

NLWJC- Kagan

Counsel - Box 005 - Folder 014

Cruise Vessel Act

Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phone No. (Partial) (1 page)	nd	P6/b(6)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Elena Kagan
OA/Box Number: 8248

FOLDER TITLE:

Cruise Vessel Act

2009-1006-F
ry925

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

THE WHITE HOUSE
WASHINGTON

October 2, 1996

MEMORANDUM FOR JACK QUINN
BRUCE LINDSEY
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: CRUISE VESSEL TORT REFORM

Attached are the tort reform provisions in the Coast Guard bill passed late last week. We got exactly what we wanted on everything:

- (1) Cruise lines can take advantage only of domestic -- and not of foreign -- caps on malpractice liability;
- (2) The allowance of contract provisions relieving a cruise line of liability for emotional distress includes an exception for cases involving rape and sexual harassment; and
- (3) Most important, the provision preventing foreign seamen from suing foreign-flag vessels in U.S. courts was entirely eliminated.

Just thought I'd let you know.

F: HAS CONF CGAUTH96.FIL

216

1 “(1) the price of buoy chain manufactured in
2 the United States is unreasonable; or

3 “(2) emergency circumstances exist.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
5 for chapter 5 of title 14, United States Code, as amended
6 by section 311 of this Act, is further amended by adding
7 at the end the following:

 “97. Procurement of buoy chain.”.

8 SEC. 1129. CRUISE SHIP LIABILITY.

9 (a) APPLICABILITY OF STATUTORY LIMITATIONS.—
10 Section 4283 of the Revised Statutes (46 App. U.S.C.
11 183) is amended by adding at the end the following new
12 subsection:

13 “(g) In a suit by any person in which the operator
14 or owner of a vessel or employer of a crewmember is
15 claimed to have vicarious liability for medical malpractice
16 with regard to a crewmember occurring at a shoreside fa-
17 cility, and to the extent the damages resulted from the
18 conduct of any shoreside doctor, hospital, medical facility,
19 or other health care provider, such operator, owner, or em-
20 ployer shall be entitled to rely upon any and all statutory
21 limitations of liability applicable to the doctor, hospital,
22 medical facility, or other health care provider in the State
23 of the United States in which the shoreside medical care
24 was provided.”.

1 (b) CONTRACT LIMITATIONS ALLOWED.—Section
2 4283b of the Revised Statutes of the United States (46
3 App. U.S.C. 163c) is amended by redesignating the exist-
4 ing text as subsection (a) and by adding at the end the
5 following new subsection:

6 “(b)(1) Subsection (a) shall not prohibit provisions
7 or limitations in contracts, agreements, or ticket condi-
8 tions of carriage with passengers which relieve a crew-
9 member, manager, agent, master, owner, or operator of
10 a vessel from liability for infliction of emotional distress,
11 mental suffering, or psychological injury so long as such
12 provisions or limitations do not limit such liability if the
13 emotional distress, mental suffering, or psychological in-
14 jury was—

15 “(A) the result of physical injury to the claim-
16 ant caused by the negligence or fault of a crew-
17 member or the manager, agent, master, owner, or
18 operator;

19 “(B) the result of the claimant having been at
20 actual risk of physical injury, and such risk was
21 caused by the negligence or fault of a crewmember
22 or the manager, agent, master, owner, or operator;
23 or

24 “(C) intentionally inflicted by a crewmember or
25 the manager, agent, master, owner, or operator.

1 “(2) Nothing in this subsection is intended to limit
2 the liability of a crewmember or the manager, agent, mas-
3 ter, owner, or operator of a vessel in a case involving sex-
4 ual harassment, sexual assault, or rape.”.

5 **SEC. 1130. SENSE OF CONGRESS ON THE IMPLEMENTATION**
6 **OF REGULATIONS REGARDING ANIMAL FATS-**
7 **AND VEGETABLE OILS.**

8 **(a) SENSE OF CONGRESS.**—It is the sense of Con-
9 gress that, in an effort to reduce unnecessary regulatory
10 burdens, a regulation issued or enforced and an interpre-
11 tation or guideline established pursuant to Public Law
12 104-55 should in any manner possible recognize and pro-
13 vide for the differences in the physical, chemical, biologi-
14 cal, and other properties, and in the environmental effects,
15 of the classes of fats, oils, and greases described under
16 that law.

17 **(b) REPORT.**—Within 60 days after the date of enact-
18 ment of this section and on January 1 of each year there-
19 after, the Secretary of Transportation shall submit a re-
20 port to Congress on the extent to which the implementa-
21 tion by the United States Coast Guard of regulations is-
22 sued or enforced, or interpretations or guidelines estab-
23 lished, pursuant to public Law 104-55, carry out the in-
24 tent of Congress and recognize and provide for the dif-
25 ferences in the physical, chemical, biological, and other

THE WHITE HOUSE
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- (3) Most important, the provision preventing foreign seamen from suing foreign-flag vessels in U.S. courts was entirely eliminated.

Just thought I'd let you know.

Handwritten notes:
E
Randy
D

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Sep-1996 10:19am

TO: Elena Kagan
TO: Kim C. Nakahara
TO: David Worzala

FROM: James A. Brown
 Office of Mgmt and Budget, LRD

CC: James J. Jukes
CC: David E. Tornquist

SUBJECT: Coast Guard/Liability Caps

According to Transportation, staffers of the conferees met with the interest groups yesterday. After the meeting, they "went to the legislative clerk with language." Presumably, this includes some compromise on the liability caps issue, but no one knows for sure. We will circulate language as soon as it becomes available.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

19-Sep-1996 03:57pm

TO: Elena Kagan

FROM: James A. Brown
Office of Mgmt and Budget, LRD

SUBJECT: Coast Guard Conference

I spoke with Jane DeCell of DOT re: the opening of the conference on the Coast Guard authorization bill. Apparently, everyone agreed that a compromise must be reached on the tort liability provision in order to produce a bill, but it did not appear that they were close to achieving such a compromise.

Andy Blucher

Bill may well die

Dem's say they need

strong letter -

if don't get, will

probably come out

the way it is.

Cell
Jane De ~~del~~ - DOT

366-9299

Cast Guard v.
4 yr effort

Manad - reasonably impassioned
→ CV not ref - single issue.
Don't have much else in bill.

Other than this:

positive/

good part.

want very much.

Maritime regulatory initiative -

beneficial to merchant marine.

streamlines regulation

Also good provisions on

personnel / internal report

off-shore financial responsibility -

liked by Sen. Breaux

Wording in the - current DOT
positive

Not confident as to what effect
of this letter would be.

We'd like to get it cleared

N. McF sign it. (Pena, if change to veto)

1st week back

Doing Q - viable option

Leg on Lott's list

Dem's skeptical, tho, abt coming to closure

So-50 whether it gets out.

w/ some form of T.R.

One logical compromise -

Americans. fully protected

Foreigners get maint + care

But foreigners don't get pain + suffering

Any real reason for this tho -

Why not just let simmer

Nancy McFadden Telecon #1

~~see~~ DOT folks talked to one of the +
Hollings's staff.

Conflict btw CG + everyone else.

Secy's office doesn't like.

But tough for us to say absolute veto -
bc in CG's mind - imp bill

(But they could get by w/out this).



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

DRAFT

The Honorable Larry D. Pressler
Chairman, Committee on Commerce,
Science, and Transportation
Washington, D.C. 20510

Dear Mr. Chairman:

As the Conference Committee begins consideration of S. 1004, the "Coast Guard Authorization Act for fiscal year 1996," the Department of Transportation wishes to express its appreciation for the bipartisan effort involved in developing S. 1004, which contains over 100 parallel provisions in support of the Coast Guard. Among the most important are the maritime regulatory and Coast Guard Auxiliary reforms. These provisions will eliminate burdensome regulatory requirements and enhance the operation of the Coast Guard Auxiliary by adding flexibility and providing needed protection for the Auxiliary's 36,000 volunteer members. The Department would also like to take this opportunity to offer our views on a number of issues that remain to be resolved in Conference.

First, the Department adamantly objects to the Cruise Vessel Tort Reform Act contained in Section 430 of the House version of the "Coast Guard Authorization Act for fiscal year 1996." The Department believes this provision should not be included in the Conference Report because of the adverse competitive effect on U.S.-flag cruise ship companies, the potential harm to U.S. passengers on cruise ships, and the potential abrogation of rights currently granted to foreign seafarers by U.S. convention and law. The Department could not view as acceptable any Coast Guard Authorization Act that contains the Cruise Vessel Tort Reform Act. // *

Second, both the House and Senate versions of S. 1004 revise financial responsibility requirements for offshore facilities. The Department supports appropriate relief from financial responsibility requirements for certain marinas and shoreside facilities, but opposes elimination of all claimants' right of direct action against financial responsibility guarantors of responsible parties. As a minimum, the Federal Government's right to direct action against the responsible party's guarantor must be fully retained, including actions for recovery of funds expended from the Oil Spill Liability Trust Fund. In addition, the right of claimants to direct action must be fully preserved in cases of insolvency or bankruptcy of the responsible party for the offshore facility.

Third, the Maritime Regulatory Reform proposal (Senate, Title VI; House, Title V), which eliminates burdensome regulations on American vessels, also includes vessel financing provisions that could provide needed capital for the maritime

2

industry. However, the Department is concerned that current operators who benefit from the Jones Act might be harmed and urges the Conferees to ensure that these American operators are adequately protected.

Additionally, there are four provisions that are among the Coast Guard's highest legislative priorities and should be preserved in Conference. These initiatives will save lives, enhance law enforcement, protect the environment, and ensure safe navigation: the Federal Recreational Boating Safety (RBS) Grants Program (Senate, Sec. 501); the Law Enforcement Enhancement Act (Senate, Title IX); amendments to the Act to Prevent Pollution from Ships (Senate, Title VIII); and the Truman-Hobbs Bridge Alteration Program (Senate, Sec. 101(a)(5) and (b)).

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this views report to Congress.

This letter is also being sent to Chairman Bud Shuster, House Transportation and Infrastructure Committee.

Sincerely,

Federico Peña

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 5256

FILE NO: 155

7/30/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): _____

TO: Legislative Liaison Officer - See Distribution below:

FROM: James JUKES

(for) Assistant Director for Legislative Reference

OMB CONTACT: James BROWN 395-3473 Legislative Assistant's Line: 395-3454
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=BROWN, G=JAMES, I=A
brown_ja@a1/eop/gov
Kim NAKAHARA 395-3057

SUBJECT: TRANSPORTATION Proposed Report RE: S1004, Coast Guard Authorizations,
FY1996

DEADLINE: 12:00 noon Thursday, August 01, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The conferees may meet on Thursday afternoon. It is therefore important that we clear this letter promptly. If we do not hear from you by the deadline, either in the form of a comment or notification that a comment will be forthcoming shortly, *we will assume that you have no comment.*

DISTRIBUTION LIST:

- AGENCIES: 25-COMMERCE - Michael A. Levitt - 2024823151
- 19-Council on Environmental Quality - Michelle Denton - 2023955750
- 29-DEFENSE - Samuel T. Brick, Jr. - 7036971305
- 33-Environmental Protection Agency - Chris Hoff - 2022605414
- 59-INTERIOR - Jane Lyder - 2022066706
- 61-JUSTICE - Andrew Fols - 2025142141

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- EOP: Kim Nakahara
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- Cheryl Kojak*
- Alice Sheffield*
- James Murguia*
- Susan Brophy*

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

**LRM NO: 5256
FILE NO: 155**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.

If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

**TO: James BROWN 395-3473
Office of Management and Budget
Fax Number: 395-3109
Branch-Wide Line (to reach legislative assistant): 395-3454**

**FROM: _____ (Date)

_____ (Telephone)**

SUBJECT: TRANSPORTATION Proposed Report RE: S1004, Coast Guard Authorizations, FY1996

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

Tim Brown - telecon

New in conf.

sched to meet this afternoon.

may not.

Longstanding standoff

do not GJ wants
MARRAD later
This is Secy's attempt
to split the diff.

Proposed compromises

?? understanding -
rape exception

?? led to us jurisdiction

1) for. sailors ^{no} sue in US

2) essab. limits on error
diagnosis -

3) dr. malprac lhd to
that in law of port
when dr.

will check
→
⇓

EXECUTIVE OFFICE OF THE PRESIDENT

01-Aug-1996 11:07am

TO: Elena Kagan

FROM: James A. Brown
Office of Mgmt and Budget, LRD

SUBJECT: Foreign Seamen: Clarification

According to DOT, a compromise has been offered by industry representatives regarding the rights of foreign seamen to sue in U.S. Courts. Under this proposal, foreign seamen would be able to sue in U.S. courts regarding alleged violations of vessel owners' obligation to provide "maintenance and cure" (i.e., food, shelter, and medical care.) Any other claims would still have to be brought in foreign courts.

8/24/10

Can you
put me a call
about this?
I really just wanted
a sense of where up
the financing
in compens +
with us.
Thanks
much so

~~PERSONAL & CONFIDENTIAL~~

Debbie
X65572

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: JGP DATE: 5/24/10
2409-1006-F

It was good speaking to you last week on the phone.

It would be extremely helpful if the President would communicate to the House and Senate that he would veto the U.S. Coast Guard Authorization bill if it came to him with the "Cruise Vessel Tort Reform" provisions (Section 430) as in the House version of H.R. 1361. This provision would eliminate the ability of foreign crewmen serving on "runaway-flag" vessels in and out of U.S. ports to file suit in U.S. courts for compensation for injury, unpaid wages, and "maintenance and cure."

This section has nothing to do with the Coast Guard authorization. It was added by Congressman Don Young, (R-AL), because he believed that the legislation was a sure thing because of other provisions of the bill. There are several provisions in the legislation which the coastal states want, one being the easing of the burdens of the Oil Pollution Act, 1990, to the offshore oil industry. For this reason, the President may not want to go public, but he or his staff could, however, persuade members of the House and Senate to encourage the conferees to vote against this liability provision when they go to conference. We have no precise time on when this conference will occur since Senator Hollings is objecting to the Senate naming conferees because of the possibility of Section 430 of H.R. 1361 being accepted in conference. Of course, another thing the President could do would be to relay a message to Senator Hollings that he appreciates his efforts.

A. This amendment should be opposed by the administration because:

- 1) With reference to the limitation of liability for shore-side medical malpractice: I believe that passage of this legislation would encourage the shipowners to dump injured seamen or passengers on inadequate physicians who are simply cheap in other places. These cases are few and far between, but they do exist. I can tell you that we have just tried a case within the last year for a National Maritime Union seaman who was taken for poor medical treatment in Turkey and lost a leg. The court law is that the vessel owner is liable and responsible for the injured seaman (though it is not so clear for passengers) and responsible for the affects of malpractice and treatment that they have provide. This certainly encourages companies to look for good physicians and to be sure that the best treatment is provided.
- 2) This would create a disparity for foreign seamen working on these "foreign-flag" vessels, making it cheaper for American companies to flee to the foreign flag.
- 3) The statute benefits "foreign-flag" shipowners at the expense of American flag shipowners while doing nothing to enhance the passenger trade for American owners. It creates another disparity in treatment of passengers' claims that would benefit those who take American jobs.
- 4) There is no national interest or benefit, as the "foreign flag" ships do not pay American taxes or American wages and are already in a cat-bird seat as far as competition goes.
- 5) The argument is that the courts are swamped with these foreign seamen cases. This is absolutely not true and they should absolutely should not be permitted to slide by this. In Southern District of Texas and all the hundreds of cases now pending there are not more than 5 or 6 of these cases for foreign seamen, and my guess is that that is true all over the country, except maybe in Miami. These companies are benefitting from American ports, taking out almost no passengers who are not U.S. citizens. There is no way for U.S. companies to compete with the ridiculously low wages paid to these foreign seamen on "foreign-flag" vessels. Every one of these changes simply makes the gap wider.

