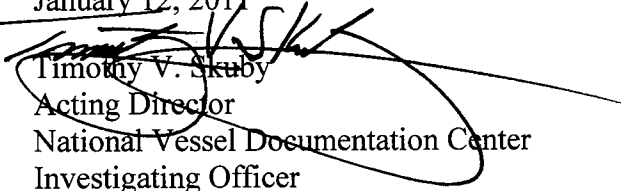




## MEMORANDUM

**Date:** January 12, 2011

**From:**  Timothy V. Skuby  
Acting Director  
National Vessel Documentation Center  
Investigating Officer

**To:** Kevin Cook, RADM  
CG-54

**Subject:** Investigation into the U.S. Citizenship status of Trico Marine Services, Inc. and its Subsidiaries and Affiliates owning vessels with Certificates of Documentation with Coastwise Endorsements

**Ref:** (a) Convening Order dated December 1, 2009  
(b) Administrative Investigations Manual, COMDTINST M5830.1A, Chapter 5, Exhibit 5-A

### Preliminary Statement

1. Per **Reference (a)**, I have concluded a Standard Investigation into the U.S. citizenship status of Trico Marine Services, Inc. ("TMSI") and its subsidiaries and affiliates owning vessels with Certificates of Documentation with coastwise endorsements and, as directed by reference (a), hereby submit this investigative report in accordance with the format of **Reference (b)**.
2. This investigation was prompted by the receipt of serious, credibly documented allegations challenging the U.S. citizenship of TMSI from the law firm of Holland & Knight, as counsel to Kistefos AS ("Kistefos"), an investment firm in Oslo, Norway, and a stockholder, acknowledged by both Kistefos and TMSI to be a non-citizen stockholder, of TMSI. The initial letter received from counsel to Kistefos, together with supplemental letters and correspondences, with attachments, are incorporated herein by reference as **Exhibits 3/A-3/O**.
3. The law which establishes the applicable standard for U.S. citizenship of entities, as an eligibility requirement for those entities which seek to own vessels documented with Certificates of Documentation endorsed for coastwise trade, is codified at 46 U.S.C.

§ 50501. With regard to the requirement for U.S. citizen ownership interest in such entities it provides, in pertinent part, as follows:

**“§50501. Entitles deemed citizens of the United States.**

(a) **In general.**---In this subtitle, a corporation, partnership, or association is deemed to be a citizen of the United States only if the controlling interest is owned by citizens of the United States. However, if the corporation, partnership, or association is operating a vessel in the coastwise trade, at least 75 percent of the interest must be owned by citizens of the United States.

.....

(d) **Determination of 75 percent corporate interest.**---At least 75 percent of the interest in a corporation is owned by citizens of the United States under subsection (a) only if---

- (1) title to at least 75 percent of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;
- (2) at least 75 percent of the voting power in the corporation is vested in citizens of the United States;
- (3) there is not contract or understanding by which more than 25 percent of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and
- (4) there is no other means by which control of more than 25 percent of any interest in the corporation is given to or permitted to be exercised by a person not a citizen of the United States.”

Briefly stated, and as pertinent to the present investigation, the statute requires that 75% of the ownership interest in a vessel owning entity, as evidenced primarily by title and voting power, must be vested in U.S. citizens in order for that entity to be eligible to document and operate vessels in the coastwise trade.

4. In addition, where title to a vessel is held by an entity comprised, in whole or in part, of other entities, further clarification of the applicable standard for stock or equity ownership is found at 46 C.F.R. § 67.31(d), as follows:

**“§67.31 Stock or equity interest requirements.**

.....

(d) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a

citizen eligible to document vessels in its own right with the trade endorsement sought.”

Again, briefly stated, the regulation expresses the requirement that, in order for a vessel owning entity, which is comprised of or under the ownership of other entities, to be eligible to document and operate vessels in the coastwise trade, “the 75 percent citizenship requirement [of section 2] apply[ies] to each corporation in the ownership chain.” Conoco, Inc. v. Skinner, 970 F. 2d 1206, 1212 (3<sup>rd</sup> Cir. 1992). Each entity contributing to the vessel owning entity’s eligibility must itself be eligible to document and operate vessels in the coastwise trade. Consequently, if any of those contributing entities are comprised of or under the ownership of other entities, each such entity contributing to that contributing entity’s eligibility must also be eligible to document and operate vessels in the coastwise trade. And so on up the “ownership chain”.

This regulatory requirement is also expressly set forth in the Coast Guard’s Application For Initial Issue, Exchange, Or Replacement Of Certificate Of Documentation; Redocumentation (CG-1258) (**Exhibit 2/W**) which requires corporations, as applicants for documentation of vessels with coastwise endorsements, to certify as to the “percentage of stock owned by U.S. citizens eligible to document vessels in their own right, with the endorsement(s) sought on this application.”

