ELIMINATION OF DISCLOSURE OF CONSTRUCTION DETAILS ON PASSENGER VESSELS

HEARING

BEFORE THE

MERCHANT MARINE SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST SESSION

ON

S. 1924 and H.R. 210

TO ELIMINATE REQUIREMENTS FOR DISCLOSURE OF CONSTRUCTION DETAILS ON PASSENGER VESSELS MEETING PRESCRIBED SAFETY STANDARDS

AND

S. 2817

TO AMEND THE MARITIME LIEN PROVISIONS OF THE SHIP MORTGAGE ACT OF 1920

NOVEMBER 11, 1969

Serial No. 91–36

Printed for the use of the Committee on Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1969

COMMITTEE ON COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
VANCE HARTKE, Indiana
PHILIP A. HART, Michigan
HOWARD W. CANNON, Nevada
RUSSELL B. LONG, Louisiana
FRANK E. MOSS, Utah
ERNEST F. HOLLINGS, South Carolina
DANIEL K. INOUYE, Hawaii
JOSEPH D. TYDINGS, Maryland
WILLIAM B. SPONG, JR., Virginia

NORRIS COTTON, New Hampshire
HUGH SCOTT, Pennsylvania
WINSTON PROUTY, Vermont
JAMES B. PEARSON, Kansas
ROBERT P. GRIFFIN, Michigan
HOWARD H. BAKER, JR., Tennessee
CHARLES E. GOODELL, New York
MARLOW W. COOK, Kentucky

FREDERICK J. LORDAN, *Staff Director*
MICHAEL PERTSCHUK, *Chief Counsel*
LEONARD BICKWIT, JR., *Staff Counsel*
ARTHUR PANKOPF, JR., *Minority Staff Director*
J. PAUL MOLLOY, *Minority Staff Counsel*

SUBCOMMITTEE ON ENERGY, NATURAL RESOURCES, AND THE ENVIRONMENT

PHILIP A. HART, Michigan, *Chairman*
FRANK E. MOSS, Utah, *Vice Chairman*

JOHN O. PASTORE, Rhode Island
RUSSELL B. LONG, Louisiana
JOSEPH D. TYDINGS, Maryland
WILLIAM B. SPONG, JR., Virginia

HOWARD H. BAKER, JR., Tennessee
CHARLES E. GOODELL, New York
HUGH SCOTT, Pennsylvania
MARLOW W. COOK, Kentucky

CONTENTS

ELIMINATE REQUIREMENTS FOR DISCLOSURE OF CONSTRUCTION DETAILS ON PASSENGER VESSELS MEETING PRESCRIBED SAFETY STANDARDS AND AMEND THE MARITIME LIEN PROVISIONS OF THE SHIP MORTGAGE ACT OF 1920

TUESDAY, NOVEMBER 11, 1969

U.S. SENATE,
COMMITTEE ON COMMERCE,
MERCHANT MARINE SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10 a.m. in room 5110, New Senate Office Building, Hon. Daniel K. Inouye presiding.

Present: Senator Inouye.

OPENING STATEMENT BY THE CHAIRMAN

Senator INOUYE. This morning we open hearings on two bills. The first is S. 1924, a bill to provide for the elimination of requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards. Public Law 89–777 provides that effective May of 1967 operators of passenger vessels and persons selling passage on passenger vessels must notify prospective passengers of the safety standards with which the vessel complies or does not comply. In addition, all advertising and promotional literature must contain the information. However, the same law provides that after November of 1968 no vessel can sail from an American port with American passengers if it does not comply with safety standards. Now that all vessels must comply in any event, S. 1924 would relieve those ships that comply from the obligation of advertising that fact.

H.R. 210, the companion bill to S. 1924, was enacted by the House with a single amendment that would require the vessel to disclose its flag of registry.

The second bill is S. 2817, a bill to amend the maritime lien provisions of the Ship Mortgage Act of 1920. The effect of this bill would be that rates filed as tariffs by marine terminal operators with the Federal Maritime Commission would attach as liens to a charter vessel even though the terms of the charter between the ship charterer and the ship's owner denies the charterer authority to bind the vessel with liens. I will now place a copy of the bills and agency comments in the record.

Staff member assigned to this hearing: Emanuel Rouvelas.

(The bills and agency comments follow:)

[H.R. 210, 91st Cong., first sess.]

AN ACT To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4400 of the Revised Statutes, as amended (46 U.S.C. 362), is amended—

(1) by inserting at the end of subsection (b) thereof the following new sentence: "The provisions of this subsection shall not apply to voyages by vessels meeting the safety standards prescribed in subsection (c) of this section.", and

(2) by adding at the end thereof the following new subsection:

"(d) All promotional literature or advertising in or over any medium of communication within the United States offering passage or soliciting passengers for ocean voyages anywhere in the world shall specify the registry of any vessel named in such promotional literature or advertising."

Passed the House of Representatives October 6, 1969.

Attest: W. PAT JENNINGS, *Clerk.*

[S. 1924, 91st Cong., first sess.]

A BILL To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (b) of section 4400 of the Revised Statutes, as amended (46 U.S.C. 362), is hereby further amended by adding at the end thereof the following sentence: "*Provided, however,* That the provisions of this subsection shall not apply to voyages by vessels meeting the safety standards prescribed in subsection (c) of this section."

[S. 2817, 91st Cong., first sess.]

A BILL To amend the maritime lien provisions of the Ship Mortgage Act of 1920

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 30 of the Ship Mortgage Act of 1920 (46 U.S.C. 971–975) is amended as follows:

(1) by adding, at the end of subsection P thereof (46 U.S.C. 971), the following new sentence: "Services furnished to a vessel in accordance with the provisions of a tariff filed with the Federal Maritime Commission pursuant to the rules of said Commission shall be deemed necessaries for all purposes."

(2) by inserting, in subsection R thereof (46 U.S.C. 973) after the word "but" and before the word "nothing", the following: ", except as hereinafter in this section provided," and adding, at the end of said subsection R, the following new sentence: "No provision in any charter party, agreement for sale of a vessel, nor any other reason, shall be, or be construed to be, a sufficient reason to deny to any person, having a tariff on file with the Federal Maritime Commission pursuant to the rules of said Commission, a maritime lien for services, included in said tariff, which are furnished to a vessel."

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., November 17, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 210, an Act—

"To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards, and for other purposes."

Subsection (b) of section 4400 of the Revised Statutes, as amended by Public Law 89–777, approved November 6, 1966, provides that owners, operators and agents, or any person selling passage on a foreign or domestic passenger vessel of one hundred gross tons or over, having berth or stateroom accommoda-

tions for 50 or more passengers, and embarking passengers at United States ports for a coastwise or international voyage shall notify each prospective passenger of the safety standards with which such vessel complies or does not comply. In addition the subsection provides that all promotional literature or advertising in or over any medium of communication within the United States offering passage or soliciting passengers for ocean voyages anywhere in the world shall include similar information as a part of the advertisement or description of the voyage.

Subsection (c) of that section of the Revised Statutes, as amended by Public Law 89–777, provides that, after November 2, 1968, any foreign or domestic vessel of over 100 gross tons, having berth or stateroom accommodations for 50 or more passengers, shall not depart a United States port with passengers who are United States nationals, and who embarked at that port, if the Secretary of the Department in which the Coast Guard is operating finds that such vessel does not comply with the standards set forth in the International Convention for safety of life at sea, 1960, as modified by certain amendments proposed, by the thirteenth session of the Maritime Safety Committee of the Inter-governmental Maritime Consultative Organization. The foregoing amendments are those proposed by the United States, after the sinking of the *Yarmouth Castle*, to improve the fire safety of foreign flag passenger vessels.

The bill would amend section 4400 of the Revised Statutes by inserting at the end of subsection (b) a new sentence providing that the subsection shall not apply to voyages by vessels meeting the safety requirements of subsection (c).

Since all vessels leaving United States ports to which subsection (b) applies are required to meet the safety standards of subsection (c), the effect of this provision of the bill would be to exempt all such vessels from the requirements of subsection (b). The bill would leave in effect the requirements of subsection (b) with regard to advertising over any medium of exchange in the United States of voyages anywhere in the world by vessels that do not meet the requirements of subsection (c).

The bill would further amend section 4400 of the Revised Statutes by adding at the end thereof a new subsection (d), which would provide that all promotional literature or advertising in or over any medium of communication within the United States offering passage or soliciting passengers for ocean voyages anywhere in the world shall specify the registry of any vessel named in such promotional literature or advertising.

We recommend enactment of the bill. Since all passenger vessels leaving United States ports are required to meet satisfactory fire and safety requirements, advertisements to the effect that they meet such requirements seem unnecessary. The bill will relieve American-flag and foreign flag passenger vessels, and those advertising voyages for them, of an unnecessary expense and burden. The requirement that all promotional advertising in the United States for ocean voyages anywhere in the world shall specify the registry of the vessel would give our citizens the opportunity to select United States-flag vessels.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM E. MURANE,
Acting General Counsel.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., July 29, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department with respect to S. 1924, a bill—

"To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards."

Subsection (b) of section 4400 of the Revised Statutes, as amended by Public Law 89–777, approved November 6, 1966, provides that owners, operators and agents, or any person selling passage on a foreign or domestic passenger vessel of one hundred gross tons or over, having berth or stateroom accommodations for 50 or more passengers, and embarking passengers at United States ports for a coastwise or international voyage shall notify each prospective passenger of the

safety standards with which such vessel complies or does not comply. In addition the subsection provides that all promotional literature or advertising in or over any medium of communication within the United States offering passage or soliciting passengers for ocean voyages anywhere in the world shall include similar information as a part of the advertisement or description of the voyage.

Subsection (c) of that section of the Revised Statutes, as amended by Public Law 89–777, provides that, after November 2, 1968, any foreign or domestic vessel of over 100 gross tons, having berth or stateroom accommodations for 50 or more passengers, shall not depart a United States port with passengers who are United States nationals, and who embarked at that port, if the Secretary of the Department in which the Coast Guard is operating finds that such vessel does not comply with the standards set forth in the International Convention for Safety of Life at Sea, 1960, as modified by certain amendments proposed by the thirteenth session of the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization. The foregoing amendments are those proposed by the United States, after the sinking of the Yarmouth Castle, to improve the fire safety of foreign flag passenger vessels.

The bill would amend subsection (b) of section 4400 of the Revised Statutes to provide that the subsection shall not apply to voyages by vessels meeting the safety requirements of subsection (c).

Since all vessels leaving United States ports to which subsection (b) applies are required to meet the safety standards of subsection (c), the effect of the bill would be to exempt all such vessels from the requirements of subsection (b). The bill would leave in effect the requirements of subsection (b) with regard to advertising over any medium of exchange in the United States of voyages anywhere in the world by vessels that do not meet the requirements of subsection (c).

