable us to adjust to the requirement, and to give the market a chance to return to where it was before 9/11/02. We have already been hit hard by reduced demand. By further increasing our operating costs, we could be forced to discontinue operating, and seek protection under available laws.

Very truly,

J. Gary Droubay
President & CEO
Goldbelt, Incorporated

cc: Congressman Don Young
Dick West

ORIGINAL

CARNIVAL
CORPORATION

ARNALDO PEREZ
Senior Vice President and General Counsel

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May 15, 2002

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, NW, Room 1046
Washington, D.C. 20573-3001

RE: Financial Responsibility Requirements for Nonperformance of Transportation – Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations (Docket No. 02-07) (the "Proposed Rulemaking")

Dear Mr. VanBrackle:

Carnival Corporation ("Carnival") submits the following comments on the Proposed Rulemaking. These comments are submitted by Carnival on behalf of Carnival Cruise Lines, Holland America Line, Cunard Line, Seabourn Cruise Line, Costa Cruises and Windstar Cruises, all of which are owned by Carnival.

The Commission should reconsider certain issues relating to the financial responsibility of passenger vessel operators' ("PVOs") to indemnify passengers for nonperformance of transportation. The rapid increase in the fleets of the larger PVOs over the last several years has substantially increased the shortfall in coverage between the current cap of $15 million per operator and the actual amount of unearned passenger revenues. In addition, recent bankruptcies of several U.S. and foreign cruise lines support the need to adopt better policies and procedures for the protection of the U.S. consumer.

Carnival believes that the Commission's proposal to eliminate the self-insurance provision while maintaining the current cap levels for financial responsibility does little to provide the needed financial security to U.S. passengers. American consumers will continue to have at risk hundreds of millions of dollars of unprotected cruise deposits held by non-investment grade cruise operators. The Commission should set rules which provide adequate protection to the cruising public and adopt standards which are self-adjusting as cruise lines increase in size, so as to avoid the need to return to this issue every few years, as has been the case since the mid-1990's.

We attach and resubmit the formal comments originally made by Carnival to the Commission in response to proposed rules issued in 1994 and 1996. In those previous submissions, Carnival strongly urged the Commission to revise the self-insurance rules to allow foreign and U.S.

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companies with investment grade credit ratings and strong balance sheets to qualify for self-insurance and to increase, in a substantial manner, the current $15 million cap on bonds or guarantees submitted by PVOs who would not qualify for self-insurance. The U.S. passengers adversely affected by the recent cruise line bankruptcies would have been more adequately protected by these measures we previously recommended. We urge the Commission to Implement rules consistent with our previous comments so that passenger deposits and advances are truly protected in the future.

In addition, we recommend that the Commission actively and publicly support a change in Public Law 89-777 to extend the financial responsibility requirements to voyages embarking U.S. passengers in foreign ports. We refer to a letter dated October 2, 1996, from then Commission Chairman, Harold J. Creel, Jr. in support of such expansion (a copy of which is enclosed). This change alone would expand the breadth of the law to protect thousands of U.S passengers who purchase their cruises in the U.S. but are not protected by Public Law 89-777 simply because their cruise sails from a foreign port. The distinction under current law between U.S. and foreign ports is irrelevant and serves no purpose given the marketing practices of the modern-day cruise industry. We hope that recent events in the industry will convince the Commission co take an aggressive stance for this change.

We would be willing to meet with the Commission to discuss our comments in more detail in the hope of issuing meaningful protection to the U.S. public while at the same time recognizing the financial security and strength of cruise companies such as Carnival. Should you have any questions or require additional information, please do not hesitate to contact the undersigned.

Very truly yours,

Carnival Corporation

Arnaldo Perez
Senior Vice President and General Counsel

Doc #6613 v1

CARNIVAL
CORPORATION

ALAN R. TWAITS
General Counsel and Secretary

June 23, 1994

Mr. Joseph C. Polking
Secretary
FEDERAL MARITIME COMMISSION
800 North Capitol St., NW
Washington, DC 20573

RE: DOCKET NO. 94-06
FINANCIAL RESPONSIBILITY REQUIREMENTS
FOR NON-PERFORMANCE OF TRANSPORTATION;
46 CFR PART 540

Dear Mr. Polking:

Carnival Corporation ("Carnival") submits the following comments to the proposed rule in Docket No. 94-06. Carnival is responding as the parent company of Carnival Cruise Lines, Holland America Lines, and Windstar Cruises. Together these Carnival cruise companies operate eighteen (18) cruise vessels primarily on itineraries which embark passengers from U.S. ports and comprise the largest cruise business in the world. Although Carnival is a member of ICCL which is filing separate comments in this proceeding, the comments herein represent Carnival's position.

Carnival believes that the current gap in cruise industry coverage between passenger deposits (unearned passenger revenues or "UPRs") and levels of financial responsibility for nonperformance of transportation is a legitimate issue for the FMC to again address. As the Commission has identified in this proceeding, the rapid increase in the fleets of the larger cruise companies over the last several years has substantially increased the shortfall in coverage between the current cap of $15 million per operator and the actual amount of UPRs. Carnival believes it is appropriate for the Commission to set rules which provide adequate protection to the cruising public and to adopt standards which are self-adjusting as cruise lines increase in size, so as to avoid the need to return to this issue every few years.

Should even one cruise line fail without adequate passenger protection, the credibility of all lines in the marketplace will suffer from a loss of consumer confidence. Therefore, Carnival feels it is also in the industry's self interest to increase these protections.

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1. Self Insurance Should Not Be Eliminated, but Standards Should Be Established To Make It Workable

It is difficult to understand the rationale behind the Commission's proposal to eliminate self-insurance as a vehicle for protecting cruise deposits. Rather, we believe self-insurance standards which establish thresholds of creditworthiness which financially sound cruise companies can work with should be strengthened. By removing the self-insurance option, the Commission would penalize those cruise lines which are the most sound financially. Carnival urges the Commission to permit financially responsible cruise lines to self-insure under practical and workable financial standards which are significantly stronger than those that currently exist.

We would suggest that if a cruise company can meet the following thresholds, it be allowed to self-insure: (A) an "investment grade rating" of its debt by at least two accepted bond rating agencies, or alternativelv, (B) meeting certain minimum financial ratios. If the Commission is asking more of the industry, it should be prepared to accept the financial standards which the rating agencies and Wall Street have already applied to and will continue to adjudge a maturing industry. Moreover, in applying the minimum financial ratios the Commission should not needlessly handicap the industry by insisting on the impractical and unnecessary requirement that vessel assets must always be in U.S. waters to qualify under the net worth test.

A. Investment Grade Ratinss bv Bond Rating Agencies

Specifically a cruise line should be able to self-insure if it has been given an investment grade rating, for example, BBB- and above from Standard & Poors, and Baa3 and above from Moodys. Other government agencies charged with making commercial decisions as to the creditworthiness of private sector companies already look to these ratings as the appropriate financial standard. The Overseas Private Investment Corporation (OPIC), for example, uses Standard & Poors and Moodys ratings when determining the insurability of a company in the context of a potential foreign investment. The Commission should likewise step up to this comprehensive and tried yet simple way of determining financial responsibility and creditworthiness.

B. Meeting Certain Minimum Financial Ratios

Should a cruise line not be rated by the bond rating agencies or not have received an investment grade rating because it is not large enough or a publicly traded company, both of the following minimum financial ratios should be met by the cruise line to determine whether its financial condition is sufficiently strong to protect UPRs and thereby permit self-insurance. Financial reports attesting to these ratios should be certified to quarterly by the cruise line's Chief Financial Officer and certified to at year's end by the company's independent auditors.

(1) Liuuiditv Test

A minimum liquidity test should be established whereby a cruise company's cash, short-term investments and undrawn credit lines must equal or exceed 100% of its UPRs. The liquidity test is an appropriate gauge of a company's ability to satisfy passenger claims on a timely basis, without having to liquidate its cruise ship assets.

