

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA METAL TRADES COUNCIL,
MTD, AFL-CIO,
3011 Cedar Street
Philadelphia, PA 19134,

and

METAL TRADES DEPARTMENT, AFL-CIO,
815 16th Street, NW
Washington, D.C. 20006,

Plaintiffs,

v.

Case No. _____

ADMIRAL THAD W. ALLEN, in his official
capacity as COMMANDANT,
UNITED STATES COAST GUARD,
2100 Second Street, SW
Washington, DC 20593,

and

UNITED STATES COAST GUARD,
2100 Second Street, SW
Washington, DC 20593,

and

THOMAS L. WILLIS, in his official capacity
as DIRECTOR, NATIONAL VESSEL
DOCUMENTATION CENTER,
792 T J Jackson Drive
Falling Waters, WV 25419,

and

NATIONAL VESSEL
DOCUMENTATION CENTER,
792 T J Jackson Drive
Falling Waters, WV 25419,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, the Philadelphia Metal Trades Council, MTD, AFL-CIO (“PMTC”) and the Metal Trades Department, AFL-CIO (“MTD”), by and through their attorneys, respectfully allege their causes of action as follows:

NATURE OF ACTION

1. Pursuant to Section 706 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, Plaintiffs PMTC and MTD bring this action for review of the ruling of the United States Coast Guard (“Coast Guard”) that vessels, whose equipment modules and piping systems are pre-assembled and pre-outfitted in foreign facilities, nevertheless qualify as “built in the United States” for purposes of Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883 and the Coast Guard’s regulation, 46 C.F.R. § 67.97 (2006), pertaining to “United States built.”

2. Section 27 of the Merchant Marine Act of 1920 (also known as the “Jones Act”), provides, in relevant part, that merchandise transported by water, or by land and water, directly or indirectly between points in the United States that are embraced by coastwise laws (*i.e.*, “coastwise trade”) shall be transported only in “a vessel built in and documented under the laws of the United States....” 46 U.S.C. App. § 883. The Coast Guard’s regulation defines what constitutes “United States built” for purposes of Section 27 of the Jones Act. 46 C.F.R. § 67.97 (2005). Pursuant to this regulation, the Coast Guard deems a vessel to be “United States built” if (1) “all major components of its hull and superstructure are fabricated in the United States”; and (2) “the vessel is assembled entirely in the United States.” *Id.*

3. On May 24, 2006, the Director of the National Vessel Documentation Center (“NVDC”), Thomas L. Willis, issued a ruling that Veteran Class MT-46 Product Tankers (“Product Tankers”), which are being built at the Philadelphia Shipyard by Aker Philadelphia Shipyard, Inc. (“APSI”), will be deemed to be “built in the United States” for purposes of the Jones Act and “United States built” for purposes of the Coast Guard’s regulations even though

the Product Tankers' equipment modules and piping systems were pre-assembled and pre-outfitted at foreign facilities. The MTD and PMTC appealed this ruling to the Commandant of the Coast Guard. On November 15, 2006, the Commandant denied the appeal of the MTD and PMTC and reaffirmed the decision of the NVDC Director. The Commandant's denial constitutes final agency action under Section 704 of the APA, 5 U.S.C. § 704.

4. The employees of United States shipyards, such as the employees who work at the Philadelphia Shipyard, traditionally perform the assembling and pre-outfitting equipment modules and piping systems for vessels that will engage in coastwise trade subject to the Jones Act. By ruling that this assembly and pre-outfitting work may be performed in foreign facilities, the NVDC Director and the Coast Guard Commandant have violated the Jones Act requirement that vessels engaging in coastwise trade be built in the United States. 46 U.S.C. App. § 883. The NVDC Director and the Coast Guard Commandant have also contravened one of the fundamental purposes embodied in the Jones Act, *viz.*, to protect and foster the ability of United States shipyards to build commercial vessels that are vital to the economic and national security of this country. Moreover, the rulings of the NVDC Director and Coast Guard Commandant are plainly erroneous and inconsistent with the unambiguous language of the Coast Guard's own regulation that, to be deemed "United States built," the vessel must, *inter alia*, be *assembled entirely* in the United States. 46 C.F.R. § 67.97. Accordingly, the ruling and decision, as well as the interpretations of the Jones Act and the Coast Guard's regulation contained therein, are arbitrary, capricious and not in accordance with law, in violation of Section 706(A)(2) of the APA, 5 U.S.C. § 706(A)(2).