We recommend enactment of the bill. Since all passenger vessels leaving United States ports are required to meet satisfactory fire safety requirements, advertisements to the effect that they meet such requirements seem unnecessary. The bill will relieve American-flag and foreign flag passenger vessels, and those advertising voyages for them, of an unnecessary expense and burden.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

JAMES T. LYNN,
General Counsel.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., July 28, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1924, a bill—

"To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards."

The proposed legislation would exempt passenger vessels which meet the construction standards set forth in the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) and the 1966 Fire Safety Requirements from the disclosure requirements of P.L. 89–777.

The Department of Transportation is not opposed to enactment of the proposed legislation. Our position is founded in the conclusion that the purpose of the broad disclosure requirements contained in P.L. 89–777, to encourage upgrading of vessel safety standards particularly relating to fire safety, has been substantially accomplished.

P.L. 89–777 requires notice to prospective passengers and disclosure in all advertising for *all* vessels of one-hundred gross tons or over which have berth or stateroom accommodations for fifty or more passengers and embarking passengers at United States ports for a coastwise or an international voyage of the safety standards with which the vessel complies or does not comply. Because subsection (c) of P.L. 89–777 is now fully operative—after the running of a grace period for compliance which extended through November 1, 1968—and all of the foregoing passenger vessels sailing from U.S. ports must comply with the safety standards of SOLAS 60, as modified by the 1966 Fire Safety Standards,

subsection (b) which S. 1924 would amend, does not affect them. Additionally, we believe subsection (c) assures that the primary objective of P.L. 89–777, protection of United States citizens traveling on board foreign passenger vessels calling at United States ports, is not adversely affected by passage of the proposed legislation.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

CHARLES D. BAKER.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., August 12, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your request for comment on S. 1924, a bill "To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards", has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The Act of November 6, 1966 (P.L. 89–777, 80 Stat. 1356) requires that owners and agents of certain passenger vessels notify prospective passengers of the safety standards with which the vessel does or does not comply and that promotional literature soliciting passengers include similar information. This bill would make these requirements inapplicable to voyages by vessels meeting the safety standards set forth in the International Convention for the Safety of Life at Sea, 1960, as modified by the amendments proposed by the 13th session of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization.

The Department of the Navy, on behalf of the Department of Defense, defers to the views of the Departments of Commerce and Transportation on this bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on S. 1924 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

JOHN D. H. KANE, Jr.,
Captain, U.S. Navy, Deputy Chief.

FEDERAL MARITIME COMMISSION,
Washington, D.C., August 25, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This refers to your letter of April 25, 1969, requesting the views of the Federal Maritime Commission with respect to S. 1924, a bill—

"To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards."

Owners, operators, agents or other persons selling passage, on, or soliciting passengers for, passenger vessels of 100 gross tons or over, having accommodations for 50 or more persons, are presently required by 46 U.S.C. 362 to include in all promotional literature or advertising in or over any medium of communication within the United States, information concerning the safety standards with which the vessel complies or does not comply.

This requirement was written into the law after extensive hearings before the Merchant Marine and Fisheries Subcommittee of the Senate Commerce Committee and the House Merchant Marine and Fisheries Committee, in 1966 following the burning and sinking of the Yarmouth Castle while en route from Miami to Nassau, with the loss of 90 lives. The primary purpose of the applicable sections of the statute is the protection of U.S. citizens sailing from United

States ports, by bringing to their attention vital information concerning the safety features of the vessel on which they are sailing or on which they intend to book passage.

S. 1924 would amend 46 U.S.C. 362, by deleting therefrom the requirement that advertising notify prospective passengers of the safety standards with which the vessel does or does not comply, if in fact the vessel meets the safety standards prescribed in subsection (c) of 46 U.S.C. 362. However, we believe that the traveling public is entitled to disclosure of meaningful information concerning the safety features of vessels on which they plan to embark.

Enforcement of safety requirements is a function of the United States Coast Guard. Since S. 1924 would not affect the regulatory responsibilities of this Commission, we defer to the views of the Coast Guard on the merits of this bill.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely yours,

JOHN HARLLEE,
Rear Admiral, U.S. Navy (Retired) Chairman.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., August 26, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1924, "To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards."

Public Law 89–777, approved November 6, 1966, added new subsections (b) and (c) to section 4400 of the Revised Statutes (46 U.S.C. Supp. III 362(b) and (c)). Subsection (b) requires persons selling passage on foreign or domestic passenger vessels of a certain size and embarking passengers at United States ports for a voyage to notify every prospective passenger of the safety standards with which the vessel complies or does not comply.

Subsection (c) prohibits such a vessel from departing a United States port with American passengers, if the Secretary of the Department in which the Coast Guard is operating finds that the vessel does not comply with the standards set forth in the International Convention for the Safety of Life at Sea, 1960, as modified.

The bill would make the disclosure requirements of subsection (b) inapplicable to voyages of vessels meeting the safety standards prescribed in subsection (c).

The proposed legislation is not of primary interest to this Department and the Department has no comment to make with regard to the general merits of the bill.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

PAUL W. EGGERS,
General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., August 28, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of April 25, 1969, requesting comments on S. 1924, a bill "To eliminate requirements for disclosure of construction details on passenger vessels meeting prescribed safety standards."

Under the proposed legislation owners, operators or agents of vessels meeting the construction standards established by the Convention for the Safety of Life at Sea (SOLAS 60) and the 1966 Fire Safety Amendments to that Convention, would be exempted from the disclosure and advertising requirements of PL 89–777. PL 89–777 requires that passengers on all vessels, which are over 100 gross

registered tons, have stateroom accommodations for 50 or more passengers, and embark passengers at United States ports, be notified of the safety standards with which the vessel does or does not comply. The law also requires that all promotional literature or advertising for voyages by such ships include similar information pertaining to safety standards.

Since United States law now prohibits the embarkation of American passengers in American ports by any vessel of over 100 gross tons having berth or stateroom accommodations for 50 or more passengers which does not comply with the safety requirements of the Safety of Life at Sea, 1960 Convention, as amended by the 1966 Fire Safety Amendments, the Department of State is of the opinion that the disclosures to passengers and advertising requirements of PL 89–777 are no longer necessary to insure passenger safety. Consequently, the Department has no objection to the proposed legislation.

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

Sincerely yours,

H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., November 6, 1969.

In Reply Refer to LA–64 : ela.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN : Your request for comment on S. 2817, a bill "To amend the maritime lien provisions of the Ship Mortgage Act of 1920," has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

Under present law, a vessel's charter may contain a clause by which the owner of the vessel prohibits its charterer from binding the vessel to liens. When confronted by such a clause, a terminal operator cannot place a lien against the vessel for facilities and services rendered to the vessel. This bill would enable terminal operators to subject vessels to liens to aid in the collection of the operators' charges. The bill would amend the Ship Mortgage Act of 1920 (46 U.S.C. 971–975) to provide that services furnished a vessel in accordance with a tariff filed with the Federal Maritime Commission shall be deemed necessaries and that no charter provision shall be sufficient reason to deny a lien for such necessaries.

The Department of the Navy, on behalf of the Department of Defense, defers to the views of the Department of Commerce and the Federal Maritime Commission on this legislation.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on S. 2817 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

JOHN D. H. KANE, Jr.,
Captain, U.S. Navy, Deputy Chief.

DEPARTMENT OF STATE,
Washington, D.C., November 6, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN : The Secretary has asked me to reply to your letter of August 26, 1969 which requested comment on S. 2817, a bill "To amend the maritime lien provisions of the Ship Mortgage Act of 1920".

The Department has no objection to the proposed legislation from the standpoint of foreign policy and would defer to the views of other government agencies more directly concerned.

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

Sincerely yours,

H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., November 6, 1969.

Re MS 211.131 S.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2817, "To amend the maritime lien provisions of the Ship Mortgage Act of 1920.

Subsection P of the Ship Mortgage Act, 1920 (46 U.S.C. 971), provides that any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel upon the order of its owner or of a person authorized by him, shall have a maritime lien on the vessel, which may be enforced by suit *in rem;* and it shall not be necessary to allege or prove that credit was given to the vessel.

Subsection R of that Act (46 U.S.C. 973) provides that nothing in the Act shall be construed to confer a lien when the person furnishing the necessaries knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, or for any other reason, the person ordering the necessaries was without authority to bind the vessel.

Under existing law, however, a vessel owner may insert in any charter of the vessel a "prohibition of lien" clause which denies to the charterer authority to bind the vessel to liens. When such a clause is in the charter, a marine terminal operator who supplies facilities and services to the vessel cannot subject the vessel to a lien even though the charges are part of his tariff filed with the Federal Maritime Commission.

The proposed legislation would amend subsection P of the Ship Mortgage Act, 1920, to eliminate any doubt as to whether terminal services provided to a vessel under the provisions of a tariff filed with the Federal Maritime Commission are included among the necessaries for which a lien may be had and would amend subsection R to eliminate any possible argument that the supplier of necessaries to a vessel under a tariff filed with the Federal Maritime Commission should be denied a lien by reason of any alleged failure to exercise "reasonable diligence" to ascertain the terms of a charter.

Neither subsections P or R of the Ship Mortgage Act, 1920, nor the amendments which would be made by the proposed legislation, if enacted, relate to matters within the jurisdiction of the Treasury Department. Administration of the provisions of that Act relating to the recordation of liens on vessels of the United States, formerly a function of the Bureau of Customs of this Department, was transferred to the U.S. Coast Guard by Treasury Department Order No. 167–81 of January 30, 1967 (32 F.R. 2463), and is now the responsibility of the Department of Transportation. The Treasury Department, therefore, offers no comments on the merits of S. 2817.

It is suggested, however, that because the Ship Mortgage Act, 1920, comprises section 30 of the Merchant Marine Act, 1920, the words "Merchant Marine Act, 1920 (46 U.S.C. 911–984)" be substituted for "Ship Mortgage Act of 1920 (46 U.S.C. 971–975)" in lines 3–4, page 1, of the bill.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

PAUL W. EGGERS,
General Counsel.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., November 10, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 2817, a bill—

"To amend the maritime lien provisions of the Ship Mortgage Act of 1920".

Subsection P of the Ship Mortgage Act, 1920 (46 U.S.C. 971), provides that any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

S. 2817 would amend subsection P by the addition of a new sentence providing that services furnished to a vessel in accordance with the provisions of a tariff filed with the Federal Martime Commission pursuant to the rules of said Commission shall be deemed necessaries for all purposes.

Subsection R of the Ship Mortgage Act, 1920 (46 U.S.C. 973), provides that nothing in the Act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefore.

S. 2817 would amend subsection R to provide that no provision in any charter party, agreement for sale of a vessel, nor any other reason, shall be, or be construed to be, a sufficient reason to deny to any person, having a tariff on file with the Federal Maritime Commission pursuant to the rules of said Commission, a maritime lien for services, included in said tariff, which are furnished to a vessel.