This principle has been upheld by the NVDC even in the case of publicly traded companies. A determination letter dated November 21, 1991, issued by the NVDC in the case of Textron, Inc., a publicly traded company, is a case in point. It articulated the principle as follows:

“The mere fact that a corporation or individual has an address in the U.S. does not necessarily mean that that person is a citizen. Moreover, if stock in Textron is owned by entities other than natural persons, each entity which contributes to the stock interest qualifications for coastwise trade must be a citizen eligible in its own right to document vessels for use in coastwise trade. (46 C.F.R. 67.03-2(b)) It is highly probable that at least some of Textron’s publicly traded stock is owned by corporations or partnerships.

5. Finally, the general requirements for corporations (and entities deemed comparable to corporations, such as certain limited liability companies) to document vessels, and specifically, to document vessels with coastwise endorsements, are set forth in regulations which implement the requirements of 46 U.S.C. § 50501 at 46 C.F.R. § 67.39, as follows:

**“§67.39 Corporation**

- (a) For the purpose of obtaining a registry or a recreational endorsement, a corporation meets citizenship requirements if:
  - (1) It is incorporated under the laws of the United States or of a State;
  - (2) Its chief executive officer, by whatever title, is a citizen;

- (3) Its chairman of the board of directors is a citizen; and
- (4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

.....

- (c) For the purpose of obtaining a coastwise endorsement, a corporation meets citizenship requirements if:
  - (1) It meets the requirements of paragraph (a) of this section and at least 75% of the stock interest in the corporation is owned by citizens....”

Thus, for a corporation (or comparably organized limited liability company) to qualify as a U.S. citizen for purposes of documenting a vessel with a coastwise endorsement, all of the listed requirements must be met. The fact that such an entity might be organized in a State of the United States is, by itself and absent satisfaction of the other requirements, insufficient to qualify that entity to document a vessel at all, let alone to document a vessel with a coastwise endorsement.

- 6. As a publicly traded company, the ownership interests in TMSI can and will be subject to frequent change. Consequently, this investigation elected to take “snapshots” of TMSI’s ownership interests by examining those ownership interests as of the close of trading on the last trading day of each of the following calendar quarters (each an “Effective Date”): 3Q2008 (September 30, 2008); 4Q2008 (December 31, 2008); 1Q2009 (March 31, 2009); 2Q2009 (June 30, 2009); 3Q2009 (September 30, 2009); 4Q2009 (December 31, 2009); and 1Q 2010 (March 31, 2010). Thus, the period examined by this investigation extended from September 30, 2008, through and including March 31, 2010 (the “Effective Period”).
- 7. As directed by the Convening Order, this investigation was undertaken in conjunction with the Maritime Administration. Close coordination and consultation with the Maritime Administration was maintained throughout the investigation, including in the development of this report. The views of the Maritime Administration as to the Findings of Fact, Opinions and Recommendations contained herein are set forth in Addendum A to this report, enclosed herewith.
- 8. The investigation proceeded by sending multiple written inquiries to TMSI pursuant to the authority of 46 U.S.C. § 12139(a), and concluded with a meeting with TMSI officers and counsel, as well as counsel for the Maritime Administration, on September 21, 2010.

The meeting was held at Coast Guard Headquarters and was attended by the following participants: (i) **representing TMSI:** Mr. Brett Cenkus, TMSI General Counsel; Mr. Constantine Papavizas, Winston & Strawn; and Mr. James Palenchar, Bartlit Beck Herman Palenchar & Scott LLP; (ii) **representing the U. S. Maritime Administration:** Mr. Murray Bloom, Mr. Michael Pucci, and Mr. Rand Pixa, Deputy Chief Counsel; (iii) **representing the U. S. Coast Guard, Chief Counsel’s Office:** (iii) Mr. Cal Lederer, Acting Judge Advocate General; RDML(sel) Frederick Kenney, Chief, Office of Maritime & International Law; and Mr. Alex Weller, Attorney-Advisor, Office of

Maritime & International Law; and (iv) **representing the U. S. Coast Guard, National Vessel Documentation Center:** Ms. Patricia Williams, Director; Mr. Timothy Skuby, Deputy Director; and Mr. Douglas Cameron, Staff Attorney.

TMSI’s representatives submitted various materials in support of its views to the participants (**Exhibit 2/Y**), offered a discussion of those materials supported by a Powerpoint presentation, and took questions from those present.

