

# Memorandum

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FEDERAL MARITIME COMM

**TO** : Bryant VanBrakle, Secretary

**DATE:** May 28, 2003

**FROM** : *JE B* Commissioner Joseph E. Brennan

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

On April 3, 2003, the Commission announced that interested persons could make oral presentations to individual commissioners concerning Docket No. 02-15. At the request of counsel for Royal Caribbean International, a meeting took place on May 21, 2003 from approximately 10:30-11:30 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.

The meeting participants were:

Joseph E. Brennan, Commissioner, Federal Maritime Commission  
Steven D. Najarian, Counsel to Commissioner Brennan  
Richard D. Fain, Chairman and CEO, Royal Caribbean International  
Hopewell Darneille, Attorney, Thompson Coburn  
Jack Deschauer, Attorney, Patton Boggs  
Michael G. Roberts, Attorney, Thompson Coburn

Mr. Fain stated that he has been a CEO of Royal Caribbean for the last 17 years and that he has now been to Washington, D.C. twice to advocate on issues.

Commissioner Brennan quoted the "adequate financial responsibility" language from Public Law 89-777 (80 Stat. 1356) and noted that this language would probably be discussed in the public hearing scheduled for June 11, 2003.

Mr. Fain noted that:

- In a survey, 94% of cruise passengers stated that a cruise is as good as, or better than, a land vacation.
- He had met with Commissioner Won.
- While governmental and commercial objections are sometimes different, that is not true in this case. Both the government and Royal Caribbean want to protect the consumer.
- Royal Caribbean and the industry must deal with the problem of consumer fraud.

- The average cruise passenger last year was 42 years-old.
- The questions are: what are the real risks, and does the proposed rule address them?
- Royal Caribbean has a connection to its customers. When Royal Caribbean requested updates to its mailing list, only a 5-10% response was expected, but in fact 60% responded.
- After September 11<sup>th</sup>, Royal Caribbean waived cancellation fees and allowed customers to re-book.
- Under the proposed rule, the FMC would become a court of first resort because of the mandatory alternative dispute resolution provision. At Royal Caribbean, 1,400 persons handle bookings, and 130 persons handle the customer-service desk. With ADR, the FMC would have to take on this morass of work. The cost would be huge.
- The FMC should not think that the cruise lines can merely buy a bond for one or two percent. The cost is infinitely greater. It is not possible to simply request and purchase a bond. Escrowing of the money would be required by the banking and insurance industries. Money would have to be borrowed at eight percent interest, and the escrow account would earn only one percent interest. The industry can afford to set up such escrows, but doing so would mean that funds would not be available for shipbuilding.
- He agrees with the dictionary definition, as cited by Comm. Brennan, that "adequate" means "sufficient to do the job."
- There is a wide spectrum of vessels. It is unlikely that deluxe vessels, such as those operated by Royal Caribbean, would cease operations, in comparison to vessels that are not as well-equipped or maintained.
- Credit card purchases, deposits, and other devices protect the consumer.
- A bond does not cover all costs, such as the refund of airline costs to passengers. Nor does a bond cover non-U.S. departures.
- The highest unearned passenger revenue for Royal Caribbean was \$550 million. Two-thirds of Royal Caribbean's UPR is covered by credit cards. A significant percentage of Royal Caribbean's UPR relates to non-U.S. cruises.
- Passengers are not entitled to a refund merely because they fear a terrorist attack. September 11<sup>th</sup> was catastrophic for Royal Caribbean. No airplanes were flying. Royal Caribbean has a goal of answering 85% of phone calls within 20 seconds. On September 11<sup>th</sup>, Royal Caribbean answered 70% of phone calls within 20 seconds. There were 11,000 bookings at Royal Caribbean on September 11<sup>th</sup> and even more on September 12<sup>th</sup>. That was unusual under the circumstances.
- In the 4<sup>th</sup> quarter of 2001, Royal Caribbean sailed 92% full.
- The Pritzker family of Chicago is a 25% owner. The family also owns Hyatt.
- Royal Caribbean had a good year in 2001.
- Cessation of operations would be a remote contingency. The FMC is proposing to provide 100% coverage for the remote possibilities and none for the realistic ones.
- The credit card companies provide realistic protection for consumers. There would be significant commercial implications if the FMC should amend its rules to make credit-card purchases a special category. It would be better for the FMC to simply take notice that credit cards are being used.
- The proposed rule is a very costly way to protect against a remote risk, and it offers inadequate protection against a real risk. Royal Caribbean would like to develop an alternative approach with the FMC. The cruise industry does want to protect the consumer.
- A cruise vessel can accommodate 3,0000 passengers.

Comm. Brennan asked Mr. Fain whether the \$15 million cap should be maintained or raised. Mr. Fain replied that he was not prepared to answer at that time, that the amount was not the only issue, and that it matters what is being covered and how is is being covered.

Mr. Fain noted that:

- A cost/benefit study was underway.
- The FMC must use its judgement to define the word "adequate."
- It was appropriate for the Commission to eliminate self-insurance.

Mr. Deschauer noted that, by his interpretation, the statute, in section 3, gives the Commission the option of requiring information showing financial responsibility or, in place of that, a bond or other security for the indemnification of passengers for nonperformance. He stated that this provision sets up a balancing test.

Mr. Fain noted that:

- Royal Caribbean offers a Baltic cruise.
- One-half of Royal Caribbean customers are repeat customers in any given year.
- Royal Caribbean has over 1 million new customers annually.
- One in three cruise voyages takes place on a Royal Caribbean vessel.