

2012 Mr. HICKEY. Thank you, sir. Thank you, Congressman
2013 Cummings for inviting me to speak today before the
2014 Subcommittee. I am truly honored.

2015 For 27 years I have practiced law in the cruise line
2016 capital of the world, Miami, Florida. I am a trial lawyer.
2017 For the first 17 years of my career I represented cruise
2018 lines, railroads, insurance companies, and major
2019 corporations. For the last 10 years I have fought the cruise
2020 lines and have represented passengers and crew members
2021 against cruise lines and against large corporations.

2022 The passengers I represent are people from all across
2023 the United States. They are all of your constituents,
2024 constitutes of you, Mr. Cummings, of you, Ms. Brown and Mr.
2025 Mica, my fellow Floridians, and they are one of the 10
2026 million United States citizens who take cruises every year.

2027 The cruise lines market to Americans, they depend on
2028 Americans. And although I have heard it said that, yes,
2029 Florida's economic engine is in large part contributed to by
2030 the cruise lines, certainly it is those ten million Americans
2031 every year who contribute billions of dollars to the coffers
2032 of the cruise lines, representatives of whom are sitting
2033 behind me at this time.

2034 I stand by the statement made on page 2 of my paper,
2035 which is--and I am going to get more into this, in the three

2036 | and a half minutes I am going to explore my 27 years of
2037 | experience with you. But the passenger or crew member
2038 | seeking justice against the cruise line is met with more
2039 | obstacles than in any other area of the law. I can explain
2040 | that and I can also answer some of the questions I have heard
2041 | raised earlier. Congressman Coble raised some questions that
2042 | I can perhaps shed some light on in regard to regulations and
2043 | penalties.

2044 | In my paper, I share a hypothetical. In the
2045 | hypothetical I went through various scenarios of passengers,
2046 | typical passengers, your constituents, the American people
2047 | who are on cruise ships every day and what they go through.
2048 | I take these calls and my staff take these calls every
2049 | working day and sometimes on weekends from folks all across
2050 | the country. I am not going to, and I do not have time to go
2051 | through the hypotheticals. There are basically six involved.

2052 | One is Lisa Smith, and these are all fictitious names,
2053 | of course, involved in a rape. One of the problems involved
2054 | in these sexual assault cases is getting the statistics. Let
2055 | me tell you, and what Dr. Klein has addressed, statistically,
2056 | what we get from the cruise lines is a different answer every
2057 | time we ask the question. In sworn interrogatories in a case
2058 | I have pending in Miami, Florida, the Royal Caribbean Cruise
2059 | Line just swore that in a three year period the number of
2060 | sexual assaults was 17. Yet, not a year ago, before the

2061 United States Congress, Congressman Shays' Subcommittee, that
2062 very same cruise line submitted statistics that indicated
2063 there were approximately 66, in a slightly different time
2064 frame but the same number of years, and there were
2065 overlapping years. I submit to you that the rate of sexual
2066 assaults has not changed that much.

2067 What we are not getting from the cruise lines in fact is
2068 their database. They keep a database on these sexual
2069 assaults and we are not getting that and you are not getting
2070 that. What you are getting and what I am getting in law suits
2071 every day in Miami, Florida, when I fight down there in the
2072 trenches, is a lawyer-generated document with a self-chosen
2073 definition for sexual assault and sexual battery. I get
2074 different numbers every time I ask the question.

2075 The other scenario I put forth is Maria Casa, who went
2076 overboard. This is loosely written about a woman from
2077 Wisconsin who went overboard in 2004 off the coast of Mexico.
2078 Annette Meisner I believe is her name. She went overboard
2079 and subsequently died it is believed; she has been declared
2080 dead. The security camera trained supposedly on the landing
2081 where she had the fight with the officer, who it is suspected
2082 may have pushed her off, was not functioning that night.