5. The PMTC and MTD seek declaratory relief declaring that the May 24, 2006 ruling of the NVDC Director and the November 15, 2006 decision of the Commandant, and the interpretations of the Jones Act and the Coast Guard's regulation to allow the preassembly and

pre-outfitting of a vessel's equipment modules and piping systems in foreign facilities, to be arbitrary and capricious and not in accordance with law. The PMTC and MTD further seek injunctive relief (1) enjoining the Coast Guard from relying upon that interpretation of the Jones Act and the Coast Guard's regulation; (2) prohibiting the Coast Guard from issuing certificates of documentation endorsed for coastwise trade to any vessel that the Coast Guard deems to be "United States built" despite the vessel's equipment modules and piping systems having been pre-assembled and/or pre-outfitted at a foreign facility; and (3) requiring the Coast Guard to rescind any certificates of documentation endorsed for coastwise trade to any vessel that was deemed "United States built" despite the vessel's equipment modules having been pre-assembled and/or pre-outfitted at a foreign facility.

JURISDICTION AND VENUE

6 This Court has jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 702-706; federal question, 28 U.S.C. § 1331; statutes arising under an Act of Congress regulating commerce, 28 U.S.C. § 1337; action to compel an officer of the United States to perform his duty, 28 U.S.C. § 1361; writs, 28 U.S.C. § 1651; the Declaratory Judgment Act 28 U.S.C. §§ 2201, & 2202; Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883; and the Vessel Documentation Act, 46 U.S.C. §§ 12101 *et seq.*

7 Venue is proper in this Court under 28 U.S.C. § 1391(e), as this is an action against officers of agencies acting in their official capacity, the action is being brought in the jurisdiction where one of the plaintiffs reside, and there is no real property involved in the action.

PARTIES

8 Plaintiff Philadelphia Metal Trades Council, MTD, AFL-CIO is an unincorporated labor organization with its headquarters at 3011 Cedar Street, Philadelphia, PA 19134. The PMTC is the exclusive bargaining representative of over five-hundred (500)

bargaining unit employees who work for Aker Philadelphia Shipyard, Inc. at the Philadelphia Shipyard, which is located at 2100 Kitty Hawk Avenue, Philadelphia, Pennsylvania 19112. The bargaining unit employees build vessels intended for coastwise trade subject to the Jones Act, such as containerships and product tankers. The bargaining unit employees are currently building the Veteran Class MT-46 Product Tankers; and, but for the rulings of the NVDC and Coast Guard allowing the pre-assembly and pre-outfitting of equipment modules and piping systems in foreign facilities, the bargaining unit employees would be performing the assembly and pre-outfitting of the modules and systems for the Product Tankers. As their exclusive bargaining representative, subject to a duty of fair representation, the PMTC acts on the bargaining unit employees' behalf by negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, and litigating employees' collective rights and interests before administrative agencies and in federal courts. One of the rights and interests of the bargaining unit employees that the PMTC works to protect is the right to, and interest in, the preservation of the bargaining unit work performed by these employees at the Philadelphia Shipyard. The PMTC brings this action on behalf of itself and the bargaining unit employees it represents at the Philadelphia Shipyard. The PMTC participated in the administrative process before the Coast Guard, with regard to the challenged rulings, on behalf of itself and the bargaining unit employees working at the Philadelphia Shipyard.

9 The Metal Trades Department is an unincorporated labor organization having its headquarters at 815 16th Street, NW, Washington, D.C. 20006. The MTD is the parent organization of the PMTC, which was chartered by and affiliated with the MTD. The MTD acts on behalf of the PMTC, as well as the employees represented by the PMTC, by lobbying federal and state legislatures to protect the employees' collective rights, and by litigating employees' collective rights and interests in federal courts and before administrative agencies. One of the

rights and interests of the bargaining unit employees that the MTD works to protect is the right to, and interest in, preservation of the work performed by these employees at the Philadelphia Shipyard. The MTD participated in the administrative process before the Coast Guard, with regard to the challenged rulings, on behalf of the PMTC and the bargaining unit employees working at the Philadelphia Shipyard.