It doesn't make any sense, therefore, to allow U.S. jurisdiction for unseaworthiness and maintenance and cure, but not for negligence. The provision that negligence would not be allowed when the country of residence of the seamen provides a remedy is nothing but a trap. Most of these countries have some "remedy" which are totally and absolutely inadequate. We have seen the *sequela* to legislation which took foreign nationals working in the offshore oil industry out of the Jones Act and dispatch them back to their "host countries." These men and women do not receive any benefits to speak of. We had one case where we were contacted by a new widow from Honduras whose husband was killed in Ciudad, Carmen on a crewboat. Zapata Oil was not even willing to transport the body from Ciudad, Carmen in Mexico home to Honduras. There are no benefits of any consequence paid to these people, even if there is a "foreign remedy." It is a fraud and I defy anybody to show cases where the remedy exists and was adequate by almost any humane standard. Again, whatever the standard is separates further American shipowners and encourages Americans to flee to foreign flags.

Further, every case in which there is unseaworthiness also has a negligence claim and vice versa. Therefore, there is going to be no reduction in the number of cases that are filed. The only thing that would be reduced by this revision are the rights and benefits of injured men and women. The provision to limit this to foreign-flag vessel passengers that transport no more than 75% creates, it seems to me, an almost impossible "discovery burden" on the injured person and/or their survivors.

The real issue here is whether or not Americans are going to be able to compete with American-flagged vessels. These cruise line vessels are all registered in tiny countries under flags of convenience. Billions are literally made from U.S. passengers, but no corporate income tax comes back to the American taxpayer. These cruise lines are in direct competition to American tourists interests who are not so fortunate as to be able to escape tax liability or to be able to pay \$200 a month to an employee. Further, there would be more competition undoubtedly from American-flagged vessels if the law were being designed to equalize the costs to the foreign shipowners. It seems to me that that's what we should be accomplishing by revisions in the law. We should be seeking to make foreign-flag cruise shipowners who carry almost 100% American passengers pay their crews' wages based on American level wages and taxes the same as an American company would have. This would give Americans a real opportunity to fly our own flag.

Withdrawal/Redaction Marker

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Judging from the effect of the legislation passed in the offshore oil industry on foreign seamen and their families, I can only tell you that this provides for nothing but heartache and disaster when the bread winner in those families become injured or are killed. There is no real adequate remedy. It is the worst form of "jingoism" and the worst demonstration of American indifference to allow this kind of disparity to increase.

Maritime unions including the AFL Maritime Committee, are in vigorous opposition.

B. I am certain that this "John Dos Passas" rendition may need interpretation. Please call me at the following numbers if you need to talk to me:

- 1) P6/(b)(6) (home)
- 2) 757-7811 (office)
- 3) P6/(b)(6) (office after hours)

[001]

THE WHITE HOUSE
WASHINGTON

OFFICE OF LEGISLATIVE AFFAIRS
FAX COVER SHEET

NOTE: THE INFORMATION CONTAINED IN THIS FACSIMILE
MESSAGE IS CONFIDENTIAL AND INTENDED FOR
THE RECIPIENT ONLY.

DATE: 7-25-96

TO: Elena Kagan

FAX #: 456-1647

FROM: Andy Blocker (202) 456-6620
FAX #: (202) 456-2604

RE: Tort Reform - Cruise Vessel

PAGE 1 OF 3

If there are any problems with this transmission, please call (202) 456-6620

JUL 24 '96 04:47PM DOT/CONGRESSIONAL AF

P.2



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

The Honorable Larry D. Pressler
Chairman, Committee on Commerce,
Science, and Transportation
Washington, D.C. 20510

Dear Mr. Chairman:

As the Conference Committee begins consideration of S. 1004, the "Coast Guard Authorization Act for fiscal year 1996," the Department of Transportation wishes to express its appreciation for the bipartisan effort involved in developing S. 1004, which contains over 100 parallel provisions in support of the Coast Guard. Among the most important are the maritime regulatory and Coast Guard Auxiliary reforms. These provisions will eliminate burdensome regulatory requirements and enhance the operation of the Coast Guard Auxiliary by adding flexibility and providing needed protection for the Auxiliary's 36,000 volunteer members. The Department would also like to take this opportunity to offer our views on a number of issues that remain to be resolved in Conference.

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Second, both the House and Senate versions of S. 1004 revise financial responsibility requirements for offshore facilities. The Department supports appropriate relief from financial responsibility requirements for certain marinas and shoreside facilities, but opposes elimination of all claimants' right of direct action against financial responsibility guarantors of responsible parties. As a minimum, the Federal Government's right to direct action against the responsible party's guarantor must be fully retained, including actions for recovery of funds expended from the Oil Spill Liability Trust Fund. In addition, the right of claimants to direct action must be fully preserved in cases of insolvency or bankruptcy of the responsible party for the offshore facility.

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JUL 24 '96 04:48PM DOT/CONGRESSIONAL AF

P.3

2

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Additionally, there are four provisions that are among the Coast Guard's highest legislative priorities and should be preserved in Conference. These initiatives will save lives, enhance law enforcement, protect the environment, and ensure safe navigation: the Federal Recreational Boating Safety (RBS) Grants Program (Senate, Sec. 501); the Law Enforcement Enhancement Act (Senate, Title IX); amendments to the Act to Prevent Pollution from Ships (Senate, Title VIII); and the Truman-Hobbs Bridge Alteration Program (Senate, Sec. 101(a)(5) and (b)).

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this views report to Congress.

This letter is also being sent to Chairman Bud Shuster, House Transportation and Infrastructure Committee.

Sincerely,

Federico Peña

Return to Elena Kagan

✓BRC

THE WHITE HOUSE

WASHINGTON

June 7, 1996

MEMORANDUM FOR BRUCE LINDSEY

FROM: ELENA KAGAN *EK*
CC: JACK QUINN, KATHY WALLMAN
SUBJECT: CRUISE VESSEL TORT REFORM

After much hemming and hawing, backing and forthing (which I believe reflects much hemming and hawing, backing and forthing in Congress), the Department of Transportation has asked that for the moment at least, the White House refrain from making any statements -- whether public or private -- about vetoing the Coast Guard Authorization Bill because of its tort reform provisions. According to Nancy McFadden, Sen. Hollings is now in the midst of productive pre-conference negotiations with Sen. Stevens on these provisions, and any signaling from the White House about a veto would only complicate their negotiations. McFadden urged that we wait and see what agreement Sens. Hollings and Stevens reach before we weigh in on this issue.

This advice seems sound to me. McFadden sounded confident of both the progress of negotiations and the unsettling effect of White House intervention. At the same time, I do not think we are now in a position to say very much about exactly what would provoke a veto. In these circumstances, I think we should continue to monitor the situation and evaluate the possible outcomes. Let me know if you disagree; otherwise, I'll keep in touch with DOT, as well as with Ellen Seidman at the NEC, and report back to you on further developments.

*agree
B-L*

060711

THE WHITE HOUSE

WASHINGTON

June 7, 1996

MEMORANDUM FOR BRUCE LINDSEY

FROM: ELENA KAGAN *EK*
CC: JACK QUINN, KATHY WALLMAN
SUBJECT: CRUISE VESSEL TORT REFORM

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White House News Report

Low level staff talk -
veto

Hollings / other friends -

lay low,

↳ tell Blocher -

let negots going
on b/w Stevens +

Hollings proceed -

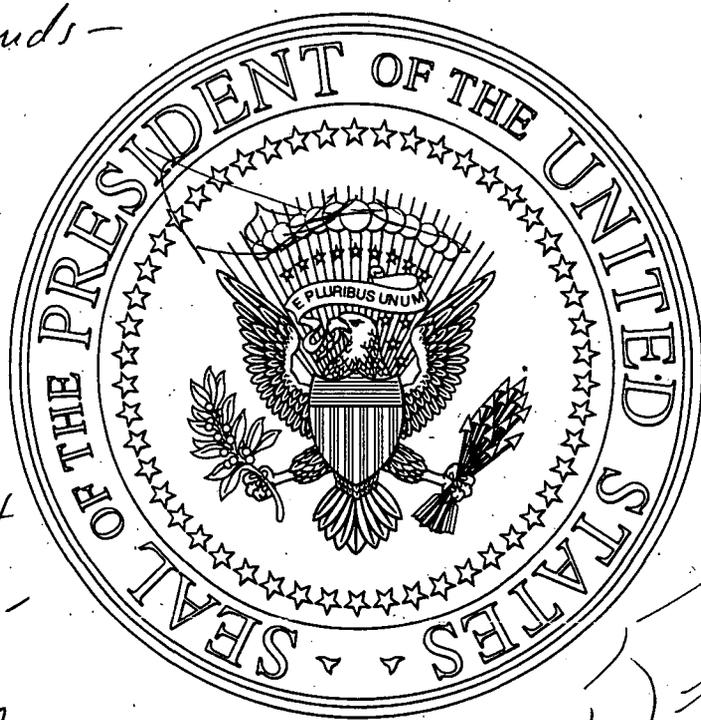
we can only

complicate things -

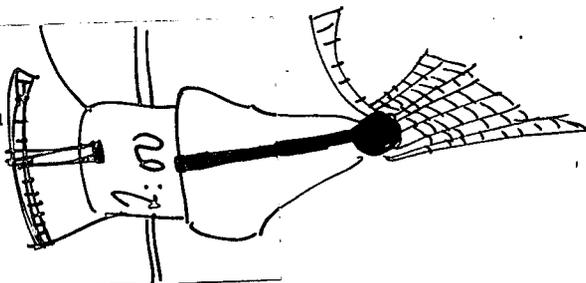
at some point -

in conference -

maybe.



Elena Kagan
125 OEOb



Friday, June 7, 1996

Produced by the Office of News Analysis

Room 161 OEOb (Ext. 6-5694)

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Q's

Nancy McFadden



Hollings trying to broker a deal

real objectives? ← What drives this?
Want veto threat?
What is in rest of bill?
OK as to what practical/ error dist?

Want to elevate this?

Thinks lack of -

Have to talk w/ Hollings' office

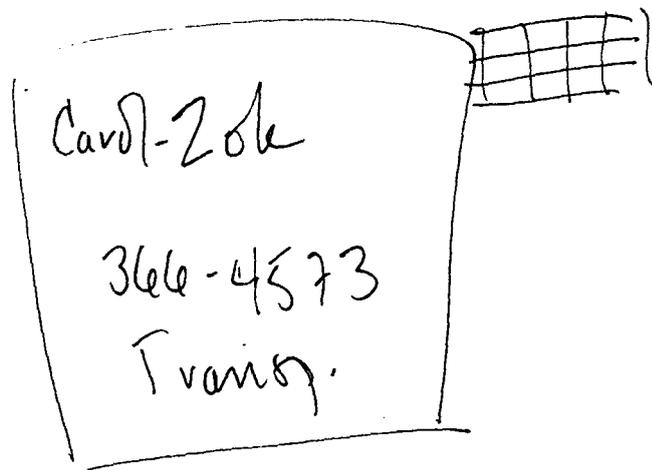
5

THE WHITE HOUSE
WASHINGTON

Maj of ind f-flay
(really American)



driving this.



OMB-Q we really need.

David Tornquist 395-5704.

Commerce

NEC

NEC - doesn't care
Commerce ??

Transport - wants to elevate

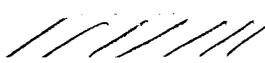
NOT This wk
which PT -
cubicles have
NOT been appointed

Hollings/Pressler met
This wk.
want to do this - give
more leverage - in
negotiations.

All in House
NOT in Senate

LOTT pressing
← Pressler to agree.

NO S.A.P. ✓



My notes - main vessel no limit.

malpractice limit - lib limit - ca's exceed liab. of US facility where sick person taken for treatment.

erro disease limit - now exception for rape. seems OK.

↳ allows King to limit

(injured on vessel)

↳ otherwise - limit to where ed comes from phys injury.

ban on foreign names sailing fr vessels in US CTS

a) comp adv to ff shipping over US flag vessels

↳ nearly all ex. vessels - don't pay many US taxes

avoid the laws

US-flag remain liable for injuries to crew

b) liboch princ of intl law - viol of convention?

↳ rt of seafarers to receive maintenance + cure / also damages per inj/death
removes this rt' (as practical mth)

state Dept - potential conflicts w/ US obligs under

Friendship/commercial/navigation treaties

↳ 8-10% of ff crews

e) makes US seafarers less desirable for employment

US sailors can sue ff ships.

Need veto sent to
have hope of compromise

FF shippers driving this
certain line industry

THE WHITE HOUSE

WASHINGTON
May 9, 1996

MEMORANDUM FOR BRUCE LINDSEY

CC: JACK QUINN, KATHY WALLMAN

FROM: ELENA KAGAN *ek*

SUBJECT: CRUISE VESSEL TORT REFORM

Elena
How do I
know if
there's
any

I received the attached from Jim Brown of OMB today. As Brown's memo notes, the Department of Transportation would like to know whether the cruise vessel tort reform provision in the Coast Guard Authorization bill might provoke a presidential veto.

Brown told me on the phone that some members of Congress are working on a compromise provision that would delete the limits on liability for malpractice and emotional distress, but retain the bar on foreign seamen suing foreign-flag vessels in U.S. courts. My sense, however, is that this bar is the most problematic aspect of the provision, because of the competitive advantage it gives to foreign-flag shipping over U.S.-flag vessels.

What should we tell Brown and the Transportation Department? (You can ignore the part of Brown's memo that requests guidance by "this afternoon." He is not expecting anything before next week.)

Bruce -
you what?
Jim

EXECUTIVE OFFICE OF THE PRESIDENT

09-May-1996 10:53am

TO: Elena Kagan

FROM: James A. Brown
Office of Mgmt and Budget, LRDSUBJECT: Liability provision in Coast Guard Authorization bill

Negotiations between House and Senate conferees on S. 1004, the Coast Guard Authorization Bill for FY 1996, have been stalled for several months over a liability provision included in the House version of the bill.

On March 27 the Department of Transportation sent a letter to conferees "strongly recommending" that the provision be deleted.

Since then, there has been a lot of activity regarding liability limitation provisions in other legislation. The Department has asked us to provide (hopefully, this afternoon) a current reading on whether the provision would be tolerable, even though objectionable, in an enrolled Coast Guard authorization bill, or whether it is so objectionable that the President would feel required to veto the bill.

I will fax the provision to you separately, and will be grateful for any guidance you can provide. Thanks.



the United States, a remedy is available to the person under the laws of that nation, and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident; or

(B) a remedy is available to the person bringing the action under the laws of the nation in which the person maintained citizenship or permanent residency at the time of the incident giving rise to the action and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident.

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U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20580

March 27, 1996 . . .

The Honorable Larry D. Pressler
Chairman
Committee on Commerce, Science and Transportation
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Transportation respectfully submits the following comments opposing the enactment of Section 430 of S. 1004, the Cruise Vessel Tort Reform provision contained in the Coast Guard Authorization Act for Fiscal Year 1996, as passed by the House on February 22, 1996. The Senate's version of S. 1004 does not contain a provision similar to Section 430. The Department strongly recommends that the provision be deleted from S. 1004 during conference because of the adverse competitive effect on U.S.-flag cruise ship companies, the potential harm to U.S. passengers on cruise ships, and the potential abrogation of rights currently granted to foreign seafarers by U.S. convention and law.

Because Section 430 has no effect on the safe operation of cruise vessels, it should not be included in an otherwise noncontroversial Coast Guard Authorization bill. The disagreement over this provision now threatens the success of S. 1004 in this Congress. S. 1004 contains too many agreed-upon provisions important to the Coast Guard, the Coast Guard Auxiliary, the maritime industry and the general public, to allow the "cruise vessel tort reform" debate to further delay its enactment.