Following the meeting, and the departure of the TMSI representatives, a discussion ensued among the other participants (excluding Mr. Lederer, who had been called away by other commitments) at which time it was recommended by the Chief Counsel’s Office, and decided by the National Vessel Documentation Center, that, for the reasons set forth in **Opinions**, paragraph 4, and as further documented herein, there existed good and sufficient cause to proceed with this report, its Findings of Fact, Opinions, and Recommendations.

**Findings of Fact**

1. **THAT**, based upon records on file at the National Vessel Documentation Center (“NVDC”) as of the date of this report, Trico Marine Assets, Inc. (“TMAI”) is, or was during some portion of the Effective Period, the owner of record of eleven (11) vessels which are, or were during some portion of the Effective Period, documented with Certificates of Documentation endorsed for coastwise trade. Those vessels, together with their documentation status as of the first and last Effective Dates, are identified, by name and official number, as follows:

**TRICO MARINE ASSETS, INC.**

<u>O.N.</u>	<u>Vessel Name</u>	<u>Status-(As of 3/31/10)</u>	<u>Status-(As of 1st Eff. Date)</u>
588735	SOUTHERN RIVER	COD valid thru 9/30/10	Owned/documented by TMAI on 9/30/08
644766	POWDER RIVER	Deleted 12/2/09 sold foreign; no BS submitted	Owned/documented by TMAI on 9/30/08
649356	STONES RIVER	COD valid thru 12/31/10	Owned/documented by TMAI on 9/30/08
653020	WOLF RIVER	COD valid thru 12/31/10	Owned/documented by TMAI on 9/30/08
1212011	TRICO MYSTIC	COD valid thru 8/31/10	Owned/documented by TMAI on 9/30/08; received title by BS on 8/22/08
1215615	TRICO MOON	COD valid thru 11/30/10	Not owned by TMAI on 9/30/08; built by Bender Shipbuilding on 10/22/08 and transferred to TMAI by BS dated 11/12/08

610097	BUFFALO RIVER	Deleted 10/29/09 sold foreign; no BS submitted until 6/2010; BS dated 9/14/2009 to Naviera Mexicana de Servicios	Owned/documentated by TMAI on 9/30/08
643965	CANE RIVER	Deleted 7/6/09 sold; BS from TMAI dated 6/29/09	Owned/documentated by TMAI on 9/30/08
643978	CHARLES RIVER	Deleted 7/2/09 sold; BS from TMAI dated 6/29/09	Owned/documentated by TMAI on 9/30/08
600765	RUBY RIVER	TMAI sold to Arlet Services, LLC 12/9/09	Owned/documentated by TMAI on 9/30/08
603712	ELKHORN RIVER (now named JUDY FRANCES)	TMAI sold to Comar Marine Corp on 12/3/09	Owned /documentated by TMAI on 9/30/08
1073988	SPIRIT RIVER	COD valid thru 10/31/10	Owned/documentated by TMII on 9/30/08
1076616	HONDO RIVER	COD valid thru 10/31/10	Owned/documentated by TMII on 9/30/08

2. **THAT**, based upon records on file at the NVDC, Trico Marine International, Inc. (“TMII”) is, or was during some portion of the Effective Period, the owner of record of two (2) vessels which are, or were during some portion of the Effective Period, documented with Certificates of Documentation endorsed for coastwise trade. Those vessels, together with their documentation status as of the first and last Effective Dates, are identified, by name and official number, as follows:

<u>O.N.</u>	<u>Vessel Name</u>	<u>Status-(As of 3/31/10)</u>	<u>Status-(As of 1st Eff. Date)</u>
1073988	SPIRIT RIVER	COD valid thru 10/31/10	Owned/documentated by TMII on 9/30/08
1076616	HONDO RIVER	COD valid thru 10/31/10	Owned/documentated by TMII on 9/30/08

3. **THAT**, TMAI is a wholly-owned subsidiary of TMSI, a publicly traded corporation, and TMII is a wholly-owned subsidiary of TMAI and an indirect wholly-owned subsidiary of TMSI (**Exhibit 2/M**); and

4. **THAT**, as direct or indirect wholly-owned subsidiaries of TMSI, the eligibility of each of TMAI and TMII to document vessels with coastwise endorsements is dependent upon the eligibility of TMSI, as a U.S. citizen, to document vessels in its own right with coastwise trade endorsements; and

5. **THAT**, based upon the information and documentation provided by TMSI (or, by inference, from information that TMSI failed to provide as requested) in response to our inquiries (**Exhibit 2/R**), the percentage of U.S. citizen ownership interest in TMSI (or, conversely, the percentage of non-citizen ownership in TMSI\*), as of each Effective Date, is found to be as follows:

**(a) Effective Date 3Q2008 (September 30, 2008)**

TMSI reported total shares outstanding of 15,181,987.