(2) Three Times Tanuible Net Worth Test

In addition to a liquidity test a cruise company should also be required to meet a minimum tangible net worth test. Under the tangible net worth test, instead of the Commission's current requirements of net worth equal to at least 110% of passenger deposits, the standard should be strengthened because non-current or cruise ship assets may indeed not always be worth their carrying values in the event of a need to liquidate such assets. Therefore, we recommend that a cruise company's tangible net worth--(excluding intangible assets such as good will) should be equal to or exceed three times its UPRs (the "three times tangible net worth test") Net worth is the excess of a company's assets over its liabilities, including its liability for unearned passenger revenue. Thus the three times tangible net worth test provides the passenger with assets available to cover UPRs of at least four to one. This is significant and substantial passenger protection.

The three times tangible worth test is a standard of creditworthiness which transcends the location of a company's assets. For companies in the cruise business, vessels typically comprise the most significant portion of their assets. In order for the net worth test to ever be available to the international cruise industry which embarks passengers out of U.S. ports, the Commission must remove its current narrow requirement that assets be located within the U.S. at all times. There is no statutory mandate for this restrictive view of assets. Interestingly the statute itself plainly applies to passengers embarking from U.S. ports. (46 App. U.S.C., 817e). It does not apply only to those very few cruise vessels remaining at all times in the U.S.

Embarkation from U.S. ports defines the jurisdiction of the statute. If the Commission determines to limit a company's assets under the net worth test by location at all, and Carnival believes the Commission is not compelled to and should not do so, the limit should be consistent with the statute. At the very least, vessels embarking passengers in the U.S. or U.S. territorial ports, or which otherwise make calls in U.S. or U.S. territorial ports, should be counted as assets, regardless of whether they venture out of U.S. waters. The Commission of course could require the appointment of an agent in the U.S. for service of process as a condition for self insurance if it was concerned about amenability to lawsuit in the U.S.

A cruise company meeting the self-insurance tests proposed herein clearly has the resources to satisfy passenger claims for UPRs. It is inconsistent with the statute for the Commission to find that cruise vessels embarking passengers from U.S. ports and therefore subject to the Act, are not U.S. based and cannot qualify for self-insurance under the net worth test because they are not continually in U.S. waters. This writes non-Jones Act vessels out of the regulations (and out of the Act). Such an interpretation would be unintended by Congress.

C. Other Considerations In Applying Self-Insurance Tests

The Commission should also be flexible and realistic in applying the self-insurance tests to affiliated companies on a consolidated basis. That is, where more than one cruise line is under common ownership control, albeit operating under different cruise line identities and companies, the investment grade rating test, the three times tangible net worth test, and the liquidity test should be applied to the commonly held cruise lines on a consolidated basis, so that the parent (or the parent <u>and</u> all cruise line subsidiaries and affiliates) are considered the self-insurers, under a consolidated filing.

The Commission's current qualification requirements for self-insurers relating to the minimum of five years in the U.S. trades could be retained, although if the cruise company meets the stringent financial tests proposed by Carnival, it is difficult to see the relevance in retaining the five year rule. As for reporting requirements, the quarterly and annual financial filings and certifications must be retained for the net worth and liquidity tests to demonstrate that the minimum financial ratios have been met. Certifications of investment grade ratings by the bond rating agencies are reliable and should alleviate the need for such financial reporting requirements if investment grade ratings have been obtained.

11. <u>Bonding If Self-Insurance Requirements Are Not Met</u>

If a cruise company is unable to self-insure by meeting either the investment grade ratings test or the minimum financial ratios test, then Carnival supports a much higher level of bonding than currently exists to protect passengers. In light of the total amount of passenger deposits, the Commission's first alternative of bonding 110% of UPRs up to $25 Million per operator, and 90% of UPRs for amounts exceeding $25 Million appears reasonable.

III. <u>Summary</u>

The self-insurance proposal recommended by Carnival clearly would allay the Commission's concern that passengers would have insufficient assets to attach. Existing superior claims, such as mortgages and shipyard debt, would plainly not eat up unsecured passenger claims under the three times tangible net worth test, given the surfeit of net worth. The quarterly reporting requirements ensure adequate lead time in the event an enterprise falls below the self-insurance tests. The proposed bonding sliding scale also is self adjusting and alleviates the need to review this issue year after year. Carnival's strong desire is to be able to self-insure under the realistic but strict financial tests proposed herein. Lines not qualifying for self-insurance should close the gap in protection to the public with the kind of sliding scale bonding proposed by the Commission.

Carnival appreciates the opportunity to respond to this proposed rulemaking proceeding.

Respectfully submitted,

CARNIVAL CORPORATION

By: ______________________
Alan R. Twaits
General Counsel and
Secretary

CARNIVAL
CORPORATION

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FEDERAL MARITIME COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL MARITIME COMMISSION

In the Matter of
Financial Responsibility Requirements
for Nonperformance of Transportation)
)

Docket No. 94-06

I. INTRODUCTION

Carnival Corporation ("Carnival") submits the following comments on the proposed rule, "Financial Responsibility Requirements for Nonperformance of Transportation" (Docket No. 94-04). These comments are submitted by Carnival on behalf of Carnival Cruise Lines, Holland America Lines, and Windstar Cruises, all of which are owned by or affiliated with Carnival.

The International Council of Cruise Lines (ICCL) has filed comments separately in this docket. Carnival endorses ICCL's comments. Carnival files comments -touching on areas beyond those advanced by ICCL for one reason: we are concerned that the Commission has strayed from the intent and mechanics of the statute regarding financial responsibility for the nonperformance of transportation by passenger vessel operators ("PVO"). The original intent of the financial responsibility statute was to protect passengers from undercapitalized or unscrupulous operators. The industry has matured greatly from the 1960's when the passenger trades consisted primarily of special purpose chartered voyages on underutilized liner vessels. Indeed, the legislative history indicates that the law was originally intended to address defaults by charter operators and that the law was expanded to address all cruise operators to reduce the administrative burden on the Commission. p. 4182, 3 U.S.C. & A.N. 1966.

The cruise industry of today is a multi-billion dollar industry serving customers worldwide. The vast majority of cruise operators are credit-worthy and financially stable. Those that are not are clearly identifiable through financial reports and other publicly available information. The statute grants considerable flexibility to require information and data to facilitate the identification of PVOs experiencing financial diffkulties in order to protect the traveling public.

Carnival believes that the Commission has transformed a flexible statute intended to permit, at least in some circumstances, a relatively informal informational showing of financial responsibility, into a rigid, highly burdensome structure that arbitrarily casts aside the inherent flexibility granted by Congress.

II. THE COMMISSION SHOULD USE THIS RULEMAKING PROCEEDING TO IMPLEMENT THE "INFORMATION" PROVISION OF THE STATUTE

Public Law 89-977 (80 Stat. 1357, 1358) requires Passenger Vessel Operators ("PVOs") to provide the Commission with "information" that establishes the financial responsibility of a PVO. Alternatively, the statute contemplates that the Commission may require a showing of financial responsibility in the form of bonds, insurance or other monetary security. The statute (codified at 46 U.S.C. § 817e), states:

> No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark-passengers at United States ports without first having filed with the Federal Maritime Commission such information establish financial [redacted]ibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

46 U.S.C. § 817e(a). (emphasis added)

The statute is straightforward. It authorizes the Commission to accept either: (1) "information" to satisfy its financial responsibility; or (2) a bond or other security. These are two separate and distinct options. Over the course of the three decades it has administered the statute, the Commission has disregarded this distinction when promulgating regulations and issuing proposed rules. The current and proposed regulations do not provide an "information" option to cruise operators. The Commission has deviated a great distance from Congress's authorization to maintain informational requirements to its establishment of a virtually universal dollar-for-dollar security requirement throughout the industry.