10. Defendant Admiral Thad W. Allen is the Commandant of the United States Coast Guard, which has jurisdiction over the administration and enforcement of the “built in ... the United States” requirement in Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883. The Plaintiffs are suing Admiral Allen in his official capacity as the Commandant, which is the highest-ranking official of the Coast Guard.

11. Defendant United States Coast Guard is a component of the United States Department of Homeland Security that is responsible for the administration and enforcement of the “built in ... the United States requirement of Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883, and the Coast Guard’s regulation concerning “United States built,” 46 C.F.R. § 67.97.

12. Defendant Thomas L. Willis is the Director of the National Vessel Documentation Center (“NVDC”), which has the responsibility of administering and enforcing the “built in the United States” requirement in Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883, as well as the Coast Guard’s regulation pertaining to “United States built,” 46 C.F.R. § 67.97. The NVDC is also responsible for the issuance of certificates of documentation endorsed for coastwise trade under the Jones Act. The Plaintiffs are suing Director Willis in his official capacity as Director is the highest-ranking position within the NVDC.

13. Defendant National Vessel Documentation Center is a component of the United States Coast Guard, which has the responsibility of administering and enforcing the “built in the

United States” requirement in Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883, as well as the Coast Guard’s regulation pertaining to “United States built,” 46 C.F.R. § 67.97. The NVDC is also responsible for the issuance of certificates of documentation endorsed for coastwise trade under the Jones Act.

STATEMENT OF FACTS

A. The Shipbuilding Process

14. Generally, the work progression in the construction of a vessel, such as a product tanker, can be described as follows:

a. Employees first cut and shape the steel plate that will be used to form the hull, superstructure and other structural components of the vessel. For purposes of the Jones Act, the Coast Guard has defined the terms “hull” and “superstructure” in its regulations. The Coast Guard defines the “hull” as “the shell, or outer casing and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations.” 46 C.F.R. § 67.3 (2005). The Coast Guard defines the “superstructure” as “the main deck and any structural part above the main deck.” *Id.*

b. Employees then weld stiffeners to the shaped steel and further weld the steel to form parts of the shell, outer casing, internal structure, main deck or other structural parts of the vessel. The welded structures are known as “blocks.” Employees may further weld two or more blocks together, creating a “grand block.”

c. Employees also assemble and pre-outfit equipment modules (also referred to as micro-modules or macro-modules). The work of assembling and pre-outfitting modules depends upon the particular module, but generally includes the assembly of mechanical components, the wiring of the components, and the fitting of pipe (*i.e.*,

cutting pipe, bending pipe, welding flanges, and welding pipe), as well as the attachment of items such as floor panels, ladders and railings.

d. Employees then incorporate the assembled equipment modules with the prefabricated steel to create “blocks.” Employees incorporate the modules into the block by, first, welding the module to a steel foundation and, second, welding the steel foundation into its permanent position within the block. Two or more blocks are referred to as “grand blocks.”

e. The blocks or grand blocks are then lowered into the dry dock, where employees weld the blocks or grand blocks into their permanent position in the vessel.

f. Once the blocks or grand blocks are welded into their permanent position in the vessel, employees then perform the final connections of the piping and wiring.

15. Historically, the past practice in the United States shipbuilding industry, in accordance with the requirements of the Jones Act and the industry’s understanding thereof, has been to have the assembly and pre-outfitting of equipment modules intended for commercial vessels, as described above in Paragraph 14(c), performed at the shipyard itself, or at other contractor or subcontractor facilities located within the United States.

16. The Vessel Documentation Act provides that, “[s]ubject to the laws of the United States regulating the coastwise trade, only a vessel for which a certificate of documentation with a coastwise endorsement is issued may be employed in the coastwise trade.” 46 U.S.C. § 12106(b). With respect to certificates of documentation endorsed for coastwise trade, the Vessel Documentation Act provides, in relevant part, that, “[a] certificate of documentation may be endorsed with a coastwise endorsement for a vessel that – (1) is eligible for documentation; (2)(A) was built in the United States....” 46 U.S.C. § 12106(a)(1) & (2)(A).