2083 There is another scenario in there about the mother of
2084 this woman, Beatrice Casa, who suffers a heart attack and
2085 goes to the ship's infirmary and is misdiagnosed as

2086 | indigestion and subsequently suffers a massive heart attach.
2087 | We get calls on a weekly basis about the medical care on
2088 | cruise ships. It is substandard and the cruise lines,
2089 | through two recent decisions--I know my time is running out
2090 | but I want to get to the end of this--two recent decisions,
2091 | one out of Florida, are marching their way toward
2092 | immunization from lawsuits of medical malpractice. This is a
2093 | situation where folks are out there in the middle of the
2094 | Atlantic or the Pacific and it is an isolated situation they
2095 | are in, they have no choice but to go to these doctors.

2096 | Next, Fred and Ethel Mertz, those may not be fictitious
2097 | names, I do not know, but Fred and Ethel go on an excursion
2098 | and they are robbed on a beach in Nassau. I chose that
2099 | because there are numerous incidents, not just in Nassau, not
2100 | just in the Bahamas, I love the Bahamas, but there are
2101 | numerous cases arising out of people getting assaulted on
2102 | these beaches. The fact is, on the one hand, the cruise
2103 | lines say that the excursions are hand picked, they are
2104 | monitored, they are continuously reviewed, but they are not.
2105 | In fact, when a law suit is brought or if a lawyer is
2106 | consulted, the cruise lines raise the fact that the excursion
2107 | is an independent contractor.

2108 | I want to get to two other scenarios and then I am going
2109 | to finish up. Two actually involve crew members. You might
2110 | say what do we care about these foreign crew members, you

2111 might ask me that question. The answer is, these crew
2112 members, some of whom are in the marine department and some
2113 of whom are in the hotel department, those folks are in
2114 charge of the safety and security of all those Americans who
2115 are on board those cruise ships. So if those folks are not
2116 healthy, and those folks are getting into trouble, we have
2117 got a problem. I cite in my paper ^a a real life incident, and
2118 I am not kidding, where a life boat in a drill was suspended
2119 approximately 60 to 90 feet in the air, depending upon who
2120 you talk to, and the release mechanism for the life boat,
2121 these life boats are held on cables and lowered into the
2122 water, the release mechanism came loose and dropped to the
2123 ocean below, injuring five of the eight individuals on board.

2124 I am representing those individuals against the cruise line,
2125 which is Royal Caribbean Cruise Line. A similar incident
2126 happened one year before. There were no injuries, but a
2127 similar accident happened one year before..

2128 Mr. CUMMINGS. Mr. Hickey, I am going to have to ask you
2129 to wrap up. I let you go two and a half minutes over.

2130 Mr. HICKEY. Thank you, sir. I am going to go right to
2131 the end about the legislation that is being urged, at least
2132 by me, today. I would of course be glad and look forward to
2133 questions.

2134 One, Congress should consider amending the Death on the
2135 High Seas Act so that victims of cruise ship negligence are

2136 | treated the same as victims of commercial aviation accidents.
2137 | I make a very brief point here. People who die in cruise
2138 | ship accidents and on the high seas are limited to economic
2139 | damages. Actually, on page 12, at the top, I made an error
2140 | in my paper. I said 'non-economic' and I meant they are
2141 | limited to economic damages.

2142 | Two, Congress should consider requiring the cruise lines
2143 | to preserve crime scene evidence. That has been discussed
2144 | here today.

2145 | Three, Congress should consider creating a central
2146 | database to collect information about crime on cruise ships.

2147 | Four, Congress should consider providing whistleblower
2148 | protection for cruise line employees who report crimes.

2149 | Five, finally, Congress should consider amending the
2150 | Federal Arbitration Act to make it even clearer that the Act
2151 | does not apply to actions brought by seamen under the Jones
2152 | Act or for any other remedies. In other words, we have this
2153 | Jones Act in place to protect these seamen and yet, through a
2154 | recent 11th circuit opinion and now the new clauses in
2155 | contracts with these crew members, cruise lines are forcing
2156 | through this law crew members to arbitrate in the Philippines
2157 | or whatever home country, and therefore we have this Jones
2158 | Act and it is not protecting these crew members, and these
2159 | crew members are in turn protecting American citizens.