The legislative history of 46 U.S.C. § 817e notes that certain cruise operators at the time of passage of the law were filing evidence of financial responsibility with the Maritime Administration in the form of financial reports and that the Commission had "access" to these reports. p. 4182, 3 U.S.C. & A.N. 1966. This confirms that Congress intended to enable cruise operators to meet the statutory requirements by simply filing information (e.g., financial reports) to demonstrate financial responsibility for nonperformance of transportation.

The rigidity of the current regulations stems in part from the desire of the Commission and its staff to minimize the amount of oversight necessary to administer the regulations. Based upon both the existing and proposed regulations, the Commission has reduced its administrative obligations primarily to the periodic, mechanical verification of the existence of adequate bonding by industry members. We do not feel that implementation of an "information" alternative to the existing bonding requirements would entail much, if any, additional administrative burden on the Commission's staff. All that would be required is periodic review of financial statements submitted by cruise operators for verification of compliance with predetermined net worth or working capital requirements.

Consequently, Carnival suggests that the Commission re-issue the proposed regulations and include standards for informational filings.

III. COMMENTS ON THE PROPOSED RULE

The Commission's administration of Public Law 89-777 has been progressively restrictive. Through various rulemakings and administrative oversight, the Commission has narrowed the availability of the alternative compliance measures to the point that there are very few options accessible to PVOs. This process of restriction has continued despite the general absence of support in rulemaking records for such restrictions, despite the strong record of the cruise industry in delivering services to the public, and despite a statute that grants the Commission great flexibility in the administration of its financial responsibility provisions.

The proposed rule limits even further the options available to PVOs. This is true even for the most financially sound members of the cruise industry. The Commission should make substantial revisions to the proposed rules to conform the regulations with statutory intent as well as to ensure that the regulations produce data that provide the Commission with evidence of a PVO's financial condition.

A. THE REDUCED COVERAGE SLIDING SCALE PROVISIONS MUST BE REVISED TO BE MEANINGFUL

1. The Commission Must Re-evaluate its Proposal Regarding Debt Ratings

The Commission proposes to allow an operator to reduce the quantum of its financial responsibility showing if that operator: (1) can demonstrate at least five years of operation in U.S. trades; (2) satisfactorily explains any nonperformance claims; and (3) has a debt rating of Aa or better by Moody's Investor Service.

The first two elements reflect current conditions for reduced coverage. The provision regarding the Moody's Investment Rating, however, is new. The Commission justifies this new criteria on the grounds that it will "give more weight to third-party, marketplace assessments of PVO's financial strength." (61 Fed. Reg. 33063 (1996)). The Commission also asserts that it is being responsive to previous industry comments regarding self-insurance because the new criteria indirectly rely upon "foreign-based assets as urged by foreign-flag PVO's in connection with self-insurance standards." (61 Fed. Reg. 33063 (1996)). However, in the absence of accompanying record support or analysis, the Commission's selection of Moody's Aa as the controlling requirement frustrates informed public comment and imposes a needlessly high threshold. If no PVO can meet the standard, the Commission should not rely on the belief that this revision is in any way responsive to "previous industry comments."

Because it arbitrarily fixes an unrealistic bond rating threshold, the Commission's proposal will substantially restrict the applicability of the reduced coverage sliding scale provisions. Neither the rule nor accompanying material reflects any awareness of this restrictive effect. The commenting public is thus left in the dark as to whether the Commission has reasons for these restrictions or whether, instead, it has acted in the mistaken belief that it has permitted wider access to the reduced coverage provisions.

The Commission provides no clue to its reasoning behind the selection of the Aa rating. Currently, no PVOs or their corporate parents have a Moody's rating of "Aa" or its Standard & Poors equivalent, "AA." If implemented, the Commission's proposal will foreclose all PVOs from reducing coverage, even when a PVO demonstrates years of satisfactory service to the U.S. market and fully explains all non-performance claims.

An appropriate bond rating threshold should not be so high as to preclude financially stable operators from qualifying, or so low as to allow financially weak operators to reduce their coverage requirements. Accordingly, Carnival respectfully submits that the Commission should permit companies with a Moody's bond rating of "Baa" or better, or Standard & Poors rating of "BBB" or better, to qualify.

A Moody's "Baa" or a Standard & Poors "BBB" rating generally indicates an investment grade bond from a company that has acceptable asset coverage and satisfactory earnings. Such bonds qualify for commercial bank investments. Consequently, a "Baa" or "BBB" rating indicates that the issuing company is in sound financial condition. For example, Carnival, an investment grade rated corporation ("A2" Moodys, "A" S&P), has the ability to borrow up to $1 billion in the commercial markets without posting <u>any</u> assets, domestic or foreign, as security. The list of investment grade companies that do <u>not</u> satisfy the Commission's unnecessarily restrictive Aa rating threshold includes such financial stalwarts and household names as General Motors, Disney, Dow Chemical and Sears Roebuck.

A rating criterion at the investment grade level would imbue the reduced coverage requirements with some real world application and would, at the same time, be consistent with the protective purposes of the statute. The record of this rulemaking offers no evidence that the Commission requires a higher threshold of financial strength to reach a determination of "financial responsibility" than commercial lending institutions require to advance unsecured loans of similar or greater magnitude.

2. The Commission Must Broaden the Definition of "Applicant" in implementing the Reduced Coverage Provisions

If a bond rating criterion is adopted in any context in the regulations, the Commission should consider not only the "applicant's" bond rating, but that of corporations related to the applicant as well. Many PVO "applicants" are subsidiaries of larger corporate parents. For assorted financial reasons, a PVO may operate more than one "applicant." In some instances, for reasons unrelated to the financial viability of the companies, the parent corporation has a bond rating while the subsidiary "applicant" does not.

Consequently, if the Commission does establish a bond rating threshold to justify a reduction in required coverage, the Commission should expand its definition of "applicant" to include bond-issuing related companies within a corporate family. If the Commission does not adopt this recommendation, major PVOs will be unable to qualify for reduced cover even when they are members of a corporate family whose debt instruments enjoy strong ratings and a demonstrated history of superior performance.

Carnival recognizes that any use of a parent corporation's bond rating to support a determination of financial responsibility of a subsidiary or affiliate carries with it a corresponding obligation to guarantee the UPR of the subsidiary or affiliate. Carnival would therefore support a corollary requirement that conditions Commission reliance on the rating of a parent/affiliate upon that related company assuming responsibility for the UPR in the event of nonperformance of transportation.

B. PROPOSED CONDITIONS RENDER THE SELF-INSURANCE OPTION -- ILLUSORY

1. Current Self-Insurance Standards Need to be Revised to Reflect Current Industry Conditions

The Commission thus far has ignored the viewpoints of the vast majority of commentators in this rulemaking proceeding and similar proceedings regarding the need to develop self-insurance requirements that have real-world vitality. The Commission rejects expanding the availability of this form of financial responsibility, and in fact, proposes to restrict its further use.

Under current regulations, self-insurance is available to those operators who "demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trades of the United States." 46 C.F.R. § 540.5(d). The Commission makes available the use of self-insurance to those operators that: (1) have a minimum of five years of operation in the United States; (2) can satisfactorily explain any claims for nonperformance; (3) provide the Commission a list of contractual obligations and encumbrances; and (4) maintain a net worth in the amount of financial responsibility.

The Commission requires a PVO's net worth to be physically located in the United States. In the proposed rulemaking, the Commission intends to continue this requirement. The Commission further proposes to require both "net worth and working capital" in the amount of financial responsibility and to require an additional 25 per cent of the UPR to be backed by a guaranty, surety bond, insurance or escrow account.