The rules and regulations of the Federal Maritime Commission for the filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth or possession thereof, in connection with a common carrier by water in the foreign commerce of the United States or in the interstate commerce on the high seas or the Great Lakes are set forth in 46 C. F. R., Part 533. These rules and regulations define terminal services as dockage, wharfage, free time, wharf demurrage, terminal storage, handling, loading and unloading, usage, checking and heavy lift. Other definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the above definitions. Any additional services which are offered are required to be listed and charges therefore shown in terminal tariffs.

The provisions of S. 2817 would not have any appreciable effect on the activities of this Department, but would appear to be of particular interest to the Federal Maritime Commission. Therefore, we defer to that Agency.

We are informally advised that the Federal Maritime Commission does not favor the provisions of S. 2817 on several grounds, one of which is their inability to effectively police the provisions of tariffs filed with them. This Department shares the concern of the Federal Maritime Commission in this regard since the provisions of such tariffs, if given the benefit of a lien, could prove prejudicial to the interests of the United States-flag merchant marine and other vessel operators.

We have been advised by the Bureau of the Budget that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM E. MURANE,
Acting General Counsel.

FEDERAL MARITIME COMMISSION,
Washington, D.C., November 10, 1969.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of August 27, 1969, for the views of the Federal Maritime Commission with respect to S. 2817, a bill "To amend the maritime lien provisions of the Ship Mortgage Act, 1920."

The purpose of S. 2817 is to amend the maritime lien provisions of the 1920 Act by specifically including within the term "necessaries" any services furnished to a vessel in accordance with the provisions of a tariff filed with the Federal Maritime Commission pursuant to rules of the Commission, and to provide that any services furnished to a vessel pursuant to such a filed tariff shall constitute a lien on the vessel notwithstanding the inclusion in a charter party or sales agreement of a prohibition of lien clause, or for any other reason.

The Federal Maritime Commission takes no position on whether a provision in a charter party or sales agreement should preclude the establishment of a lien for services furnished to a vessel. Also the Commission does not take a position on whether a terminal operator should be entitled to preferred treatment under the Ship Mortgage Act, 1920, for services performed. The Commission's responsibilities in the area of terminal operators are of a regulatory nature. The settlement of claims for terminal services performed to ships is a contractual matter to be resolved between the parties or failing that, in civil proceedings in the admiralty courts. Historically, it has not been a matter for resolution by a regulatory agency. Lacking the necessary expertise in this area, we oppose the provisions of S. 2817 which condition the enforcement of a lien for terminal services on a determination to be made by the Federal Maritime Commission. If the committee determines that services performed for a ship by the terminal operator are to enjoy a preferred status vis-a-vis other serivces performed for the ship, we think that such services should be clearly identified, i.e. specifically spelled out in the legislation. In this way, the parties would be fully informed of those specific items which are encompassed within the term "necessaries". Unless so modified, the bill presents numerous problems discussed herein.

The inclusion of an item in a tariff does not of itself mean that the item is proper or that the charge is reasonable. Rates, rules, and regulations concerning terminal services, even though on file with the Commission, could be unjust and unreasonable or otherwise in violation of the Shipping Act, 1916. The Commission's authority over marine terminal tariffs is very limited. The Commission's General Order 15 requires terminal operators to (1) file tariffs with the Commission on or before their effective dates; (2) post tariffs at their place of business; and (3) set forth definitions for principal terminal services similar to those contained in the Commission's rule, or in the alternative, make appropriate correlation. The Commission has no authority to reject or suspend tariffs. If the staff has reason to believe that a rule, regulation or service set forth in a marine terminal tariff may be discriminatory or otherwise unreasonable, the staff attempts informally to have the matter changed. If these efforts are unsuccessful, such rule or regulation can be found violative of the Shipping Act only after notice and hearing. Formal proceedings may take from five months to over a year [1] before the final decision and, during such period, the tariff material would continue to be lawfully on file.

Furthermore, the rates for terminal services are filed pursuant to the Commission's own rule (G.O. 15) which is issued under Sec. 17 of the Shipping Act, 1916, and are not filed pursuant to express statutory provisions requiring that tariff's be filed. If the Commission were ever to change General Order 15, the basis for the lien provided in S. 2817 might be removed. While the possibility of the Commission doing so is remote, no one can predict with certainty what future regulatory considerations may or may not prompt the Commission to rescind or substantially modify its rule.

The Commission has only limited ratemaking authority to fix or establish the level of marine terminal charges. This limited authority is derived from sections 16, First, and 17 of the Shipping Act, 1916, which are not essentially ratemaking provisions. For instance, section 16 makes it unlawful for a terminal operator:

---

[1] See *The Boston Shipping Assoc., Inc.* v. *Port of Boston,* 10 F.M.C. 409 (1967); *Boston Shipping Assn.* v. *Port of Boston Marine Terminal,* 11 F.M.C. 1 (1967).

> To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 17 provides a terminal operator:

> . . . shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

Terminal services, definitions and practices vary from one coastal area to another and, in some instances, within a single coastal area or, in some instances, even within a single port. As already pointed out, General Order 15 contains definitions for services generally considered as being principal services offered by terminal operators, but do not restrict terminal tariffs only to such services. It provides that if tariffs do not set forth definitions contained in the Order, such definitions should be appropriately correlated.

In addition to the principal terminal services, such as dockage and wharfage, some tariffs cover other terminal services, e.g., providing fresh water, telephone facilities and electricity. Some tariffs include charges for tieing lines, opening hatches, watching services, general labor services, or various other minor services for the convenience of the water carrier. We question whether all such items should be included in the term "necessaries" under the Ship Mortgage Act of 1920 merely because they happen to be filed in a tariff with the Commission.

Some terminal tariffs state that the water carrier must guarantee certain charges for services rendered for the account of the cargo owner. It is not clear whether the framers of the bill intended to include such secondary services within the phrase "furnished to a vessel". If they are included, the terminal operator could obtain a lien based upon a claim properly chargeable to the cargo rather that to the vessel. We question whether the bill should cover such charges.

Further, General Order 15 exempts from its filing requirements rates and charges for services offered by a terminal operator to a steamship line which are the subject of negotiation. Thus, negotiated services are not contained in tariffs on file with the Commission. In New York, for example, dockage and wharfage charges which are the principal terminal services provided to a water carrier are contained in stevedore contracts negotiated between the terminal, stevedore and water carrier. These stevedoring contracts apply to practically all piers in the Port of New York, with the exception of a few New York Port Authority piers, and therefore, such activities would not be covered by the proposed lien legislation. This is true also of the "service and facilities charge" applicable at certain Pacific Coast ports.

Under section 1 of the Shipping Act, the Commission regulates the activities of terminal operators only "in connection with a common carrier by water." Many terminal operators provide marine terminal services to non-common carriers such as tramps or proprietary vessels. The extent of service to common carriers by water varies from one terminal to another, and many terminal operators who deal with non-common carrier vessels are not required to file their tariffs with the Commission. Therefore, determining what charges are "necessaries" and the right to establishment of a lien against a vessel based on charges contained in tariffs on file with the Federal Maritime Commission could lead to confusion. Whether or not a particular charge furnished to a vessel should entitle the terminal operator to a lien should not depend upon whether the vessel involved is a common carrier or a non-common carrier. In some instances a single terminal operator might have certain charges published in its terminal tariff applicable to common carriers and filed with the Commission, and at some time might have different negotiated rates for similar services rendered to non-common carriers. Obviously, this could create a situation where a lien would be created with respect to the claim against the common carrier but not for a similar claim by the same terminal operator against a non-common carrier.

In summary, it does not appear that the establishment of a particular claim by a terminal operator against a vessel as a "necessary" should depend on whether or not it is included in a tariff filed with the Federal Maritime Commission. Moreover, it would appear that there would be certain confusion and inequities because terminal services vary from port to port and even from terminal to terminal and, under certain circumstances, terminal services and

charges are not even required to be filed with the Commission. Accordingly, while the Commission does not take a position on the purpose of this bill to establish liens for charges and services which may be considered "necessaries", it does urge that if it is found that there is a need for the establishment of such liens, the determination of what are "necessaries" should not be tied to tariffs filed with the Commission. Such items should be specifically identified in the basic legislation.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

HELEN DELICH BENTLEY,
Chairman.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., November 13, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2817, a bill—

"To amend the maritime lien provisions of the Ship Mortgage Act of 1920."

The bill would amend subsections P and R of section 30 of the Ship Mortgage Act of 1920 (46 U.S.C. 971–975) to clarify that terminal services provided to a vessel in accordance with the provisions of a tariff on file with the Federal Maritime Commission are included among the "necessaries" for which a maritime lien may be had. It would also guarantee a maritime lien to a person furnishing services to a vessel pursuant to a tariff on file with the Federal Maritime Commission, regardless of the terms of any charter party or agreement for sale of the vessel.

The Department of Transportation perceives no administrative difficulties with S. 2817, but defers to the Federal Maritime Commission as to the merits of the specific provisions. The Coast Guard, under this Department, is responsible under the Ship Mortgage Act for the recording of maritime liens on vessels covered by a preferred mortgage (46 U.S.C. 925). However, performance of that function is not related to the services which by statute should or should not be defined as the basis of a lien.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

CHARLES D. BAKER.

Senator INOUYE. We will take up S. 1924 first and our first witness will be Capt. W. W. Barrow, Chief of the Merchant Vessel Inspection Division, of the U.S. Coast Guard.

Captain Barrow.

STATEMENT OF CAPT. WINFORD W. BARROW, CHIEF, MERCHANT VESSEL INSPECTION DIVISION, U.S. COAST GUARD

Captain BARROW. Thank you very much, Mr. Chairman. It is a pleasure to be here. I present Admiral Murphy's regrets at being called out of town unexpectedly and not being able to be here.

Senator INOUYE. Fine. You may proceed any way you wish.

Captain BARROW. Mr. Chairman, I appreciate the opportunity to appear today and comment on Senate bill 1924 and House bill 210.

The proposed bills would, when a passenger vessel meets the applicable safety standards prescribed in the International Convention for the Safety of Life at Sea, 1960, and the 1966 Fire Safety Requirements, delete the existing requirement in subsection (b) of Public Law 89–777 that all advertising and promotional literature, as well as the written

notification to a passenger at the time of selling passage on a vessel contain a complete description of the safety standards with which that vessel does or does not comply.

The Coast Guard has no objection to enactment of the proposed legislation. We feel that the purpose of the disclosure requirements contained in Public Law 89–777, which became effective on May 6, 1967; that is, to encourage the upgrading of passenger vessel fire safety standards, has been substantially accomplished.

It is also significant to note that irrespective of the advertising requirements in subsection (b) of Public Law 89–777, subsection (c) of the same law, which became effective a year and one-half later on November 1, 1968, requires that the same passenger vessels must comply with safety standards set forth in the International Convention for the Safety of Life at Sea, 1960, as modified by the 1966 Fire Safety Requirements, before they are permitted to embark U.S. citizens as passengers at a U.S. port. The mandatory requirement of subsection (c), which, incidentally, is verified by actual vessel examinations carried out by Coast Guard personnel, would not be altered by the enactment of S. 1924 or H.R. 210.

