Statement of Commissioner William P. Doyle

Federal Maritime Commission

Passenger Vessel Operator Financial Responsibility Requirements for Nonperformance of Transportation and Technical Revision to Passenger Vessel Operator Regulations

FMC Docket No. 11-16

February 13, 2013

Good Morning Commissioner Cordero: I want to say that I have reviewed the staff's work on the matter, and I thank all of you ladies and gentlemen for a great job. I sincerely thank you for your efforts, and I look forward to working with you on future Commission business.

Commissioner, I would like to make a few statements for the public record regarding this agenda item, Docket No. 11-16. My comments are derived from the analysis developed by Staff:

- The larger Passenger Vessel Operators (PVOs) with Unearned Passenger Revenue (UPR) exceeding the current cap have had the benefit of an unchanging burden of financial responsibility for more than twenty (20) years.
- In 1990, the total financial coverage provided was nearly 25% of outstanding UPR, amounting to slightly more than $250 Million. With the total 2-year high UPR for all PVOs in the FMC's program now at $3.9 Billion, total financial coverage currently amounts to about 8% of UPR ($323 Million).
- Changing the financial responsibility nonperformance cap from $15 Million to $30 Million would now increase industry-wide coverage to approximately 14% -- or just over half of the original UPR percentage.
- Notably, fifteen (15) PVOs have gone out of business or otherwise ceased operations since the year 2000.
- Without a doubt, the Commission's experience with respect to PVOs that have ceased operation is relevant to consideration of the proposed $30 Million cap, and this experience is equally relevant to consideration of the individual proposals for alternative financial protection, provided the PVO's UPR is less than 150% of the cap.
- Additionally, by way of example:
    - One PVO had a UPR of $51 million when it went out of business.
    - Approximately 60% of that PVO's passengers were reimbursed through credit card issuers and travel insurance.
    - Only after ten years of bankruptcy proceedings did the remaining 40% of the passengers receive reimbursement of up to $2,100 each. This amount was the maximum amount that the passengers could receive pursuant to the Bankruptcy proceedings. This did not cover 100% of the passengers' losses.

- In a separate and extensive negotiation for one of the company's passenger vessels, a compromise was structured whereby passengers received reimbursements of only 26% of their initial deposits.
- Nobody wants to wait through 10 years of bankruptcy proceedings in order to get some sort of redress for a vacation that they had saved for and planned to take a decade before.
- In the context of this example, I also note that industry has commented that reliance on credit card refunds is problematic because credit card companies could increase security to cover some or all of the UPR relief granted which could include "hold backs" or letters of credit to protect the credit card issuer in the event of non-performance.

➢ Next, I would like to point out that some PVOs may offer travel insurance that have portions of coverage which are not in fact underwritten by insurance providers, with the passenger protected only to the extent of the PVO's ability to reimburse:

- By way of example, staff noted that one PVO offered so-called private travel insurance. Ultimately, the insurance proved to be illusory, as the premiums paid by the passengers were not actually utilized to protect the passengers for non-performance through insurance; instead, the company used the travel insurance premiums for other purposes.

➢ Furthermore, approximately forty (40) vessel operators participate in the FMC's PVO program. Nine (9) are small PVOs as defined by the Small Business Administration.

➢ Eight (8) of the nine (9) small operators will remain unaffected economically by the proposed rule changes, even without consideration of the alternative forms of coverage.

➢ Lastly, this rule would allow the Commission to recognize alternative protections submitted by small PVOs with UPRs not exceeding 150% of the proposed cap, which in some instances may permit an operator to effectively provide coverage and incur less cost than required today.