The geographic characteristics of the modern U.S.-based cruise business dictate that, for the vast majority of cruise providers, their principal assets, vessels, are outside U.S. territorial waters for significant portions of time. The Commission also takes the position that U.S.-based, but not U.S.-registered vessels, are not "physically located in the United States." Thus the U.S.-situs provisions of the Commission's regulations and proposals have the effect of destroying the real-world utility of the self-insurance alternative. Modern cruise vessels nonetheless must call U.S. ports extremely frequently and are fully subject to local process while in the United States.[1]

2. Congress Supports Wider Employment of the Self-Insurance Option

In 1993 Congress amended Public Law 89-777 to remove the requirement that bonds or other security "be in the amount paid equal to the estimated total revenue for the particular transportation." (Public Law 103-206, § 320, Dec. 20, 1993, 107 Stat. 2427). An earlier comment to this docket provides some illumination as to the purpose of the amendment.

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[1] The "U.S.-situs" provision of the rules not only is unrealistic given the necessary frequency of vessel calls in the United States and the relatively uniform conventions governing vessel arrest worldwide, but also is inconsistent with the Commission's willingness to accept offshore insurers, sureties and guarantors as sources of evidence of financial responsibility. The modern reality is that national boundaries are generally not significant barriers to fulfillment of financial commitments or satisfaction of claims.

This 1993 revision to the law was made because the Commission "asked this Committee to amend the original statute to provide you with greater flexibility in determining financial responsibility of cruise operators so as to meet the changing needs of the industry." (Letter of Gerry T. Studds, et al., June 24, 1994). "This Committee" is a reference to the House Merchant Marine and Fisheries Committee, then the authorizing Committee for the Commission. The letter was signed by the Democratic and Republican leaders of that Committee.

The letter also criticizes the Commission for proposing to tighten, not ease, the financial responsibility burden. The letter strongly urged the Commission to maintain, and to make more widely available, the self-insurance option. The Commission, on the record of this proceeding, has yet to explain cogently why it refuses to take this course of action.

3. The U.S.-based Asset Requirement should be Dropped and the Commission should instead Evaluate the Overall Financial Condition of the Operator

The Commission should revise its regulations to reflect current industry conditions and operations. Basing regulations on nonexistent problems or improbable circumstances does not do the industry, the public, or the Commission, any good.

The Commission is urged to remove the U.S. -only asset test. To qualify for self-insurance, the Commission should instead consider the overall financial strength, and likelihood of default, on all or a portion of a PVO's UPR. This test is particularly applicable to operators who consistently operate from U.S. ports, operators headquartered in the United States, or companies with a substantial U.S. presence.

IV. CONCLUSION

The cruise industry has developed into a complex, dependable international service industry. It is critical to the continued success of the industry that the traveling public have absolute confidence in the ability of cruise providers to deliver the services they sell. Carnival supports programs intended to safeguard the public's confidence in the industry. What we urge herein is that such programs be closely tailored to the structure and requirements of the statute and to the individual financial characteristics of cruise operators. The statute permits this flexibility and the Commission should not deprive itself or the industry of the regulatory creativity granted by the statute.

Respectfully submitted,

CARNIVAL CORPORATION

Arnaldo Perez
General Counsel and Secretary

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FAX TRANSMISSION COVER SHEET

Date:	*October 23, 1996*	
To:	*Dan Grausz, Esq.*	*(206) 284-8332*
	Cindy Colenda	*(202) 296-8463*
Re:	*FMC response*	
Sender:	*Arnaldo Perez*	

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FAX TRANSMISSION COVER SHEET

Date:	*October 23, 1996*	
To:	*Dan Grausz, Esq.*	*(206) 284-8332*
	Cindy Colenda	*(202) 296-W 1676*
Re:	*FMC response*	
Sender:	*Arnaldo Perez*	

YOU SHOULD RECEIVE 13 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (305) 599-2600 Ext. 5323.

Office of the Chairman

Federal Maritime Commission
Washington, D.C. 20573

October 2, 1996

Senator Larry Pressler
Chairman
committee on commerce, Science and Transportation
U.S. Senate
Washington, D.C. 20515

Re: Financial Responsibility for Death or Injury to Passengers and For Nonperformance of Voyages

Dear nr. Chairman:

I am writing you about certain concerns that the Federal Maritime Commission ("Commission") has with regard to legislation which we administer, i.e., sections 2 and 3 of Public Law 89-777, 46 U.S.C. app. §§ 817d and 817e, 80 Stat. 1356 (1966).

Public Law 89-777 establishes financial responsibility requirements, stated in specific dollar amounts, for vessels with berth or stateroom accommodations for SO or more passengers that embark passengers at U.S. ports. section 2 requires owners or charterers of such vessel8 to establish their financial responsibility to meet any liability incurred for injury or death to passengers or other persons on voyages to or from the United States.[1] Section 3 requires persons in the United States that

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[1] Section 2(a) of Pub. L. 89-777 provides, in part:

> Each owner or charterer of an American or foreign vessel having berth or stateroom accommodations for fifty or more passengers, and embarking passengers at United States ports, shall establish, under regulations prescribed by the Federal Maritime Commission, his financial responsibility to meet any liability he may incur for death or injury to passengers or other persons on voyages to or from United States ports. in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:
>
> [illegible] passenger • [illegible]tion up to and including five hundred; plus
>
> $15,000 for each additional passenger accommodation betveen five hundred and one and one thousand: plus

(continued...)

arrange, offer, advertise, or provide passage on such vessels to evidence their financial responsibility to indemnify passengers for nonperformance of transportation.[2]

The Commission's Pub. L. 89-777 program seeks to protect the travelling public from unscrupulous or financially irresponsible passenger vessel operators ("PVOs"). This program has a direct, personal impact on individual members of the general public. Annually, more than 4 million U.S. citizens embark on the 135 vessels operated by 42 cruise operators currently in the program. These voyages are safeguarded by evidence of financial responsibility in excess of $1 billion for casualty and $130 million for performance. The U.S. cruise market is also an important attraction for the thousands of foreign visitors which embark upon cruises originating at U.S. ports,

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[1](...continued)

> $10,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred; plus
>
> $5,000 for each passenger accommodation in excess of one thousand five hundred.

Provided, however, That if such owner or charterer is operating more than one vessel subject to this section, the foregoing amount shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

[2]Section 3 (a) provides, in part:

No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of transportation.

The cruise industry's extraordinary growth' and the emergence of other types of passenger vessel servicer over the past thirty years may have overtaken the scope of this statute and diluted much of the protaatfon it affords the travelling public. The Commission has been addressing some of the issues presented by the industry's growth. For example, we have conducted rulemaking proceedings to ensure that there is adequate protection for passenger deposits and prepaid fares in the event of nonperformance. However, there are other issues which the Commission believes shouldbs addressed that are beyond the scope of our current authority.

Our examination of the industry has identified four particular areas of concern with regard to out administration of Pub. L. 89-777:

> *First*, inflation has eroded most of the protection envisioned by section 2.
>
> Second, inflation also has eroded most of the deterrence *afforded* by the psnaltiss provided in sections 2(c) and 3(c).
>
> Third, there is a growing number of vessels of faring "cruises to nowhere" and other excursions that *are* not within the jurisdiction of section 2.
>
> Fourth. transportation in connection with tickets sold in the U.S. for cruises embarking at non-U.S. ports is not covered by either section 2 or section 3.

Each of there *concerns* is discussed in turn.

