



16731
February 27, 2003

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: MV01000490
M/V [REDACTED]
[REDACTED]
\$2,500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV01000490, which includes your appeal on behalf of [REDACTED] (hereinafter "[REDACTED]"), owners of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$2,500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 3306(a) 46 USC 3301 46 USC 3318(a)	Operation of a vessel in violation of regulations issued under 46 USC Chapter 33 for vessels subject to inspection.	\$2,500.00

The violation was noted during a Coast Guard investigation of a marine casualty that occurred aboard the M/V [REDACTED] on June 30, 2000, while the vessel was moored at mile 729 on the Missouri River, in Sioux City, Iowa.

On appeal, you "stand on...[the]...objections set forth in...[your]...previous 'Written Response to Coast Guard's Preliminary Findings' contained in...[your]...letter of June 7, 2001." In that letter, you asserted, with specific reference to 46 CFR 199.10(j), that because "the reporting requirement applies only to those repairs or alterations described as 'extensive'...the ability to properly comply with the regulation depends on an individual's subjective interpretation of the term 'extensive' and creates a definite ambiguity in terms of reporting requirements." You note that the vessel's Chief Engineer, Mr. [REDACTED] "was not aware that the repairs being made to the electric winch...needed to be reported," and, likening the repairs to the replacement of a car's brake pads, you insist that the Chief Engineer did not "consider changing the brake pads of the winch to be extensive." You further note that the vessel's "not reporting the winch repairs to the Coast Guard was certainly not an intentional avoidance of Coast Guard regulations" and add that there "was never any attempt, nor even any reason, to try to hide any repairs." You further assert, "[i]f the final finding of the Coast Guard is that a violation was committed, it was certainly an unknowing omission." In mitigation, you contend that the vessel "has never been cited for a violation of any Coast Guard regulations since it began operations" and add that, "[a]fter the Coast Guard's investigation brought the [REDACTED]'s [M/V [REDACTED]]'s

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attention to the Coast Guard's interpretation of the reporting requirements dealing with repairs...[the vessel]...took responsive remedial action." Your appeal is denied for the reasons described below.

Before I begin, I believe a brief recitation of the facts is in order. The M/V [REDACTED] is a stern-wheel casino vessel operated on the Missouri River from its dock in Sioux City, Iowa. Although the vessel's Coast Guard Certificate of Inspection indicates that it is named the [REDACTED], it is commonly referred to as the M/V [REDACTED].

The marine casualty in issue occurred on June 30, 2000, during a man-overboard drill conducted by the crew of the M/V [REDACTED] while it was docked at Sioux City, Iowa. As the vessel's crew lowered its portside rescue boat to conduct the drill, the lifeboat's electrical winch malfunctioned, causing the rescue boat to free-fall to the water below. The Coast Guard's report of the incident indicates that, as the lifeboat fell, "the internal clutch assembly and other winch components came apart explosively, striking the winch operator, deckhand [REDACTED] and Mrs. [REDACTED], seated approximately 20 feet above on the Hurricane deck." Mrs. [REDACTED] was struck in the right eye and died as a result of her injuries.

During the Coast Guard's investigation of the casualty, numerous entries were observed in the ship's logbooks documenting repairs of the vessel's portside rescue boat winch. Specifically, the logs indicated that repairs were conducted on February 27, 2000, March 20, 2000, April 6, 11, 13, 18 and 21, 2000, and on June 15, 2000. The record evidences that [REDACTED], owner of the M/V [REDACTED], did not inform the Coast Guard of any of these repairs. As a result, the Coast Guard instituted the instant civil penalty case.

As you correctly noted in your correspondence and as is indicated in the Coast Guard's report of the incident, the sole issue in this case is whether [REDACTED] violated 46 CFR 199.10(j) by failing to report repairs or alterations to the vessel's portside rescue boat winch assembly to the Coast Guard. In relevant part, 46 CFR 199.10(j) makes clear that "[n]o extensive repairs or alterations...may be made to a lifesaving appliance without advance notification to the OCMI." The regulation further states "each repair or alteration must be made with material, and tested in the manner, specified in this subchapter and applicable to the new construction requirements in subchapter Q of this chapter."

You contend that [REDACTED] did not violate the regulation because the repairs or alterations to the vessel's winch were not "extensive" and therefore did not fall within the Coast Guard's reporting requirement. I do not agree.