17. A certificate of documentation may be invalidated if it does not satisfy the requirements of the Vessel Documentation Act, including the requirements for endorsements for coastwise trade in 46 U.S.C. § 12106. *See* 46 U.S.C. § 12135. The Coast Guard's regulations provide that, "[a] Certificate of Documentation issued to a vessel together with any endorsements thereon is invalid, ..., and subject to cancellation upon a determination by the Director, National Vessel Documentation Center, that the issuance of the Certificate was improper for any reason." 46 C.F.R. § 67.173 (2005).

B. The Philadelphia Shipyard

18. In 1997, the Philadelphia Shipyard Development Corporation entered into a contract with Kværner ASA to establish a state-of-the art shipbuilding facility at the site of the former Philadelphia Naval Shipyard. A majority of the funds invested in the establishment of the new facility came from the Federal Government, the State of Pennsylvania, and the Delaware River Port Authority.

19. With this investment of public funds, Kværner ASA agreed to build the new shipbuilding facility and to provide training to the employees who would be building the vessels at the shipyard. Kværner ASA further agreed to develop a supplier/subcontractor strategy that would assist regional suppliers and subcontractors to become the primary providers of materials and services to the new shipyard. Kværner ASA also agreed that it would employ no less than five hundred (500) full-time employees at the shipyard per calendar year.

20. The state-of-the-art shipbuilding facility incorporates Dry Docks 4 and 5 of the former Philadelphia Naval Shipyard and includes three components adjacent to those dry docks: (1) a 450,000 square foot fabrication and panel shop ("fabrication shop"), which included a pipe fabrication shop; (2) an 85,000 square foot grand block shop; and (3) two paint shops. These shops contain state-of-the-art equipment, including a computer numerically controlled plate-

cutting system, profile processing system, bending machines, automated welding equipment, and pipe processing equipment.

21. It was within the fabrication shop that bargaining unit employees at the shipyard used to perform the assembly and pre-outfitting of equipment modules. In performing this work, bargaining unit employees would, *inter alia*, utilize the pipe processing equipment to cut and bend pipe, weld flanges or pipe, perform electrical wiring and other work required to assemble and pre-outfit modules prior to being incorporated into blocks.

22. Kværner ASA created Kværner Philadelphia Shipyard, Inc. (“KPSI”) to operate the Philadelphia Shipyard and build vessels intended for coastwise trade subject to the Jones Act. KPSI hired the bargaining unit employees, and, thereafter, it recognized the PMTC as the employees’ exclusive bargaining representative. KPSI further entered into a collective bargaining agreement with the PMTC setting forth the terms and conditions of employment for the bargaining unit employees engaged in the production of commercial vessels.

23. In 2005, Aker Philadelphia Shipyard, Inc. (“APSI”) succeeded KPSI as the operator of the Philadelphia Shipyard. APSI also recognized the PMTC as the exclusive bargaining representative of the bargaining unit employees at the Philadelphia Shipyard and assumed KPSI’s obligations under the collective bargaining agreement with the PMTC.

C. The Veteran Class MT-46 Product Tankers

24. In 2005, Aker Philadelphia Shipyard, Inc. announced that it entered into an agreement with Hyundai Mipo Dockyard Co., LTD (“HMD”), a South Korean shipbuilder, to provide a ship design package for a 46,000 dead-weight tonnage product tanker based upon HMD’s design for the Athenian Class Product Tankers. APSI intended to use this ship design package to construct ten (10) Veteran Class MT-46 Product Tankers at the Philadelphia

Shipyards. The product tankers are designated by their hull number, beginning with Product Tanker 005 and continuing thereafter, *i.e.*, Product Tanker 006, Product Tanker 007, etc.

25. In a press release posted on the APSI website, APSI announced that it entered into a partnership with HMD. APSI's role in this partnership was supposed to consist of the "direct responsibility for hull production through production and assembly of steel blocks, for assembly and integration of the ship modules and final outfitting as well as testing and commission." <http://www.phillyshipyards.com/index.cfm?Id=5-20-21-0> (last visited January 10, 2007). HMD's role in the partnership was to provide "the basic design package for the vessels, ..., the production drawings, test procedures, turnkey support, etc., as well as support for delivery of a major part of the material and equipment needed." *Id.* The vessels that are being produced pursuant to this partnership are the Veteran Class MT-46 Product Tankers.

