U.S. Department of Homeland Security

United States Coast Guard

Director
National Vessel Documentation Center

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16713/5/3
May 10, 2011

William N. Myhre, Esq.
K & L Gates LLP
1601 K Street NW
Washington, DC 20006-1600

Dear Mr. Myhre:

We are responding to your letter of February 8, 2011, with exhibits, which requested a preliminary determination that certain work proposed to be performed overseas on the vessel LEWEK AMBASSADOR (ex – DMT TOPAZ; ex – AGNES CANDIES), official number 1071956, (the "Vessel") will not result in a loss of the Vessel's ability to obtain a coastwise endorsement.

As a preliminary matter, we note that the Vessel is currently documented with a registry endorsement only and, as you have acknowledged, the Vessel's current ownership structure does not satisfy the test of 75% U.S. citizen ownership necessary to be eligible for a coastwise endorsement. However, in both your letter of February 8, 2011, and in a subsequent exchange of e-mails on February 9, 2011, you have indicated that the owning entity will comply with applicable U.S. citizenship requirements before any application for a coastwise endorsement is made. The purpose of your submission at this time is simply to confirm that the Vessel itself will not forfeit its eligibility for a coastwise endorsement, when one is applied for, on the basis of the proposed overseas work.

As you have indicated, the Vessel was built by Bender Shipbuilding and Repair Co. Inc., in Mobile, Alabama, in 1998. You now propose to perform certain work to the vessel overseas.

46 C.F.R. § 67.177 establishes a two-part test to determine whether any considerable part of its hull or superstructure has been built upon or substantially altered, as a consequence of which the vessel would be deemed "rebuilt foreign" and, as a further consequence, not eligible to engage in the coastwise trades of the United States.

The first test, also known as the "major component test," requires that the vessel be deemed rebuilt foreign "when a major component of the hull or superstructure not built in the United States is added to the vessel." 46 C.F.R. § 177(a) Although the term "major component" is not defined by statute or regulation, longstanding agency practice, affirmed by the Courts (Shipbuilders Council of America v. U.S. Coast Guard, 578 F. 3d 234 (4th Cir. 2009)) defines it as a new, separate and completely-constructed unit, built separate from and added to the vessel, that weighs more than 1.5% of the steelweight (or discounted lightship weight) of the vessel.

Under the second test, also known as the "considerable part test," only a certain quantity of hull and superstructure work can be performed on a coastwise qualified vessel outside of the United States without risk of the loss of its coastwise eligibility. For vessels of which the hull and superstructure are constructed of steel, as in this case, "a vessel is not considered rebuilt when work performed on its hull or superstructure constitutes 7.5 percent or less of the vessel's steelweight prior to the work." 46 C.F.R. § 67.177(b)(3)

We also note that, for purposes of the tests described above, the terms "hull" and "superstructure" are defined at 46 C.F.R. § 67.3, as follows (in pertinent part):

> "*Hull* " means the shell, or outer casing, and internal **structure** below the main deck which provides both the flotation envelope and **structural integrity** of the vessel in its normal operations. (emphasis added)
>
> "*Superstructure*" means the main deck and any other **structural part** above the main deck. (emphasis added)

In this case it has been well-documented that the "major component test" will have been satisfied in that any new and separately constructed units proposed to be added to the Vessel overseas will weigh considerably less than 1.5% of the Vessel's steelweight. However, the weights of those units will be fully taken into account in applying the "considerable part test."

In order to aid our assessment of the requirements of the "considerable part test" in this case we referred your submission to the Coast Guard's Naval Architecture Division ("NAD") for their review of (i) the general plausibility of your assessment of the vessel's steelweight, and (ii) your categorization of the work between those matters which were deemed structural (and, therefore, counted in the calculation of the applicable percentage) and those deemed non-structural (and not counted).

With regard to the first issue, at the suggestion of the NAD, by our e-mail dated March 14, 2011, we sought additional information from you concerning the calculation of the Vessel's discounted lightship steelweight calculations. We did so, in this case, because the percentage of steel work proposed to be done overseas (projected as 7.43% of the Vessel's steelweight based upon a steelweight calculation of 746.24 metric tons) fell quite close to the 7.5% threshold. You submitted that additional information by letter dated March 24, 2011, which revealed, based upon new calculations prepared by Shiptech Naval Architects, the Vessel's steelweight to be 767.81 metric tons. This increase in the Vessel's steelweight yielded a corresponding decrease in the percentage of projected steel work to be done overseas to 7.22% --- still under the 7.5% threshold but by a somewhat wider margin.

