

Commissioner Joseph E. Brennan in Opposition to Proposed Rule Relating to the Commission's Passenger Vessel Responsibility Program

Commissioner Joseph E. Brennan, voting on September 8th, 2011, in opposition to the issuance of a proposed rule relating to the Commission's passenger vessel responsibility program established pursuant to Section 3 (Performance) of Public Law 89-777, 46 U.S.C. §§ 44101-44106, stated:

I am very unsatisfied with the proposed rule. If it is issued today and adopted in two months, the Commission will be able to say that it has doubled the coverage cap, which might look good in the press. But that headline becomes less splashy when you realize that the FMC will still be leaving 84% of passenger payments uncovered on an industry-wide basis.

Going from 8% coverage to 16% will still leave 84% of pre-payments uncovered. This would happen despite a clear directive from Congress to make sure that passengers who make a deposit get their money back if the cruise line goes belly up. In fact, for many passengers, the percentage will be far less than 16%. Passengers who book with the larger lines, which have most of the action, could be looking at less than 6% coverage.

Any member of this Commission, if asked to appear before a congressional committee following a cruise-line bankruptcy, could not defend leaving 84% of passenger payments unprotected. The statute that the FMC administers does not call for the Commission to weigh the interests of cruise-line operators against those of the passengers. Congress already did that weighing and passed a law that came down squarely on the side of the passengers. Yet this agency is about to come down squarely on the side of the vessel owners.

For the last 20 years, the Commission has had a coverage cap that has not even kept up with inflation, let alone unearned passenger revenue. It is embarrassing. The Commission is thumbing its nose at Congress. The statute requires adequate financial responsibility to refund passenger pre-payments. The proposed rule does not do that. If a situation ever arises in which refunds are demanded of cruise lines on a grand scale, the FMC will be seen as an incompetent federal agency. The perception will be that the Commission was more interested in the profit margins of foreign cruise-line owners than the down-payments made by American citizens for a cruise.

The proposed rule is indefensible. No one would insure a house for 16% of its value. What homeowner would feel adequately compensated by a check for \$16,000 after his or her \$100,000 house has burned down? Yet that is exactly the risk that the Federal Maritime Commission will be placing on passengers, in defiance of the Congress.

The FMC will effectively be saying to cruise passengers: "Be satisfied with a refund of 16 cents on the dollar. If you want to have the rest of our money back, go try your luck in the bankruptcy court." This will unjustifiably continue to leave cruise passengers extremely vulnerable. It is well-known that unsecured creditors (passengers, in this case) commonly receive nothing in bankruptcy proceedings.

I, for one, could not explain to a congressional committee how coverage of a mere 16% of passenger pre-payments could possibly represent adequate protection under 46 U.S.C. § 44102. Therefore I am voting today against issuing the proposed rule.

Please note the original linked title, Commissioner Joseph E. Brennan Dissents on FMC Vote to Move Forward on Cruise Line Passenger Financial Protections and Rules for Service Contracts that Link Rates to Freight Indices, has been changed (11/03/11) to more accurately reflect Commissioner Brennan's dissent only to the PVO matter.