26. Contrary to the requirements of the Jones Act and the Coast Guard's regulation, much of the assembly work necessary to build these product tankers has been and is being performed in foreign locations, including the following:

a. the pre-assembly and pre-outfitting of equipment modules—*i.e.*, the taking of mechanical components, wiring the components, and fitting of pipe (including cutting pipe, bending pipe, welding flanges and connecting the pipe to the components and equipment), as well as, in some cases, even welding the module to the steel foundation—at facilities or shipyards located in South Korea;

b. the pre-assembly of piping systems (including cutting pipe, bending pipe, welding piping and welding flanges) at facilities or shipyards located in South Korea or in Germany; and

c. the shipping of the preassembled equipment modules and piping systems from South Korean facilities or other foreign facilities to the Philadelphia Shipyard,

where the only remaining work for bargaining unit employees to perform is the final welding of the preassembled and pre-outfitted modules and systems into their permanent positions and the making of final electrical and piping connections.

27. As a result of this construction process, bargaining unit employees at the Philadelphia Shipyard no longer perform the assembly and pre-outfitting of equipment modules and piping systems, as they did on vessels constructed at the Philadelphia Shipyard prior to the work on the Product Tankers. The employees no longer use the pipe processing equipment, some of which has been removed from the fabrication shop. With respect to equipment modules and piping systems, the only work left for bargaining unit employees is to weld the foreign-assembled modules and systems into their permanent position and make the final connections.

D. The First Ruling of the Coast Guard on a Request from KPSI

28. On October 5, 2004, KPSI, APSI's predecessor, submitted a request for a ruling from the Coast Guard's National Vessel Documentation Center ("NVDC"). On information and belief, KPSI sought confirmation from the Coast Guard that the product tankers, which would include "foreign-built engine room related macro modules" would nevertheless be deemed to be "built in the United States" for purposes of the Jones Act and "United States built" for purposes of the Coast Guard's regulations.

29. On December 6, 2004, the Director of the NVDC issued a ruling with regard to the request from KPSI, APSI's predecessor, regarding the use of modules preassembled in foreign countries in the Veteran Class MT-46 Product Tankers.

a. In the December 6, 2004 decision, the Director stated, *inter alia*, that items not integral to the hull or superstructure, such as propulsion machinery, machinery, consoles, wiring, certain mechanical systems and outfitting have no bearing on a U.S. build determination.

b. The Director further stated, “[the Coast Guard has] also held that the use of small engine room equipment modules of foreign origin will not affect a U.S. build determination.”

c. In describing KPSI’s “submissions,” the Director stated the following:

Your submissions show that [KPSI] wishes to use macro modules, which would be incorporated into the construction of the tanker at the [KPSI] yard in Philadelphia. Each module is self-supporting and independent of the vessel’s structure. The self-supporting foundations of the module are not integral to the hull or superstructure. Although the modules are fixed in place to restrict movement, they neither contribute to the overall integrity of the vessel nor comprise part of the watertight envelope of the hull. Outfitting of the modules would include machinery components and foundations, equipment, piping, switchboards, cabling, lighting, stairs, ladders, railings and floor gratings.

d. The Director concluded that, based on KPSI’s representations and submissions, “the Coast Guard finds that the incorporation of macro modules described will not result in a finding that the tanker is not built in the United States for vessel documentation purposes.”

30. The Director’s decision, as set forth above in Paragraph 29, addresses whether the use of preassembled modules satisfies the *first* requirement of the Coast Guard’s regulations, *i.e.*, that all major components of the hull and superstructure be fabricated in the United States; the Director’s decision does not address the *second* requirement of the regulations, *i.e.*, that the product tankers be “assembled entirely in the United States.”

31. By policy and practice, the NVDC does not provide notice to the public, through either the Federal Register or any other means of communication, that it has received a request for a ruling, or made a ruling, on an issue relating to the requirements of the Jones Act or the Coast Guard’s regulations. Generally, the only means by which the NVDC’s decisions are available to the public is through a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. However, the request for an NVDC ruling, which is submitted by a

shipyard such as KPSI or APSI, may not be available through FOIA because the entity making the request has the opportunity to show that such requests should be exempt from disclosure under FOIA because they contain confidential financial information. Thus, FOIA provides the public with the means of obtaining only the NVDC decision, but not the materials upon which the NVDC based its decision.