TMSI acknowledged non-citizen ownership by the following: (i) Kistefos AS as the owner of 3,285,959 shares or 21.64%; and (ii) Barclays PLC (Palomino Limited/Walkers SPV) as the owner of 42,652 shares or 0.28%. Thus, TMSI acknowledged non-citizen ownership of a total of 3,328,611 shares or 21.92%.

TMSI further acknowledged ownership by the following: (i) Bay Harbour Management, L.C. as the owner of 1,359,686 shares or 8.96%; (ii) Black River Asset Management LLC as the owner of 1,331,600 shares or 8.77%; (iii) Dimensional Fund Advisors LP as the owner of 1,279,356 shares or 8.43%; (iv) Whitebox Advisors, LLC as the owner of 717,989 shares or 4.73%; (v) Barclays Global Investors UK Holdings Limited as the owner of 508,167 shares or 3.35%; (vi) Barclays PLC (Barclays Capital Inc.) as the owner of 61,825 shares or 0.41%; and (vii) various others as the owners of 457,703 shares or 3.01%. Thus, TMSI acknowledged ownership by these (or related) entities of a total of 5,716,326 shares or 37.66%.

Contrary to the assertion by Kistefos that these entities were organized in and citizens of, respectively, (i) Cayman Islands, (ii) Cayman Islands, (iii) United Kingdom and Australia, (iv) British Virgin Islands, (v) United Kingdom, (vi) United Kingdom, and (vii) various foreign jurisdictions, TMSI asserted that actual beneficial ownership (as to which, see the discussion at **Opinions**, paragraphs 3 and 4) (c), provided to TMSI by **Exhibit 2/Q**) was held by affiliated entities organized in and citizens of, respectively, (i) U.S.(Florida), (ii) U.S.(Delaware), (iii) U.S.(Delaware), (iv) U.S.(Delaware), (v) U.S.(National and California), (vi) U.S. (Connecticut), and (vii) various U.S. jurisdictions.

Even accepting TMSI's assertion as to the actual entities which were the beneficial owners of these shares, it offered no evidence of the citizenship of these entities, despite repeated requests and opportunities to do so, other than their place of organization. No evidence was offered that they are citizens eligible to document vessels with coastwise endorsements in their own right. Consequently, we are left with no alternative but to conclude that these entities are not qualified to contribute to the ownership interest percentage of TMSI necessary to qualify it as eligible to document vessels with coastwise trade privileges.

**Thus, the total percentage of shares owned by entities either acknowledged by TMSI to be non-citizens (21.92%) or not established to be Jones Act citizens (37.66%) was 59.58%.**

**(b) Effective Date 4Q2008 (December 31, 2008)**

TMSI reported total shares outstanding of 15, 677,679.

TMSI acknowledged non-citizen ownership by the following: (i) Kistefos AS as the owner 3,535,959 shares or 22.55%; and (ii) Barclays PLC (Palomino Limited/Walkers SPV) as the owner of 50,686 shares or 0.32%. Thus, TMSI acknowledged non-citizen ownership of a total of 3,586,645 shares or 22.87%.

TMSI further acknowledged ownership by the following: (i) Bay Harbour Management, LC as the owner of 2,404,465 shares or 15.34%; (ii) Dimensional Fund Advisors LP as the owner of 1,215,886 or 7.76%; (iii) Black River Asset Management LLC as the owner of 1,017,500 shares or 6.49%; (iv) Barclays Global Investors UK Holdings Limited as the owner of 749,931 shares or 4.78%; (v) Whitebox Advisors, LLC as the owner of 613,266 shares or 3.91%; and (vi) various others as the owners of 206,434 shares or 1.32%. Thus, TMSI acknowledged ownership by these (or related) entities of a total of 6,207,482 shares or 39.60%.

The places of organization and citizenship of these entities were asserted by Kistefos, and contrarily by TMSI, as set forth in (a), above.

However, even accepting TMSI's assertion as to the actual entities which were the beneficial owners of those shares, with the only evidence offered as to the citizenship of these entities being their place of organization there is insufficient evidence to find that they are citizens eligible to document vessels with coastwise endorsements in their own right. Thus, we are left with no alternative but to conclude that they are not qualified to contribute to the ownership interest percentage of TMSI necessary to qualify it as eligible to document vessels with coastwise privileges.

**Thus, the total percentage of shares owned by entities either acknowledged by TMSI to be non-citizens (24.12%) or not established to be Jones Act citizens (38.28%) was 62.4%.**

**(c) Effective Date 1Q2009 (March 31, 2009)**

TMSI reported total shares outstanding of 16,294,850.