However, the NAD completed its review of your initial and supplemental documentation and issued its report dated May 9, 2011, and, for the reasons stated therein, it deemed the original Bender Shipyard steelweight estimate of 746.24 metric tons to be the more accurate of the two estimates. Consequently, we will accept that estimate for the purposes of this determination.

With regard to the second issue, the NAD's sole exception to your categorization of the proposed work between that which was structural and that which was non-structural related to the weathertight doors to be installed on the Main Deck. However, it was determined that the effect of including these doors in the weight estimate of structural work would be negligible and, therefore, inconsequential for purposes of a preliminary determination. However, we agree with the NAD that those doors should be properly categorized in your post-modification submittal.

Consequently, the NAD's review and findings, which we have attached hereto as Exhibit A, confirmed your submission on both counts, with the minor but negligible exception noted.

In light of these findings, and your calculation that the steelwork to be performed on the vessel would constitute 55.44 metric tons, or 7.43% (and less than 7.5%) of the Vessel's steelweight, we find that, by regulation, the Vessel would not be considered rebuilt.

For these reasons we conclude, and confirm, that performance of the work, as described, to the Vessel outside of the United States will not result in the Vessel being deemed to have been rebuilt foreign and will not jeopardize the Vessel's eligibility for a coastwise endorsement.

However, we caution you that this is a preliminary determination based upon the descriptions you have provided of the proposed work. We further caution you that your proposal comes very close to the 7.5% threshold, with little margin for error, and that you may not assume that favorable exercise of discretion will be automatic in the event that the work actually performed exceeds that threshold. We ask that you confirm to this office in writing following completion of the work that the work actually done to the Vessel is as you have described it, with regard to both the weights of new and separately constructed units actually added to the vessel as well as the overall weight of steelwork actually done, or, if not, that you provide documentation of the work, as done, with supporting calculations and appropriate drawings.

Sincerely,

Timothy V. Skuby
CAPT, USCG Retired
Director

EXHIBIT A

U.S. Department of Homeland Security
United States Coast Guard

Commandant (CG-5212)
United States Coast Guard

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16713
May 9, 2011

MEMORANDUM

From: Jaideep SIRKAR
Chief, Naval Architecture Division (CG-5212)

Reply to Attn of: CG-5212 (202) 372-1366

To: National Vessel Documentation Center

Subj: **OSV *Lewek Ambassador* – PRELIMINARY FOREIGN REBUILD DETERMINATION**

Refs: (a) K&L Gates letter (with 4 exhibits) of February 8, 2011, to NVDC
(b) D. Cameron (NVDC) e-mail of 8 Feb 2011, to J. Sirkar (CG-5212), forwarding ref (a)
(c) D. Cameron (NVDC) e-mail of 4 Mar 2011, to B. Myhre (K&L Gates)
(d) K&L Gates letter (with 2 exhibits) of March 24, 2011, to NVDC, in response to ref (c)

1. The owner of the offshore supply vessel ***Lewek Ambassador*** (O.N. 1071956) intends to make certain modifications to the vessel in a foreign (Vietnamese) shipyard, per reference (a). Reference (b) requested that this division review the planned modifications for purposes of your preliminary foreign rebuild determination. Reference (c) requested additional information regarding the original shipyard steel weight estimates for the vessel, which was submitted per reference (d).

2. According to reference (a), most of the steel work is associated with aftward expansion of the deckhouse on the Main Deck, 01 and 02 Levels, and the pilothouse. The existing flume tank (on the 02 Level) will be converted into staterooms. Other non-structural work is also planned.

3. In addition to our general review, we are particularly asked to comment on two issues: if the discounted steel weight of the vessel is within reasonable expectations, and if the itemized work is properly categorized as structural/non-structural.