In conclusion, we believe that the primary objective of Public Law 89–777, the protection of U.S. citizens traveling on board foreign passenger vessels calling at U.S. ports, will not be adversely affected by passage of the proposed legislation.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions.

Senator INOUYE. Thank you very much, Captain.

Am I correct in assuming that the reason for the Coast Guard's support of this measure is that the original legislation, Public Law 89–777, did a sufficiently effective job so that after November of 1968 there have been no ships serving the United States which do not comply with the safety standards?

Captain BARROW. I think that is basically true, Mr. Chairman. Since this law became effective the Coast Guard has verified over 70 foreign vessels which serve U.S. ports for compliance with subsection (c) of this law.

I think it is interesting to note that some 46 vessels or 47 vessels which served U.S. ports in the several years before this law went into effect have actually been removed from service.

Senator INOUYE. How do you verify compliance with Public Law 89–777? Is it by inspection, and what sort of inspection?

Captain BARROW. The Coast Guard is permitted under the terms of the control provisions of SOLAS 60 to actually carry out control examinations. For the purposes of Public Law 89–777, we, I am sure, went beyond the original intent of the control examination. We actually in some cases removed panels to check for construction details and to examine wiring and physically verified to a large degree actual compliance with the new requirements.

Senator INOUYE. What is your view on the amendment which was made in the House on the requirement for disclosure?

Captain BARROW. We have no strong feelings either way on this, Mr. Chairman. I understand that the insertion of this provision is not objected to strenuously by the people in the industry. We do note that the position of it in the amendment leaves up in the air the agency

which is to administer this, to write regulations, and secondly, that there doesn't appear to be a penalty provision for failure to comply with this provision.

Senator INOUYE. Am I correct to say that the Coast Guard is confident that this bill will in no way jeopardize the safety of the U.S. passengers?

Captain BARROW. Yes, sir.

Senator INOUYE. Thank you very much, Captain. You have been most helpful, sir.

Captain BARROW. Thank you very much.

Senator INOUYE. The next witness will be Mr. James J. Reynolds, president of the American Institute of Merchant Shipping.

Mr. Reynolds, welcome once again to our committee.

STATEMENT OF JAMES J. REYNOLDS, PRESIDENT, AMERICAN INSTITUTE OF MERCHANT SHIPPING, WASHINGTON, D.C.

Mr. REYNOLDS. Thank you very much, Senator Inouye.

Senator, I have a very brief statement here and with your patience I think the best way for me to handle it would be to read it. It is only four pages in length.

Senator INOUYE. Please proceed.

Mr. REYNOLDS. I am James J. Reynolds, president, American Institute of Merchant Shipping. I appear before you today on behalf of the Liner Council of the American Institute of Merchant Shipping.

On a personal note, I cannot help but say what a source of pride it is to appear before you on this particular date, Veterans Day. I am honored to be here.

Senator INOUYE. Thank you very much.

Mr. REYNOLDS. The Liner Council consists of 14 steamship lines that hold subsidy contracts with the U.S. Government. Included are all American-flag steamship lines that operate passenger vessels in the foreign service. Matson Navigation Co., which operates in domestic service and which is the only major U.S.-flag passenger service not represented in the Liner Council of AIMS, is however a member of the basic AIMS organization and supports the views expressed in this statement.

In 1966 the Congress enacted Public Law 89–777, to require evidence of adequate financial responsibility to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages, to establish minimum standards for passenger vessels, and to require disclosure of construction details on passenger vessels and for other purposes.

It is our view that Public Law 89–777 has been a very worthwhile law and will continue to be so. As a direct result of its enactment, construction and fire safety standards of all passenger ships, United States or foreign flag, that embark U.S. citizens at U.S. ports have been upgraded. The Liner Council, AIMS, fully supports this accomplishment and commends this committee for the major role it played in bringing this about.

There are, however, two provisions in Public Law 89–777 which we believe have fulfilled the purpose for which they were designed but

which are now having a negative impact on travel by sea—an impact which was certainly never contemplated at the time of enactment.

I refer to the provision which requires that each prospective passenger be notified of the safety standards with which the vessel complies or does not comply and the further requirement that all promotional literature or advertising in or over any medium of communication include similar information.

Disclosure information now required for presentation to all prospective passengers or used in advertising and promotional campaigns must of necessity be expressed in terms of safety standards and fire safety standards. The repeated usage of the words "safety" and "fire" constitute a psychological deterrent to travel by sea.

This may not be subject to quantification. That is to say it cannot be shown that bookings would be 3 or 10 percent higher if this disclosure practice were discontinued. However, they would be higher. This is a significant matter. And the requirement for disclosure in advertising is a strong deterrent to sea travel.

This view is supported by every individual with extensive experience in passenger ship operations and in marketing passenger space on those ships. Particular individuals may react differently to the safety legend in advertising, but the repeated use of the words "safety" and "fire" produce a net negative effect insofar as travel by sea is concerned.

Insofar as advertising itself is concerned, the effect of the disclosure requirement generally has been to preclude the use of the radio and TV media. On a 30-second flash commercial, for example, perhaps half the time will be devoted to disclosure information.

Furthermore, a technical explanation of fire and safety standards would stand in harsh contrast to the image of balmy moonlight sailing expounded by the announcer or displayed on a screen seconds before.

This amounts to paying to advertise something that may do more harm than good—a compulsory recital that compulsory standards have in fact been met—and the result is that these media have lost their appeal and usefulness.

It is not only the radio and TV media that have been affected, but also outdoor advertising—as on billboards—and "tie in" advertising with travel agents. Over 80 percent of steamship bookings are made through travel agencies. After Public Law 89–777 was passed many travel agencies ceased promotion of travel by sea. They simply would not pay for negative advertising nor, frankly, could they be expected to do so.

The important thing is that since November 2, 1968, every vessel embarking passengers from the United States has had to meet the standards prescribed by law or is not permitted to sail. The very meritorious purposes of the act have thus been met and unsafe vessels have been excluded from the ports of the United States. But to establish safety standards to avoid tragic incidents at sea is one thing and require that this be constantly printed and advertised is another.

We of the Liner Council, AIMS, believe that the elimination of the disclosure of safety information would in no way detract from the effective implementation of the legal requirements and would indeed remove a psychological barrier from the minds of many American citizens who would otherwise plan cruises or travel on U.S.-flag vessels.

The Liner Council, AIMS, wishes to make one point absolutely clear. No one is more desirous of insuring the safety of passengers on regular service or on cruises than the operators of U.S. passenger flag vessels. Not only are they interested in the welfare of fellow citizens, but their reputation and future business depend on it.

However, it is not the disclosure of safety standards that has increased the safety of embarking in a passenger ship at a U.S. port. It is the standards themselves that are established in the law that have brought this about. Elimination of disclosure will in no way change this. The disclosure requirement is costly, deters travel by sea, reduces available advertising media, and serves no longer a useful purpose.

H.R. 210, as passed by the House of Representatives, included an amendment to the bill as originally submitted to the effect that the nationality of registry would be included in all passenger ship advertising. The Liner Council, AIMS, has no objection to this provision and supports H.R. 210 as passed by the House of Representatives.

The Liner Council, AIMS, appreciates the opportunity provided by this committee to submit these comments on the subject of H.R. 210, and urges support for this amendment to Public Law 88–777.

Thank you very much, sir.

Senator INOUYE. Mr. Reynolds, you have been most helpful. As you know, I am a new member of this committee and as such every meeting is a refreshing educational experience to me. It just occurred to me why I have not seen any ocean liner ads on TV now.

May I ask you if this sort of disclosure requirement is made of air, road, and rail travel?

Mr. REYNOLDS. Not to my knowledge. I think this is one of the reasons we see so much advertising of air travel on TV media and it is very effective, as we know.

Senator INOUYE. I think it would be exciting if Pan American or TWA had to spend 30 seconds telling the folks it is safe before it went up, up, and away.

I gather from your testimony that very little advertising is done by the operators of passenger vessels?

Mr. REYNOLDS. There is considerable newspaper advertising, Mr. Chairman, by the lines directly. The travel agents have pretty well stopped it. There is an increasing sensitivity to this problem that in all advertising, newspaper, magazine, or otherwise, you must have that statement that the safety at sea conventions are met, fire, and safety, and so forth. So I do not think there is any doubt that it is having an adverse impact on travel and heaven knows American vessels need every passenger they can get these days.

Senator INOUYE. In other words, you are suggesting if we want to see increased advertising for the spring and summer cruises we should pass the bill immediately?

Mr. REYNOLDS. It would be very helpful if that could be done. I appreciate there are pressing matters before the Congress at this time, but it would be useful if this would be put there.

Incidentally, I share your education problem. As you know, I was President Johnson's, Under Secretary of Labor and appeared before this committee a number of times. I have only been president of AIMS since March.

I feel quite confident that this requirement we are discussing is having an adverse impact. I think it is a question of throwing the baby out with the water. The effectiveness of the law itself has been magnificent because we have eliminated these dreadful incidents at sea. I think it is good that the flag of registry must be stated in advertising, which is a constructive thing, so that American citizens will know under what flag they are going to sail.

Senator INOUYE. Mr. Reynolds, you have been most helpful to the committee. I appreciate this very much.

Mr. REYNOLDS. Thank you.

Senator INOUYE. The next witness is Mr. Vincent Demo, chairman of the New York Committee of the International Committee of Passenger Lines.

Mr. Demo, welcome to the committee.

STATEMENT OF VINCENT A. DEMO, CHAIRMAN, NEW YORK COMMITTEE OF THE INTERNATIONAL COMMITTEE OF PASSENGER LINES

Mr. DEMO. Mr. Chairman, I am Vincent A. Demo and I am chairman of the New York Committee of the International Committee of Passenger Lines. This committee is comprised of foreign steamship lines providing passenger service to and from the United States, including the vast majority of cruises from American ports. A list of the carrier members of this organization is attached hereto and made a part hereof.

The International Committee of Passenger Lines (ICPL) strongly supports S. 1924, which would have the effect of eliminating the elaborate disclosure procedures required under subsection (b) of section 4400 of the Revised Statutes, as amended (46 U.S.C. 362). We understand that our position on this subject is identical with that of the American passenger lines.

The section in question is part of Public Law 89–777, approved on November 6, 1966. It requires owners, operators, agents, or any persons selling passage on foreign or domestic passenger vessels which embark passengers at U.S. ports, to notify prospective passengers of the safety standards. The interpretive regulations in implementation of the statute, stipulate that all promotional literature and advertising in or over any medium of communication within the United States is required to include such information. Additionally, after booking passage and before embarking from a U.S. port, all passengers must again be given a written or printed notice covering the safety factors of the vessel.

The statute also provided that vessels could not depart after November 2, 1968, with American nationals from a U.S. port unless the Coast Guard had found that they complied with standards set forth in the International Convention for the Safety of Life at Sea, 1960, as modified by the amendments proposed by the 13th session of the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization (IMCO), contained in annexes I through IV of the note verbale of the Secretary General of that organization, dated May 17, 1966.