2160 | Thank you, Mr. Cummings, and thank you, esteemed

2161 | members.

2162 | [Mr. Hickey's prepared statement follows:]

2163 | ***** INSERT *****

2164 Mr. CUMMINGS. We thank you, and all of you.

2165 Ms. Dishman, did you get any assistance from the FBI's
2166 Office of Victims Assistance?

2167 Ms. DISHMAN. I had a victims witness program, I had a
2168 victims specialist.

2169 Mr. CUMMINGS. Was that helpful to you?

2170 Ms. DISHMAN. It was. My victim specialist, Serge
2171 Hernandez, was the reason why I was able to get the meeting
2172 with the Department of Justice. The FBI actually continued
2173 to question why this was necessary, what more would they need
2174 to tell me to help me understand that there just was simply
2175 was not enough evidence.

2176 Mr. CUMMINGS. Anybody sitting up here, Ms. Dishman, you
2177 cannot see what we see, but sitting up here when you were
2178 testifying, there were women who were crying. I said it
2179 before and I will say it again, and one of our Congressmen on
2180 this side of the aisle said it, when you have a person who
2181 goes through something, I think it is kind of important that
2182 whoever is trying to remedy that situation try, try,--I
2183 cannot put myself in the shoes of a woman, but I know one
2184 thing, I would not want what happened to you happen to any
2185 woman in my life--but to try to put themselves in your
2186 position.

2187 The reason why I am saying this is because you said you
2188 hope that we will listen to you and you hope that we would

2189 | try to do something to help you, we are going to do the best
2190 | we can. But when you sit here and you see women crying, and
2191 | it was not little lightweight tears either, that is something
2192 | that we cannot just disregard. I thank them for being here
2193 | and supporting you.

2194 | Let me go to you, Mr. Hickey. A little bit earlier, Mr.
2195 | LaTourette asked the question about the laws that we
2196 | presently have, what we are presently dealing with. Were you
2197 | here when the FBI testified?

2198 | Mr. HICKEY. Yes, sir, I was.

2199 | Mr. CUMMINGS. We are legislators. It is nice when we
2200 | can convince people to voluntarily do things. But we are
2201 | legislators. When you look at the present laws and treaties
2202 | and these agreements that we have or do not have, are there
2203 | things that you would like to see us do? I know you have
2204 | your suggestions. But as legislators, are there things that
2205 | you would like to see us do? And then I do not know how
2206 | familiar you all are with the agreement. You may have heard
2207 | the FBI say they felt that it was a giant step in the right
2208 | direction, and you heard the Coast Guard say that it was
2209 | excellent. I am just wondering how you all feel about that.

2210 | Mr. HICKEY. Mr. Cummings, if I could. There are a
2211 | couple of things that you have to understand, and I do not
2212 | know if I am coming across too loud. First of all, the Coast
2213 | Guard I believe said that there is a criminal penalty for not

2214 reporting certain crimes that occur at sea. But in a way
2215 that is begging the question, because while there is a
2216 criminal penalty if a statute was violated, the fact is, and
2217 I believe the Coast Guard so testified, there is not a
2218 requirement for the reporting beyond the 12 mile limit. So
2219 there may be a criminal penalty if you violate the law, but
2220 the law as we know it today is pretty narrow.

2221 Secondly, to talk about the agreement, and I know I am
2222 skipping around a little bit and if I am not answering the
2223 aspect of your question that you are focused on, please tell
2224 me, but as to the agreement, I believe I have seen a draft
2225 form of that agreement. Whenever the FBI and folks in this
2226 Government say we are working with the industry, and I know
2227 this industry, I get this knot in my stomach and I think
2228 maybe the American people are going to get it again. I think
2229 Congresswoman Matsui brought up, well, I hear you are working
2230 with the industry, are you working with the victims' rights
2231 folks? Are you working with the 10 million people that you
2232 all represent, that we are all a part of, that go on cruises
2233 every single year. Their trade association says that their
2234 market is 40,000 and there are a lot of American citizens out
2235 there.