Section 430 has three major provisions which are discussed below. On their face, the limited liability provisions in the first two subsections apply to all passengers on cruise vessels leaving U.S. ports and to both U.S.-flag and foreign-flag cruise vessels operating out of U.S. ports. However, 95 percent of the passengers on cruises leaving U.S. ports are U.S. citizens and nearly all of those vessels are foreign-flag. Thus, the adverse impact of the provisions falls mainly on U.S. passengers while at the same time benefiting foreign-flag cruise operators -- operators who pay few U.S. taxes and avoid U.S. minimum wage and fair labor laws. The third subsection gives a competitive advantage to foreign-flag cruise vessel owners by allowing them to escape liability in U.S. court for injuries to their foreign crew, while U.S.-flag vessel owners would remain liable for injuries to their crew.

LIMIT LIABILITY FOR MEDICAL MALPRACTICE

The first part of Section 430 limits the liability of cruise ship owners in certain malpractice tort actions brought by passengers. Under Subsection 430(a), a cruise ship owner's liability cannot exceed the legal liability of the shore-based facility where a sick or injured passenger is taken for treatment. As a result, this subsection may encourage a cruise ship owner to "forum shop" and limit its potential liability by referring a sick or injured passenger to treatment in the port with the most restrictive malpractice laws, rather than the closest port with the best available hospital. This provision could harm U.S. passengers by restricting their ability to hold the cruise ship owners fully accountable for mistreatment or injury resulting from the owners' referral to a local facility.

LIMIT LIABILITY FOR EMOTIONAL DISTRESS, ETC.

Subsection 430(b) limits the liability of cruise ship owners in civil tort actions brought by passengers for the infliction of emotional distress, mental suffering or psychological injury. Through conditions printed on passenger tickets, cruise vessel owners may limit the recovery of an injured passenger for emotional damages to instances where emotional distress was the direct result of substantial physical injury. Compensation for emotional injury is the primary civil remedy in rape cases, for example, which, unfortunately, do occur on cruise vessels. Subsection 430(b) would allow a cruise vessel owner to escape liability for emotional distress or psychological injury suffered by a passenger raped on a cruise ship unless there is also substantial physical injury.

PRECLUDE ACCESS TO U.S. COURTS BY FOREIGN SEAFARERS

Subsection 430(c) bars foreign seafarers injured on board a foreign-flag vessel from bringing an action in U.S. courts for "maintenance and cure" or damages for injury or death. The right of seafarers to receive food and lodging and medical care during illness or injury ("maintenance and cure") while in the service of the ship has been a bedrock principle of international maritime law for more than 200 years. The principle is designed to protect the welfare of seafarers. The right to "maintenance and cure" is a fundamental right consistently recognized by U.S. courts, including the Supreme Court, the courts of other maritime nations, and international labor agreements. As a practical matter, Subsection 430(c) would remove this right for seafarers employed on foreign ships trading regularly and primarily in U.S. ports.

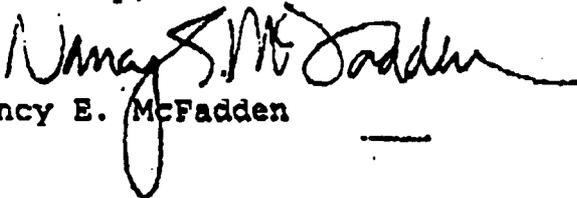
Another longstanding right superseded by subsection 430(c) is the right of foreign crew to file claims in U.S. courts under the Jones Act, 46 App. U.S.C. 5688, for injury or death aboard foreign-flag vessels doing business in the United States. This right has also been reaffirmed by the Supreme Court.¹ The Supreme Court recognized the importance of including foreign-flag vessels as employers under the Jones Act as a matter of "commercial equity". Denying foreign seafarers the right to sue in U.S. courts would give a significant competitive advantage to foreign-flag cruise ships over U.S.-flag cruise ships. Section 430(c) restricts access to foreign seafarers, but U.S. seafarers would continue to have the ability to pursue their claims in U.S. courts.

Barring foreign seafarers' access to U.S. courts also might violate the Shipowners' Liability (Sick and Injured) Convention (No. 55), 1936, a convention adopted by the International Labor Organization and approved by the United States on October 29, 1938. This convention grants seafarers the right to receive "maintenance and cure" and to pursue this right in the courts of all nations in which the convention is in force. We would also like to call the Committee's attention to the fact that the U.S. State Department opposes Subsection 430(c) because of the commercial disadvantage to U.S.-flag cruise operations and the potential conflicts with U.S. obligations under Friendship, Commerce and Navigation treaties which allow reciprocal access to U.S. courts by nationals of other treaty parties.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the submission of this report.

Thank you for the opportunity to comment on Section 430 of S. 1004, the Coast Guard Authorization Act for Fiscal Year 1996.

Sincerely,


Nancy E. McFadden

¹In Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970), the Supreme Court upheld the right of foreign seafarers to use U.S. courts to recover "maintenance and cure" and to make claims under the Jones Act.

THE WHITE HOUSE

WASHINGTON
May 9, 1996

MEMORANDUM FOR BRUCE LINDSEY

CC: JACK QUINN, KATHY WALLMAN
FROM: ELENA KAGAN *AK*
SUBJECT: CRUISE VESSEL TORT REFORM

I received the attached from Jim Brown of OMB today. As Brown's memo notes, the Department of Transportation would like to know whether the cruise vessel tort reform provision in the Coast Guard Authorization bill might provoke a presidential veto.

Brown told me on the phone that some members of Congress are working on a compromise provision that would delete the limits on liability for malpractice and emotional distress, but retain the bar on foreign seamen suing foreign-flag vessels in U.S. courts. My sense, however, is that this bar is the most problematic aspect of the provision, because of the competitive advantage it gives to foreign-flag shipping over U.S.-flag vessels.

What should we tell Brown and the Transportation Department? (You can ignore the part of Brown's memo that requests guidance by "this afternoon." He is not expecting anything before next week.)

Elena

If barring foreign seamen from suing
in U.S. courts creates a competitive
disadvantage for U.S.-flag vessels,
why is anyone for it (other than
foreign-flag vessels)? Does the Dept of
Commerce have a position? What about
NEC?

from

MAY 13, 1996

MEMORANDUM FOR JOHN HILLEY

FROM: ANDY BLOCKER 
RE: THE CRUISE VESSEL TORT REFORM ACT/ COAST GUARD BILL
CC: BRUCE LINDSEY, SUSAN BROPHY

This memo concerns Senator Lott's attempt to attach the Cruise Vessel Tort Reform Act (CVTRA) to the Coast Guard Reauthorization Act of 1996 in conference. The CVTRA has already passed the House as a part of the Coast Guard Reauthorization Act. Senator Hollings has been blocking the appointment of conferees in order to craft a compromise. He has reached a compromise on two of the three main provisions in the CVTRA:

Section 430(a) would limit the liability of cruise ship owners in certain medical malpractice tort actions brought by passengers. The cruise ship owner's liability could not exceed the legal liability of the shore-based facility where a sick person is taken for treatment. (COMPROMISE REACHED: Section 430(a) would only apply to U.S. states. In other words, liability limits of foreign countries would not apply to the cruise ship owner.)

Section 430(b) would limit the liability of cruise ship owners in civil tort actions brought by passengers for the infliction of emotional distress, mental suffering or psychological injury. Under this subsection, the cruise vessel owners could limit, via conditions printed on passenger tickets, emotional damages to instances where emotional distress was a direct result of substantial physical injury. This would prevent victims of rape from seeking damages unless there is substantial physical injury. (COMPROMISE REACHED: Section 430(b) would no longer require "substantial" physical injury and sexual harassment, sexual assault, and rape would be explicitly excluded from the liability limitation.)

Section 430(c) would bar foreign seafarers injured on board foreign-flag vessels from bringing an action in U.S. courts for "maintenance and cure" or damages for injury or death. Denying seafarers the right to sue in U.S. courts would give a significant competitive advantage to foreign-flag ships over U.S. flag ships. It would also make U.S. seafarers (8-10% of foreign-flag ship crews) less desirable for employment as compared to the unprotected and less expensive foreign seafarers. (NO COMPROMISE REACHED)

-next page-

The Department of Transportation wrote a letter (attached) on March 27, 1996 in opposition to the CVTRA. However, the cruise line industry took comfort in the fact that the letter did not mention the word "veto" and quickly pursued Senator Lott's help in making sure the language made it through conference.

Prior to the compromises reached by Senator Hollings, the Department of Transportation started drafting a "veto" letter to get the industry to compromise. The "veto" letter was never intended for circulation, but only for negotiation. Since the "veto" rumor began, two of the three provisions have been worked out. It is uncertain whether or not a compromise can be worked out on the last provision unless an actual "veto" statement is issued. We should know more in the next two weeks as Senator Hollings continues to negotiate with the cruise line industry and Senator Stevens who is sympathetic with our position.



U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

March 27, 1996

The Honorable Larry D. Pressler
Chairman
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Russell Senate Office Building
Washington, D.C. 20510

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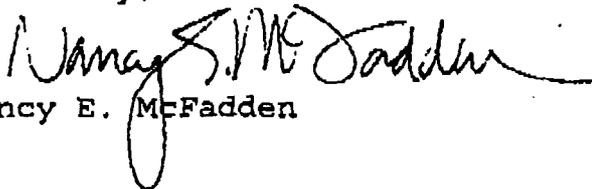
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Nancy E. McFadden

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Summary of Changes to
House-passed Cruise Vessel Tort Reform Provisions

- 1) The House provisions would limit a shipowner's liability for shoreside medical malpractice on an injured seaman or passenger treated ashore to the applicable shoreside medical malpractice liability limit. Revision limits applicability to U.S. states.
- 2) The House provisions would enable shipowners to limit their liability for a passenger's emotional or psychological damages to situations where there was injury or actual risk of injury due to the shipowner's negligence or intention through fine print conditions on the ticket. Revision lowers threshold for liability by eliminating requirement that injury be "substantial" and also explicitly excludes sexual harassment, sexual assault, and rape from the liability limitation.
- 3) The House provision would eliminate the ability of non-resident alien crew members of foreign-flag cruise ships to sue in U.S. courts when employment or union contracts stipulate another forum or when a crew member's country of residence provides a remedy and the shipowner accepts its jurisdiction. Revision would eliminate U.S. jurisdiction for negligence when a crew member's country of residence provides a remedy, but retains U.S. court jurisdiction over maintenance and cure and unseaworthiness actions by non-resident aliens. The provision would be limited to foreign-flag passenger vessels that transport no more than 75 percent of U.S. passengers in a calendar year and whose vessels were over five thousand gross tons with accommodations for at least 100 passengers. The revision also retains the alien crew member's right to a jury trial.

1 [Staff Discussion Draft]

2 April 30, 1996

3 (c) Section 20 of the Act of March 4, 1915 (46
4 U.S.C. App. 688) is amended by adding at the end thereof
5 the following:

6 “(c) LIMITATION FOR CERTAIN ALIENS WHERE
7 THERE IS AN ALTERNATIVE FORUM.—

8 “(1) IN GENERAL.—Except for an action for
9 maintenance and cure, or an action resulting from
10 the unseaworthy condition of a vessel, no civil action
11 may be maintained under subsection (a) for dam-
12 ages for injury or death of an individual who was
13 not a citizen or permanent legal resident alien of the
14 United States at the time of the incident giving rise
15 to the action if—

16 “(A) the incident giving rise to the action
17 occurred while the individual was employed on
18 board an exempted passenger vessel;

19 “(B) a remedy is available to, or on behalf
20 of, the individual bringing the action (or on
21 whose behalf the action is brought) under the
22 laws of the nation of which that individual was
23 a citizen or permanent legal resident at the
24 time of the incident giving rise to the action;
25 and

1 “(C) the party seeking to dismiss the ac-
2 tion under this paragraph stipulates to jurisdic-
3 tion under the laws of that nation as to such
4 incident.

5 “(2) JURISDICTION NOT IMPLIED.—The provi-
6 sions of paragraph (1) shall not be interpreted to re-
7 quire any court in the United States to accept juris-
8 diction over any action.

9 “(3) RIGHT TO TRIAL BY JURY NOT IM-
10 PAIRED.—Nothing in this subsection shall restrict
11 the right of trial by jury provided under subsection
12 (a).

13 “(4) EXEMPTED PASSENGER VESSEL DE-
14 FINED.—For purposes of this subsection, the term
15 ‘exempted passenger vessel’ means a vessel docu-
16 mented other than under the laws of the United
17 States—

18 “(A) less than 75 percent of the pas-
19 sengers of which, for the calendar year in which
20 the incident giving rise to the action occurs, are
21 citizens or permanent legal resident aliens of
22 the United States;

23 “(B) that is of not less than 5,000 gross
24 tons; and

1

“(C) that has accommodations for not less

2

than 100 passengers.”.

○

Other provisions:

Validity of certificates of citizenship issued prior to repeal. Act Oct. 9, 1940, ch 784, § 2, 54 Stat. 1058, provided: "All certificates heretofore issued to seamen under the authority of section 4588 of the Revised Statutes of the United States [former 46 USCS § 686] are hereby declared void."

§ 688. Recovery for injury to or death of seaman

(a) **Application of railway employee statutes; jurisdiction.** Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) **Limitation for certain aliens; applicability in lieu of other remedy. (1)**

No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred—

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources—including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in Article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person—

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

(Mar. 4, 1915, ch 153, § 20, 38 Stat. 1185; June 5, 1920, ch 250, § 33, 41 Stat. 1007; Dec. 29, 1982, P. L. 97-389, Title V, § 503(a), 96 Stat. 1955.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury, to railway employees" and "statutes of the United States conferring or regulating the right of action for death in the case of railway employees", referred to in this section, probably are references to the Federal Employers' Liability Acts, Act June 11, 1906, ch 3073, 34 Stat. 232; Apr. 22, 1908, ch 149, 35 Stat. 65; Apr. 5, 1910, ch 143, 36 Stat. 291; and Aug. 11, 1939, ch 685, 53 Stat. 1404, which appear generally as 45 USCS §§ 51 et seq. For full classification of such Acts, consult USCS Tables volumes.

"The 1958 Convention on the Continental Shelf", referred to in this section, occurred at Geneva on April 29, 1958, and entered into force for the United States on June 10, 1964. See 15 UST 471; TIAS 5578.

Amendments:

1920. Act June 5, 1920, substituted this section for one which read: "In any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority."

1982. Act Dec. 29, 1982 designated the existing provisions as subsec. (a); and added subsec. (b).

Other provisions:

Application of amendment made by Act Dec. 29, 1982. Act Dec. 29, 1982, P. L. 97-389, Title V, § 503(b), 96 Stat. 1956, provided: "The amendment made by this section [see the 1982 Amendment note] does not apply to any action arising out of an incident that occurred before the date of enactment of this section [enacted Dec. 29, 1982]."

CROSS REFERENCES

Jurisdiction of admiralty and maritime cases, 28 USCS § 1333.
 Nonremovability of Federal Employers' Liability Act actions from state court, 28 USCS § 1445.
 Jury trial in admiralty and maritime cases, 28 USCS § 1873.
 Fees and costs in seamen's suits, 28 USCS § 1916.
 Longshoremen's and Harbor Workers' Compensation Act, 33 USCS §§ 901 et seq.
 Liability for injuries to railroad employees, 45 USCS §§ 51 et seq.
 Limitation of vessel owner's liability, 46 USCS Appx §§ 181 et seq.
 Death on high seas by wrongful act, 46 USCS Appx §§ 761 et seq.
 Limitation of actions for maritime torts, 46 USCS Appx § 763a.
 Suits in Admiralty against United States for damages caused by public vessels, 46 USCS Appx §§ 781 et seq.