E. The Second Ruling of the Coast Guard on a Request from APSI

32. On April 25, 2006, APSI, successor to KPSI, submitted its own request for a ruling from the NVDC that the product tankers being built at the Philadelphia Shipyard would be eligible for Certificates of Documentation endorsed for coastwise trade, despite the use of modules preassembled in foreign facilities. That is, APSI requested a ruling that, notwithstanding the fact that South Korean facilities pre-assembled and pre-outfitted equipment modules, the product tankers still would be deemed “built in the United States” for purposes of the Jones Act and “United States built” for purposes of the Coast Guard’s regulations.

33. On May 24, 2006, the Director of the National Vessel Documentation Center issued a ruling with regard to the request from APSI.

a. In the decision, the Director stated what he termed three “long-established corollary principles, one of which is that “the Coast Guard has consistently held that items not integral to the hull or superstructure, such as propulsion machinery, consoles, wiring harnesses and other outfitting have no bearing on a U.S. build determination, and may, therefore, be foreign built without compromising the coastwise eligibility of a vessel.”

b. After setting forth the “well-established corollary principles,” the Director then made certain findings, one of which is that:

Consistent with prior rulings, the rudder horn casting would not be considered to be integral to the hull and, therefore, its weight was properly

excluded from these calculations. The same is true for the engine room equipment modules. However, to the extent that such modules were to be attached or joined in a foreign yard the “assembled in the United States” test would be impacted. That would not be the case with respect to these Vessels because the modules are to be attached in Philadelphia.

c. The Director then concluded, “notwithstanding the incorporation of certain foreign fabricated components as described above and in your letter of April 25, 2006, the ten Veteran Class MT-46 Product Tankers to be built at Aker’s [APSI’s] shipyard in Philadelphia will be eligible for Certificates of Documentation endorsed for coastwise trade upon completion of the work.”

34. As with the December 6, 2004 decision, the Director’s May 24, 2006 decision considers the propriety of the foreign-assembled equipment modules under the first requirement of the Coast Guard’s regulations, *i.e.*, that major components of the hull and superstructure must be fabricated in the United States. However, the Director’s May 24, 2006 decision goes further than the earlier 2004 decision referenced in Paragraph 29 above by *misapplying* and *misstating* the second requirement of the Coast Guard’s regulation, which is not “assembled in the United States,” as framed by the Director, but “assembled *entirely* in the United States,” as set forth in 46 C.F.R. § 67.97.

F. The PMTC’s and MTD’s Appeal of the Coast Guard’s Ruling

35. On May 17, 2006, the PMTC and the MTD made their own request for a ruling of Commandant of the Coast Guard with respect to whether the Veteran Class MT-46 Product Tankers will qualify as “built in United States” for purposes of the Jones Act and the Coast Guard’s regulation. The PMTC challenged, *inter alia*, the preassembly of equipment modules and piping systems in foreign facilities.

36. On May 23, 2006, the PMTC and MTD submitted a revised request for ruling. This revised request challenged, *inter alia*, the preassembly of equipment modules and piping systems in foreign facilities.

37. On June 16, 2006, Defendant Thomas L. Willis, the Director of the National Vessel Documentation Center, responded to the May 17, 2006 submission of the PMTC and MTD. In that response, the Director noted that “[i]n the case of the Veteran Class MT-46 Product Tankers under construction at Aker Philadelphia Shipyard an application for such a ruling was received by the NVDC on behalf of APSI by letter dated April 25, 2006.” The Director then stated, “[f]ollowing our established and customary practice, we issued such a ruling on May 24, 2006 on the basis of submissions received by it from APSI in support of the application.” The Director attached his May 24, 2006 ruling, is described above in Paragraph 33, that the vessels would be deemed “built in the United States.”

38. Following the appeal procedures set forth in the NVDC Director’s June 16, 2006 letter, the PMTC and MTD filed an appeal with the Commandant (G-PC) via the Commandant (G-PC(d)) on June 22, 2006. The appeal of the PMTC and MTD included an appeal from the Director’s decision in his May 24, 2006 ruling with respect to the use of pre-assembled and pre-outfitted modules and piping systems.