1. <u>Inflation's [illegible] section2'scoverageformula</u>

The *coverage requirements* set forth in section 2 (a) are prescribed by the atatuts and can *only* be changed *by* Congress. These dollar amounts have remained unchanged since the statute's enactment in 1966. However, inflation *over* the intervening period has effectively eroded most of the value of the *protection* provided by these coverage requirements -- the consumer price index ("CPI")

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[3]A comprehensive study *of* the PVO industry was prepared *by* Price Waterhouse in February 1993. The *study,* titled "The Economic Impact *of* the Passenger Cruise Industry of the United States in 1992," states *that* the cruise industry directly *and* indirectly provided 450,166 full *time* jobs *In* major industries in the *U.S., vith* S14.6 billion In wages, commissions and benefits, and contributed $6.5 billion in federal, state and local taxes in 1992. It projected the S6.6 billion to grov to $8.2 billion by 1996.

has increased by 375% since 1966.[4] Also, the contemporary generation of cruise ships tends to be much larger than in the mid-1960's - - the size of a Florida-based cruise ship has roughly doubled. If there were to be a casualty, it is likely that more passengers would be affected, but the value of the coverage available to meet liability for *death* or injury would be far less than that intended by Congress when it first enacted *this* measure.

This situation could be addressed by pegging statutory coverage requirements to the CPI[5] or by initially pegging coverage

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[4]The most recently available U.S. Department of Labor, Bureau of Labor Statistics, Consumer price indexes for major expenditure classes, 1950-95 (For all urban consumers; 1982-84=100) indicates that overall "All items" (CPI-U) increased by 375% during the period 1966-1995 (32.4 to 153.5), *for* an annual rate of increase of 12.93. Of course, there was considerable variation across the expenditure classes reported:

Total % Increase	Annual % Increase	Class	Indexes 1966	Indexes 1995
167	5.8	Apparel and upkeep	49.0	130.6
331	11.4	Transportation	32.3	139.1
363	11.8	Food	33.8	149.9
343	11.8	Energy	23.3	103.3
374	12.9	All items	32.4	153.5
502	17.3	Shelter	27.8	167.6
751	25.9	Medical care	26.3	223.8

[5]Pegging such an adjustment to the 1995 "All items? (CPI-U)" index would produce the following coverage scale (rounded up to the next $5,000) :

$95,000 for each passenger accommodation up to and including five hundred: plus

$75,000 for each additional passenger accommodation between five hundred and one and one thousand; plus

$50,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred: *plus*

$25,000 for eaeh passenger accommodation in excess of one thousand five hundred.

Pegging such *an* adjustment to the 1995 "Medical care" index would produce the following coverage scale (rounded up to the next $5,000) :

(continued.. .)

requirements to the CPI and authorizing the Commission to subsequently adjust these amounts periodically.

2. Inflation's erosion of the deterrence afforded by Pub. L. 89-777's penalties

Pub. L. 89-777 provides for civil penalties of not more than $5,000 for a violation of sections 2 or 3, in addition to civil penalties of $200 for each passage sold. These penalty amounts have remained unchanged since the statute's enactment in 1966. However, thirty years worth of inflation also has whittled away most of the deterrent value of these penalty amounts.

Me Commission believes that the inflationary adjustments authorized by the Federal civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410) (October 5, 1990) as amended by the Debt Collection Improvement Ace of 1996 (Pub. L. 104-134) (April 26, 1996) ("Amendment"), which are limited to ten percent, will not adequately deter violations of Pub. L. 89-777.

First, the industry has prospered to the extent that its growth has exceeded inflation by more than two-to-one. Statistics provided by the Cruise tine International Association ("CLIA")[6] indicate that the number of cruise passengers has grown from 500,000 passengers in 1970 to 4,000,000 in 1991 -- an eightfold increase. There has bssn a comparable increase in unearned passenger revenues held by carriers and intended to be protected by Pub. L. 89-777. During the same period, inflation (indexed to "All items (CPI-U)") experienced a 350 percent increase.

Second, the current lrvrl of penalties -- even if increased by the maximum allowable 10 percent -- would appear to be insufficient to deter violations. Since 1991, 8 of the 42 -- fully 19% -- of the PVOs in Me Commission's Pub. L. 89-777 program have been

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[5](...continued)

5175,000 for each passenger accommodation up to and including five hundred; plus

5130,000 for each additional passenger accommodation between five hundred and one and one thousand; plus

590,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred: plus

$45,000 for aachpassenger accommodation in excess of one thousand five hundred.

[6]CLIA, "The Cruise Industry, An Overview," Marketing Edition, July 1992.

referred for enforcement action. In many of these *cases, the violations occurred as a consequence of lavish publicity campaigns obviously undeterred by the risk of invoking Pub. L. 89-777 penalties.

In view of the foregoing, there appears to be a compelling basis for a statutory adjustment to Pub. L. 89-777's penalties, notwithstanding the Amendment's recent enactment. To realize the deterrent effect intended by Pub. L. 89-777, especially in light of the unusual growth of the passenger vessel industry since 1966, the penalty amounts should be increased to $25,000 in addition to $1,000 for each pasrage sold.

3. "Cruises to Nowhere", excursions and riverboat casinos

There la an increasing number of "cruises to nowhere"[7] ● ♠ other newer passenger vessel services embarking at U.S. seaports and ports on our inland waterway system. Public Law 89-777 applies only to vessels with berth or stateroom accommodations for fifty or more passengers. Therefore, it does not apply to many vessel operators who are providing "day cruises", "dinner cruises", "music cruises", "cruises to nowhere", "riverboat gambling" of other 1-day excursions on vessels which carry a large number of passengers, but lack the minimum number of stateroom ● ♍♍□♋◆■□♎♋⧫♓□■⬩.

These operators generally do not present nonperformance issues because they are not dependent upon deposits or prepaid fares. An issue does arise under the casualty provisions of Pub. L. 89-777, however, because "cruises to nowhere" and other excursions have resulted in a dramatic increase in the number of passengers embarking vessels that are not in the section 2 program. We have no precise figures as to the number of passengers that embark these vessels, but published press accounts project "8 million people a year on riverboat cruises" by the year 2000 at Nev Orleans alone (statement attributed to Patrick Fahey, general manager of President Casinos' New Orleana office: Traffic World, April 4, 1994, page 54). In an interview carried in the December 13, 1993 Journal of Commerce, J. Ron brinson, president and thief executive offic□ of the Port of New Orleans, stated:

> ". . . One of these gambling boats may interchange 10,000 people a day, and four of them will be fleeted within a half mile of one another.
>
> Every day, nearly every hour, we'll have as many people in this corridor as would be at a Super Bowl."

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[7]So-called "cruises to nowhere" generally involve vessels that embark passengers at a U.S. seaport, proceed to cruise in international waters for gambling, then return the same dry to the port of embarkation.

To address this situation, the vords "berth or stateroom" could be removed from the first sentence of section 2(a).

4. __Transportation in connection with cruise tickets sold in the U.S. for voyages which embark at non-U.S. ports__

Pub. L. 89-777's casualty and nonperformance provisions do not extend to cruise packages sold in the U.S. if a vessel does not embark its passengers at U.S. ports. Many operators sell tickets in the U.S. to passengers that fly to a foreign port to board the cruise ship. The consequences of this statutory limitation were brought into sharp focus by the recent events surrounding Regency Cruises ("Regency"), which ceased oprrations as of October 29, 1999, and filed for Chapter 11 protection on November 7, 1995.

Regency had four vessels in our program; however, over one-half of its 200-plus published 1995 cruises were to have embarked at foreign ports, such as Montego Bay, Jamaica. Regency had sold many of these cruises in the United States. As a consequence, potentially thousands of U.S. citizens each stand to lose anywhere from several hundred to several thousand dollars on the cruises that they had ● ☹●☼♏❒ paid deposits on or prepaid ln full. Moreover, because Regency apparently provided incentives to those who paid by check or cash, many of these passengers will have no recourse against their credit card issuers.

Given that section 2 of Pub. L. 89-777 is also limited to vessels embarking passengers at U.S. ports, it is fortunate that Regency was not involved an any major casualties Involving death or injury-[8]

Each year, approximately 4.5 million passengers embark vessels covered by Pub. L. 89-777. We axe not certain how many additional passengers are sold packages in the U.S. whereby they fly to a foreign portof● ❍♌♋❐☺♍♋♦♓❐■⚂ but it could be a considerable number if the Regency experience is any guide.