TMSI acknowledged non-citizen ownership by the following: (i) Kistefos AS as the owner of 3,535,959 shares or 21.07%; and (ii) Barclays PLC (Palomino Limited/Walkers



SPV) as the owner of 532 shares or 0.00%. Thus, TMSI acknowledged non-citizen ownership of a total of 3,536,491 shares or 21.07%.

TMSI further acknowledged ownership by the following: (i) Bay Harbour Management, L.C. as the owner of 2,404,465 shares or 14.76%; (ii) Dimensional Fund Advisors LP as the owner of 1,234,894 shares or 7.58%; (iii) Black River Asset Management LLC as the owner of 975,000 shares or 5.98%; (iv) Barclays Global Investors UK Holdings Limited as the owner of 743,343 shares or 4.56%; (v) Barclays PLC (Barclays Capital Inc.) as the owner of 71 shares or 0.00%; (vi) Whitebox Advisors, LLC as the owner of 613,266 shares or 3.76%; and (vii) various others as the owners of 79,766 shares or 0.49%.. Thus, TMSI acknowledged ownership by these (or related) entities of a total of 6,050,805 shares or 37.13%.

The places of organization and citizenship of these entities were asserted by Kistefos, and contrarily by TMSI, as set forth in (a), above.

However, even accepting TMSI's assertion as to the actual entities which were the beneficial owners of those shares, with the only evidence offered as to the citizenship of these entities being their place of organization there is insufficient evidence to find that they are citizens eligible to document vessels with coastwise endorsements in their own right. Thus, we are left with no alternative but to conclude that they are not qualified to contribute to the ownership interest percentage of TMSI necessary to qualify it as eligible to document vessels with coastwise privileges.

**Thus, the total percentage of shares owned by entities either acknowledged by TMSI to be non-citizens (21.07%) or not established to be Jones Act citizens (37.13%) was 58.20%.**

**(d) Effective Date 2Q2009 (June 30, 2009)**

TMSI reported total shares outstanding of 19,111,876.

TMSI acknowledged non-citizen ownership by the following: (i) Kistefos AS as the owner of 3,535,959 shares or 18.50%; and (ii) Barclays PLC (Palomino Limited/Walkers SPV) as the owner of 532 shares or 0.00%.

Thus, TMSI acknowledged non-citizen ownership of a total of 3,536,491 shares or 18.50%.

TMSI further acknowledged ownership by the following: (i) Bay Harbour Management, L.C. as the owner of 2,454,465 shares or 12.84%; (ii) Dimensional Fund Advisors LP as the owner of 1,254,441 shares or 6.56%; (iii) Barclays Global Investors UK Holdings Limited as the owner of 709,063 shares or 3.71%; (iv) Barclays PLC (Barclays Capital Inc.) as the owner of 71,600 shares or 0.37%; (v) Whitebox Advisors, LLC as the owner of 603,476 shares or 3.16%; (vi) Black River Asset Management LLC as the owner of 190,000 shares or 0.99%; and (vii) various others as the owners of 585,908 shares or

3.07%. Thus, TMSI acknowledged ownership by these (or related) entities of a total of 5,868,953 shares or 30.70%.

The places of organization and citizenship of these entities were asserted by Kistefos, and contrarily by TMSI, as set forth in (a), above.

However, even accepting TMSI's assertion as to the actual entities which were the beneficial owners of those shares, with the only evidence offered as to the citizenship of these entities being their place of organization there is insufficient evidence to find that they are citizens eligible to document vessels with coastwise endorsements in their own right. Thus, we are left with no alternative but to conclude that they are not qualified to contribute to the ownership interest percentage of TMSI necessary to qualify it as eligible to document vessels with coastwise privileges.

**Thus, the total percentage of shares owned by entities either acknowledged by TMSI to be non-citizens (18.50%) or not established to be Jones Act citizens (30.70%) was 49.20%.**

**(e) Effective Date 3Q2009 (September 30, 2009)**

TMSI reported total shares outstanding of 19,522,975.

TMSI acknowledged non-citizen ownership by the following: (i) Kistefos AS as the owner of 3,535,959 shares or 18.11%.

TMSI further acknowledged ownership by the following: (i) Bay Harbour Management, L.C. as the owner of 2,454,465 shares or 12.57%; (ii) Dimensional Fund Advisors LP as the owner of 1,322,910 shares or 6.78%; (iii) Whitebox Advisors, LLC as the owner of 930,933 shares or 4.77%; and (iv) Barclays Global Investors UK Holdings Limited as the owner of 453,523 shares or 2.32%; and (v) various others as the owners of 87,397 shares or 0.45%. Thus, TMSI acknowledged that these (or related) entities owned a total of 5,249,228 shares or 26.89%.

