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**MEMORANDUM**

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**TO:** PUBLIC UTILITIES COMMISSION  
**FROM:** JOHN SPIRITO, JR., CHIEF LEGAL COUNSEL  
DIVISION OF PUBLIC UTILITIES AND CARRIERS (“DIVISION”)  
**SUBJECT:** ISLAND HI-SPEED FERRY TARIFF FILING – DOCKET NO. 3599  
**DATE:** 4/20/2004  
**CC:** SERVICE LIST

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Please accept this memorandum as a supplement to the April 16, 2004 memorandum sent by Mr. Stephen Scialabba, the Division’s Chief Accountant, in the above noted docket matter. As referenced in Mr. Scialabba’s memorandum, this memorandum is being offered for the singular purpose of addressing the appropriateness of Item “6” in Island Hi-Speed Ferry’s (“IHSF”) proposed Terms and Conditions.

In its tariff submission, IHSF has included Terms and Conditions, for Commission approval, which contain the following provision:

*PERSONAL INJURY AND DEATH. IHSF is not liable for any personal injury or death unless it receives written notification of the injury or death within six months of its occurrence from the injured passenger, their representative, or the representative of the estate of a deceased passenger and unless suit is instituted in the United States District Court for the District of Rhode Island as an admiralty or maritime action, without demand for jury trial, within one year of the occurrence of the injury or death.<sup>1</sup>*

Predicated on IHSF’s declared purpose for the aforementioned provision, and after researching the matter, the Division recommends that the Commission deny inclusion of this provision in IHSF’s Terms and Conditions.

IHSF has indicated that it is including this provision in its Terms and Conditions “pursuant to the decision of the Rhode Island Supreme Court in Tateosian v. Celebrity Cruise Services, 768 A. 2d 1248 (R.I. 2001)”. However, after researching the matter, the Division has concluded that the Tateosian case does not require that the provision be included in IHSF’s Terms and Conditions, and further, that the matter is wholly outside the scope of the Commission’s regulatory authority.

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<sup>1</sup> This version of the proposed “Term and Condition” differs from the version initially submitted on March 30, 2004. This version reflects changes made by IHSF in response to observations made by the Division in a data request.

The language in issue has in genesis in 46 App. U.S.C.S. Sec. 183b, a federal statute. This federal law was enacted for the purpose of regulating the relationship between common carriers of passengers and their passengers with reference to duties, obligations, and restrictions to the carriers in connection with their issuance of tickets and their liability to passengers for a safe passage.<sup>2</sup> While this federal law prevents carriers from imposing unreasonably short periods of limitations on actions for personal injuries and fatalities on passengers, it does establish a one-year statute of limitations that preempts longer state statutes of limitation that would otherwise apply.<sup>3</sup> The states are preempted from imposing conflicting periods of limitations on actions since a cruise ticket has been deemed a maritime contract subject to federal maritime law.<sup>4</sup> The Tateosian case acknowledges the applicability of federal maritime law over this subject matter.

In view of the maritime law implications, and the consequent preemptions of state law to the contrary, the Division does not believe that the controlling provisions of the federal law ought to be memorialized in Commission approved Terms and Conditions, which might mislead a passenger to think that the Commission has some authority over this maritime statute of limitations matter.

Moreover, the caselaw that has developed regarding this federal law dictates that carriers like IHSF must “reasonably” draw the passengers’ attention to the restriction of time within which to sue.<sup>5</sup> To determine if a carrier has “reasonably communicated” the existence and importance of the limitation to the passenger, the court must look at whether the physical characteristics of the ticket itself reasonably communicate to the passenger the existence therein of the important terms and conditions that affect the passenger’s legal rights.<sup>6</sup> The court must further look at whether the circumstances surrounding a passenger’s purchase and subsequent retention of the ticket/contract permitted the passenger to become meaningfully informed of the contractual terms at stake.<sup>7</sup> The Tateosian case involved an examination of the carrier’s compliance with this communications requirement.

Regarding this mandatory “reasonable communication” issue, the Division does not believe that a provision contained in IHSF’s Terms and Conditions, a document that is rarely, if ever, seen by a passenger in advance of boarding the vessel, would adequately inform the passengers of their legal rights under the federal law.

In conclusion, IHSF does not require the Commission’s approval to exercise its right to adopt the shorter statute of limitations provided pursuant to 46 App. U.S.C.S. Sec. 183b. Accordingly, there is no reason for the Commission to directly, or indirectly, suggest approval with the efforts made by IHSF to satisfy the “reasonable communications” standard mandated under the federal law. Clearly, this is a matter best left to the Courts. Finally, the Division has discussed this issue and its recommendation with Mark Hagopian, Esq. at IHSF, who offered his concurrence and a willingness to withdraw the proposed Terms and Conditions provision.

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<sup>2</sup> Moore v. American Scantic Line, Inc., (1939, DC NY) 30 F. Supp 843.

<sup>3</sup> Barrette v. Home Lines, Inc., (1958, DC NY) 168 F. Supp 141.

<sup>4</sup> Vavoules v. Kloster Cruise, Ltd., (1993, ED NY) 822 F. Supp 979.

<sup>5</sup> Spataro v. Kloster Cruise, Ltd., (1990, CA2 NY) 894 F2d 44.

<sup>6</sup> Ward v. Cross Sound Ferry, (2001, CA2 NY) 273 F3d 520.

<sup>7</sup> Id.