THE WHITE HOUSE

WASHINGTON

May 9, 1996

MEMORANDUM FOR BRUCE LINDSEY

CC: JACK QUINN, KATHY WALLMAN
FROM: ELENA KAGAN *ek*
SUBJECT: CRUISE VESSEL TORT REFORM

I received the attached from Jim Brown of OMB today. As Brown's memo notes, the Department of Transportation would like to know whether the cruise vessel tort reform provision in the Coast Guard Authorization bill might provoke a presidential veto.

Brown told me on the phone that some members of Congress are working on a compromise provision that would delete the limits on liability for malpractice and emotional distress, but retain the bar on foreign seamen suing foreign-flag vessels in U.S. courts. My sense, however, is that this bar is the most problematic aspect of the provision, because of the competitive advantage it gives to foreign-flag shipping over U.S.-flag vessels.

What should we tell Brown and the Transportation Department? (You can ignore the part of Brown's memo that requests guidance by "this afternoon." He is not expecting anything before next week.)

if foreign. can't see here.
cc: Elena - Is this still a live issue? I think we should oppose the provision in toto; the compromise doesn't sound compelling to me. Do we need to meet to resolve?
Kevin

EXECUTIVE OFFICE OF THE PRESIDENT

09-May-1996 10:53am

TO: Elena Kagan

FROM: James A. Brown
Office of Mgmt and Budget, LRD

SUBJECT: Liability provision in Coast Guard Authorization bill

Negotiations between House and Senate conferees on S. 1004, the Coast Guard Authorization Bill for FY 1996, have been stalled for several months over a liability provision included in the House version of the bill.

On March 27 the Department of Transportation sent a letter to conferees "strongly recommending" that the provision be deleted.

Since then, there has been a lot of activity regarding liability limitation provisions in other legislation. The Department has asked us to provide (hopefully, this afternoon) a current reading on whether the provision would be tolerable, even though objectionable, in an enrolled Coast Guard authorization bill, or whether it is so objectionable that the President would feel required to veto the bill.

I will fax the provision to you separately, and will be grateful for any guidance you can provide. Thanks.



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S.1004

Coast Guard Authorization Act For Fiscal Year 1996 (Engrossed House Amendment)

SEC. 430. CRUISE VESSEL TORT REFORM.

(a) Section 4283 of the Revised Statutes of the United States (46 App. 183), is amended by adding a new subsection (g) to read as follows:

'(g) In a suit by any person in which a shipowner, operator, or employer of a crew member is claimed to have direct or vicarious liability for medical malpractice or other tortious conduct occurring at a shoreside facility, or in which the damages sought are alleged to result from the referral to or treatment by any shoreside doctor, hospital, medical facility, or other health care provider, the shipowner, operator, or employer shall be entitled to rely upon any and all statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State in which the shoreside medical care was provided.'

(b) Section 4283b of the Revised Statutes of the United States (46 App. 183c) is amended by adding a new subsection to read as follows:

'(b) Subsection (a) shall not prohibit provisions or limitations in contracts, agreements, or ticket conditions of carriage with passengers which relieve a manager, agent, master, owner, or operator of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as such provisions or limitations do not limit liability if the emotional distress, mental suffering, or psychological injury was--

'(1) the result of substantial physical injury to the claimant caused by the negligence or fault of the manager, agent, master, owner, or operator;

'(2) the result of the claimant having been at actual risk of substantial physical injury, which risk was caused by the negligence or fault of the manager, agent, master, owner, or operator; or

'(3) intentionally inflicted by the manager, agent, master, owner, or operator.'

(c) Section 20 of chapter 153 of the Act of March 4, 1915 (46 App. 688) is amended by adding a new subsection to read as follows:

'(c) Limitation for Certain Aliens in Case of Contractual Alternative Forum--

'(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent legal resident alien of the United States at the time of the incident giving rise to the action, if the incident giving rise to the action occurred while the person was employed on board a vessel documented other than under the laws of the United States, which vessel was owned by an entity organized other than under the laws of the United States or by a person who is not a citizen or permanent legal resident alien.

'(2) The provisions of paragraph (1) shall only apply if--

'(A) the incident giving rise to the action occurred while the person bringing the action was a party to a contract of employment or was subject to a collective bargaining agreement which, by its terms, provided for an exclusive forum for resolution of all such disputes or actions in a nation other than

the United States, a remedy is available to the person under the laws of that nation, and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident; or

(B) a remedy is available to the person bringing the action under the laws of the nation in which the person maintained citizenship or permanent residency at the time of the incident giving rise to the action and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident.

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U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St. S.W.
Washington, D.C. 20590

March 27, 1996 . . .

The Honorable Larry D. Pressler
Chairman
Committee on Commerce, Science and Transportation
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Transportation respectfully submits the following comments opposing the enactment of Section 430 of S. 1004, the Cruise Vessel Tort Reform provision contained in the Coast Guard Authorization Act for Fiscal Year 1996, as passed by the House on February 22, 1996. The Senate's version of S. 1004 does not contain a provision similar to Section 430. The Department strongly recommends that the provision be deleted from S. 1004 during conference because of the adverse competitive effect on U.S.-flag cruise ship companies, the potential harm to U.S. passengers on cruise ships, and the potential abrogation of rights currently granted to foreign seafarers by U.S. convention and law.

Because Section 430 has no effect on the safe operation of cruise vessels, it should not be included in an otherwise noncontroversial Coast Guard Authorization bill. The disagreement over this provision now threatens the success of S. 1004 in this Congress. S. 1004 contains too many agreed-upon provisions important to the Coast Guard, the Coast Guard Auxiliary, the maritime industry and the general public, to allow the "cruise vessel tort reform" debate to further delay its enactment.

Section 430 has three major provisions which are discussed below. On their face, the limited liability provisions in the first two subsections apply to all passengers on cruise vessels leaving U.S. ports and to both U.S.-flag and foreign-flag cruise vessels operating out of U.S. ports. However, 95 percent of the passengers on cruises leaving U.S. ports are U.S. citizens and nearly all of those vessels are foreign-flag. Thus, the adverse impact of the provisions falls mainly on U.S. passengers while at the same time benefiting foreign-flag cruise operators -- operators who pay few U.S. taxes and avoid U.S. minimum wage and fair labor laws. The third subsection gives a competitive advantage to foreign-flag cruise vessel owners by allowing them to escape liability in U.S. court for injuries to their foreign crew, while U.S.-flag vessel owners would remain liable for injuries to their crew.

LIMIT LIABILITY FOR MEDICAL MALPRACTICE

The first part of Section 430 limits the liability of cruise ship owners in certain malpractice tort actions brought by passengers. Under Subsection 430(a), a cruise ship owner's liability cannot exceed the legal liability of the shore-based facility where a sick or injured passenger is taken for treatment. As a result, this subsection may encourage a cruise ship owner to "forum shop" and limit its potential liability by referring a sick or injured passenger to treatment in the port with the most restrictive malpractice laws, rather than the closest port with the best available hospital. This provision could harm U.S. passengers by restricting their ability to hold the cruise ship owners fully accountable for mistreatment or injury resulting from the owners' referral to a local facility.

LIMIT LIABILITY FOR EMOTIONAL DISTRESS, ETC.

Subsection 430(b) limits the liability of cruise ship owners in civil tort actions brought by passengers for the infliction of emotional distress, mental suffering or psychological injury. Through conditions printed on passenger tickets, cruise vessel owners may limit the recovery of an injured passenger for emotional damages to instances where emotional distress was the direct result of substantial physical injury. Compensation for emotional injury is the primary civil remedy in rape cases, for example, which, unfortunately, do occur on cruise vessels. Subsection 430(b) would allow a cruise vessel owner to escape liability for emotional distress or psychological injury suffered by a passenger raped on a cruise ship unless there is also substantial physical injury.

PRECLUDE ACCESS TO U.S. COURTS BY FOREIGN SEAFARERS

Subsection 430(c) bars foreign seafarers injured on board a foreign-flag vessel from bringing an action in U.S. courts for "maintenance and cure" or damages for injury or death. The right of seafarers to receive food and lodging and medical care during illness or injury ("maintenance and cure") while in the service of the ship has been a bedrock principle of international maritime law for more than 200 years. The principle is designed to protect the welfare of seafarers. The right to "maintenance and cure" is a fundamental right consistently recognized by U.S. courts, including the Supreme Court, the courts of other maritime nations, and international labor agreements. As a practical matter, Subsection 430(c) would remove this right for seafarers employed on foreign ships trading regularly and primarily in U.S. ports.

3

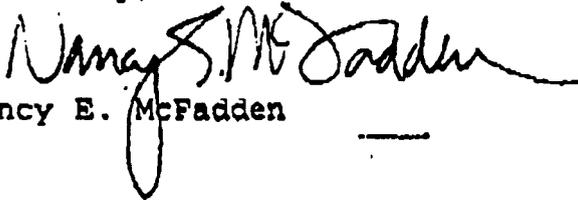
Another longstanding right superseded by Subsection 430(c) is the right of foreign crew to file claims in U.S. courts under the Jones Act, 46 App. U.S.C. §688, for injury or death aboard foreign-flag vessels doing business in the United States. This right has also been reaffirmed by the Supreme Court.¹ The Supreme Court recognized the importance of including foreign-flag vessels as employers under the Jones Act as a matter of "commercial equity". Denying foreign seafarers the right to sue in U.S. courts would give a significant competitive advantage to foreign-flag cruise ships over U.S.-flag cruise ships. Section 430(c) restricts access to foreign seafarers, but U.S. seafarers would continue to have the ability to pursue their claims in U.S. courts.

Barring foreign seafarers' access to U.S. courts also might violate the Shipowners' Liability (Sick and Injured) Convention (No. 55), 1936, a convention adopted by the International Labor Organization and approved by the United States on October 29, 1938. This convention grants seafarers the right to receive "maintenance and cure" and to pursue this right in the courts of all nations in which the convention is in force. We would also like to call the Committee's attention to the fact that the U.S. State Department opposes Subsection 430(c) because of the commercial disadvantage to U.S.-flag cruise operations and the potential conflicts with U.S. obligations under Friendship, Commerce and Navigation treaties which allow reciprocal access to U.S. courts by nationals of other treaty parties.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the submission of this report.

Thank you for the opportunity to comment on Section 430 of S. 1004, the Coast Guard Authorization Act for Fiscal Year 1996.

Sincerely,



Nancy E. McFadden

¹In Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970), the Supreme Court upheld the right of foreign seafarers to use U.S. courts to recover "maintenance and cure" and to make claims under the Jones Act.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

22-May-1996 04:00pm

TO: Elena Kagan

FROM: James A. Brown
 Office of Mgmt and Budget, LRD

SUBJECT: Coast Guard Authorization Bill--liability issue

Is there any guidance I can pass on to Transportation regarding whether the President would be likely to feel compelled to veto the liability provision in this bill?

Thanks for your help.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

15-May-1996 04:02pm

TO: Elena Kagan

FROM: James A. Brown
 Office of Mgmt and Budget, LRD

SUBJECT: Coast Guard Authorization Liability Issue

I wanted to check in with you to see whether you had been successful in obtaining guidance on whether the President would feel compelled to veto this bill if it contained the liability provision I shared with you last week.

Thanks.

RE: UPDATE ON CRUISE VESSEL TORT REFORM

DATE: May 6, 1996
=====

I wanted to update you on where we are on the cruise vessel tort reform provision included in the House passed Coast Guard bill. I have included a statement on the current law, background information, and a list of potential options for further change.

Compensation and Personal Injury Remedies for Foreign Seamen:

On May 9, 1995, the House of Representatives passed the Coast Guard Authorization Act. The bill includes a provision (section 430) entitled "Cruise Vessel Tort Reform". The provision was added to the bill as part of the Committee en bloc amendment without any discussion. No hearings have been held on the issue by either the House or Senate. The provisions of 430(a)&(b), respectively, extended state law limitations on certain medical malpractice claims, and restricted the rights of passenger claims for damage for emotional distress. Senate concerns about the application of sections 430(a)&(b) have been resolved. However, the provision restricting the rights of foreign seamen to bring suit in the United States remains unresolved.

Subsection 430(c), as originally proposed, would eliminate the right of an alien crew member serving aboard foreign flag vessels to maintenance and cure or for damages for injury or death. The provision would only apply if the crew member was party to a collective bargaining agreement providing for an exclusive forum for resolution of all such disputes in a nation other than the United States; or if a remedy is available to the person under the crew member's national laws.

Maritime personal injury law:

A suit for personal injuries resulting from a maritime tort in connection with a vessel on navigable waters can be brought on the admiralty side of Federal District Courts. This grant of authority to District Courts is found at 28 USC 1333, which states, "the district courts shall have original jurisdiction, exclusive of the courts of the States, of any civil case of admiralty or maritime jurisdiction, saving to suitors all other remedies to which they are otherwise entitled." The savings to suitors clause has been construed to provide personal injury claimants the right to proceed in personam in State court, provided that the jurisdictional requirements of State court can be met. Federal Districts Courts have exclusive jurisdiction over in rem claims. Even though a maritime personal injury claim is brought on the civil side of the Federal District Court, the substantive federal maritime law controls.

A seaman is entitled to three remedies for personal

injuries:

(1) Maintenance and cure. General maritime law affords to all ill or injured seamen the right to receive medical treatment and to be maintained ashore when he falls ill or is injured while in the service of a vessel. This right includes the right to receive medical treatment to the point of maximum cure, and does not allow the seamen to recover for injuries of a permanent nature. Maintenance and cure is an extremely old legal right that has been traced to Roman law. U.S. treaty law (treaties of friendship, commerce and navigation and the Shipowners Liability Convention of 1936) reserve access to U.S. court for alien seamen claims for maintenance and cure.

(2) Unseaworthiness. Under general maritime law any individual with a contractual nexus to a vessel owner may recover from a vessel owner for injuries caused by the unseaworthy conditions of a vessel. The warranty of seaworthiness is another ancient maritime right, dating back to Roman law. The warranty seaworthiness was originally a duty undertaken by a shipowner to a cargo shipper to "provide a seaworthy vessel and to supply and keep in order the proper appliances appurtenant to the ship". In the late nineteenth century, the warranty of seaworthiness was extended to seamen. The warranty now covers longshoremen, third party contractors, invitees, and passengers.

(3) Jones Act (46 USC 688). The Jones Act, enacted in 1920, provides seamen with a right to a jury trial for any personal injuries caused by the negligence of a shipowner. Contributory negligence is not a bar to recovery, but does mitigate the employees' recovery. The negligence action is identical to the right afforded to railroad employees under FELA, and the statute incorporates FELA by reference.

foreign seamen:

Foreign seamen have been always been allowed to bring suit for injuries and illness in the United States. Seamen remedies were initially restricted to claims for maintenance and cure and unseaworthiness, until Congress enacted the Jones Act in 1920. Congressional consideration of the Jones Act clarified that foreign seamen were eligible to sue under the provisions of the Jones Act. In fact, one of the primary reasons for extending the provisions of the Jones Act to foreign seamen was to equalize the burden facing U.S.-flag operators and the burden facing foreign flag operators. These protections are important to foreign seamen who are usually residents of third world countries, and who, in all likelihood, do not have a legal system that affords injured workers remedies for employer negligence. Many rights afforded to U.S. seamen in their labor contracts, or under their shipping articles, are not afforded to foreign seamen in their shipping articles as a result of the unequal bargaining powers of the shipowner/employer.