To address this, section 2(a) could bs revised by inserting ", or pursuant to ticket contracts sold in the United States," after "embarking passengers at United States ports"; section 3(a) could be revised by inserting ", or which is to provide transportation pursuant to tickets sold in the United States," after Which is to embark passengers at United States ports".

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[8]Most recently, the potential impact of this limitation also, was illustrated by a fire aboard the WORLD EXPLORER which boarded its passengers at Vancouver, BC. A number of United States citizens were among the passengers, a large number of whom undoubtedly purchased their tickets in the United States. The vessel experienced a fire during its voyage and five crewmen were killed and a number of passengers were injured.

The Commission and its staff stand ready to provide the Committee with any assistance on these matters it may require.

Sincerely,

Harold J. Creel , Jr.
Chairman

CruiseWest

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May 21, 2002

Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Room 1046
Washington, DC 20573-0001

Re: Docket No. 02-07 – Financial Responsibility Requirements for Nonperformance of Transportation – Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations -- 67 Fed. Reg. 19730 (April 23, 2002)

Dear Mr. VanBrakle:

I am the Chief Executive Officer and Chairman of the Board of West Travel, Inc., d/b/a Cruise West and Alaska Sightseeing Tours ("Cruise West" or the "Company") and am writing in response to the Notice of Proposed Rulemaking ("NPRM") published by the Federal Maritime Commission ("Commission" or "FMC") with respect to proposed changes in the financial responsibility requirements for issuance of Performance Certificates. These proposed changes would eliminate the availability of self-insurance and the sliding scale coverage as potential evidence of financial responsibility. Because our Company utilizes the self-insurance option we have a significant interest in the proposed rulemaking and appreciate the opportunity to submit these comments.

1. Background: Cruise West is an Established Passenger Vessel Operator

Cruise West is a family owned cruise and tour company, which I founded in 1973 together with my father, Chuck West, a pioneer of Alaska tourism. My Dad started the first tours to Alaska in 1946, and is well known in the travel industry as "Mr. Alaska". He is the founder of Westours, which he sold to Holland America Line in 1972.

Cruise West operates and markets a fleet of eight small passenger vessels that carry between 54 and 114 guests. Our Company also operates shore-based tours and excursions in Alaska under the Alaska Sightseeing Tours brand. The vessels operate in Alaska during the summer months – May to September, and during the rest of the year in British Columbia, on the Columbia and Snake Rivers, in the California Wine Country and in Mexico's Sea of Cortez. The Company also has an exclusive sales and marketing agreement with the owner of a ninth vessel located in Central America and operating cruises to Costa Rica, Panama and Belize.

Cruise West has experienced sustained growth, acquiring seven vessels since 1989, and now employs over 500 American citizens. Unlike its larger foreign competitors, the Company pays U.S. and state income tax on all earnings. Cruise West has received several industry awards for customer service, including the 2001 Partner of the Year award for national AAA Travel, one of the largest travel agencies in the world.

Ever since we began operating passenger vessels, Cruise West has complied with FMC Performance Certificate regulations, including the requirements for self-insurance since beginning that coverage in 1997. Cruise West has a strong balance sheet with vessel market value far in excess of debt, resulting in far more than sufficient net equity located in the United States. Based on this good faith compliance with FMC regulations, we have structured our long-term business affairs in reliance on the ability to maintain substantial net worth in capital assets, rather than more liquid cash-based assets.

2. Overview of Cruise West Position

For nearly thirty years, our Company has built a proven track record of providing Alaskan cruise and other vacation alternatives to our customers. We have a consistently higher level of customer satisfaction than our competitors and have never faced an unsatisfied claim that we failed to provide the contracted for transportation to our passengers. Like all segments of the travel industry, however, we too have felt the adverse impact of the tragic events surrounding the terrorist activities of September 11, 2001. But unlike some of our competitors in the cruise business, we have been able to restructure our operations to meet these challenges and continue to provide our customers with reliable vacation options.

We have a strong commitment of service to our passengers and share the Commission's concern that they be adequately protected. One of the best ways that can be accomplished is to be sure that companies like ours are in a sound operating position and are not overburdened by abrupt changes in long-standing regulations or unnecessary requirements that either (1) are so restrictive as to threaten our operating stability, or (2) put us at a competitive disadvantage with respect to larger companies who are competitors in the overall cruise market.

We appreciate that the Commission is mindful of the careful balance that must be struck in adopting new regulations in this area and that precipitous action could cause the very nonperformance that the Commission seeks to prevent.' In accepting evidence of financial responsibility to implement the Performance Certificate program, the Commission should have maximum flexibility to evaluate particular operators and to accept appropriate evidence of financial responsibility as circumstances warrant.

By responding to recent developments in the industry with the proposed total elimination of self-insurance and the sliding scale, we are concerned that the Commission is unnecessarily limiting its own options -- tying its own hands – when it comes to fashioning the appropriate coverage for any given situation. Under current regulations, evidence of financial responsibility can be established in several ways, but by eliminating self-insurance and the use of the sliding scale, the proposed rule forces the industry to into a narrowing set of options to evidence financial responsibility. This proposal comes just at a time when developments in the industry suggest that ***increasing*** flexibility, rather than limiting flexibility, will best enable the Commission to strike the appropriate balance of having adequate coverage, while not requiring such burdensome coverage as to ***cause*** the very nonperformance that the Commission seeks to prevent. As outlined in greater detail below, we urge the Commission to keep its options open.

3. Discussion

[1] 67 Fed. Reg. 19730 at 1973 1 (April **23, 2002)**.

a. The Proposed Rule Could Jeopardize Smaller American Operators by Putting them at a Competitive Disadvantage with respect to Larger Foreign Operators

A significant consequence of the proposed rule will be the enhancement of the competitive position of the large foreign cruise lines at the expense of American operators. The most significant adverse impact of the proposed rule will be on smaller American companies, like Cruise West. Our U.S. flag vessels already operate at a significant competitive disadvantage against foreign-flag vessels because of higher capital costs, higher crew rates and unfavorable tax treatment. The proposed rule will only increase that competitiveness gap. It will have no impact on the largest cruise lines that already dominate the North American cruise market because they do not have U.S. based assets, and therefore can not qualify for the self-insurance program. Similarly, these operators have unearned passenger revenues ("UPR") that significantly exceed the level that makes the sliding scale of any use to them.

(1) The Sliding Scale

The sliding scale provides experienced smaller operators with at least some modest relief from the regulatory advantage enjoyed by the larger operators. The disparity is significant. A major cruise line with a fleet of several large cruise ships could easily have a UPR figure in the hundreds of millions dollars, yet because of the $15 million ceiling under current regulations, that cruise line would be required to cover only a small fraction of its UPR with a bond or other collateral. By comparison, a smaller operator that has a total UPR of $15 million would have to cover a full 100% of its UPR.[2] The relative burden on the smaller company is obvious and puts it at a significant competitive disadvantage over its larger competitor.

The sliding scale was intended to help in some small way to address that competitive disadvantage. The proposed rule offers no explanation as to why the sliding scale should now be totally eliminated as a mechanism to address this disparity, particularly when the $15 million

[2] That Congress did not intend to require 100% coverage is clear from the 1993 amendment to the underlying statute deleting the only language that could be read to require full coverage. Pub. L. 103-206, Title III, Section 320, 107 Stat. 2427 (1993).

ceiling is unaffected. There appears to be no relationship between use of the sliding scale and any failure of passengers to receive their fares with respect to the cruise line failures cited in the NPRM. [3]

(2) Self-Insurance

The ability to self-insure to meet Performance Certificate requirements is one of the few existing advantages to maintaining a U.S. based cruise line because self-insurance is expressly tied to ownership of U.S. based assets. The proposed rule would give no significance to these U.S. based assets, even though Congress believed them to be important at the time Public Law 89-777 was enacted.[4]

The failed cruise line cited in the NPRM, whose passengers are likely to receive little reimbursement, was self-insured but involved a highly unique situation where the net worth requirements overestimated the value of certain vessels under construction that were never completed. This particular problem could be dealt with by requiring closer examination of how net worth requirements are met, with additional coverage required as appropriate, rather than eliminating self-insurance altogether.[5]

The presence of U.S. based assets is a wholly appropriate basis for evaluating an operator's financial responsibility and should not be thrown out with the bathwater of a single bad experience. At a minimum, the existence of U.S. based assets should be a factor that the Commission is allowed to consider in its analysis as to whether there are sufficient resources available to cover potential passenger claims for non-performance.