As a consequence, since November 2, 1968, no vessel can sail from an American port without complying with the established single uniform safety standard and the entire purpose of the disclosure requirements has therefore been eliminated. There is, therefore, no longer any occasion for disclosure at the time of booking nor for the advertising requirements.

These requirements, which have become wholly superfluous since the November 2, 1968, deadline has passed, are unduly burdensome and necessarily impede the promotion of steamship travel. During the period that these regulations have been in effect, there has been a pronounced change in the pattern of promotion for steamship passenger transportation and cruises. Travel agents, who are counted on to produce over 85 percent of the travel business, either cannot afford to or will not incur the additional cost of purchasing more advertising space to include the required safety text, nor will they sacrifice promotional text for a description of safety standards. Advertising by them has consequently dropped off appreciably and has brought about a diminution of interest in steamship travel.

Steamship carriers have been unable to use the effective media of television and radio advertising in the promotion of their services because of the prohibitive expense of paying for and repeating the extensive safety comment required for each commercial. For example, in a 30-second television commercial which mentions only one ship, the cost attributable to disclosure would be $450 out of a total of $1,800 for a low preference commercial and as much as $1,200 for a 30-second commercial in prime time—these costs would, of course, be higher if more than one vessel were being advertised.

Outdoor advertising, formerly employed successfully on occasion by steamship carriers, has had to be eliminated because of the requirement that the 24-word safety legend be displayed in the same size as the few words of the actual advertisement.

Apart from the foregoing rather clear impediments to normal promotional routines, it is more than a little incongruous to extol the glamor and comfort of ship travel and follow it immediately with an extended review of safety features involving repeated references to "safety" and "fire." The constant and unwarranted emphasis on safety requirements strongly implies that there is something inherently dangerous in ocean transportation, not present in other means of transportation. The required warning must inevitably lead the reader to question whether the threatened risk to life and limb does not outweigh the promised pleasure and relaxation. We feel very strongly that this has had the unfortunate consequence of deterring many potential passengers from the utilization of services provided by both foreign and American lines who have gone to such pains to build up and maintain their services.

We assert that the dangers of ocean transportation are certainly less than those of other forms of transportation—or even of staying at home, for that matter—and we believe that it is unfair to our industry to impose this type of a handicap under presently existing circumstances.

With the objectives of the statute having been achieved and all passenger vessels now having to maintain the desired standards, the purposes which prompted the adoption of the statute no longer exist.

Therefore, it is hoped by these carriers (and, we believe, all others interested in international passenger transportation) that the now unnecessary requirements will be eliminated by the adoption of S. 1924.

We are happy to note a complete endorsement of our views in the House of Representatives Report No. 91–517 on H.R. 210, the counterpart of S. 1924. In the hearings before the House there was full support for our position by AIMS, the Coast Guard, the Department of Commerce, the Maritime Administration, and the labor-management committee.

On behalf of the responsible lines in this committee, I thank you for the opportunity to present their views.

H.R. 210 as passed by the House of Representatives contains an amendment that the flag of registry be included in passenger ship advertising. Our committee has no objection to this provision.

Thank you.

Senator INOUYE. Thank you very much, Mr. Demo. I have just one question. Have all the members of your association ratified the 1960 safety convention and the 1966 amendment thereto?

Mr. DEMO. Yes.

Senator INOUYE. And it is your view that the requirement of flag registry is not an important factor?

Mr. DEMO. No. It is apparently the necessary price to pay for the elimination of the present 24-word legend.

Senator INOUYE. May I assure you that I am convinced that this sort of amendment should have been passed on November 3, 1968. I will personally recommend expeditious and favorable action on this measure.

Mr. DEMO. Thank you. I would support the point made by Mr. Reynolds who testified just before me; namely, that the peak of our steamship advertising is coming up right now for the Christmas and winter cruises, and it is really very important from our standpoint to see this disclosure requirement eliminated as soon as possible.

Senator INOUYE. I don't think we can take it up next week. We have the debate on Justice Haynsworth coming up.

Mr. DEMO. The following week will do.

Senator INOUYE. The following week we may have the tax reform bill but we may be able to sneak it in there.

Let me assure you that we will treat this matter expeditiously.

Mr. DEMO. Thank you.

(The list of members follows:)

MEMBERS OF NEW YORK COMMITTEE OF THE INTERNATIONAL COMMITTEE OF PASSENGER LINES

Canadian Pacific, Clipper Line, Costa Line, Inc., Cunard Line Limited, French Line, German Atlantic Line, Greek Line, Holland-America Line, Home Lines, Inc., Incres Line, Italian Line, National Hellenic America Line, North German Lloyd, Norwegian America Line, Paquet Line, P&O Lines, Inc., Sun Line, Swedish American Line.

Senator INOUYE. Now we will take up S. 2817. Our first witness will be Mr. Leroy F. Fuller, director, Bureau of Domestic Regulation, Federal Maritime Commission.

Mr. Fuller, welcome to the committee.

Mr. FULLER. Thank you, Senator.

STATEMENT OF LEROY F. FULLER, DIRECTOR, BUREAU OF DOMESTIC REGULATION, FEDERAL MARITIME COMMISSION, ACCOMPANIED BY JAMES PIMPER AND GENE STAKEM

Mr. FULLER. I am Leroy F. Fuller, Director of the Bureau of Domestic Regulation. With me, on my right, is Mr. James Pimper, General Counsel, and on my left, Mr. Gene Stakem, Chief of the Division of Terminals and Freight Forwarders.

It is an honor to appear before your committee and offer our comments with respect to S. 2817, a bill to amend the maritime lien provisions of the Ship Mortgage Act, 1920.

The purpose of this proposed legislation is to amend the maritime lien provisions of the 1920 act to specifically include within the term "necessaries" any services furnished to a vessel in accordance with the provisions of a terminal tariff filed with the Federal Maritime Commission pursuant to that agency's rules and regulations and to provide that any services furnished to a vessel in accordance with such a filed tariff shall constitute a lien against the vessel, notwithstanding the inclusion in a charter party or sales agreement covering the vessel of a prohibition of lien clause, or for any other reason.

The Federal Maritime Commission takes no position on whether a provision in a charter party or sales agreement should preclude the establishment of a lien for services furnished to a vessel. The Commission does not have jurisdiction over the manner of settlement of money claims by a terminal operator against a carrier. Money claims against vessels and vessel operators, and the establishment of liens and priorities thereof between various classes of claims involve the highly technical and specialized field of admiralty law.

The Federal Maritime Commission is concerned with economic regulation over the practices and charges of marine terminal operators and ocean common carrier activities, and does not deal with the settlement of admiralty claims and the determination of what should be included in the term "necessaries." Such matters have historically been left to the expertise of the admiralty courts.

The Commission's expertise in ocean shipping regulation and administrative law does not extend to the specialized field of claims, settlements, and liens under admiralty law. Therefore, the Commission takes no position as to whether or not a terminal operator should be entitled to establish a lien against a vessel for various claims for "necessaries," in addition to those specified in 46 U.S.C. 971.

The Commission does, however, have some regulatory jurisdiction over the practices and charges of marine terminals and the tariffs they file covering their practices and charges therefor.

We are opposed to the provisions of S. 2817 which would create a lien for services solely because they are enumerated in tariffs filed with the Federal Maritime Commission pursuant to its General Order 15 (30 F.R. 12681). If services performed for a ship by the terminal operator are to enjoy a preferred status vis-a-vis other services performed for the ship, we think this would be more appropriately accomplished by having the legislation clearly and specifically identify such services.

In my view to tie this legislation to services filed in FMC tariffs would create confusion and inequities.

The fact that an item is included in a terminal tariff does not of itself establish that the item is proper or that the charge therefor is reasonable and lawful. Rates, rules, and regulations covering terminal services, even when filed in a tariff with the Commission, could be unjust, unreasonable, or otherwise in violation of the Shipping Act, 1916. This is true because the Commission's authority over marine terminal tariffs is somewhat limited.

The Commission's General Order 15 requires terminals to (1) file tariffs with the Commission, (2) post tariffs at the place of business, and (3) set forth certain definitions for principal recognized services as contained in the Commission's rule, or in the alternative, establish the terminal's own definition of services provided.

The Commission has no authority to reject or suspend a filed tariff, even if the staff has reason to believe that an item included in the tariff may be unjust or unreasonable or discriminatory.

If the staff has reason to believe that a rule, regulation, or service set forth in a terminal tariff is discriminatory or otherwise in violation of law, the staff attempts informally to get the matter adjusted. If these informal efforts are not successful, such rule, regulation, or service can be found to be violative of the Shipping Act only after full notice and hearing.

Such formal proceedings could take from 5 months to more than a year before final decision. During that period, the service and charge therefor would continue to be lawfully on file and in effect.

Furthermore, the rates for terminal services are filed pursuant to the Commission's own rule (General Order 15) which is issued under section 17 of the Shipping Act, 1916, and are not filed pursuant to express statutory provisions requiring that tariffs be filed.

If the Commission were ever to change General Order 15, the basis for the lien provided in S. 2817 might be removed. While the possibility of the Commission doing so is remote, no one can predict with certainty what future regulatory considerations may or may not prompt the Commission to rescind or substantially modify its rule.

The Commission has only limited ratemaking authority to fix or establish the level of marine terminal charges. This limited authority is derived from sections 16 first, and 17 of the Shipping Act, 1916, which are not essentially ratemaking provisions. For instance, section 16 makes it unlawful for a terminal operator—

> To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsover.

Section 17 provides a terminal operator—

> . . . shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

There are a number of ways in which terminal services as filed in tariffs with the Commission are not uniform. Terminal services, definitions, and practices as filed in Commission tariffs vary between different coastal areas; within a single coastal area; and even between terminal operators in a single port.

As previously discussed, General Order 15 contains suggested definitions for terminal services considered to be the principal services provided by terminal operators, but does not restrict terminal tariffs to only those services and definitions. It provides that if particular tariffs do not set forth the exact definitions contained in that order, appropriate definitions should be included in the tariff and correlated with the FMC's definitions.

Furthermore, while the principal services covered by terminal tariffs cover dockage, wharfage, storage, et cetera, some tariffs apply to other services; for example, providing telephone facilities, electricity, and fresh water, charges for opening hatches, various labor services, tying lines, and watchmen's services, and various other minor and extraneous services for the convenience of the vessel.

We question whether such minor items should be included in the term "necessaries" for the establishment of a lien under the Ship Mortgage Act of 1920, merely because they happen to be filed in a tariff with the Commission.

Some terminal tariffs provide that the water carrier must pay charges for services which are, in fact, rendered for the account of the cargo owner. In such a situation, the terminal operator looks to the carrier for collection, and the carrier must collect from the cargo owner.

It is not clear whether the framers of this bill intended to include such secondary charges, which really are provided for the cargo, within the phrase "furnished to a vessel." If such claims should be included, the terminal operator could obtain a lien based upon a claim properly chargeable to the cargo rather than to the vessel. We question whether the bill should apply to such charges.