U.S. courts have limited the right of foreign seamen to sue in the United States through doctrines of choice of law and forum nonconveniens. The seminal case on choice of law in maritime cases is Lauritzen v. Larsen, 345 U.S. 571 (1953) which was further refined in Hellenic Lines v. Rhoditis, 398 U.S. 306 (1970). In these cases, the Supreme Court enumerated nine factors to be considered in determining the proper choice of law and whether another forum is more appropriate for the disposition of the claim. The nine factors that are considered in the forum nonconveniens determination are:

- 1) the place of the wrongful act;
- 2) the law of the flag;
- 3) the domicile of the seaman;
- 4) the allegiance of the defendant shipowner;
- 5) the place of the execution of the employment contract;
- 6) the inaccessibility of the foreign forum;
- 7) the law of the forum;
- 8) the base of operations;
- 9) the place of substantial and continuing contracts of the shipowner.

The last two factors were added to the forum nonconveniens determination in response to the prevalence of vessels operating under flags of convenience. If, after the court considers the foregoing factors, it determines that the majority of contacts lie elsewhere the action may be transferred.

Options for further change:

After your initial objections to the cruise ship tort reform provisions, the cruise ship industry reformulated their original offer. The revised offer resolved the concerns about sections 430(a)&(b). The revised offer on 430(c) restricted the applicability of the limitation on suits for injuries or illness to foreign flag passenger vessels, and proposed to allow foreign seamen to bring suit for maintenance and cure.

After reviewing the cruise ship industry draft, you tendered a counterproposal to restrict the applicability of the limitation on suits for injuries or illness to foreign flag passenger vessels that carried at least 25% non-U.S. citizen passengers (we expect to have to delete this provision, since most all of the cruise ship operations derive over 90% of their revenues from U.S. passengers) and expanded the right of foreign seamen to bring suit to include actions for unseaworthiness in addition to actions for maintenance and cure, including the right to a jury trial.

Your offer was intended to respond to the cruise ship operators position that injury claims were being made frivolously. The standard in a Jones Act case is whether "any" negligence occurred, and contributory negligence does not bar recovery-- it only mitigates the amount of recoverable damages.

As such, it is very easy to defeat a defendants motion for summary judgement, since all the plaintiff need prove was that there was negligence. However, in a case for damages under the warranty of seaworthiness, the standard is sufficiently higher. The standard is whether the vessel was reasonably fit for its intended purpose. This standard would make it much more difficult for the plaintiff to defeat a motion for summary judgement, and allow the defendant to decrease his exposure to potential frivolous claims. While your proposal does raise the bar to a right to a jury trial, it also maintains the right of seamen to recover for unseaworthiness to compensate the seamen for permanent injury, such as the loss of a limb, since maintenance and cure only covers to the point of maximum recovery and would not include damages to compensate for permanent disability.

Capital Notebook

Coast Guard Bill Cruises Into Trouble

By Guy Gugliotta
Washington Post Staff Writer

According to Rep. Don Young (R-Alaska), it was a "noncontroversial manager's amendment," a legislative massage that makes a bill more attractive to more members as it comes to the House floor.

The amendment passed the House by voice vote on May 9, 1995, and the underlying Coast Guard Reauthorization Bill followed 406 to 12. Only afterward did people read the fine print.

It turned out that the amendment limits the right of foreign seamen to sue in U.S. courts for grievances against foreign cruise ship lines, most of them flying foreign flags.

This has provoked opposition from consumer groups, trial lawyers, U.S. labor unions and even a bunch of ministers and priests, who have taken Kathie Lee Gifford to task for pitching a cruise line on TV.

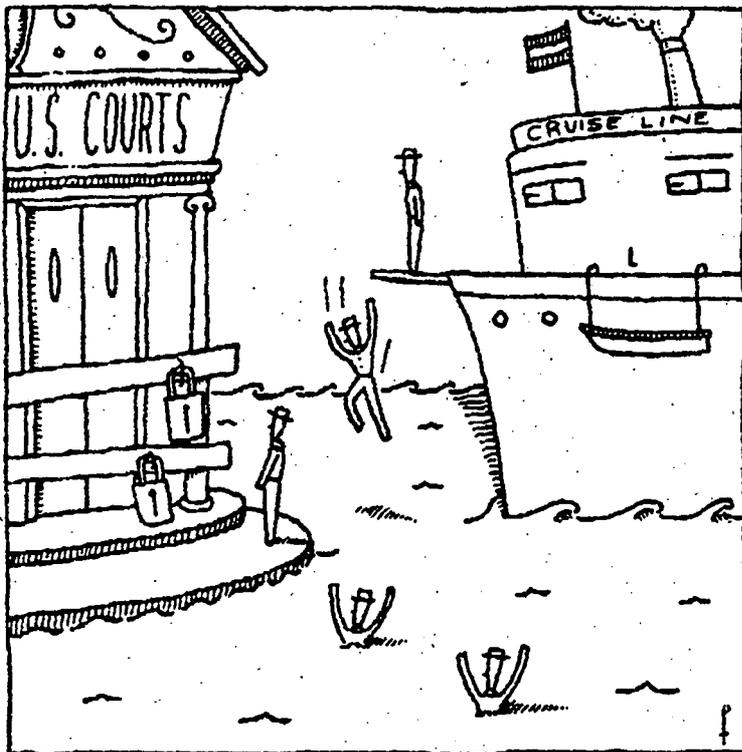
Their point is that the foreigners, the vast majority of the 60,000 crew members employed aboard 87 ships from 19 different foreign-owned cruise lines, tend to come from countries like Honduras and the Philippines where legal recourse may be limited, to put it kindly. If they can't sue in the United States, they can't sue anywhere.

The cruise lines are miffed because a half-dozen lawyers in South Florida (cruise ship central) are making a fortune filing frivolous damage suits on behalf of people who either signed contracts not to sue or have perfectly good courts in their home countries.

The bill has languished for more than a year, waiting to go to a House-Senate conference while lawmakers try to resolve this impasse. There is little evidence of movement.

Both sides have scored impressive victories in this duel. The International Council of Cruise Lines, representing the companies, gets top marks for sneaking the amendment into the bill. Who says outlanders can't master the system?

"There has been growing abuse of litigation," said council president Cindy Colenda. "Our



BY PAUL FISCH FOR THE WASHINGTON POST

interest is that all countries have adequate remedies for protecting their seamen. It is absolutely inaccurate that we're cutting off their rights."

But the opposition has made a handsome recovery. The North American Maritime Ministry Association, representing chaplains in 125 U.S. and Canadian ports, presented firsthand experience of sailors' complaints. Who can argue with God?

"It is not uncommon to hear from a seafarer that he's being denied access to medical help, or just not getting a square deal," said the Rev. Paul K. Chapman, a Baptist minister in New York and executive secretary of the association. "We see cases of serious exploitation."

On May 29, the association issued a news release urging Gifford to "temporarily disassociate herself" from Carnival Cruise Lines, and also pointed out that foreign lines pay no corporate income tax in the United States while making huge profits carrying U.S. citizens to and from U.S. ports.

Young's office, meanwhile, maintains that the boss's amendment simply sought to unclog the U.S. court system. Rep. James A. Traficant Jr. (D-Ohio), the Democrats' floor manager for the Coast Guard bill, accepted the explanation, but noted in a letter to Young that U.S. seafarers' unions "have some legitimate concerns."

Like: Why should a cruise line ever hire a *gringo* who can sue

in the United States when they can get a Colombian who can be fired in Miami the first time he complains? He can sue in Barranquilla, of course, if he can scrape up the money to get home.

At present, the council does not seem to be winning the war of words. Colenda contends, for example, that there is "no contact" between the United States and foreign cruise lines with foreign crewmen.

Whoops! What about the 4.5 million passengers the cruise ships carry annually, the overwhelming number of whom are Americans? And what about the 450,000 direct and indirect shoreside jobs the industry has created in the United States? "This is a *de facto* American business," Chapman said.

Colenda also notes that foreigners compete dramatically for every cruise ship job opening: "Caribbean nationals, if they can even get a job in their country, are very, very satisfied to have jobs on our ships."

Whoops! If cruise ships hold the same attraction as a Mexican border *maquiladora*, maybe it's time for Congress to take a closer look at wages and working conditions.

"Our strategy is to say this industry is out of control," said Joe Belluck, staff attorney at consumer group Public Citizen's Congress Watch. "Our strategy is to signal to them [the cruise lines] that 'you don't want to push this.'"

In the End, Warner and Miller to Their Own Styles Stay True

By Spencer S. Hsu and Peter Baker

Washington Post Staff Writers

Sen. John W. Warner and challenger James C. Miller III rushed to the finish of Virginia's GOP Senate campaign yesterday just as they began it: a highflying incumbent using the advantages of money and popularity and an underdog laboring quietly to lead a grass-roots revolt.

Heading into today's open primary, Warner hopped across Virginia in a chartered plane, barnstorming at colorful rallies in all the state's major television markets. Miller, meanwhile, steered his red Dodge pickup truck through small Shenandoah Valley towns, keeping a relatively low profile while trying to

stir support among the rural and religious conservative voters who are key to his hopes.

Their campaigning styles were typical for a primary race in which the well-funded Warner has skirted the state GOP's more conservative leadership by trying to appeal directly to moderate and suburban voters. In a barrage of television advertisements, Warner has touted his seniority and role in landing federal jobs and projects.

Miller is trying to capitalize on some conservatives' anger with Warner for, among other things, refusing to support Oliver L. North's bid for Senate two years ago. The former federal budget director's low-budget campaign is hoping that a boost from angry Christian conservatives, rural voters and gun

enthusiasts will help Miller upset the three-term incumbent.

In Alexandria yesterday afternoon, 80 Warner supporters with red, white and blue signs lined the steps of Market Square, chanting "Six more years!" and applauding Warner's every move—stepping onto the sidewalk, putting on his blue blazer, turning to the TV cameras.

"Turnout tomorrow will be significant and historic," boasted Warner, who is hoping for a high turnout among voters who are not GOP loyalists. "I accept humbly the very strong likelihood I will be the Republican nominee!"

In the Valley, Miller typically was greeted by one or two local supporters as he shook

hands in local shops in the towns of Berryville, Front Royal and Chester Gap. "I'm Jim Miller, and I hope I can count on your support in tomorrow's Republican primary," he told them, repeating the refrain all day.

"You've got my vote," said W.R. Miller, 80, an electronics engineer who left Falls Church to retire in a log cabin overlooking the Shenandoah River in Front Royal. Shopping at the local Kmart, W.R. Miller echoed the sentiments of many of the challenger's supporters. "I just don't like Warner," he said. "He's not faithful to the party. Why should they support him?"

Besides basing his campaign on conservatives' anger at Warner, James Miller has

See PRIMARY, B5, Col. 3

PRIMARY, From B1

staked out territory to the political right of Warner. Unlike Warner, Miller opposes abortion in cases of rape or incest. Miller also has advocated repealing the assault weapons ban and replacing the federal income tax with a flat tax.

But Warner has responded with a general election-style television ad campaign that has saturated the airwaves with glossy personal statements and personal attacks on Miller that the underfunded challenger couldn't afford to answer.

"People . . . see me as a person of integrity and character and a person who will put the interests of the state first," said Warner, 69, holding newspaper endorsements and a copy of his voting record during a televised morning news conference in Norfolk. "The larger issue is the economy of the state and the ability to hold jobs and increase jobs."

Miller brushed off the unusual nature of his final day, noting his early morning appearances on "Fox Morning News" in Washington and a Christiansburg radio call-in show, and saying he had wanted to visit every part of the state in the 10 days since the state GOP convention.

His tour seemed designed to fit his need for a low turnout today. Political analysts say Miller's chances are better if fewer people vote, because the hard-core Republicans who hate Warner are certain to show up, while moderates, independents and even Democrats who like the senator are less likely to feel the urgency.

Miller, 53, repeated his complaint about Warner's open invitation for non-Republicans to cross over and vote. "I just think that's unethical," Miller said. "This is the primary for Republicans. Democrats nominated their candidate."

If a lack of excitement about today's primary is good news for Miller, then he might have been heartened by the reactions he got yesterday in the Shenandoah Valley as he darted into traffic and walked through stores, greeting residents.

He wrapped up his campaign last night at a hot dog roast in a half-empty fire station hall with about 30 supporters in the isolated mountain town of Chester Gap.

Earlier, at a Hallmark store in Front Royal, Miller came across Aimee Sirna, 18, and Nicole Randall, 19, who were civic-minded enough to register to vote but seemed to find the whole primary business a bit mystifying.

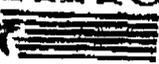
Sirna: "Who are you running against?"

Miller: "John Warner."

Sirna: "Is he a Democrat?"

Miller: "No, he's a Republican."

Sirna: "So you're both Republicans? Then there's not a choice."

**DADE COUNTY
DEMOCRATIC
PARTY** 
DEMOCRATIC PRIDE

*Elena
fyi
B...*

JOSEPH S. GELLER
Chair

April 25, 1996

Mr. Bruce Lindsey
The White House
Washington, D.C.

Re: Cruise Vessel Tort Reform Act

Dear Bruce:

It is my understanding that one of your responsibilities is advising the President regarding tort reform matters. I have been contacted by some friends and loyal Democrats regarding the Cruise Vessel Tort Reform bill. This issue is of particular importance to the Miami community because, for practical reasons, most foreign seamen claims nationwide are filed in Miami. Although the provisions of the bill pertaining to passengers (both as to frivolous suits and to medical malpractice claims) are significant, the foreign seamen provisions are the most important. As can be seen in the attached brief memo from William Huggett, a loyal long-time supporter of both the Party and the President, the provisions pertaining to cruise vessel tort reform are unfair, and it is important for the White House to exert pressure on the Conference Committee to delete the cruise line amendment, or to veto the final bill if the conferees in both houses insist on including the cruise line amendment.

Although it appears to make some sense to prevent foreign seamen from bringing suit against foreign registered vessels in U.S. courts, the issue actually is a red herring. For one thing, the actual burden on the courts is fairly minimal, as William Huggett points out in his memo. Moreover, although the cruise lines in question are "foreign registered vessels", these simply are flags of convenience. The vessels are based in, and operate from, U.S. ports, but avoid U.S. income taxes. They compete directly with both American shipping companies and with the American tourism industry generally. In effect, they merely are seeking a further competitive advantage over American-based shipping companies, since the latter would still remain liable for seamen's suits. Additionally, since only foreign seamen would be

*OWEN CALLOWAY, Vice Chair *TERRY (JAVALDA), Secretary *JOSEPH BURNSIDE, Treasurer
*CYNTHIA HALL, State Committeewoman *BILL MAUK JR., State Committeeman

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Mr. Bruce Lindsey
April 25, 1996
Page 2

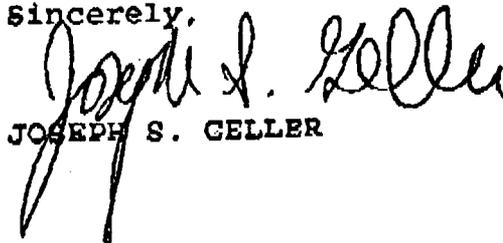
excluded from suing under this provision, the effect would be to cost American seamen their jobs, since it would be much cheaper, and safer, to hire foreigners than Americans. Note that the bill would apply not only to cruise ships, but also to cargo ships and tankers. Ultimately, even more American companies would go offshore, fly foreign flags, and hire foreign seamen.

The bill also would be horribly unfair to foreign seamen. Even those based in the United States, serving American tourists daily, would be left with virtually no recourse. They could be fired and deported home at any time, even if injured or sick.

In summary, Bruce, the bill is unfair and anti-competitive. I hope that the White House is able to prevent its passage into law. Some of the bill's opponents, such as William Huggett, would love the opportunity to speak directly with you about the bill. Are you planning to come to Miami with the President on Monday? If so, we would greatly appreciate a meeting.

Please contact me at my law office, (305) 949-6600, or at my voice pager, (305) 787-9805, to further discuss this issue upon receipt of this memo. Thank you for your consideration.