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[3] The preamble to the NPRM makes no mention of whether any of the four companies utilized the sliding scale. It appears as though the only passengers that are unlikely to receive reimbursement are those associated with the one self insured company, which by definition, did not rely on the sliding scale to establish coverage levels. 67 Fed. Reg. at 19731 (April 23, 2002).

[4] The legislative history of Public Law 89-777 places particular significance on the existence of U.S. based assets as one of the protections that should be considered in determining whether an operator was financially responsible. See S. Rep. No. 1483, 89th Cong., 1" Sess. (1966), reprinted in 1966 U.S.C.C.A.N. 4176, 4182 ("many persons operating in the cruise business are responsible and *maintain sufficient assets in this* country which could be proceeded against.") (emphasis added).

[5] The cited company, American Classic Voyages Co. ("AMCV"), had embarked on a highly leveraged expansion involving an ambitious billion dollar new multiple vessel construction program. It was able to meet the net worth requirements by valuing several hundred million dollars of vessels under construction at a level that relied on completion of the vessek. When the company filed for bankruptcy following the events of September 11, the actual value of the partially completed vessels was far less, resulting in the short fall.

b. The Commission Should Retain the Option to Accept Self-Insurance and Sliding Scale Coverage on a Case-by-Case Basis

There is no question that the events of last September had a disproportionate affect on the travel industry as a whole and on the cruise business in particular. Our Company has worked to meet these challenges by making operational and financial changes to lower our debt burden, increase operational efficiencies and strengthen our position in a changing market. This has also resulted in a substantial amount of our net worth reflected in capital assets, rather than more liquid cash-based assets that would be necessary to collateralize a surety bond. Other companies will no doubt face different circumstances.

The Commission's task in this climate is a challenging one. By being too lenient in the evidence of financial responsibility that it requires, the Commission may be leaving passengers vulnerable to lost fares. On the other hand, imposing new financial responsibility requirements too suddenly, or that are too burdensome on the operator, the Commission action could result in the operator's inability to meet its commitments thereby causing the very nonperformance that the agency is charged with guarding against.

We believe that under these circumstances the Commission should maintain maximum flexibility to accept alternative evidence of financial responsibility in order to strike the appropriate balance in any given situation. Accordingly, we urge the Commission to maintain both self-insurance and the sliding scale as optional methods of establishing financial responsibility. As long as acceptance of either one is left to the discretion of the Commission, situations that have proven difficult in the past could be avoided, without forcing the agency and the industry into a narrow set of prescribed options that may not be able to meet the challenges facing the industry without causing the very problem that the Performance Certificate program is intended to prevent.

At a minimum, we recommend that the self-insurance and sliding scale options be left in place as discretionary with the Commission for the time being. Should it be determined that they are appropriate for elimination, that should only be done as part of a comprehensive rulemaking re-evaluating the ceiling, so that in the regulatory interim, small U.S. operators are not disadvantaged with respect to their large foreign competitors.

c. The Commission Should Provide An Appropriate Transition Period to Avoid Causing the Very Non-Performance that the Performance Certificate Program is Intended to Guard Against

For the past five years, Cruise West has utilized self-insurance to meet the FMC financial responsibility requirements. Our long-term business arrangements were structured in good faith reliance on those requirements. Similarly, those companies that have relied on the sliding scale coverage have likely structured their business arrangements accordingly. As with any regulatory change upon which parties have relied, due process requires an orderly transition. This is particularly true where to do otherwise would frustrate the very purpose of the regulatory regime.

An immediate and complete transition to the proposed rulemaking cannot be accomplished quickly without having significant, and potentially devastating, effects on the organization. For instance, cash may need to be raised through sale of company assets or equity in order to provide alternate evidence of financial responsibility, resulting in a long-term impact on the company. Such drastic and unusual measures are due in part to the unavailability of traditional alternatives in the aftermath of September 11th. Whatever regulatory change the Commission decides to make, we strongly recommend that the Commission provide sufficient time for affected parties to transition into the new scheme. Because circumstances will likely be different depending on the particular company we urge the Commission to give itself sufficient latitude to handle these matters on a case-by -case basis so as to allow for an orderly transition.

4. Conclusion

For the reasons outlined above, we strongly urge the Commission to maximize its ability to implement the Performance Certificate program and to retain the flexibility to use both self-insurance and the sliding scale, both subject to the Commission's discretion that they are appropriate methods of establishing financial responsibility for a particular operator. Should the Commission decide otherwise, however, we strongly encourage that an ample transition period be allowed to ensure that operators, like Cruise West, that have relied on current regulations in structuring their affairs, be allowed a sufficient transition time, to bring their operations into compliance. To do otherwise could jeopardize their ability to perform the transportation at all.

We appreciate this opportunity to provide comments in connection with the proposed rulemaking.

Sincerely,

Richard G. West
Chairman/Chief Executive Officer

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AMERICAN WEST STEAMBOAT COMPANY

May 22, 2002

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
Room 1046
800 North Capitol Street, NW
Washington, D.C. 20573-0001

Re: Financial Responsibility Requirements for Nonperformance of Transportation [FMC Docket No. 02-07]

Dear Mr. VanBrakle:

American West Steamboat Company, LLC ("AWSC") would like to take this opportunity to comment on the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Maritime Commission (the "Commission") regarding changes to the regulations governing the Financial Responsibility Requirements for Nonperformance of Transportation. 67 Fed. Reg. 19730 (April 23, 2002). AWSC currently operates the QUEEN OF THE WEST, a sternwheeler vessel, on seven-night cruises on the Columbia, Snake and Willamette Rivers. AWSC has a second vessel, EMPRESS OF THE NORTH, under construction, which it plans to operate in the Pacific Northwest and Alaska beginning in late-2003. AWSC uses an escrow account to meet the Commission's financial responsibility requirements.

AWSC supports the changes proposed by the Commission in the NPRM. Like many passenger vessel operators, AWSC is concerned that consumer confidence in the industry has been shaken by the recent bankruptcies in which passengers have lost money or experienced significant delays in receiving refunds. AWSC believes that the elimination of self-insurance and the sliding scale options and the limitation of third party guarantors to qualified Protection & Indemnity Associations will go a long way towards bolstering the travel public's confidence in cruise lines, which in turn will result in a healthier cruise industry.

Based on discussions with the Commission's staff, it is our understanding that the Commission will be considering additional changes to the financial responsibility regulations for passenger vessel operators, including elimination of the $15 million cap on unearned passenger revenue ("UPR"), once the current rulemaking is completed. AWSC wishes to express its support for an in-depth review by the Commission of the current financial responsibility rules regulations and would support the elimination of the cap because it would help ensure 100% protection of UPR. Along with the elimination of the $15 million cap, AWSC would ask the Commission to consider reducing the amount of required coverage from 110% to 100% of UPR. Elimination of the additional 10% would still guarantee 100% protection of UPR, but would soften the impact of the elimination of the cap on passenger vessel operators. Finally, AWSC

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believes that the Commission also should consider the role of credit cards and third-party travel insurance, both of which provide passengers with protection against nonperformance by a cruise operator, when determining what constitutes 100% protection of UPR.