39. On November 15, 2006, the Commandant, through Rear Admiral B. M. Salerno, issued a decision denying the appeal of the PMTC and MTD. The Commandant first determined that, while the May 24, 2006 ruling of the NVDC Director was “simply an advisory ruling,” the Commandant nevertheless found that, “in this case, it is sufficiently in the interests of all parties, not just the Appellants, but Aker and perhaps others as well,” that the Plaintiffs’ appeal be addressed on its merits “at this stage rather than at a subsequent stage....”

40. After addressing the procedural posture of the Plaintiffs' appeal, the Commandant addressed the merits of the appeal by, finding, *inter alia*:

a. the fact that particular equipment modules were "manufactured, or underwent 'pre-assembly' foreign does not, in our interpretation of this regulatory requirement, foreclose the possibility that it, like many other items of outfit or equipment, may be incorporated into vessels still deemed to have been 'assembled entirely' in the United States"; and

b. that the argument of the PMTC and MTD that the "manufacturing or 'pre-assembly' work" could be performed in the United States "is also not the salient issue in the reasonable administration of this regulatory requirement." In this regard, the Commandant stated that, "if taken literally ..., that [sic]every nut or bolt incorporated into a vessel, or into any of its outfit or equipment, undergo 'assembly' or 'preassembly,' in the United States." The Commandant stated, "[t]he concept of vessels deemed to have been 'assembled,' even 'assembled entirely,' in the United States, has never been accorded that breath."

41. The Commandant's November 15, 2006 denial of the appeal of the PMTC and MTD constitutes final agency action under 5 U.S.C. § 704.

COUNT I
VIOLATION OF THE MERCHANT MARINE ACT OF 1920
AND THE ADMINISTRATIVE PROCEDURE ACT

42. Plaintiffs PMTC and MTD reallege each allegation contained in Paragraphs 1 through 41 of the Complaint as if set forth herein.

43. Section 27 of the Merchant Marine Act of 1920 requires vessels that engage in coastwise trade, *i.e.*, the transportation of merchandise and commodities between points in the United States to, *inter alia*, be built in the United States. 46 U.S.C. App. § 883.

44. The purpose of, and policy embodied in, the Jones Act is to protect the economic security and national security of the United States. Congress passed the Jones Act to ensure that the United States shipyards constitute the *only* source for the construction of commercial vessels that transport merchandise within the United States. In so doing, Congress sought to protect this country's shipbuilding base—and, by extension, the work performed by shipbuilding employees—by preserving the ability of United States shipyards to produce vessels that can serve this country in times of war and/or national emergency. *See, e.g.*, 46 U.S.C. App. § 861 (stating the purposes of the Merchant Marine Act of 1920).

45. In direct contravention of the Jones Act and the policy it is intended to serve, the NVDC, through its Director, and the Coast Guard, through the Commandant, have issued rulings that permit APSI to “outsource” a major part of the building of the vessels—*i.e.*, the assembly and pre-outfitting of equipment modules and piping systems—to foreign facilities. These rulings authorize the conduct of APSI, which reduces the work available to the bargaining unit employees represented by the PMTC and MTD at the Philadelphia Shipyard. The work of assembling and pre-outfitting equipment modules, which the employees performed at the Philadelphia Shipyard with respect to vessels other than the Product Tankers (such as container ships), is not being performed at the Shipyard or even in this country with respect to the Product Tankers. Furthermore, some of the equipment used to assemble modules, such as the pipe fabrication equipment, is no longer being used and/or has been removed from the fabrication shop, further reducing any capability for such work to be performed at the Philadelphia Shipyard in the future.

46. While the Jones Act does not prohibit United States shipyards from purchasing materials, equipment, and components from foreign suppliers, the Jones Act requires the vessels to be built in the United States. Accordingly, the assembly and the incorporation of the

materials, equipment and components into the vessel must be performed in the United States. This includes the work of incorporating a mechanical component, the external wiring of that component and, the incorporation of piping and other equipment (such as ladders, floors, and rails) into an equipment module or piping system, before that module or system itself is incorporated into a block or grand block and, ultimately, into a vessel.

47. The rulings of the NVDC and the Coast Guard, which allow the work of assembling and pre-outfitting equipment modules and piping systems to be performed overseas, violates the Jones Act and its underlying purpose and policy. Therefore, the rulings are arbitrary, capricious and not in accordance with law, in violation of Section 706(2)(A) of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

COUNT II
VIOLATION OF THE COAST GUARD REGULATIONS
AND THE ADMINISTRATIVE PROCEDURE ACT

48. Plaintiffs PMTC and MTD reallege each allegation contained in Paragraphs 1 through 47 of the Complaint as if set forth herein.