Sincerely,



JOSEPH S. GELLER

JSG/jc

cc: George Stephanopoulos

LAW OFFICES OF
WILLIAM HUGGETT
66 WEST FLAMM FR STREET
SUITE 400 CONCORD BUILDING
MIAMI, FLORIDA 33130

WILLIAM HUGGETT
ANNA M. SCORNAVACCA

PROFESSIONAL ASSOCIATION
TELEPHONE (305) 471 1021
FAX (305) 532 0523

April 23, 1996

Joseph S. Geller, Esquire
Sheraton Design Center
Office Plaza - Suite 403
1914 Griffin Road
Dania, Florida 33004

VIA FACSIMILE
(305) 920-6885

**Re: Cruise Vessel Tort Reform Amendment to the Coast Guard
Reauthorization Act**

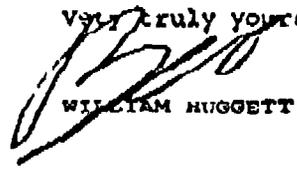
Dear Joe:

Enclosed please find the following:

1. A two and a half page memorandum detailing the issues as you requested me to write;
2. A letter opposing the Amendment from the Department of Transportation;
3. One page position paper from me (Cruise Lines);
4. Three page position paper from ATLA and myself (Oppose);
5. Two page position paper from ATLA (Eliminating);
6. One page position paper from ATLA (Talking Points);
7. One page position paper from ATLA (Clogging Courts)
8. Article from the Miami Herald on Carnival Cruise Lines' recent earnings;
9. Speech by Senator Hollings, in favor;
10. Speech by Senator Kerry, in favor;
11. Speech by Senator Lott, opposing;
12. Article from the "Legal Times" on how Don Young got the Bill through the House with no committee assignment notice or debate; and
13. Copy of the Bill.

Hopefully, I have not overburdened you with materials.

Very truly yours,


WILLIAM HUGGETT

WH/sp
Enclosures

M E M O R A N D U M

TO: Joseph Geller
 FROM: William Huggett
 RE: Cruise Vessel Tort Reform Act - April 23, 1996

The status of this Bill is an Amendment to the Coast Guard Reauthorization Act for fiscal 1996. It has passed the House with no debate or committee assignment. The Senate Commerce Committee passed the "Marked Up" Bill without any of the Cruise Lines provisions. Since then much lobbying has transpired. Senator Lott is now calling for the Conference Committee; the Republicans want to add in the cruise line amendment. Senator Hollings, the minority leader of the Commerce Committee, is "filibustering" by refusing to appoint the Democrats. Pressure is mounting every day. I expect the Senate will get to this any day.

The Bill has three provisions:

1. Passengers on cruise ships would not be able to sue for small or frivolous suits. The actual words say: "No recovery for emotional distress unless there is substantial physical injury";

2. Reduces claims for medical malpractice for passengers by limiting the amount to equal whatever amount could be recovered in any State or foreign country where the passenger also was treated; and

3. No foreign seamen could bring suit against any foreign registered vessel in any U.S. Court.

The backers of this Bill are the cruise line industry who have the support of the Republican party generally and Congressman Young and Senator Stevens from Alaska specifically. The argument of the cruise lines is that our Courts are overcrowded with suits by foreign seamen. The United States should not provide a forum for claims by and against foreigners. By weeding out foreign seamen suits and frivolous passenger suits we ease the burden on our Courts.

Our position is that the first two provisions concerning passengers were bargaining chips. Both sides are willing to give these up. As written, however, the emotional distress provision would relieve the cruise line of any responsibility for the rape of a passenger (even a child) by a crewman. The issue of medical malpractice

applies to very few claims. The majority of the jurisdictions at present provide that the doctor is an independent contractor and the cruise lines are not responsible for his negligence. We could live with either of these provisions (so long as it excluded rape). We have no objection to preventing frivolous lawsuits. The real issue for both sides is foreign seamen.

In our view the issue is not overcrowding of the Courts. For practical reasons, most cases nationwide are brought here in Miami. A detailed analysis of the Clerk's docket of the Circuit and Federal Courts in Dade County revealed only 201 open and pending cases by crewmen against the three major cruise lines. Most cases are settled without litigation. I suggest that the Court overcrowding issue is bogus.

The real issue is competition. All cruise line vessels are registered in tiny countries such as Liberia or Panama with "Flags of Convenience". These foreign companies make billions from U.S. passengers but pay no income or corporate taxes. These cruise lines are in direct competition with American shipping companies that do pay taxes; even more so, they compete with the American tourism industry. This bill is a foreign industry asking for an economic competitive advantage over American industry and American labor by relieving itself of any responsibility for health care costs.

In Hellenic Lines, Ltd. v. Rhoditis, 90 S Ct. 1731, (1970) the Supreme Court gave foreign seamen the right to bring health care claims against "flag of convenience" shipowners in the U.S., if the shipowner was doing substantial business here, or was American in reality (exactly as most major cruise lines are today). The purpose was to level competition for U.S. shipping.

American seamen lose because foreign labor becomes even cheaper if shipping companies do not have to pay for their health care costs. The Bill is opposed by the AFL-CIO because it will reduce American jobs on all kinds of shipping (the Bill applies to cargo and tankers as well as cruise lines). The effect will be to put another nail in the coffin of the American Merchant Marine Industry. Recently Congress passed Cabotage laws and Bills giving direct subsidies to build ships in America and fly American flags; ostensibly to support the American Merchant Marine. The cruise line Bill will have the opposite effect by making it economically unfeasible for American flag shipping to compete with foreign flag shipping. Hence, more American companies will try to leave the American flag, go off shore, and hire foreign labor. (In 1995 all of Sealand reflagged all their ships to off shore flags).

Finally, the Bill would be a human disaster for the seafarers themselves. They are mostly poor, hard working people from third world countries such as Honduras, Guatemala, Indonesia and the Philippines. The Bill provides an "alternative forum" that the seamen may sue in his home country. This is a farce. A poor and injured seaman from Honduras could never recover against Carnival Cruise Lines in his country, and if he did there would be no assets to levy a judgment against. These men work twelve to sixteen hour days, seven days a week. They can be legally fired and deported at any time for no reason. If this Bill passes, ill or injured seamen will simply be deported and abandoned in their home country. Most third world countries have little or no national or medical programs, therefore, there will be no medical treatment, no compensation, and no justice.

ELIMINATING FOREIGN CREW CLAIMS HURTS THE COMPETITIVENESS OF U.S. BUSINESS AND ABOLISHES THE BASIC RIGHTS OF SEAFARERS

Provisions in the House-passed Coast Guard Reauthorization Bill (H.R. 1361) -- passed without hearings or debate -- eliminate a wide range of liability for foreign cruise vessel owners and operators -- particularly foreign-flag ships. Perhaps the most egregious of these provisions is a measure which reverses ancient maritime law and Supreme Court precedent to block the ability of foreign crewmen to file claims in U.S. courts to protect their most basic rights as seafarers -- the right to wages and the right to necessary medical care. Eliminating foreign crew claims from U.S. courts will cut substantial costs for foreign-flag ships, further disadvantaging U.S.-flag ships and U.S. tourism industries in competition with foreign-flag cruise ships for U.S. tourist dollars.

I. Eliminating Foreign Crew Claims from U.S. Courts Will Hurt American Business and Promote Foreign Interests

Cruise Lines Avoid American Flagging to Escape U.S. Laws

- Major foreign-flag cruise lines, like Carnival, Royal Caribbean, and Norwegian Cruise Lines, are based in the U.S., operate from U.S. ports, and carry mostly U.S. passengers, but their ships are registered in Liberia and Panama. Although these "flag of convenience" ships appear to be American, they are actually *foreign*. The purpose behind this scheme is to evade U.S. corporate income taxes, U.S. minimum wage requirements, U.S. health and safety laws, and accountability for ship employees. Foreign-flag ship operators want American money, but not American responsibility.

These Provisions Will Add to the Competitive Advantage Foreign-Flag Cruise Ships Have Over American-Flag Vessels and American Businesses

- Non-tax paying, foreign-flag ships compete directly for business with U.S.-flag ships. Foreign-flag cruise ships also compete directly with American hotels, resorts, and casinos for tourist dollars. Unlike foreign-flag ships, U.S. businesses and U.S.-flag ships must obey and absorb the costs of U.S. health and safety laws, workers' compensation rules, and income tax laws that foreign-flag ships routinely ignore. American-flag vessels, which employ American workers, have a difficult time competing with foreign-flag ships that take advantage of cheap, Third World labor. Until now, foreign-flag ships, like American businesses, were compelled to at least provide basic wages and medical care to their workers for fear that foreign crewmen would enforce their rights in U.S. courts.
- The provisions in the House version of the Coast Guard Reauthorization bill change all of this. The provisions would exacerbate the competitive gap between foreign-flag ships and U.S. businesses. These provisions remove the safeguard that foreign-flag ships will pay wages and provide necessary medical attention to their workers the way American

employers must. The ability of foreign crewmen to file suits in U.S. courts is a centuries old remedy that helps equalize the rights and costs of foreign and U.S. seamen.

II. Foreign Crew Claims in U.S. Courts Have Long Been Recognized and Supported by the Supreme Court

This Bill Would Reverse Ancient Maritime Law and Supreme Court Precedent

- For centuries, seamen have been able to seek redress for "maintenance and cure," an ancient right created under general maritime law. "Maintenance" is the right of a seaman to food and lodging if he falls ill or becomes injured while in service of his ship. "Cure" is the right to necessary medical services. *The right of seamen to "maintenance and cure" is so fundamental that seamen cannot even abrogate this right under a contract.*
- The courts of maritime countries, particularly the U.S., have upheld the basic right to "maintenance and cure" to ensure that seamen are protected when they are most vulnerable -- when they are sick or injured in a foreign port. *These provisions would gut these basic seafarer rights.*
- Another remedy available to seamen that has long been recognized by the Supreme Court when seamen sustain injuries on foreign-flag vessels doing business in the U.S. is recovery under the Jones Act. *The provisions of this bill seek to eliminate Jones Act claims as well as "maintenance and cure" claims, thereby reversing Supreme Court precedent which has upheld the right of foreign crewmen to file claims in U.S. courts.*

Foreign Crew Claims in U.S. Courts Help Level the Playing Field Between U.S. Businesses and Foreign-Flag Cruise Ships Doing Business in the U.S.

- In Hellenic Lines Ltd. v. Rhoditis, the Supreme Court recognized the importance of including foreign-flag vessels as "employers" under the Jones Act as a matter of commercial equity. The Supreme Court stated definitely that there was "*no reason whatsoever* to give the Jones Act a strained construction so that [an] alien owner, engaged in an extensive business operation in [the U.S.], may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibilities of a Jones Act employer." *The provisions in the House version of the Coast Guard Reauthorization bill reject this view in favor of foreign interests.*
- Claims by foreign crewmen against foreign-flag ships should be subject to U.S. jurisdiction just like claims against their American competitors to ensure that these foreign businesses will not gain the additional economic advantage of denying their workers basic rights to wages and adequate medical care.

THE FOREIGN SEAMEN PROVISION IN THE HOUSE COAST GUARD BILL VIOLATES U.S. TREATY OBLIGATIONS

- ♦ The "foreign seamen" provision in the House Coast Guard Reauthorization Bill would ban foreign seamen who work on foreign-flag cruise ships operating in the U.S. from protecting their ancient maritime rights to wages and necessary medical care in U.S. courts.
- ♦ The "foreign seamen" provision is completely at odds with long-standing U.S. treaty obligations. On September 29, 1939, following Senate ratification, President Franklin D. Roosevelt signed into law the Shipowners Liability Convention (54 Stat. 1693), which restates the fundamental maritime rights of all seamen and obligates the U.S. to protect and enforce these basic rights.
- ♦ To remain consistent with its obligations under the Shipowners Liability Convention, the U.S. must give foreign seamen access to U.S. courts. As a matter of U.S. law, U.S. obligations under the Shipowners Liability Convention cannot be overturned unless Congress expresses clear legislative intent to override this treaty. It is particularly troublesome that Congress would attempt to contravene U.S. treaty obligations by passing the "foreign seamen" provision without hearings or debate.
- ♦ Article 9 of the Shipowners Liability Convention states that "*[n]ational laws or regulations shall make provision for securing the rapid and inexpensive settlement of disputes concerning the liability of the shipowner under this Convention.*" The "foreign seamen" provision would directly violate this U.S. treaty obligation by seriously delaying, if not destroying, the settlement of shipowner liability disputes. It would be very difficult for foreign seamen to obtain jurisdiction for their disputes in foreign courts, since they involve cruise ships operating in the U.S. In addition, the "foreign seamen" provision would make lawsuits brought by foreign seamen far more expensive, due to the cost of foreign travel and the need to pay "up front" for foreign legal representation.
- ♦ Article 11 of the Shipowners Liability Convention states that "*national laws or regulations relating to benefits under this Convention shall be so interpreted and enforced as to ensure equality of treatment to all seamen irrespective of nationality, domicile, or race.*" The foreign seamen provision would directly violate this U.S. treaty obligation. The foreign seamen provision unfairly discriminates against foreign seamen, ensuring that they alone will be unable to use U.S. courts to enforce their ancient maritime rights.
- ♦ The foreign seamen provision would violate other U.S. treaty obligations as well. For example, Article II of the U.S. Treaty of Amity and Economic Relations with Thailand (19 U.S.T. 5843) and Article IV of the U.S. Friendship, Commerce, and Navigation Treaty with Japan (4 U.S.T. 2063) require the U.S. to provide foreign nationals with the same access to U.S. courts that exists for U.S. citizens.
- ♦ Even if Congress expresses clear legislative intent and seeks to override existing U.S. treaty obligations by passing the "foreign seamen" provision, the U.S. would still remain obligated under international law to provide foreign seamen with access to U.S. courts. By refusing to honor its commitments, the U.S. would breach international law and could be subject to an international dispute, not to mention retaliation from other countries.

FOREIGN SEAMEN CLAIMS ARE NOT CLOGGING-UP U.S. COURTS

The foreign-flag cruise line industry is begging Congress to pass the "foreign seamen" provision included in the House Coast Guard Reauthorization Bill without hearings or debate. This provision would bar foreign seamen who work on foreign-flag cruise ships operating in the U.S. from bringing claims into U.S. courts. This provision could effectively eliminate the ability of foreign seamen to protect their ancient maritime rights to wages and necessary medical care.

Lobbyists for the foreign-flag cruise line industry have justified this attempt to take away the basic maritime rights of foreign seamen by asserting that lawsuits brought by foreign seamen are clogging-up the U.S. court system. This argument, however, is untrue -- just look at the facts:

- ♦ Claims brought by foreign seamen against foreign-flag cruise lines are virtually non-existent in the federal docket. In fact, only a handful of lawsuits brought by foreign seamen have even been adjudicated in the federal court system. Of the 4,534 active pending cases in the federal courts of Miami, there exist only 3 cases brought by seamen against the largest cruise ship businesses, Carnival, Royal Caribbean, and Norwegian Cruise Lines.
- ♦ Because the cruise lines demand it, nearly all lawsuits brought by foreign seamen and U.S. passengers against the cruise lines are filed in the state court system of Dade County, Florida (Miami), the cruise lines' center of operation, even though many cruise ship incidents occur outside of Florida.
- ♦ As of November 1995, only 345 cases were open or pending in Dade County against Carnival, Royal Caribbean, and Norwegian Cruise. Of these pending cases, 193 claims were brought by seamen and 152 claims were brought by passengers.
- ♦ Lawsuits brought by seamen against Carnival, Royal Caribbean, and Norwegian Cruise Lines account for only .19% of the total number of civil cases in Florida's state and federal docket. Lawsuits brought by passengers against these major cruise lines account for only .16% of Florida's state and federal civil cases.
- ♦ Over the last 24 years of computerized reporting (1971-1995), the total number of lawsuits filed against Carnival, Royal Caribbean, and Norwegian Cruise Lines in Dade County (foreign seamen and U.S. passenger claims together) is 1,648. This works out to an average of 68.5 cases per year.
- ♦ The total number of lawsuits against cruise lines brought by foreign seamen and passengers each year is undeniably low and in no way overburdens the U.S. court system. The cruise line industry's "clogging-up the courts" argument is a "red-herring," pure and simple.