Further, General Order 15 exempts from its filing requirements rates and charges for services offered by a terminal operator to a steamship line which are the subject of negotiation. Thus, negotiated services are not contained in tariffs on file with the Commission.

In New York, for example, dockage and wharfage charges which are the principal terminal services provided to a water carrier are contained in stevedore contracts negotiated between the terminal, stevedore, and water carrier. These stevedoring contracts apply to practically all piers in the Port of New York, with the exception of a few New York Port Authority piers, and therefore, such activities would not be covered by the proposed lien legislation. This is true also of the "service and facilities charge" applicable to certain Pacific coast ports.

Under section 1 of the Shipping Act, the Commission regulates the activities of terminal operators only "in connection with a common carrier by water." Many terminal operators provide marine terminal services to noncommon carriers such as tramps or proprietary vessels.

The extent of service to common carriers by water varies from one

terminal to another, and many terminal operators who deal with noncommon carrier vessels are not required to file their tariffs with the Commission.

Therefore, determining what charges are "necessaries" and the right to establishment of a lien against a vessel based on charges contained in tariffs on file with the Federal Maritime Commission could lead to confusion.

Whether or not a particular charge furnished to a vessel should entitle the terminal operator to a lien should not depend upon whether the vessel involved is a common carrier or a noncommon carrier.

In some instances a single terminal operator might have certain charges published in its terminal tariff applicable to common carriers and filed with the Commission, and at some time might have different negotiated rates for similar services rendered to noncommon carriers. Obviously, this could create a situation where a lien would be created with respect to the claim against the common carrier but not for a similar claim by the same terminal operator against a noncommon carrier.

In summary, it does not appear that the establishment of a particular claim by a terminal operator against a vessel as a "necessary" should depend on whether or not it is included in a tariff filed with the Federal Maritime Commission. Moreover, it would appear that there would be certain confusion and inequities because terminal services vary from port to port and even from terminal to terminal and, under certain circumstances, terminal services and charges are not even required to be filed with the Commission.

Accordingly, while the Commission does not take a position on the purpose of this bill to establish liens for charges and services which may be considered "necessaries," it does urge that if it is found that there is a need for the establishment of such liens, the determination of what are "necessaries" should not be tied to tariffs filed with the Commission. Such items should be specifically identified in the basic legislation.

That concludes my statement. I will be happy to answer any questions.

Senator INOUYE. Thank you very much, Mr. Fuller. The subcommittee has instructed the committee counsel, Mr. Emanuel Rouvelas, to make a special study of this measure. Therefore, I would like to call upon Mr. Rouvelas to carry on the interrogation.

Mr. ROUVELAS. Thank you, Senator.

Mr. Fuller, in your statement you said the fact that a tariff is on file with the Commission does not mean it is necessarily just and reasonable. Wouldn't that also be true if the liens were limited to defined items?

Mr. FULLER. Yes. I don't think there would be any conclusion as to reasonableness in that event.

Mr. ROUVELAS. So whether it is defined items or whether it is included in the tariff, as this bill has it, doesn't really make any difference. It would still have to be litigated in a court, wouldn't it?

Mr. FULLER. Yes; that would have to be settled outside the legislation.

Mr. ROUVELAS. You also mentioned the possibility was remote that the Commission would change General Order 15. Why couldn't the Commission take account of this legislation and provide for it, if it did change General Order 15 at some time in the future?

Mr. FULLER. It probably could include that as one of its considerations. But the primary responsibility of the Commission in requiring the filing of tariffs is the regulatory authority of the Commission. There might well be areas where, for regulatory purposes, the Commission might want a variation which might not be completely consistent with the purposes of this lien legislation.

Mr. ROUVELAS. You don't think you could adjust those two competing interests in the regulations?

Mr. FULLER. It would be hard.

Mr. ROUVELAS. You also mention that the Commission has no expertise in determining what "necessaries" are. But you express an opinion on some items which you do not consider necessaries.

Since you suggest that they can be clearly identified, could you suggest what they might be?

Mr. FULLER. My feeling on that would be that I think the terminal operators, who apparently have had some problem in collecting certain changes, and therefore would like this legislation to enable them to establish liens, would have some specific ideas as to what the services and charges have been where the problem areas have arisen.

I think our only feeling here is that there were obviously some very minor and somewhat extraneous services and charges in these tariffs which to us would not appear to be their primary problem.

These minor charges would be built into the legislation as now written.

Mr. ROUVELAS. Minor in terms of what? In terms of dollar amount?

Mr. FULLER. In terms of dollar significance in relation to total charges. As I say, I am not an admiralty law expert. Some of them might be so minor as to not even be classed as necessaries.

Mr. ROUVELAS. If the carrier requests a certain service and the terminal tariff indicates there is a charge for the service, why shouldn't the vessel be responsible for that?

Mr. FULLER. I think it becomes a charge which is payable. But whether or not it should be raised up to the status of an admiralty lien, which would override no lien clauses in the charter, that is an area that we are just not expert in.

Mr. ROUVELAS. At page 6 you suggested that provisions of the bill would lead to confusion. Can you explain a little more fully what kind of confusion you would expect?

Mr. FULLER. I think one area of confusion might be in this difficulty between the terminal serving common carriers or noncommon carriers. During the course of the same year, say, or at approximately the same time.

Mr. ROUVELAS. Couldn't a terminal apply its tariff to noncommon carriers?

Mr. FULLER. They can, but they are not required to. I don't think we are saying here that these conflicts and possible confusion absolutely will arise. But we see the possibility of this, depending on the decision of the terminals as to how they file their tariffs.

Mr. ROUVELAS. If the terminals did not file the tariff, obviously they wouldn't have a lien, but it would be their own fault, wouldn't it?

Mr. FULLER. Yes, under this legislation they would not create a lien. They probably could file it with the Commission, even though they are not required to.

I think that might create some regulatory problems for the Commission, in determining whether tariffs on file are tariffs over which we actually have regulatory jurisdiction or not.

Mr. ROUVELAS. You also mentioned that there would be a lack of uniformity for the United States as regards the charges that would be eligible for a lien under the provisions of the bill. Does this create some problem?

Mr. FULLER. What was that point?

Mr. ROUVELAS. You said there would be a lack of uniformity in terms of what was included.

Mr. FULLER. The basis of that statement is that the tariffs vary quite a bit as to services they cover. They vary between coastal areas; for example, some charges are customary on the west coast which are not charged by terminal operators on the east coast.

They sometimes vary from pier to pier in the same port. Exactly what are terminal services and the limit of what may be included as terminal services in a tariff has never been clearly delineated.

Mr. ROUVELAS. I understand that, but what problem does that create?

Mr. FULLER. It kind of leaves an open-ended situation where a carrier could create a lien on almost anything merely by including it in a tariff. In other words, there is no limit to what they could include in a tariff in order to establish a lien.

Mr. ROUVELAS. Did you or your Commission staff have the opportunity to confer with the American Association of Port Authorities on this before it was introduced?

Mr. FULLER. I think some time ago there were discussions between representatives of the association and representatives of the Commission. I was not a participant in any of those meetings.

Mr. ROUVELAS. Do you know if the American Association of Port Authorities was advised of your objections at that time?

Mr. FULLER. I know there was a discussion and there was an indication made by representatives of the Commission at one point that the Commission or the staff who were discussing it, had a preference for the necessaries being specifically described in the bill.

I don't believe those discussions reached the point of any firm position by the Commission. That was my understanding.

Mr. ROUVELAS. Assuming for the moment that the objective of this bill is a valid one, your suggestion, I take it, would be that necessaries be identified in the legislation.

Mr. FULLER. From the point of view of the Commission's regulatory responsibilities we think this would be better.

Mr. ROUVELAS. Thank you, Mr. Fuller.

Senator INOUYE. Thank you very much, Mr. Rouvelas and thank you very much, Mr. Fuller.

The next witness is Mr. Sidney Goldstein, general counsel of the Port of New York Authority and chairman, Law and Legislation Committee, American Association of Port Authorities.

STATEMENT OF SIDNEY GOLDSTEIN, GENERAL COUNSEL, PORT OF NEW YORK AUTHORITY, AND CHAIRMAN, LAW AND LEGISLATION COMMITTEE, AMERICAN ASSOCIATION OF PORT AUTHORITIES, NEW YORK, N.Y.; ACCOMPANIED BY FRANCIS A. MULHERN AND PETER FINNERTY

Mr. GOLDSTEIN. May I present my colleagues, Mr. Francis A. Mulhern on my right and on my left Mr. Peter Finnerty.

May I, sir, echo a previous statement before this committee, it is an honor to appear before you today on this historic occasion.

Senator INOUYE. Thank you very much.

Mr. GOLDSTEIN. The American Association of Port Authorities appreciates this opportunity to present our views on S. 2817.

The association is a corporate body whose members include all the 75 major ports in the United States as well as many other ports in Canada and other countries in the Western Hemisphere. Its member ports in the United States, for whom I speak here, include all of the major ports on all coasts and the Great Lakes. I am, also, specifically directed to inform the subcommittee that I appear on behalf of the Board of Commissioners of the Port of New Orleans. Our U.S. member ports handle virtually all of the oceanborne foreign commerce of our Nation. In their efforts to accommodate this flow of commerce efficiently and economically, these ports have invested more than $2 billion in terminals and cargo-handling facilities since the end of World War II.

In the main, these facilities have been provided by the ports on their own credit, and with certain exceptions as to State and local financial support, must be supported out of the revenues of the facilities. The matter before you today relates directly to the revenues of port facilities.

As the Congressional Record for August 11, 1969, at page S9638, indicates, the bill you are considering was introduced at the request of our association. The matter has been under discussion by us for some years past and was the subject of resolutions adopted by the association.

A copy of the most recent of these resolutions, which was unanimously adopted by the U.S. members at the association's 58th annual convention on October 30, 1969, less than 2 weeks ago, is attached hereto.

The problem to which the bill is addressed, and which it would solve, is a simple one. The operator of a marine terminal who renders services to a vessel which is being operated under a charter party containing a so-called no-lien clause is unable to assert a lien against the vessel to effect collection of the sums due him.

Stated differently, the terminal operator is denied the right to use the admiralty proceeding in rem under which, if a just claim for a necessary service to the vessel for which a lien is allowed is not satisfied, the vessel, itself, may be attached and sold.

Because of the nature of the remedy, that is, the attachment and sale of the vessel, various methods have arisen over the years to allow the owner to limit his liability for liens. Where the vessel is under charter and thus under the operation control of persons other than the owner, the interest of the owner has been served by the insertion into the

charter document of a clause prohibiting liens, and, as our law has developed, it has been held to be the duty of a supplier to determine whether or not the vessel is under charter before he serves it and, if it be, whether the charter prohibits liens.

The law of maritime liens is and has been a very complex subject. In this country, it was codified in the 1920 maritime lien law in subsection 30 (46 U.S.C. 973). It is the latter requirement which S. 2817 would amend.