The places of organization and citizenship of these entities were asserted by Kistefos, and contrarily by TMSI, as set forth in (a), above.

However, even accepting TMSI's assertion as to the actual entities which were the beneficial owners of those shares, with the only evidence offered as to the citizenship of these entities being their place of organization there is insufficient evidence to find that they are citizens eligible to document vessels with coastwise endorsements in their own right. Thus, we are left with no alternative but to conclude that they are not qualified to contribute to the ownership interest percentage of TMSI necessary to qualify it as eligible to document vessels with coastwise privileges.

**Thus, the total percentage of shares owned by entities either acknowledged by TMSI to be non-citizens (18.11%) or not established to be Jones Act citizens (26.89%) is 45%.**

**(f) Effective Date 4Q2009 (December 31, 2009)**

TMSI reported total shares outstanding of 19,538,017.

TMSI acknowledged non-citizen ownership by the following: (i) Kistefos AS as the owner of 3,535,959 shares or 18.10%.

TMSI further acknowledged ownership by the following: (i) Dimensional Fund Advisors LP as the owner of 1,428,558 shares or 7.31%; (ii) Whitebox Advisors, LLC as the owner of 983,834 shares or 5.04%; and (iii) Barclays Global Investors UK Holdings Limited as the owner of 19,925 shares or 0.10%; and (iv) various others as the owners of 246,020 shares or 1.26%. Thus, TMSI acknowledged that these (or related) entities owned a total of 2,678,337 shares or 13.71%.

The places of organization and citizenship of these entities were asserted by Kistefos, and contrarily by TMSI, as set forth in (a), above.

However, even accepting TMSI's assertion as to the actual entities which were the beneficial owners of those shares, with the only evidence offered as to the citizenship of these entities being their place of organization there is insufficient evidence to find that they are citizens eligible to document vessels with coastwise endorsements in their own right. Thus, we are left with no alternative but to conclude that they are not qualified to contribute to the ownership interest percentage of TMSI necessary to qualify it as eligible to document vessels with coastwise privileges.

**Thus, the total percentage of shares owned by entities either acknowledged by TMSI to be non-citizens (18.10%) or not established to be Jones Act citizens (13.71%) is 31.81%.**

**(g) Effective Date 1Q2010 (March 31, 2010)**

TMSI reported total shares outstanding of 19,538,017.

TMSI acknowledged non-citizen ownership by the following: (i) Kistefos AS as the owner of 3,535,959 shares or 18.10%.

TMSI further acknowledged ownership by the following: (i) Dimensional Fund Advisors LP as the owner of 1,399,374 shares or 7.16%; (ii) Whitebox Advisors, LLC as the owner of 898,834 shares or 4.60%; Barclays Global Investors UK Holdings Limited as the owner of 23,583 shares or 0.12%; and (iv) various others as the owners of 236,027 shares or 1.21%. Thus, TMSI acknowledged that these (or related) entities owned a total of 2,557,818 shares or 13.09%.

The places of organization and citizenship of these entities were asserted by Kistefos, and contrarily by TMSI, as set forth in (a), above.

However, even accepting TMSI's assertion as to the actual entities which were the beneficial owners of those shares, with the only evidence offered as to the citizenship of these entities being their place of organization there is insufficient evidence to find that they are citizens eligible to document vessels with coastwise endorsements in their own right. Thus, we are left with no alternative but to conclude that they are not qualified to contribute to the ownership percentage of TMSI necessary to qualify it as eligible to document vessels with coastwise privileges.

**Thus, the total percentage of shares owned by entities either acknowledged by TMSI to be non-citizens (18.10%) or not established to be Jones Act citizens (13.09%) is 31.19%; and**