ELIMINATING FOREIGN CREW CLAIMS REVERSES SUPREME COURT PRECEDENT AND LEAVES FOREIGN CREWMEN DEFENSELESS

I. Foreign Crew Claims in U.S. Courts Have Long Been Recognized and Supported by the Supreme Court

- For centuries, seamen have been able to seek redress for "maintenance and cure," an ancient right created under general maritime law. "Maintenance" is the right of a seaman to food and lodging if he falls ill or becomes injured while in service of his ship. "Cure" is the right to necessary medical services. The right of seamen to "maintenance and cure" is so fundamental that seamen cannot even abrogate this right under a contract. The courts of maritime countries, particularly the U.S., have upheld the basic right to "maintenance and cure" to ensure that seamen are protected when they are most vulnerable -- when they are sick or injured in a foreign port.
- When seamen are injured on foreign-flag vessels doing business in the U.S., seamen may seek recovery under the Jones Act. The Supreme Court has long held that foreign crewmen on these ships can file claims in U.S. courts for their injuries.
- The Supreme Court has granted U.S. jurisdiction for foreign crew claims by recognizing foreign-flag vessels as "employers" under the Jones Act. A foreign-flag vessel may qualify as a Jones Act employer if, among other factors, the basis of its crewman's claim originates in the U.S and the foreign-flag ship has substantial, commercial contacts with the U.S.
- In *Hellenic Lines Ltd. v. Rhoditis*, the Supreme Court recognized the importance of including foreign-flag vessels as "employers" under the Jones Act as a matter of commercial equity. The Supreme Court stated definitely that there was "*no reason whatsoever* to give the Jones Act a strained construction so that [an] alien owner, engaged in an extensive business operation in [the U.S.], may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibilities of a Jones Act employer." *The provisions of the Coast Guard Reauthorization bill reject this view in favor of foreign interests.*

II. Blocking Foreign Crew Claims From U.S. Courts Will Leave Foreign Seamen Without Any Recourse and Make Them Vulnerable to the Worst Kinds of Abuse

- Thousands of seamen are seriously injured each year and more are cheated out of their wages. The only real protection that foreign crewmen have from this type of abuse is the ability to file claims in U.S. courts. Eliminating the ability of foreign crewmen to bring claims before U.S. courts will undoubtedly leave these seamen without any recourse for the abuse and injuries they suffer while working aboard foreign-flag ships. The vast majority of foreign crewmen are simply unable to pursue legal recourse in the court systems of other countries since other countries do not provide contingency-fee legal representation.

OPPOSE THE CRUISE VESSEL LIABILITY PROVISIONS OF THE COAST GUARD REAUTHORIZATION BILL

The liability provisions of the House-passed Coast Guard Reauthorization Bill (H.R. 1361) eliminate a wide range of liability for foreign cruise vessel owners and operators. These provisions -- passed without hearings or debate -- would place U.S.-flag ships at a competitive disadvantage, unfairly strip away the legal rights of U.S. passengers on cruise ships, and threaten passenger safety. These provisions:

- Increase the likelihood of harm to U.S. citizens on the high seas;
- Discourage the construction and operation of U.S.-flag cruise ships by giving unfair preferences to foreign vessels;
- Punish U.S. tourism and entertainment industries competing with foreign-flag cruise ships;
- Will cause U.S. workers to lose their jobs on cruise ships;
- Ignore established principles of American tort law and traditional protections of U.S. passengers; and
- Signal America's retreat on basic worker and human rights.

I. The Liability Provisions Hurt American Business And Promote Foreign Interests

A. Cruise Lines Avoid American Flagging to Escape U.S. Laws

Major foreign-flag cruise lines, like Carnival, Royal Caribbean, and Norwegian Cruise Lines, are based in the U.S., operate from U.S. ports, and carry mostly U.S. passengers, but their ships are registered in Liberia and Panama. Although these "flag of convenience" ships appear to be American, they are actually *foreign*. The purpose behind this scheme is to evade U.S. corporate income taxes, U.S. minimum wage requirements, U.S. health and safety laws, and accountability for ship employees. Foreign-flag ship operators want American money, but not American responsibility.

B. This Bill Will Add to the Competitive Advantage Foreign-Flag Cruise Ships Have Over American-Flag Vessels and American Businesses

Non-tax paying "flag of convenience" ships compete directly with U.S.-flag ships, which pay U.S. income taxes and take responsibility for their workers' injuries. Foreign-flag cruise ships also compete directly with American hotels, resorts, and casinos for tourist dollars. U.S. businesses and U.S.-flag ships must obey health and safety laws, workers' compensation rules, and income tax laws that the "flag of convenience" ships routinely ignore. American-flag vessels, which employ American workers, already have a difficult time competing with "flag of convenience" ships that use cheap, Third World labor. The liability provisions of this bill only

exacerbate this problem by relieving foreign-flag ships of the additional responsibilities of caring for and compensating sick and injured workers the way American employers must.

II. The Liability Provisions Unnecessarily Increase Risks For U.S. Passengers

Nearly 4.5 million American passengers sail in and out of the United States each year. Most are passengers on "flag of convenience" ships that only follow the health and safety laws of countries like Liberia or Panama. While the U.S. Coast Guard and the United States Public Health Service have some authority to check ships for seaworthiness when they dock in U.S. ports, their power to monitor potential shipboard hazards is limited. The National Transportation Safety Board has no jurisdiction over these ships in international waters, nor are these ships covered by OSHA or the NLRA. As a result, American passenger safety on these ships is largely unregulated.

A. This Bill Could Immunize Foreign Cruise Vessel Owners From a Wide Range of Civil Liability For Incidents on the High Seas.

- The liability provisions would allow any ship to narrow its liability to U.S. passengers by simply adding a few words to the fine print on the back of passenger tickets -- tickets that most passengers purchase from travel agents over the telephone.
- This bill allows cruise ship owners to immunize themselves for their own negligence in causing passengers harm by cutting out claims for mental distress and suffering.

B. This Bill Promotes the Use of Substandard Foreign Doctors and Nurses to Treat American Passengers

- This bill would undermine the deterrent against hiring substandard "doctors" by guaranteeing that any cruise vessel's liability cannot exceed the laws governing the shore based facility where a passenger is taken for treatment. This will enable cruise ships to take advantage of ports of call with restrictive malpractice laws. Consequently, if a cruise ship takes an American to some remote island hospital whose government does not allow claims against hospitals, then that passenger will have no claim against the local hospital for malpractice, even if the passenger's harm was caused in part by the negligence of the ship owner. This is a radical departure from settled American law that would further diminish incentives for ship owners to hire qualified doctors.

- "Flag of convenience" ships routinely employ medical "doctors" who are not licensed anywhere in the United States. The quality of this medical care is often substandard, and the Congress should not do anything to undermine even the current incentives for vessel owners to hire responsible medical personnel.

C. This Bill Undermines Ship Safety by Barring a Long Effective Method of Policing Safety

- By barring claims filed in the U.S. by foreign crewmen, this bill encourages ship owners to employ seamen without civil rights; that means hiring Third World labor over American workers. The inevitable consequence is that American workers employed on cruise lines will lose their jobs to foreign labor. The law, as affirmed by the Supreme Court, has long recognized that the right of foreign seaman to maintain an action for wages, injury, and "maintenance and cure" is not only a fundamental maritime right, but an important part of keeping the U.S. maritime industry healthy and competitive.
- Passenger safety could also suffer. Claims brought by these crewmen expose everyday safety infractions, which when corrected, increase the ship's safety for all on board. These claims have led to the use of adequate numbers of crewmen and properly trained crews, as well as safety improvements on ships such as non-skid decking, safer ladders, and ergonomic railings. Without a means for redress, crew members will be left at the mercy of their employers and in some cases, crewmen might conceal illness or injuries for fear of being fired, thus jeopardizing the safety of the ship and placing Americans who sail at serious risk.

III. The Liability Provisions Signal America's Retreat On Human Rights

The "flag of convenience" shipping industry is the last bastion for unregulated working conditions. Most crewmen work 14 hours a day or more, have little time off, sleep in cramped spaces, and earn substantially less than the U.S. minimum wage. These workers rarely complain, since the ship owner holds their passports and can fire them at will, forcing them to either return to their native country or enter the U.S. as illegal aliens. The liability provisions of this bill not only endorse such horrible working conditions, they make them worse. By eliminating the ability of foreign crewmen to file claims in U.S. courts for abuses on cruise ships, even for incidents of death, the provisions reverse over 200 years of U.S. maritime law that has evolved to protect the welfare of seamen.

**REJECT THE CRUISE VESSEL LIABILITY PROVISIONS
ADDED TO THE HOUSE COAST GUARD REAUTHORIZATION BILL**

I. The Liability Provisions Further Promote Foreign Shipping Over U.S. Shipping

Major cruise lines (e.g. Carnival, Royal Caribbean, and Norwegian Cruise Lines) operate from U.S. ports and carry mostly American passengers, but they use *foreign* vessels typically registered in Liberia and Panama in order to avoid U.S. corporate income taxes, wage requirements, and health and safety laws.

- ♦ Disadvantaging American Business and Labor. The liability provisions of this bill give these foreign vessels another advantage by eliminating the ability of foreign crewmen to file suits in U.S. courts -- a centuries old remedy that helps equalize the rights (and costs) of foreign and U.S. seamen. This will enable foreign-flag cruise ships to deny their crewmen proper medical attention or compensation for injuries received on the job, adding to the competitive advantage that foreign-flag cruise ships have over competing U.S. interests, which must take responsibility for the American workers who retain the ability to enforce their rights in court. This provision will encourage ships to hire foreign workers.

II. The Liability Provisions Unnecessarily Increase Risks For U.S. Passengers

- ♦ Limiting the Rights of U.S. Passengers. The liability provisions also would allow any foreign cruise ship to narrow its liability to U.S. passengers by simply adding a few words to the fine print of tickets. Under the bill, the cruise lines may immunize themselves from liability for emotional distress, mental suffering, and other psychological injury unaccompanied by substantial physical harm.
- ♦ Encouraging Unlicensed Doctors. The liability provisions further guarantee that any cruise vessel's liability cannot exceed the laws governing the *shore based facility* where a sick or injured passenger is taken for treatment. This will enable cruise ships to take advantage of ports of call with restrictive malpractice laws (i.e. Florida) and could even leave Americans completely vulnerable to the laws of remote islands which might not even permit malpractice claims. This provision would lessen the incentives for vessels to hire competent doctors. Today, these "doctors" are rarely licensed U.S. physicians.

* * *

There is no compelling reason whatsoever for Congress to further encourage vessel owners to switch to foreign flags and thus avoid U.S. laws and U.S. workers. The so-called "tort reform" provisions of the Coast Guard Reauthorization bill will only add to the competitive advantages that foreign ships have at the expense of the rights and safety of American workers and passengers.

BEWARE OF SPECIAL INTEREST GIVE-AWAYS TO FOREIGN CRUISE LINES IN THE COAST GUARD CONFERENCE REPORT

The Senate may soon consider the conference report on the Coast Guard Reauthorization Bill. This report may very well contain special interest liability provisions that were passed by the House without hearings or debate for the benefit of the foreign-flag cruise line industry, and which were never in any way considered by the Senate. The Senate should reject the conference report if it contains such provisions.

The House Provisions

The provisions passed by the House without hearings or debate would change current U.S. law in three ways:

(1) Foreign seamen would lose the right to file claims in U.S. courts against foreign cruise ships operating out of U.S. ports and carrying U.S. passengers for wages and medical care -- a right that seamen have held for centuries and that has been upheld by the Supreme Court;

(2) Foreign cruise ship owners would get the advantage of any statutory limitation on medical malpractice liability available to doctors or medical facilities wherever a sick or injured crewman or passenger is taken for treatment, including foreign countries; and

(3) Foreign cruise ship owners would be able to use the fine print on tickets to avoid liability for passengers' emotional distress claims unless they also suffered substantial physical injury.

Broad-Based Opposition to the House Provisions

- ♦ The House-passed provisions have generated a fire-storm of opposition from a diverse number of groups, including nearly all of U.S. maritime labor; religious and human rights organizations such as the Center for Seafarers Rights, the Apostleship of the Sea, the Port Arthur International Seamen's Center; and consumer groups like Citizen Action -- and for good reason:
 - The "foreign seamen" provision would deny foreign seamen the right to bring claims in U.S. courts, making foreign labor even cheaper relative to U.S. labor. This provision would also give foreign-flag cruise lines -- *who do not pay any U.S. corporate income tax and who avoid U.S. civil rights and worker protection laws* -- another economic advantage over competing U.S. ships and U.S. businesses that pay taxes and that hire U.S. workers with rights they can enforce. Taking away the right of foreign seamen to sue will give the cruise lines another reason to hire foreign workers over American workers.

- The "medical malpractice" provision would apply to a number of torts far beyond incidents of medical malpractice and would risk U.S. citizens losing their right to sue if they were injured in a foreign land.
- The "emotional distress" provision would let cruise ships owners escape liability for passengers who suffer emotional injury on a cruise ship, unless they also suffered substantial physical injuries.

The Senate should reject these blatant special interest hand-outs to foreign cruise lines.

- Eliminating claims by foreign seamen will save the profitable foreign-flag cruise lines lots of money only to the detriment of U.S. workers and U.S. businesses. Foreign-flag cruise lines do not need this kind of special help. They already receive the highest form of "corporate welfare" imaginable -- they do not pay any U.S. corporate income tax, even though 95% of their passengers and profits come from the U.S.
- American interests ought to come before foreign interests. Before the Coast Guard Reauthorization Bill is passed, the Senate should make clear that it will not accept these provisions that were never even the subject of debate or hearings.

ELIMINATING FOREIGN CREW CLAIMS HURTS THE COMPETITIVENESS OF U.S. BUSINESS AND ABOLISHES THE BASIC RIGHTS OF SEAFARERS

Provisions in the House-passed Coast Guard Reauthorization Bill (H.R. 1361) -- passed without hearings or debate -- eliminate a wide range of liability for foreign cruise vessel owners and operators -- particularly foreign-flag ships. Perhaps the most egregious of these provisions is a measure which reverses ancient maritime law and Supreme Court precedent to block the ability of foreign crewmen to file claims in U.S. courts to protect their most basic rights as seafarers -- the right to wages and the right to necessary medical care. Eliminating foreign crew claims from U.S. courts will cut substantial costs for foreign-flag ships, further disadvantaging U.S.-flag ships and U.S. tourism industries in competition with foreign-flag cruise ships for U.S. tourist dollars.

I. Eliminating Foreign Crew Claims from U.S. Courts Will Hurt American Business and Promote Foreign Interests

Cruise Lines Avoid American Flagging to Escape U.S. Laws

- ♦ Major foreign-flag cruise lines, like Carnival, Royal Caribbean, and Norwegian Cruise Lines, are based in the U.S., operate from U.S. ports, and carry mostly U.S. passengers, but their ships are registered in Liberia and Panama. Although these "flag of convenience" ships appear to be American, they are actually *foreign*. The purpose behind this scheme is to evade U.S. corporate income taxes, U.S. minimum wage requirements, U.S. health and safety laws, and accountability for ship employees. Foreign-flag ship operators want American money, but not American responsibility.