The practical effect of this requirement, so far as marine terminal operators are concerned, is that before a vessel is berthed at the terminal, the operator must, if he would protect himself, actually inspect the charter party. Because this is impractical, the terminal operator is simply obliged to take the risk or refuse to take the vessel and suffer the loss of the potential revenue he might derive from it. In many instances, because of the revenue needs, he takes the risk. The result has been losses and, to try to remedy the situation, litigation.

The most recent litigation involved the Port of Tacoma, Wash. The case, which was decided in 1966 in the U.S. Circuit Court for the Ninth Circuit, is reported at 364 F. 2d 615. It is referred to in the memorandum placed in the Congressional Record by Senator Magnuson when he introduced S. 2817. You will not that there, even though the port had filed its tariff with the Federal Maritime Commission and sought only to recover charges specified in that tariff, the lien was denied because of a "no lien" clause in the charter.

It is the opinion of our membership that the services they provide: for example, dockage, wharfage, line handling, et cetera, are essential to the employment of the vessel and are used in the furtherance of the business of the vessel. They believe that the day-to-day realities of the shipping industry are such that the duty of inquiry at the risk of loss is unreasonable, at least as to them.

In the main, they are public agencies. The provision of the services is made possible only by an expenditure of public funds. Thus, in fairness, the risk of loss, we believe, should fall not on the public, but rather on the owner who uses the services or permits one to whom he charters his vessel to use them.

In proposing the amendments to the lien law set forth in the bill, the association has endeavored to balance the interests of the vessel and of the terminal operator. Thus, a lien would be permitted, if the bill be enacted into law, only for services furnished in accordance with the provisions of a tariff filed with the Federal Maritime Commission. Such a tariff is available to anyone who seeks it. The potential liability of the vessel can be known in advance of the use by it of the public facilities involved.

We can conceive of no meritorious reason why responsible vessel owners and charterers should object to the proposed amendment. They profit from the services and, in equity, should pay for them.

Nor can we conceive of others objecting to the amendment. Except in the particulars specifically set forth in the bill, it makes no change in the lien law or in the priority of such liens as between different types of liens. The time-honored order of priorities for such liens is detailed in *Todd Shipyards* v. *City of Athens*, 63 Fed. Sup. 67 (U.S. D.C., D. of Maryland 1949) at page 79, where it is pointed out that

seamen's wages are first and "necessaries" such as repairs and services are fourth in line. The bill makes no attempt to change that order, nor do we see any way it could possibly be construed to do so.

For these reasons, we believe that the bill merits your approval and that of the Congress. We respectfully request that you report it favorably to the committee and to the Senate of the United States.

Senator INOUYE. Mr. Goldstein, I am most grateful to you personally and as a member of this committee. Your statement has enlightened me as to the problem. I must confess as I reported here this morning, this is all strange to me. Since we have asked the subcommittee counsel to conduct the investigation, may I once again call upon Mr. Rouvelas.

Mr. ROUVELAS. Thank you, Senator.

Mr. Goldstein, you feel this is very important legislation for your organization, I take it?

Mr. GOLDSTEIN. Yes, sir; and our membership has two or three times resolved unanimously to advocate such bills.

(The resolution follows:)

LIENS AGAINST CHARTERED VESSELS

Whereas, the ports and terminals of the United States, by virtue of various court determinations, have, up to the present time, been held to be unable to assert a lien for their terminal charges against vessels using those terminals, notwithstanding the fact that their tariffs fixing such charges are on file with the Federal Maritime Commission, when such vessels are chartered and the charter party contains a "no lien" provision; and

Whereas, these court decisions may result in substantial loss of revenues and additional financial burdens and expense to ports and terminals involved in such situations; and

Whereas, there is now pending in the Congress of the United States a Bill S. 2817, "To amend the maritime lien provision of the Ship Mortgage Act of 1920", which was introduced at the request of the Association and will, if enacted, permit terminal operators to assert a lien against chartered vessels for their charges, now, therefore, be it

Resolved, That this Association support the legislation now pending (S. 2817) to amend the Ship Mortgage Act of 1920 and any other legislation which may be introduced to accomplish the same objective to the end that a terminal performing services under its published tariffs will be empowered to assert and enforce a lien against any vessel using its facilities in the amount of the charges payable under its tariff for the services rendered to said vessel under such circumstances; and be it further

Resolved, that the Special Committee on Federal Lien Law be, and it hereby is, authorized and directed to take such action as may be necessary to cause the adoption of such amendments to existing law.

Mr. ROUVELAS. Why did you approach this problem of the lien on a system of a filed tariff?

Mr. GOLDSTEIN. Well, sir, we looked for the simplest approach to accord to the terminal operator the protection which was necessary for him. We sought out the medium of the tariff which includes all of the charges the terminal operator assesses for services furnished.

That tariff is filed at the Federal Maritime Commission, and it seems to us this is the simplest way for us to do it.

Mr. ROUVELAS. You heard Mr. Fuller's testimony on behalf of the Federal Maritime Commission. Did you have an opportunity to confer with the Commission prior to requesting the introduction of S. 2817?

Mr. GOLDSTEIN. Yes: this matter has been under consideration with the Federal Maritime Commission now for a number of years. I would gather from the statement filed by Mr. Fuller, with whom we have a

most cordial relationship, and with his agency, that we are working toward a common end. Until we read his statement yesterday we were just not aware of any differences of opinion as to procedure in this case. We thought the bill we had drafted would be acceptable to the Federal Maritime Commission.

Mr. ROUVELAS. In referring to a terminal tariff on file with the Federal Maritime Commission, do you intend that this would in any way affect the powers or responsibilities of the Federal Maritime Commission?

Mr. GOLDSTEIN. No. That portion of Mr. Fuller's testimony I just don't understand because it is not the intention of the bill to impose any obligations on the Commission with respect to the ability of the terminal operator to create a lien.

This was merely the agency where the tariff would repose and which would constitute the place where the shipowner or his charterer might inquire as to the charges.

Mr. ROUVELAS. How do you respond to the reasons offered by the Commission in opposition to this legislation?

Mr. GOLDSTEIN. I think our approach is a much simpler one and would serve the needs of the terminal operators in a very important economic area in which they have a great concern.

Mr. ROUVELAS. Thank you.

Senator INOUYE. Mr. Goldstein, in your testimony you commented that the matter before us today relates directly to the finances or the revenues of the port facilities. How much is involved? You indicated you have improvements valued at $2 billion.

Mr. GOLDSTEIN. Yes. The ports of the Nation, sir, can only realize from revenues which are earned from the ships which dock there—can only realize those revenues, absent a State subsidy, to support the huge investments which the ports have made and if they suffer a loss by reason of a no-lien charter, it is the public that has to make up that loss.

Senator INOUYE. What has been the effect of the loss suffered as a result of these no-lien charters, let's say in the last 12 months?

Mr. GOLDSTEIN. I don't think that figure is available. We might make an inquiry to find out. I just am not armed with that information.

(The following was subsequently received for the record:)

1. GULF REGION

New Orleans, La.—In the last year the port has had about 4,000 vessels frequent its facilities, of which about 3,000 were foreign-flag vessels. Billings to these ships for services rendered amounted to about $6,500,000. An average 8,000 gross ton vessel pays about $3,000.00 for port services, excluding port charges payable to others. New Orleans has sustained a loss of over $7,000.00 due to inability to liable two chartered vessels recently calling there.

2. NORTHWEST REGION

a. Bellingham, Wash.—Handles about 280 vessels per year, about 20% of which are charters and average charges are from $5,000.00 to $7,000.00.

b. Everett, Wash.—Handled about 120 vessels per year of which about 85 are charters. Specific losses to this port are:

1. July, 1966, the S.S. Belo Horizonte, $2,114.96 port loss;
2. Sept. 1966, the S.S. Nordorte Copay, $415.41 port loss; and
3. Sept. 1967, the S.S. Brookville, $402.50 port loss.

c. Longview, Wash.—Handled 711 vessels during 1968 of which about 200 were on charter and average charges on fully laden vessels ran between $20,000 and $25,000. Specific losses include the S.S. Paterelias, October, 1969, $33,040.58 port loss. Three other losses occurred in the last 5 years.

d. Olympia, Wash.—Handles about 80 vessels per year and average charges are from $5,000 to $7,000.

e. Seattle, Wash.—Handles about 2400 vessels per year and average charges per vessel come to about $5,000. The port experiences about six difficult collection problems per year.

3. GREAT LAKES REGION (INCLUDING TOLEDO, OHIO; CLEVELAND, OHIO; DETROIT, MICH.; DULUTH, MINN. AND MILWAUKEE, WISC.)

Vessels handled in the area number close to, or more than, 1,000 depending upon exact type of ship involved. An average of charges against these vessels is from $15,000 to $20,000.

4. ATLANTIC COAST REGION

a. New York, N.Y.—172 vessels were handled at Port of New York berths during the last nine months with the average charge of $3650.

b. Savannah, Ga.—During calendar year 1968, 1647 vessels were handled at the port with average charges of $1,460.

c. Baltimore, Md.—About 4348 vessels frequented the port during 1968 and average charges were approximately $765.

d. Ports of Philadelphia, in the Delaware River, handled about 3600 vessels during the last year with average charges against same amounting to about $2700 or $2800.

Senator INOUYE. The Chair is just curious to see if it is a huge amount or a small one.

Mr. GOLDSTEIN. Well, it certainly could be a huge amount. If the ship is in the port for 5 or 6 days and runs up these charges and then beats it out in the dead of night and no one is there to collect, I suppose that is a large sum of money.

Senator INOUYE. I gather from Mr. Fuller's testimony that the services rended by these port facilities differ at different ports and different coasts and as a result I believe Mr. Fuller indicated this would cause confusion and inequity.

Mr. GOLDSTEIN. I don't understand why that should cause confusion. A ship destined for a particular port can find out what the charges are different coasts and as a result I believe Mr. Fuller indicated this would describe the services available and the charges therefor.

Surely these charges and the types of services differ from port to port. But the point is that the ship is arriving at a particular port. All he has to do is examine the tariff at that particular port and the fact that that port's charges or services available are different from another port, it doesn't seem to me to present any great problem.

Senator INOUYE. Sir, it would appear to me that the realities of the legislative process are such that we would urge your association and the Federal Maritime Commission to get together, possibly with the assistance of our counsel here, to try to resolve this matter.

It would be exceedingly difficult for this committee to present a strong case in your behalf if the Federal agency is opposed to that.

Mr. GOLDSTEIN. As I meant to say before, we enjoy a very cordial relationship with the Federal Maritime Commission, and of course if it is the suggestion of the Senator to have us sit down with them, I would do that.

Senator INOUYE. I would therefore recommend to the subcommittee that this matter be held up briefly to await the outcome of the discussions which will be held between your association and the Federal Maritime Commission and the committee staff.

Mr. GOLDSTEIN. We would be very happy to do that.