6. **THAT**, TMSI has acknowledged (**Exhibit 2/R**) that its Certificate of Incorporation includes a mechanism to declare certain shares as "Excess Shares", and thus not entitled to exercise voting rights or to receive dividend or distributions, to the extent that the ownership of such shares would jeopardize TMSI's Jones Act compliance. However,
7. TMSI has also acknowledged (**Exhibit 2/R**) that it has never determined that "Excess Shares" existed. Consequently, none of the shares owned by any of the entities described in Findings 5(a) through (g), above, had been determined by TMSI to have been Excess Shares; and
8. **THAT**, on the basis of the findings set forth above, as of the close of trading on the last trading day of each of 3Q2008, 4Q2008, 1Q2009, 2Q2009, 3Q2009, 4Q2009 and 1Q2010 (each an "Effective Date") the percentage of U.S. citizen stock or equity ownership in TMSI failed to equal or exceed the legally required minimum of 75% (or, conversely, that the percentage of non-U.S. citizen stock or equity ownership in TMSI exceeded the legally-permissible limit of 25%), as to each such Effective Date; and
9. **THAT**, on the basis of the findings set forth above, and in light of the opinions set forth below, TMSI failed to qualify as a U.S. citizen eligible in its own right to document vessels with coastwise endorsements throughout the period from Effective Date 3Q2008 (September 30, 2008) through and including Effective Date 1Q2010 (March 31, 2010) (the "Non-Compliance Period"), at a minimum\*\*; and
10. **THAT**, as a consequence of the failure of TMSI to qualify as a U.S. citizen eligible in its own right to document vessels with coastwise endorsements during the Non-Compliance Period, at a minimum\*\*, and because the eligibility of TMAI and TMII is dependent upon the eligibility of TMSI, TMAI and TMII each also failed to qualify as U.S. citizens for the purpose of documentation of vessels with coastwise endorsements and the operation of those vessels in the coastwise trade during the Non-Compliance Period, at a minimum\*\*, as well; and

11. **THAT**, on the basis of the findings set forth above, and in light of the opinions set forth below, each of the vessels owned and documented with coastwise endorsements by TMAI and TMII was in violation of the documentation laws for the continuous number of days commencing with the later of the first Effective Date (September 30, 2008), or the date on which any such vessel was first owned and documented by either TMAI or TMII if later than the first Effective Date, and extending continuously until the earlier of the last Effective Date (March 31, 2010), or the date on which any such vessel was either sold, deleted from documentation, or its Certificate of Documentation expired without renewal (“Vessel Violation Days”). As such, the Vessel Violation Days for each vessel of each of TMAI and TMII are, at a minimum\*\*, as follows:

**TRICO MARINE ASSETS, INC.**

<u>Official Number</u>	<u>Vessel Name</u>	<u>Vessel Violation Days</u>
588735	SOUTHERN RIVER	548
644766	POWDER RIVER	428
649356	STONES RIVER	548
653020	WOLF RIVER	548
1212011	TRICO MYSTIC	548
1215615	TRICO MOON	505
610097	BUFFALO RIVER	349
643965	CANE RIVER	272
643978	CHARLES RIVER	272
600765	RUBY RIVER	435
603712	ELKHORN RIVER	429

**TOTAL VESSEL VIOLATION DAYS: 4,882**

**TRICO MARINE INTERNATIONAL, INC.**

<u>Official Number</u>	<u>Vessel Name</u>	<u>Vessel Violation Days</u>
1073988	SPIRIT RIVER	548
1076616	HONDO RIVER	548

**TOTAL VESSEL VIOLATION DAYS: 1096**

12. **THAT**, Finally, the Non-Compliance Period encompassed a period during which, as to each of the identified vessels, TMAI or TMII was required to renew the endorsements on the vessel’s Certificate of Documentation. Renewing Endorsements on a Certificate of Documentation (CG-1280) (**Exhibit 2/X**) requires that the vessel owner execute the following renewal certification:

“I CERTIFY THAT THE RECITATIONS CONCERNING VESSEL NAME, TONNAGE, DIMENSIONS, PROPULSION, **OWNERSHIP**, HAILING PORT, RESTRICTIONS, **ENTITLEMENTS AND ENDORSEMENTS** CONTAINED IN

THE CERTIFICATE OF DOCUMENTATION REMAIN ABSOLUTELY THE SAME” (emphasis added)

As such, we also find that those certifications were incorrect when made as these vessels would not then have been entitled to coastwise endorsements.

**Opinions**

1. It is a long and well-established practice under the vessel documentation laws and their administration by the NVDC that the application for a Certificate of Documentation with a trade endorsement of any kind by an applicant is accepted and processed based upon the self-certification by the applicant as to its, and the vessel’s, qualifications for a Certificate of Documentation with the particular endorsement sought. Thus, in the case of citizenship, 46 C.F.R. § 67.43 establishes a rebuttable presumption for administrative purposes that an applicant is a United States citizen by the receipt by the NVDC of a properly completed form CG-1258. Since the process relies on self-certification, however, that presumption is rebuttable and, when evidence of possible non-qualification is found, the burden is upon the applicant to establish its qualifications. It was clearly so stated in the context of the discussion of the Coast Guard’s reasons for rejection of the so-called “fair inference rule”, as it would have applied to publicly traded corporations, at 58 FR 60256, 60259 (November 15, 1993), as follows:

“The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. law and acquire trading privileges. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system. **Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes.**”

As referenced in the Findings of Fact herein, the SEC filings received as part of this investigation, both from Holland & Knight in support of their allegations that TMSI did not qualify as a U.S. citizen eligible to document vessels for the coastwise trade, and received from TMSI itself, raised substantial questions as to the citizenship, in particular, of certain institutional holders of TMSI’s stock. Moreover, to the extent that the shares held by those entities contributed to, or were necessary for TMSI to establish, its satisfaction of the requirement that 75% of its ownership interest be held by coastwise qualified U.S. citizens, their citizenship was placed directly in issue.