These Provisions Will Add to the Competitive Advantage Foreign-Flag Cruise Ships Have Over American-Flag Vessels and American Businesses

- ♦ Non-tax paying, foreign-flag ships compete directly for business with U.S.-flag ships. Foreign-flag cruise ships also compete directly with American hotels, resorts, and casinos for tourist dollars. Unlike foreign-flag ships, U.S. businesses and U.S.-flag ships must obey and absorb the costs of U.S. health and safety laws, workers' compensation rules, and income tax laws that foreign-flag ships routinely ignore. American-flag vessels, which employ American workers, have a difficult time competing with foreign-flag ships that take advantage of cheap, Third World labor. Until now, foreign-flag ships, like American businesses, were compelled to at least provide basic wages and medical care to their workers for fear that foreign crewmen would enforce their rights in U.S. courts.
- ♦ The provisions in the House version of the Coast Guard Reauthorization bill change all of this. The provisions would exacerbate the competitive gap between foreign-flag ships and U.S. businesses. These provisions remove the safeguard that foreign-flag ships will pay wages and provide necessary medical attention to their workers the way American

employers must. The ability of foreign crewmen to file suits in U.S. courts is a centuries old remedy that helps equalize the rights and costs of foreign and U.S. seamen.

II. Foreign Crew Claims in U.S. Courts Have Long Been Recognized and Supported by the Supreme Court

This Bill Would Reverse Ancient Maritime Law and Supreme Court Precedent

- ♦ For centuries, seamen have been able to seek redress for "maintenance and cure," an ancient right created under general maritime law. "Maintenance" is the right of a seaman to food and lodging if he falls ill or becomes injured while in service of his ship. "Cure" is the right to necessary medical services. *The right of seamen to "maintenance and cure" is so fundamental that seamen cannot even abrogate this right under a contract.*
- ♦ The courts of maritime countries, particularly the U.S., have upheld the basic right to "maintenance and cure" to ensure that seamen are protected when they are most vulnerable -- when they are sick or injured in a foreign port. *These provisions would gut these basic seafarer rights.*
- ♦ Another remedy available to seamen that has long been recognized by the Supreme Court when seamen sustain injuries on foreign-flag vessels doing business in the U.S. is recovery under the Jones Act. *The provisions of this bill seek to eliminate Jones Act claims as well as "maintenance and cure" claims, thereby reversing Supreme Court precedent which has upheld the right of foreign crewmen to file claims in U.S. courts.*

Foreign Crew Claims in U.S. Courts Help Level the Playing Field Between U.S. Businesses and Foreign-Flag Cruise Ships Doing Business in the U.S.

- ♦ In Hellenic Lines Ltd. v. Rhoditis, the Supreme Court recognized the importance of including foreign-flag vessels as "employers" under the Jones Act as a matter of commercial equity. The Supreme Court stated definitely that there was "*no reason whatsoever* to give the Jones Act a strained construction so that [an] alien owner, engaged in an extensive business operation in [the U.S.], may have an advantage over citizens engaged in the same business by allowing him to escape the obligations and responsibilities of a Jones Act employer." *The provisions in the House version of the Coast Guard Reauthorization bill reject this view in favor of foreign interests.*
- ♦ Claims by foreign crewmen against foreign-flag ships should be subject to U.S. jurisdiction just like claims against their American competitors to ensure that these foreign businesses will not gain the additional economic advantage of denying their workers basic rights to wages and adequate medical care.

THE WHITE HOUSE

WASHINGTON

May 9, 1996

MEMORANDUM FOR BRUCE LINDSEY

CC: JACK QUINN, KATHY WALLMAN

FROM: ELENA KAGAN *ek*

SUBJECT: CRUISE VESSEL TORT REFORM

I received the attached from Jim Brown of OMB today. As Brown's memo notes, the Department of Transportation would like to know whether the cruise vessel tort reform provision in the Coast Guard Authorization bill might provoke a presidential veto.

Brown told me on the phone that some members of Congress are working on a compromise provision that would delete the limits on liability for malpractice and emotional distress, but retain the bar on foreign seamen suing foreign-flag vessels in U.S. courts. My sense, however, is that this bar is the most problematic aspect of the provision, because of the competitive advantage it gives to foreign-flag shipping over U.S.-flag vessels.

What should we tell Brown and the Transportation Department? (You can ignore the part of Brown's memo that requests guidance by "this afternoon." He is not expecting anything before next week.)

EXECUTIVE OFFICE OF THE PRESIDENT

09-May-1996 10:53am

TO: Elena Kagan

FROM: James A. Brown
Office of Mgmt and Budget, LRDSUBJECT: Liability provision in Coast Guard Authorization bill

Negotiations between House and Senate conferees on S. 1004, the Coast Guard Authorization Bill for FY 1996, have been stalled for several months over a liability provision included in the House version of the bill.

On March 27 the Department of Transportation sent a letter to conferees "strongly recommending" that the provision be deleted.

Since then, there has been a lot of activity regarding liability limitation provisions in other legislation. The Department has asked us to provide (hopefully, this afternoon) a current reading on whether the provision would be tolerable, even though objectionable, in an enrolled Coast Guard authorization bill, or whether it is so objectionable that the President would feel required to veto the bill.

I will fax the provision to you separately, and will be grateful for any guidance you can provide. Thanks.



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S.1004

Coast Guard Authorization Act For Fiscal Year 1996 (Engrossed House Amendment)

SEC. 430. CRUISE VESSEL TORT REFORM.

(a) Section 4283 of the Revised Statutes of the United States (46 App. 183). is amended by adding a new subsection (g) to read as follows:

(g) In a suit by any person in which a shipowner, operator, or employer of a crew member is claimed to have direct or vicarious liability for medical malpractice or other tortious conduct occurring at a shoreside facility, or in which the damages sought are alleged to result from the referral to or treatment by any shoreside doctor, hospital, medical facility, or other health care provider, the shipowner, operator, or employer shall be entitled to rely upon any and all statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State in which the shoreside medical care was provided.'

(b) Section 4283b of the Revised Statutes of the United States (46 App. 183c) is amended by adding a new subsection to read as follows:

(b) Subsection (a) shall not prohibit provisions or limitations in contracts, agreements, or ticket conditions of carriage with passengers which relieve a manager, agent, master, owner, or operator of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as such provisions or limitations do not limit liability if the emotional distress, mental suffering, or psychological injury was--

(1) the result of substantial physical injury to the claimant caused by the negligence or fault of the manager, agent, master, owner, or operator;

(2) the result of the claimant having been at actual risk of substantial physical injury, which risk was caused by the negligence or fault of the manager, agent, master, owner, or operator; or

(3) intentionally inflicted by the manager, agent, master, owner, or operator.'

(c) Section 20 of chapter 153 of the Act of March 4, 1915 (46 App. 688) is amended by adding a new subsection to read as follows:

(c) Limitation for Certain Aliens in Case of Contractual Alternative Forum-

(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent legal resident alien of the United States at the time of the incident giving rise to the action, if the incident giving rise to the action occurred while the person was employed on board a vessel documented other than under the laws of the United States, which vessel was owned by an entity organized other than under the laws of the United States or by a person who is not a citizen or permanent legal resident alien.

(2) The provisions of paragraph (1) shall only apply if--

(A) the incident giving rise to the action occurred while the person bringing the action was a party to a contract of employment or was subject to a collective bargaining agreement which, by its terms, provided for an exclusive forum for resolution of all such disputes or actions in a nation other than

the United States, a remedy is available to the person under the laws of that nation, and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident; or

(B) a remedy is available to the person bringing the action under the laws of the nation in which the person maintained citizenship or permanent residency at the time of the incident giving rise to the action and the party seeking to dismiss an action under paragraph (1) is willing to stipulate to jurisdiction under the laws of such nation as to such incident.

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U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20580

March 27, 1996

The Honorable Larry D. Pressler
Chairman
Committee on Commerce, Science and Transportation
Russell Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

The Department of Transportation respectfully submits the following comments opposing the enactment of Section 430 of S. 1004, the Cruise Vessel Tort Reform provision contained in the Coast Guard Authorization Act for Fiscal Year 1996, as passed by the House on February 22, 1996. The Senate's version of S. 1004 does not contain a provision similar to Section 430. The Department strongly recommends that the provision be deleted from S. 1004 during conference because of the adverse competitive effect on U.S.-flag cruise ship companies, the potential harm to U.S. passengers on cruise ships, and the potential abrogation of rights currently granted to foreign seafarers by U.S. convention and law.

Because Section 430 has no effect on the safe operation of cruise vessels, it should not be included in an otherwise noncontroversial Coast Guard Authorization bill. The disagreement over this provision now threatens the success of S. 1004 in this Congress. S. 1004 contains too many agreed-upon provisions important to the Coast Guard, the Coast Guard Auxiliary, the maritime industry and the general public, to allow the "cruise vessel tort reform" debate to further delay its enactment.

Section 430 has three major provisions which are discussed below. On their face, the limited liability provisions in the first two subsections apply to all passengers on cruise vessels leaving U.S. ports and to both U.S.-flag and foreign-flag cruise vessels operating out of U.S. ports. However, 95 percent of the passengers on cruises leaving U.S. ports are U.S. citizens and nearly all of those vessels are foreign-flag. Thus, the adverse impact of the provisions falls mainly on U.S. passengers while at the same time benefiting foreign-flag cruise operators -- operators who pay few U.S. taxes and avoid U.S. minimum wage and fair labor laws. The third subsection gives a competitive advantage to foreign-flag cruise vessel owners by allowing them to escape liability in U.S. court for injuries to their foreign crew, while U.S.-flag vessel owners would remain liable for injuries to their crew.

LIMIT LIABILITY FOR MEDICAL MALPRACTICE

The first part of Section 430 limits the liability of cruise ship owners in certain malpractice tort actions brought by passengers. Under Subsection 430(a), a cruise ship owner's liability cannot exceed the legal liability of the shore-based facility where a sick or injured passenger is taken for treatment. As a result, this subsection may encourage a cruise ship owner to "forum shop" and limit its potential liability by referring a sick or injured passenger to treatment in the port with the most restrictive malpractice laws, rather than the closest port with the best available hospital. This provision could harm U.S. passengers by restricting their ability to hold the cruise ship owners fully accountable for mistreatment or injury resulting from the owners' referral to a local facility.

LIMIT LIABILITY FOR EMOTIONAL DISTRESS, ETC.

Subsection 430(b) limits the liability of cruise ship owners in civil tort actions brought by passengers for the infliction of emotional distress, mental suffering or psychological injury. Through conditions printed on passenger tickets, cruise vessel owners may limit the recovery of an injured passenger for emotional damages to instances where emotional distress was the direct result of substantial physical injury. Compensation for emotional injury is the primary civil remedy in rape cases, for example, which, unfortunately, do occur on cruise vessels. Subsection 430(b) would allow a cruise vessel owner to escape liability for emotional distress or psychological injury suffered by a passenger raped on a cruise ship unless there is also substantial physical injury.

PRECLUDE ACCESS TO U.S. COURTS BY FOREIGN SEAFARERS

Subsection 430(c) bars foreign seafarers injured on board a foreign-flag vessel from bringing an action in U.S. courts for "maintenance and cure" or damages for injury or death. The right of seafarers to receive food and lodging and medical care during illness or injury ("maintenance and cure") while in the service of the ship has been a bedrock principle of international maritime law for more than 200 years. The principle is designed to protect the welfare of seafarers. The right to "maintenance and cure" is a fundamental right consistently recognized by U.S. courts, including the Supreme Court, the courts of other maritime nations, and international labor agreements. As a practical matter, Subsection 430(c) would remove this right for seafarers employed on foreign ships trading regularly and primarily in U.S. ports.

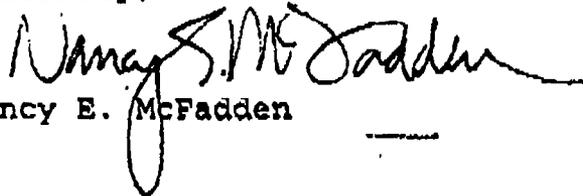
Another longstanding right superseded by Subsection 430(c) is the right of foreign crew to file claims in U.S. courts under the Jones Act, 46 App. U.S.C. §688, for injury or death aboard foreign-flag vessels doing business in the United States. This right has also been reaffirmed by the Supreme Court.¹ The Supreme Court recognized the importance of including foreign-flag vessels as employers under the Jones Act as a matter of "commercial equity". Denying foreign seafarers the right to sue in U.S. courts would give a significant competitive advantage to foreign-flag cruise ships over U.S.-flag cruise ships. Section 430(c) restricts access to foreign seafarers, but U.S. seafarers would continue to have the ability to pursue their claims in U.S. courts.

Barring foreign seafarers' access to U.S. courts also might violate the Shipowners' Liability (Sick and Injured) Convention (No. 55), 1936, a convention adopted by the International Labor Organization and approved by the United States on October 29, 1938. This convention grants seafarers the right to receive "maintenance and cure" and to pursue this right in the courts of all nations in which the convention is in force. We would also like to call the Committee's attention to the fact that the U.S. State Department opposes Subsection 430(c) because of the commercial disadvantage to U.S.-flag cruise operations and the potential conflicts with U.S. obligations under Friendship, Commerce and Navigation treaties which allow reciprocal access to U.S. courts by nationals of other treaty parties.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the submission of this report.

Thank you for the opportunity to comment on Section 430 of S. 1004, the Coast Guard Authorization Act for Fiscal Year 1996.

Sincerely,


Nancy E. McFadden

¹In Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306 (1970), the Supreme Court upheld the right of foreign seafarers to use U.S. courts to recover "maintenance and cure" and to make claims under the Jones Act.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

30-Sep-1996 09:44am

TO: BLOCKER_A
FROM: David E. Tornquist

CC: BROWN_JA
CC: Kenneth L. Schwartz
CC: David J. Worzala
CC: Kim C. Nakahara

SUBJECT: Coast Guard Tort Reform Provisions

Message Creation Date was at 30-SEP-1996 09:44:00

Per DOT, the following is the tort reform provision in the Coast Guard reauthorization:

- (1) retained the provision that allowed cruise lines to assert the medical malpractice caps of foreign countries in which an injured passenger is treated;
- (2) retained the provision which limits passenger suits for pain and suffering to that related to physical injury only. This directly impacts rape victims who are not physically injured in addition to the rape. A court challenge is expected to determine if rape itself falls under this provision.
- (3) dropped the provision which would have limited for seamen's ability to sue in US courts for injuries. This provision was opposed by both the maritime unions and trial lawyers.

David -

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

09-May-1996 10:53am

TO: Elena Kagan

FROM: James A. Brown
 Office of Mgmt and Budget, LRD

SUBJECT: Liability provision in Coast Guard Authorization bill

Negotiations between House and Senate conferees on S. 1004, the Coast Guard Authorization Bill for FY 1996, have been stalled for several months over a liability provision included in the House version of the bill.

On March 27 the Department of Transportation sent a letter to conferees "strongly recommending" that the provision be deleted.

Since then, there has been a lot of activity regarding liability limitation provisions in other legislation. The Department has asked us to provide (hopefully, this afternoon) a current reading on whether the provision would be tolerable, even though objectionable, in an enrolled Coast Guard authorization bill, or whether it is so objectionable that the President would feel required to veto the bill.

I will fax the provision to you separately, and will be grateful for any guidance you can provide. Thanks.

EXECUTIVE OFFICE OF THE PRESIDENT

09-May-1996 05:04pm

TO: Elena Kagan

FROM: James A. Brown
Office of Mgmt and Budget, LRD

SUBJECT: Attempt at compromise was not successful

1. DOT tells me that efforts to achieve the compromise I outlined to you over the phone have "fallen through." So the language I gave you this morning is still the operative provision.

2. According to DOT, the problem with barring foreign seamen from U.S. courts relates more to our obligations under international law than employment opportunities for U.S. seamen. According to DOT, as a practical matter, foreign flag carriers hire few U.S. seamen anyway.

Thanks for your help.