4. With respect to the definitions of *"hull"* and *"superstructure"* in 46 CFR 67.3, and consistent with our previous reviews of this nature:

(a) We consider any door or hatch cover to be an essential part of the "floatation envelope" of the hull if load line regulations require it to be weathertight or watertight. In general, this includes weather-exposed doors and hatches on the lower tiers of a superstructure or deckhouse (but excludes such doors and hatch covers on higher tiers);

(b) We consider "superstructure" to include deckhouses and pilothouses, but not breakwaters, crane or mast houses, or ventilation or exhaust trunks (these being "outfitting" components); and

(c) We consider any component to be part of the vessel's "structural integrity" if it is essential to the overall longitudinal/transverse strength of the hull, superstructure, or deckhouse. In general, this includes hull plating, exterior superstructure and deckhouse plating (and associated stiffeners), decks, and internal load-bearing bulkheads and columns (but excludes non-load-bearing bulkheads that essentially only serve to partition interior spaces).

5. With respect to the planned modifications to the subject vessel, our comments are:

(a) **Discounted steel weight of the vessel *(reference (d) exhibits 1-A and 1-B)*:** the discounted steel weight initially submitted per reference (a) was 746.24 metric tons (Mtons), but did not include any supporting calculations. At our recommendation, reference (c) consequently requested

additional information regarding the original Bender Shipyard weight estimate. In response, Exhibits 1-A and 1-B were submitted with reference (d). Our review of these exhibits finds that:

(i) Exhibit 1-A appears to be a copy of the original Bender Shipyard weight estimate (an 8-page breakdown of modular fabrication assemblies); it presents a steel weight estimate of 1,645,168.75 lbs, which converts to 746.24 Mtons; and

(ii) Exhibit 1-B appears to be an independent weight estimate prepared by Shiptech Naval Architects of Singapore, based upon nine Bender structural drawings; it presents a steel weight estimate of 767.81 Mtons (i.e., 21.6 Mtons heavier). Upon closer review of the calculations, the difference between the two estimates can be attributed to metric weight round-offs: the Shiptech naval architects converted many of the Bender scantlings (standard U.S.-manufactured steel shapes in inch-pound units) to standard metric-sized steel shapes that are close to—but not always equal to—the standard U.S. shapes. This practice tended to overestimate many of the unit steel weights by 3 to 4 percent, resulting in the slightly higher estimate of Exhibit 1-B.

Therefore, we conclude that 746.24 Mtons (based on the original Bender estimate per Exhibit 1-A) is the best available value for the discounted steel weight.

(b) **Weight estimate of planned steel structural modifications *(reference (a) exhibit 2)*:** these worksheets present a deck-by-deck estimate of deck and bulkhead plating, and associated beams, girders, columns and stiffeners, for the expanded deckhouse. We note that the estimate includes a 5% allowance for the weight of brackets and minor structural attachments, and a 3% allowance for welding. We assume that the structural scantlings used in the estimate (i.e., plating thicknesses and stiffener sizes) will meet class requirements; however, we note that the estimate includes a 3% margin for additional weight if heavier scantlings are required by class. The total estimated steel weight for the modifications is 55.44 Mtons. We find the calculation methodology and scope to be reasonably complete and accurate.

(c) **Categorization of the itemized work *(reference (a) exhibit 3)*:** In general, the categorization of the work items is acceptable. We note that several weathertight doors to be installed on the Main Deck and 01 Level are listed as "non-structural" whereas they are part of the "floatation envelope" of the hull (refer to paragraph 4(a) above). For purposes of this preliminary review, the affect on the weight estimate is negligible; however, in the final post-modification weight submittal they should properly be listed in the structural category.

(d) **Pre-modification & post-modification General Arrangement drawings *(reference (a) exhibits 4-A and 4-B)*:** these drawings are substantially reduced and scanned, making certain details virtually illegible. Although we were able to discern enough information to reasonably compare the planned deckhouse modifications against the weight estimates of Exhibit 2, a more-legible copy of the actual drawings should be submitted with the post-modification weight report.

6. Based on a discounted steel weight of 746.24 Mtons, the 7.5% breakpoint is 55.97 Mtons. The estimated steel weight of the planned structural modifications is 55.44 Mtons, which is extremely close to the 7.5% breakpoint. It is possible that the actual steel modifications could go over that breakpoint, especially if the classification society requires heavier scantlings than assumed in the estimate, or if the actual modifications deviate significantly from the submitted proposal. Therefore, we recommend that the post-modification report includes supporting calculations and appropriate drawings so that the final steel weight of the modifications can be clearly confirmed.

7. If you have any questions, please contact myself or Mr. Thomas JORDAN at the above.

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