2236 And so I do not think a voluntary agreement is good
2237 enough. We have seen problems. That is why we are here. We
2238 are here because of problems in the past. We are here

2239 | because, frankly, a lot of the publicity generated from the
2240 | George Smith case. When push comes to shove, that is what
2241 | happened. Congressman Shays got involved, and thank God that
2242 | he did, and thank God for all of you spending your time and
2243 | energy on this. The American people I am sure will thank you
2244 | if, in fact, something constructive comes out of this, and I
2245 | am sure it will.

2246 | But no, I do not think that voluntary is good enough.
2247 | Yes, think the laws are too narrow. And we see, for example,
2248 | the limitations, I think it was Mr. Coble that asked about
2249 | the marshals, and there were other questions I wanted to
2250 | address of Congressman Coble, about the marshals on ships. I
2251 | believe there are no marshals ever on these cruise ships.
2252 | That is my understanding. I don't know about jurisdiction,
2253 | but of course, you folks are the folks who can change the
2254 | jurisdictional aspect about that.

2255 | Mr. CUMMINGS. I am going to get to you next, Dr. Klein,
2256 | but I really would like for you all to, once you get a chance
2257 | to see the final document, to provide us with your written
2258 | comments. I asked the question, as you probably heard a
2259 | little bit earlier, I don't necessarily, Mr. Hickey, I
2260 | understand what you just said about when, you have the Coast
2261 | Guard and the FBI working with the industry, I understand the
2262 | distrust, and trust is very important.

2263 | [The information to be provided follows:]

2264

***** COMMITTEE INSERT *****

2265 Mr. CUMMINGS. But it doesn't concern me, as a matter of
2266 fact, as you heard me say, I am glad they were working
2267 together, we have a different view on that. What does
2268 concern me, however, is when groups like the one represented
2269 by Mr. Carver are not a part of the process, at least to have
2270 some comments or what have you. After all, it is people like
2271 Ms. Dishman and others who, and you, Mr. Carver, who are in a
2272 position to take this whole issue to the level that we see it
2273 on today.

2274 So I think it just seems to me, I think that is a
2275 glaring error, when those comments are not a part of the
2276 process.

2277 Dr. Klein?

2278 Mr. KLEIN. I will be as brief as I can, I won't go on
2279 too much. For me, I find that the voluntary arrangements do
2280 not work and are not a route to go. I prepared a couple of
2281 years ago a brief for Bluewater Network dealing with
2282 environmental issues and ran out very carefully the pros and
2283 cons of voluntary versus legislative approaches. I would be
2284 more than happy to provide to the Committee that documents as
2285 background.

2286 Let me just give a couple of examples in terms of why I
2287 come to this conclusion. In 2002, Crystal Cruises gave a
2288 commitment to the City of Monterrey, California, that it
2289 would not discharge anything while in the Monterrey Sanctuary

2290 off the west coast of California. Several months after it
2291 was there, it was disclosed that in fact the cruise line
2292 discharged 36,000 gallons of raw sewage and gray water. When
2293 the vice president of the company was asked by the local
2294 community why he didn't report it when it happened, his
2295 response was, we didn't break the law, we only broke our
2296 word.

2297 Hawaii has a memorandum of understanding that the
2298 industry recently pulled out of. The first year, there were
2299 between 14 and 16 violations of that voluntary arrangement,
2300 including violations of a written commitment by Royal
2301 Caribbean and other cruise lines that they discharge nothing
2302 within 12 miles of the coastline. The MOU was with a four
2303 mile mark, they violated it.

2304 And most recently, in Washington State, there were MOU
2305 violations, both in the first two years. The most recent
2306 violation was a case where the cruise ship was fined for 10
2307 violations of discharging within Washington State waters.
2308 The cruise line came forward and said, wait, three of those
2309 happened in Canada, we shouldn't be fined because Canada
2310 doesn't fine us. The State came back and said, fine, we
2311 won't fine you for those three, we will only fine you for the
2312 seven. And the cruise line said, we will pay you \$100,000
2313 anyway to show our commitment to the marine environment of
2314 the State of Washington. Those are the only things I wanted

2315 | to say.