You contend that, pursuant to 46 CFR 199.10(j), only repairs or alterations of lifesaving appliances that are "extensive" must be reported to the Coast Guard. In your letter dated June 7, 2001, you stated that "[t]he regulation does not require **all** repairs or alterations to be reported to the OCMI." Instead, it "applies only to those repairs or alterations described as "extensive." While I do not disagree with your basic assertion that the repair or alteration must be "extensive", I believe that the facts of this case satisfy that requirement.

The rebuttal comments of both the Eighth District Commander and Marine Safety Office (MSO) St. Louis clearly illustrate the reporting requirements at issue. First, in contending that the winch repairs were reportable "alterations," a representative of the Commanding Officer of MSO St.

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Louis noted that “replacement of the winch’s brake pads with materials not approved by the manufacturer constitutes a ‘repair or alteration to life-saving appliance.’” The Commanding Officer’s representative further noted that “Chief Engineer [REDACTED] had replaced several clutch pads using materials purchased from sources other than the manufacturer.” To illustrate that point, he noted that “Chief Engineer [REDACTED] stated that they would cut clutch linings from bulk material and glue the linings to the clutch housing...[and that]...several types of glue [were] tried in attempting to create these clutch pads...[so that they would]...operate properly.” The Coast Guard concluded that “[t]hese actions constitute repairs and alterations to life saving equipment...[that]...were required to be reported to the Coast Guard prior to their initiation.”

In addition, a representative of the Commander of the Eighth Coast Guard District noted, in his endorsement to MSO St. Louis’ rebuttal comments, that “Section 18.H.1.a of the MSM [Marine Safety Manual] states that federal regulations, the MSM, and Navigation Inspection and Circular No. 2-63 (NVIC 2-63), titled ‘Guide For the Inspection and Repair of Lifesaving Equipment,’ specifically address the repair of lifeboat winches.” The Commander’s representative noted, citing Section 4, paragraph 4.1 of the NVIC, that “[d]ue to the strength considerations involved, the repair or replacement of parts for davits and winches should be as original construction.” Therefore, “the use of material not equivalent to, or not meeting the requirements of, ‘original construction’ is outside the range of repairs contemplated...and therefore, constitutes ‘extensive’ repairs.” The Commander’s representative further noted that “the transcript of the marine board of investigation...[indicated that the Chief Engineer]...ordered ‘some clutch lining material’ and twice attempted to glue the material to an original clutch assembly using two different types of glue” and that “[n]either the clutch lining nor the glue were ordered from the manufacturer of the clutch assembly.” It was apparent to the Commander’s representative that “[t]he chief engineer was experimenting with different types of glue to adhere the non-standard clutch pad to the manufacturer’s clutch assembly.” The Commander’s representative concluded: “[f]rom his own testimony, it is apparent that the chief engineer was well aware that he was not replacing the clutch assembly with equipment equivalent to ‘original construction.’” Furthermore, the Commander’s representative stated:

The chief engineer testified at the marine board of investigation that when he was unable to raise the rescue boat using the manufacturer’s clutch assembly with the non-standard clutch lining, he was forced to reinstall a complete manufacturer’s clutch assembly in order to raise the boat. The fact that the complete manufacturer’s clutch assembly performed as designed while the respondent’s modified clutch assembly failed under the same conditions should have made clear to the respondent that the modified assembly was so non-equivalent to the ‘original construction’ as to constitute an extensive repair ‘and alteration.’

Therefore, given the requirements contained in the NVIC and the Coast Guard’s Marine Safety Manual, discussed above, to comply with the requirements of 46 CFR 199.10(j) repairs must be made using “original” equipment from the manufacturer of the winch. A careful reading of the record reveals that that was not the case here. As was noted above, original parts were not always used as the Chief Engineer attempted to fix the ailing portside winch. At times, he used non-standard clutch pads and various kinds of glue, none of which were ordered from the manufacturer of the clutch assembly. For the reasons noted above, I find the repairs to the

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vessel's portside winch were both "extensive repairs" and alterations that were required to be reported to the Coast Guard. Therefore, I find the violation proved.

The Hearing Officer's decision makes clear that he "carefully considered the information that you submitted including the actions the [REDACTED] (sic) engineering staff has taken to prevent similar incidents from occurring in the future and your assertion that any violation committed was not an intentional avoidance of the Coast Guard's reporting requirements." Because the Hearing Officer considered the evidence that you submitted in mitigation when he mitigated the assessed penalty from \$5,000.00 to \$2,500.00, I will not mitigation the penalty further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find a penalty of \$2,500.00 rather than the \$5,500.00 maximum permitted by statute to be appropriate in light of the circumstances of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$2,500.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 4.25% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center