49. The Coast Guard's regulation, 46 C.F.R. § 67.97, states in unambiguous language that, to be considered "United States built," (1) all major components of the hull and superstructure must be fabricated in the United States; and (2) *the vessel must be assembled entirely in the United States*. As with the Jones Act, the Coast Guard's regulation does not prohibit a United States shipbuilder from procuring components, equipment and material from foreign suppliers; however, the regulation does require that the vessel be assembled *entirely* in the United States.

50. The rulings of the NVDC Director and the Coast Guard Commandant challenged herein allow a vessel to be deemed "United States built" even though the assembly and pre-outfitting of the equipment modules for that vessel is performed in foreign facilities. The

assembly and pre-outfitting of equipment modules is an important part of the assembling of the blocks that will ultimately constitute the vessel. If the equipment modules are pre-assembled and pre-outfitted in foreign facilities, there is no basis upon which the Coast Guard could find that the *vessel is assembled entirely in the United States*, as required by the unambiguous language of the Coast Guard's regulation. Thus, the rulings of the NVDC Director and the Coast Guard Commandant are plainly erroneous and inconsistent with the unambiguous language of the Coast Guard's own regulation in 46 C.F.R. § 67.97.

51. The rulings of the NVDC and the Coast Guard, which allow the work of assembling and pre-outfitting equipment modules and piping systems to be performed overseas, violates the Coast Guard's own regulation and, consequently, is arbitrary, capricious and not in accordance with law in violation of Section 706(2)(A) of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

REQUESTED RELIEF

WHEREFORE, based on the foregoing, Plaintiffs Philadelphia Metal Trades Council, MTD, AFL-CIO and Metal Trades Department, AFL-CIO pray that the Court provide the following relief:

A. A judgment declaring that the May 24, 2006 decision of the NVDC Director and the decision of the Coast Guard Commandant dated November 16, 2006 violate Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883, as well as the Coast Guard's regulation, 46 C.F.R. § 67.97, and, accordingly, are arbitrary, capricious and not in accordance with law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

B. Issue a permanent injunction enjoining the Defendants from:

i. giving any effect to the interpretation of Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883, and the Coast Guard's regulation, 46 C.F.R.

§ 67.97, that allows the pre-assembly of equipment modules (whether characterized as macro-modules, micro-modules or equipment modules) and piping systems in foreign facilities for vessels intended for coastwise trade; and

ii. issuing any Certificates of Documentation endorsed for coastwise trade to any vessel based upon the interpretation that the vessel is “built in ... the United States” for purposes of Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883, or “United States built” for purposes of the Coast Guard’s regulation, 46 C.F.R. § 67.97, despite the fact that the vessel’s equipment modules (whether characterized as macro-modules, micro-modules or equipment modules) and piping systems were preassembled in foreign facilities.

C. Issue a permanent injunction requiring the Defendants to rescind any Certificates of Documentation endorsed for coastwise trade that have been issued to any vessel based upon the interpretation that the vessel is “built in ... the United States” for purposes of Section 27 of the Merchant Marine Act of 1920, 46 U.S.C. App. § 883, or “United States built” for purposes of the Coast Guard’s regulation, 46 C.F.R. § 67.97, even though the vessel’s equipment modules (whether characterized as macro-modules, micro-modules or equipment modules) and piping systems were preassembled in foreign facilities.

D. Award the Plaintiffs their costs and reasonable attorneys’ fees; and

E. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

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By: RPC 3936
Robert P. Curley (PA. Bar No. 55760)
O’DONOGHUE & O’DONOGHUE LLP
Constitution Place, Suite 515
325 Chestnut Street
Philadelphia, PA 19106

Tel: (215) 629-4970
Fax: (215) 629-4996

By: _____

Robert Matisoff
Keith R. Bolek
O'DONOGHUE & O'DONOGHUE LLP
4748 Wisconsin Avenue, N.W.
Washington, D.C. 20016
Tel: (202) 362-0041
Fax: (202) 237-1200

Counsel for Plaintiffs Philadelphia Metal
Trades Council, MTD, AFL-CIO and Metal
Trades Department, AFL-CIO

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