2316 | Mr. CUMMINGS. Dr. Klein, I want to make sure my comrades
2317 | here have an opportunity to speak.

2318 | Mr. Boustany.

2319 | Mr. BOUSTANY. Thank you, Mr. Chairman. I think in
2320 | fairness we will go to Mr. Coble first if that is okay with
2321 | you.

2322 | Mr. COBLE. Thank you, sir, I appreciate that.

2323 | It is good to have you all with us, Ms. Dishman,
2324 | especially you. Ms. Dishman, the United States attorney
2325 | declined to prosecute the case involving your situation, is
2326 | that correct?

2327 | Ms. DISHMAN. Yes.

2328 | Mr. COBLE. And I presume that no criminal charges were
2329 | preferred?

2330 | Ms. DISHMAN. No.

2331 | Mr. COBLE. Did any representative, Ms. Dishman, of the
2332 | cruise line, suggest that you contact the FBI or the Coast
2333 | Guard to report the incidence of the assault?

2334 | Ms. DISHMAN. No, they basically, when meeting with the
2335 | staff captain, gave me what my options would be when the
2336 | crime had occurred.

2337 | Mr. COBLE. Mr. Carver, in your testimony you include
2338 | suggestions on how to enhance passenger safety and security
2339 | aboard cruise vessels. Have you approached the cruise lines

2340 | to discuss the possibility of implementing some of those
2341 | suggestions?

2342 | Mr. CARVER. The answer is absolutely yes. I had a
2343 | meeting with the President of Celebrity Cruise Line last June
2344 | at his request. I said, here they are, there are 60 pages,
2345 | we are willing to sit down and talk about them, because this
2346 | is a serious document. This was not made up by me, it was
2347 | made up by experts in the world. And I didn't get an
2348 | invitation to further explore that conversation.

2349 | But we do have, in my testimony, we see the president of
2350 | P&O Princess Lines in Australia saying that their highest
2351 | priority is to look at our ten point program and they
2352 | represent legitimate suggestions for the cruise line
2353 | industry. I think it is amazing that a group of victims with
2354 | no money, just telling the cruise lines what they should do,
2355 | and they are not off the wall documents, they are serious
2356 | documents.

2357 | Mr. COBLE. Thank you, sir.

2358 | Mr. Hickey, what should future passengers know or do to
2359 | better equip them to deal with unpleasant incidents that may
2360 | be forthcoming?

2361 | Mr. HICKEY. I think one thing, and there are a lot of
2362 | suggestions that Mr. Carver and Dr. Klein have that may be
2363 | more powerful than this, but I think at a minimum, when a
2364 | passenger comes on board, a piece of literature that should

2365 | be put in their hands, rather than or in addition to the 20
2366 | pages ticket that they get with all the ways in which the
2367 | cruise line will prevent them from suing them, I think they
2368 | ought to get a notice that if you get into trouble, you can
2369 | call the FBI at this phone number. That would be a simple
2370 | start.

2371 | Because they do get a lot of literature, and they do get
2372 | the fine print on a booklet which is called their ticket. It
2373 | is basically a lot of exclusions and exculpatory clauses. I
2374 | think that was one start. Because as Ms. Dishman said, and I
2375 | hear this from folks, when I get the calls, I hear this from
2376 | folks, I didn't know where to go. I am on their ship.

2377 | If I get robbed outside this building here, or even
2378 | inside this building, I can walk outside and go to a police
2379 | officer. And if I get robbed in my hotel right down the
2380 | street, I can go outside and get a police officer and say,
2381 | hey, somebody robbed me in that hotel, or one of the
2382 | employees of the hotel robbed me. On a cruise ship, I can't
2383 | walk off.

2384 | Mr. COBLE. Yes, there is an isolation factor there.

2385 | Ms. Dishman, was there ever any sort of a settlement
2386 | presented to you?

2387 | Ms. DISHMAN. A settlement presented to me, in pursuing
2388 | this civilly, was the recommendation from the Department of
2389 | Justice. That is why I am here today with Congress. He told