The staff has indicated that the Commission may seek suggestions and information from interested parties as it begins preparing for the next round of proposed rulemaking regarding financial responsibility of passenger vessel operators. AWSC would be pleased to be of assistance if the Commission has any questions or would like additional information.

Thank you for your consideration of these comments.

Sincerely,

AMERICAN WEST STEAMBOAT COMPANY, LLC

By: John Hein

John Hein
Senior Vice President/General Manager

ORIGINAL

From: <Kevin.Hill@cruisetours.com>
To: <secretary@fmc.gov>
Date: 5/24/02 8:31AM
Subject: Comments to Docket 02-07

(See attached file: FMC commentsWord2000.doc)(See attached file: FMC commentsWord97oc.doc)

Dear Mr. Secretary:

Please accept the attached document (in both Word 97 & 2000) as our comments to Docket 02-07.

Kevin M. Hill
General Manager
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Glacier Bay.
CRUISELINE

May 22.2002

Bryant L. VanBrakle, Secretary
Federal Maritime Commission
800 North Capitol Street, NW, Room 1046
Washmgton, D.C 20573-0001

Re: Notice of Proposed Rulemaking (NPRM), Docket No. 02-07

Gentlemen:

Please accept these comments in response to the above referenced NPRM.

Background

Our company is Glacier Bay Park Concessions, Inc. doing business as Glacier Bay Cruiseline. We are a wholly owned subsidiary of Goldbelt, Inc., an Alaska native shareholder corporation. We operate three small passenger vessels, two of which are reqmred to comply with 46 CFR Part 540 regarding financial responsibility for nonperformance of transportation. Our vessels are all US flag ships and carry Certificates of Inspection from the US Coast Guard. Virtually all our employees are US citizens, both on and off the ships. Our employees and the company pay all US and local taxes. We pay for and carry workers compensation coverage for shore based employees in Washington and Alaska and for P&I coverage for our marine employees subject to US general maritime law and the Jones Act.

We operate in an extremely regulated environment and are subject to regulations of multiple agencies includmg: Federal Maritime Commission, Federal Communications Commission, US Coast Guard, State of Washmgton, State of Alaska, and the International Maritime Organization (IMO). SOLAS, MARPOL and SCTW are some of the regulatory products of the IMO.

Our employees are based m Washmgton, Alaska, and onboard our ships This puts us in the position of complying with three sets of workers compensation rules under the vanous regulations of two states and the federal government.

The admimstratlve burden of keeping track of and complying with this maze of regulatory reqmrements is extremely high m view of the small size of administrative staff that we can afford in a company this size.

Compare this to the situation for the large foreign flag ships operatmg in our area of Alaska. They only need to comply with the rules of IMO. Penod. They are not subject to any of the US laws applying to workers compensation, fair labor practices or mimmum wages. They have taken the position that they are not subject to the reqmrements of ADA m regard to both employees and passengers With a simplified regulatory agenda, their administrative costs are far less than ours. By employing foreign employees who work for far less than our American crew, their labor costs are also less than ours. By not paying US taxes, they have a significant business advantage. By operating much larger ships, they gain the advantage of economy of scale. The option of operating large ships is not attractive to most US operators because of the regulatory issues mvolved. US regulations make it prohibitively costly to operate US flag ships that are over 100 gross tons under our standard measurement system.

With all this being said, it would seem on the face of thmgs that we don't stand a chance competing agamst the large foreign flag ships. And, simply on the basis of price, this is true. Our success has been m being able to offer a travel experience that is totally different from the big ships. The ships, being smaller, are able to navigate close to shore and in closer quarters with the scenery and wildlife, giving passengers a unique experience unavailable on a large cruise ship. With our American crew and our wilderness focused experience, passengers on our ships have experiences that they remember for the rest of their lives. The experience on a large cruise ship, however, could be duplicated in most parts by a visit to Las Vegas.

We do have a great deal of pride in the travel experience we offer and firmly believe it is the best product on the market. However, our costs being so much higher, we must charge a fare that is always a good deal higher than what a passenger will pay on a large ship, for all the reasons cited above. This makes it a tough sell for a passenger wanting to book a cruise. It is not hard to convince the market that we have a great product, but it is very hard to continue raising prices in the face of continuing market pressure from foreign operators who enjoy such a huge competitive advantage. Most of the market simply cannot afford our product and they choose the lowest price out there.

Notice of Proposed Rulemaking

This Notice of Proposed Rulemaking m regard to Financial Responsibility for Nonperformance poses regulatory changes that will cause considerable harm to our company. If implemented as wntten, it could very well be the proverbial straw on the camels back. As noted above, we are severely handicapped in the marketplace with the unfair advantages of the competition. To add the additional expense of purchasing surety bonds, locking up funds in escrow, or buying insurance will likely have an extremely negative effect on our financial situation. To do this in the middle of an operating season, well after our budget planning is complete, gives us no chance to plan for these expenses and build them into our fare pricing so as to pass on some of the cost to the consumer. All of the cost will come straight out of our bottom hne for the current fiscal year.

The rule changes being proposed appear to our eyes to be a knee-jerk reaction to the recent demise of the US operator, American Classic Voyages (AMCV). This company blamed its troubles on the September 11 attack. That unfortunate event did have a negative effect on the industry in general but AMCV was in trouble long before that. After a long and stable history of sound operations in well established markets, they had embarked on an aggressive expansion plan on three fronts, any one of which could have caused sigmficant financial loss in the event of setbacks and, they experienced setbacks on all three. It is doubtful that they could have survived much longer even without the September 11 attack.

By comparison, our company and the other US operator with self-insured status, survived September 11 and continued with successful operations in a time of recession by laying off staff, trimming operations and ruthlessly cutting costs in every way possible. By takmg a no-nonsense approach to doing business, we are working our way successfully through an extremely hazardous time for all businesses in this country. To get this far and be penalized for the poor management of another operator is singularly unfair.

One factor mentioned by the Commission in the NPRM is their concern for the ".. impending deployment of a substantial increase in cruise ship capacity." Implicit in this statement is the concept that too much capacity will dilute the market and force prices down, thus putting pressure on the two companies operating under the self-insured program. In fact, the increased capacity is in the form of new, very large cruise ships with capacity for two or three times the number formerly carried by the largest ships. While it is true that we compete with the large ships on the basis of price, our product is very different from theirs precisely because of the enormous size difference. As the new, vastly larger ships begin to take over more of the large ship market, they will actually compete less and less with us due to the fact that increasing numbers of passengers are seeking smaller ships for the more mtimate, less crowded conditions. When the ocean behemoth is sittmg nearly a mile away from the glacier m Alaska, their three thousand passengers will see our small ship only about a quarter mile away from the face of the glacier. Many of them will want to see Alaska again, but next time on a smaller ship. So, paradoxically, the bigger ships of the future will help our business rather than hurt it

The NPRM, in its present form, contains no mformation regardmg the timetable for implementation The assumption one must make is that the changes proposed will go mto effect immediately upon adoption. An immediate implementation may likely have the exact effect on our business that is of such concern to the Commission. To impose this change in such a precipitous manner is not m the mterests of the consumer whom you are trymg to protect. We need time in order to budget for these additional expenses. Our prices for next year's cruise products are now in the process of being established so that we can prepare next year's catalog for publication. This is usually done by the middle of the current operating season. With this much lead time required, you can see how important it is that we have all the information we need in order to plan accordmgly.

Conclusion

We strongly urge the Commission to carefully consider our position in opposition to this NPRM. The NPRM will not protect the vast numbers of Americans traveling on foreign flag ships and will damage our abihty to compete on an already uneven playing field.

At the very least, we ask that you do not implement this NPRM until 2004 or later m order to give us time to make necessary adjustments.

Sincerely,

Kevin M. Hill
General Manager
Glacier Bay Cruiseline

Cc: Congressman Don Young
Gary Droubay
Greg Dronkert