Senator INOUYE. If you can come out with the result in 24 hours, why we will take it up in 24 hours.

Mr. GOLDSTEIN. Yes, sir. Thank you.

Senator INOUYE. Our next witness is Mr. Joseph P. Adams, a representative of the port of Seattle.

Welcome to the committee, sir.

STATEMENT OF JOSEPH P. ADAMS, WASHINGTON, D.C. REPRESENTATIVE, PORT OF SEATTLE

Mr. ADAMS. Mr. Chairman, in a way it is my pleasure to be here and I share with Secretary Reynolds and Chief Counsel Goldstein their commenting on the day being Armistice Day and we are all aware, I know, of your great services in World War II and as for myself on this same day I was still on Okinawa, 24 years ago.

I am sure we are all glad we made it back.

Mr. Chairman, my name is Joseph P. Adams. I am the Washington, D.C. representative of the port of Seattle. The Port of Seattle is a municipal corporation created under the laws of the State of Washington. The port is charged with the responsibility of operating marine and air terminal facilities in the Greater Seattle area. The port is under the supervision and management of a nonpartisan port commission elected by the voters of King County, Wash.

The port owns more than 20 deepwater berths including specialized facilities for the handling of grain and containerized cargoes. More than 2½ million tons of cargo are handled across Port of Seattle docks each year.

The Port of Seattle strongly endorses the passage of S. 2817. The representatives of the American Association of Port Authorities have provided the committee with a very detailed and comprehensive explanation of the workings and operation of this measure which is aimed at correcting a limited, but important oversight in existing Federal law. The Federal courts, in the case of *Port of Tacoma* v. *Duval*, ruled that charter parties may, by their own agreements, exclude the right of terminal operators to exercise liens against vessels under charter. The *Duval* case creates a number of inequities which work an extreme hardship on marine terminal operators.

First of all, the *Duval* case tends to favor vessels operated under charter as distinguished from those owned by the operator. This means in most cases that vessels operating on itinerant, or tramp, schedules enjoy more favorable terms than those operating on, for example, berth-line basis by well-established American-flag line companies.

The *Duval* decision presents marine terminal operators with difficult circumstances where the vessels likely to be under charter arrangements are most likely to be unable to meet their financial commitments to the port for terminal services. It is against vessels of this type that the marine terminal operator is most likely to exercise lien rights to protect himself for services and facilities afforded to the vessel.

The Port of Seattle can attest that the use of lien rights is an infrequent occurrence, but it is a reasonable and important remedy. We think it is particularly appropriate that these public-financed facilities have the protection of liens against all vessel operators on an equal and nondiscriminatory basis. Since many of these chartered vessels are

of foreign ownership and foreign charter, it is reasonable to expect that liens be exercised as a method of enforcing payment. To do otherwise would create extreme difficulties in attempting to sue and collect from foreign corporations with no officers and, in many cases, no agents for service within the United States.

In conclusion, we strongly urge that this committee and that the Senate approve S. 2817 as appropriate remedial legislation to develop equality in the operation of marine terminal liens against vessels and to insure protection from marine terminal operators in their financial dealings with the ship operators. We think the legislation is fair and appropriate under the circumstances.

Senator INOUYE. Thank you very much, Mr. Adams.

I realize you represent but one port facility, but could you tell us, to the best of your knowledge, about how much is involved in losses because of the present law?

Mr. ADAMS. No, I have no figures with me but I would be glad to furnish the committee with an example.

From my own experience with ship operations, I would assume that these charges in many cases could run several thousand dollars for a single vessel on one berthing. That is the best I can offer the committee at this time.

How many of these would occur in the case of people skipping during the year, I have no record. But I will be glad to attempt to procure such information.

(The following was subsequently received for the record:)

Typically, vessel charges run around $5,000 per call. This is an average only, but we think it is fair. We have probably a half dozen really difficult collection problems each year. In the last two years we have resorted to liens only twice—partly because we are unsure of the applicability under current law. In other areas, we have threatened liens and literally chased vessels from port to port, but we have in these cases gotten payment or signed notes that are otherwise enforceable against the parties.

Senator INOUYE. What sort of recourse would you have against foreign corporations with no offices or no agents for service within the United States?

Mr. ADAMS. A method could be found legally but I assume to pursue it would be more costly than the amount involved. I believe there would be no recourse.

Senator INOUYE. Do you put these ships on a blacklist of some sort?

Mr. ADAMS. That is a thought that hadn't occurred to me. I assume amongst the ports or through the AAPA such a procedure could be developed.

Senator INOUYE. You have been most helpful, Mr. Adams.

May I suggest, if I may, that you get together with Mr. Fuller and Mr. Goldstein and Mr. Rouvelas and maybe by this weekend come up with some resolution to this problem.

The subcommittee is eager to act upon this matter but will not do so until some resolution is had.

Mr. ADAMS. I appreciate the suggestion, Mr. Chairman, on behalf of the port of Seattle we will accept it and act on it.

Senator INOUYE. Thank you very much, sir.

There being no further witnesses, I would like to thank all the witnesses for helping us this morning and the hearing is closed.

(Whereupon, at 11:25 a.m., the hearing was adjourned.)

ADDITIONAL STATEMENTS AND LETTERS

STATEMENT OF THE AFL–CIO MARITIME COMMITTEE, BY HOYT S. HADDOCK, EXECUTIVE DIRECTOR

The AFL–CIO Maritime Committee consists of the National Maritime Union; National Marine Engineers' Beneficial Association, International Longshoremen's Association of Masters, Mates and Pilots; Great Lakes Seamen, Local 5000, United Steelworkers of America; and the Industrial Union of Marine and Shipbuilding Workers of America.

In 1966 the above member unions of the AFL–CIO Maritime Committee spearheaded the legislative compaign for the passage of P.L. 89–777. This law was badly needed because of some of the foreign flag firetraps engaged in the cruise trades off our shores. We shall not go into what the law provides since this has been thoroughly covered in your hearings. The need for the law was highlighted by the tragic disaster of the burning out of 90 lives aboard the SS *Yarmouth Castle* in November 1965. This Panamanian cruise ship left Miami, Florida for Nassau with many Americans, none of whom were made aware of the existing dangers.

At that time all America was appalled by the sudden snuffing out of lives because white paint and highly spiced advertisements amounted to becoming the flowers given to persons going to their own firey funerals. We in the American seamen's unions were not altogether surprised by such catastrophes. For years we had been raising our voices in warning against unsafe conditions aboard certain foreign flag ships especially some of the cruise ships.

We agree that Public Law 89–777 has achieved some measure of success in sweeping the cruise firetraps away from American shores.

We support H.R. 210 which amends the law to eliminate the quoting in advertisements that cruise ships departing U.S. ports are in compliance with the standards set forth in the International Convention for the Safety of Life at Sea, 1960 as modified by the amendments proposed by the thirteenth session of the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization. We strongly support the amendment included in H.R. 210 which requires that all passenger and cruise ship advertisements spell out the flag of registry. This was our amendment which was not opposed by anyone.

In other words, the AFL–CIO Maritime Committee recognizes the compliance of foreign ships with the above standards has resulted in safer cruises. We do not question the shipowner and travel agents' observations which are that such words as "fire" and even "safety" may psychologically have a bad impact upon potential cruise passengers. However, even accepting all the arguments favoring the passage of H.R. 210, we support this bill only if it contains the language requiring all cruise advertisements to list the ship's registry. We believe that this is necessary in order to permit all potential cruise passengers to know what flag flies from each ship's mast. As stated by the House Merchant Marine and Fisheries Committee, this provision is not controversial.

Let us not minimize the importance of requiring all cruise advertisements to contain notification of ships' registry. We, in the United States, are happy to man and sail the world's safest passenger and cruise ships. Our Government including the Congress, especially the Subcommittee on Merchant Marine of the Senate Commerce Committee, must be proud to not only require our ships to be the world's safest but to let the public know when ships fly our flag or other flags. In time, we hope that your action will compel operators of some foreign flag ships to raise their fire and safety standards to our level. This would provide the security of life aboard ships which are sailing to provide enjoyable living.

We thank you for the opportunity to discuss this urgent matter with you and to submit our views for the record.

GREAT LAKES TERMINALS ASSOCIATION,
November 18, 1969.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: The following comments concerning S. 2817, a bill to amend the maritime lien provisions of the Ship Mortgage Act, 1920 are submitted for the record on behalf of the Great Lakes Terminals Association. The twenty-eight members of the Association own and/or operate marine terminal facilities in the seven states surrounding the several Great Lakes, and have a vital interest in the proposed legislation.

We have read the letter of November 10, 1969 from Chairman Bentley of the Federal Maritime Commission and the testimony of Leroy Fuller, Director of the Commission's Bureau of Domestic Regulation. Generally, we agree with their position and discussion of terminal and stevedoring practices. We should point out, moreover, that the items and charges set forth in marine terminal tariffs filed with the Federal Maritime Commission constitute a very small portion of the total charges assessed by a terminal operator/stevedore against a vessel. The major portion of such charges are set forth in negotiated stevedoring contracts and usually cover all terminal and stevedoring services performed for the vessel between the point at which cargo is received or delivered to a shipper and the vessel's hold. In those cases where the stevedoring contract is with the owner, or the owner's agent, the stevedore may avail himself of the lien provisions of the Ship Mortgage Act, particularly 46 USC 971.

The problem of collection of accounts due arises when the vessel is time or voyage chartered and the charter contains a "no lien clause" which expressly prohibits the charterer from creating the maritime lien authorized by law. The courts have held such clauses to be valid and have further charged the stevedore with due diligence to find out if such a clause exists in the charter.

In the Great Lakes many vessels are operated under foreign charters and for many years charterers took advantage of the "no lien" clause and have left behind enormous unpaid bills. Some stevedores have gone out of business because of the application of the "no lien"clause leaving them with uncollectable claims against charterers who have no assets, or which are paper corporations.

Naturally, we strongly support any legislation which would strengthen and extend the right of a terminal operator/stevedore to maritime liens, and the proposed legislation would be beneficial in the absence of the "no lien" clause. What would be more beneficial than extending the items subject to the maritime lien provisions would be legislation which corrected the "no lien" clause before services could be contracted for. If the law placed disclosure of the "no lien clause" on the charterer rather than requiring the stevedore to search it out most of our problems would be cured.

Any stevedore who then extends credit after being apprised of a "no lien clause" has only himself to blame if his charges against the vessel go unpaid. Such legislation would not create a hardship on the owner or charterer and would be fair to all concerned. In the absence of such legislation, the members of the Great Lakes Terminals Association have instituted the practice of collecting all estimated charges in advance of working the vessel. This practice has created hard feelings in some instances, but at least the spector of large unpaid bills has been eliminated to some extent.

We sincerely hope that these views will help your committee in its consideration of S. 2817. If we may be of further assistance, please do not hesitate to call upon us.

Sincerely yours,

THOMAS D. WILCOX,
Executive Secretary,
Great Lakes Terminals Association.

○