LINDBLAD EXPEDITIONS, INC.

Comments Responding to Federal Maritime Commission's Notice of Inquiry Regarding Passenger Vessel Financial Responsibility, dated December 3, 2009.

The FMC program for assuring that monies paid by cruise line passengers are protected against non-performance by the cruise line operators is of little practical value and subjects the passenger vessel operators to costs far disproportionate to the limited utility provided by the program. The program is also grossly unfair to the smaller operators, many of whom must fund security for all their passengers while larger operators are responsible for providing security for only a small portion of their unearned passenger revenue.

Perhaps the single most important factor ignored by the structure of the FMC program is that most passenger payments are already secured against non-performance through existing credit card practices. Over 85% of passengers on U.S. flagged vessels purchase travel tickets using a credit card. These purchases are made possible by contractual arrangements between PVOs and various credit card companies, which contractual arrangements are standard across the industry. These credit card companies require, as a condition of allowing passengers to use credit cards to pay for ticket costs associated with cruises offered by the PVO, that the PVO provide collateral and/or security against non-performance and other potential claims by dissatisfied purchasers of cruise line passage. As an example, one agreement requires the PVO to maintain a substantial settlement account with a balance of available funds sufficient to accommodate its obligations under the agreement, including any "chargebacks" (charges assessed by a credit card company to the PVO in respect of refunds of payments made by passengers). The PVO is additionally required to maintain a letter of credit in the amount of several million dollars. Another agreement provides for a reserve to be established, including a deposit of funds and collateral with the credit card company, in the event the credit card company receives a disproportionate amount of disputed charges or believes the PVO to be unable to meet its obligations to card members.

These and other contractual requirements of credit card companies have been established as a means for the credit card companies to recoup all or some of their potential costs of refunding the cost of cruises paid for by credit card in the event of non-performance or even just deficient performance. Moreover, the refund mechanisms established by the credit card issuers provide a secure and efficient means for passengers to recoup any loss from nonperformance. Refunds for non-performance are provided to passengers quickly, and in a much shorter time frame than that for claims settled under the FMC-administered system. In fact, the FMC itself has directed passengers to look first to the credit card companies for recourse before submitting requests to the FMC.

In addition to the security afforded passengers by credit card companies, travel associations such as the U.S. Tour Operator Association provide the equivalent of performance bonds that are an added source of protection for would-be passengers. This is in effect a second layer of protection for passengers against nonperformance by U.S.-flagged vessel operating companies. A third level of protection comes from private travel insurance, which PVOs typically recommend that all passengers obtain and which many do.

With these three independent and overlapping means of protecting passengers, the FMC program to provide security against nonperformance is largely irrelevant.

In order to provide a meaningful and equitable back-up program to the security already offered by credit card companies, travel associations and insurance companies, the FMC should look to protect against any passengers falling through the safety net of financial security that exists by virtue of existing commercial practice. This would mean, at most, coverage in an amount appropriate for the portion of passengers who are not already protected. This could readily be accomplished by excluding from UPR that portion of passenger revenue already fully secured by credit cards, travel associations or travel insurance. By excluding "secured" revenue from the FMC's Nonperformance Obligations and instead focusing UPR on only the remaining non-secured revenue, the FMC's Nonperformance Obligation requirements would effectively protect passengers with actual exposure while avoiding redundancy and unnecessary burden to the operations of PVOs.

Moreover, this targeted coverage should apply across the board to ALL passenger vessel operators, without any artificial ceiling or cap. The current cap favors PVOs with large operations, but in practicality there is no basis to distinguish between large and small carriers. All PVOs, large and small, operate in more or less the same manner: credit card arrangements are in place for all operations, with the same standard protections for all passengers; and all operators have industry or similar bonds in place above and beyond the credit card contracts as an additional measure of protection. A more equitable solution would be to require all PVOs to provide security for the portion of UPR that is not independently secured through existing commercial arrangements. In this way, there would be an efficient system for assuring protection of passengers against non-performance, and all PVOs would be treated equally.

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