By our inquiries, TMSI was asked directly and offered repeated opportunities, among other things, to provide support for its contention (and the requirements of applicable law) that those entities were, in fact, U.S. citizens eligible to document vessels, in their own right, with coastwise endorsements. In response, it asserted that the relevant entities were organized in a State of the United States. However, it provided no evidence or

support for the contention that any other of the requirements for that status had been met. Rather, it noted that those entities were “to the best of our knowledge” (**Exhibit 2/M at page 3**) U.S. citizens eligible to own and operate coastwise-eligible vessels and that, in some cases, a person authorized to exercise voting power on behalf of the entity was a U.S. citizen (**Exhibit 2/U**).

Thus, the only support offered by TMSI in support of the contention that the requirements of applicable law had been satisfied as to those entities, which were necessary contributors to the ownership interest of TMSI necessary to qualify it (and, thereby, qualify TMAI and TMII) for coastwise eligibility, was (i) that those entities were organized in a State of the United States, (ii) that, in some cases, a U.S. citizen exercised voting power (insufficient by themselves for an entity to qualify for a Certificate of Documentation with any endorsement, let alone a coastwise endorsement), and (iii) “the best of [its] knowledge.”

On the basis of this state of the evidence, and in light of the statements noted above with regard to the burden on those who would seek coastwise privileges to be prepared to prove their eligibility, it is reasonable to infer, and by that inference to find as fact, that TMSI chose not to offer any such proof of the eligibility of those entities because it cannot; and, further, that it cannot because they are not.

2. It is reasonable to infer, and on the basis of that inference to further find as fact, that, in light of the finding that non-citizen ownership in TMSI exceeded, and exceeded by wide margins, the legally-permissible limit for non-citizen ownership as of each Effective Date, TMSI presumptively exceeded the legally-permissible limit during the periods between Effective Dates and, therefore, during the entire period bounded by the earliest and latest of those Effective Dates, at a minimum\*\*.
3. By e-mail dated March 29, 2010, (**Exhibit 2/O**) counsel to TMSI submitted certain questions and requests for clarification to the Coast Guard concerning applicable laws and regulations, and the Coast Guard’s view of both as applied to the facts in this case. By letter dated April 13, 2010, (**Exhibit 2/Q**), the Coast Guard responded. Those exhibits are incorporated by reference herein in full. However, since these responses are particularly germane to the issues raised by this case, we repeat those responses, close to in full, as follows:
  - (a) Coast Guard regulations at 46 C.F.R. §67.31 and § 69.39(c)(1) do not expressly define the cited terms: “title”, “ownership of equity”, “stock interest” or “beneficial ownership”. However, those regulations are promulgated to implement the vessel documentation and citizenship statutory requirements in title 46, U.S. Code for a vessel to be privileged to engage in the coastwise trade. The controlling interest in corporations can take many different forms. Indeed, as you have noted, the equity stock can be held by a relatively few individuals or entities, as in a closely-held corporate organization, or, as in the case of Trico, can be publicly held and traded on electronic or other stock exchange(s). Consequently, it is considered preferable

not to define those terms individually in the regulations because such would have the disadvantage of not being able to stay current with evolving corporate financial and control structures. Instead, the Coast Guard has historically adopted and applied a practical approach of interpreting and applying them in accordance with the requirements of the relevant statute, commonly known as the Jones Act and currently codified at 46 U.S.C. § 50501.

- (b) 46 U.S.C. § 50501 specifies, *inter alia*, that a corporation is deemed a citizen of the United States only if the controlling interest is owned by citizens of the United States. Additionally, if the corporation is operating a vessel in the coastwise trade, at least 75 percent of the interest must be owned by citizens of the United States. This 75% ownership requirement is further explained in the statute to exist, “only if—(1) title to at least 75 percent of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States; (2) at least 75 percent of the voting power in the corporation is vested in citizens of the United States; (3) there is no contract or understanding by which more than 25 percent of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and (4) there is no other means by which control of more than 25 percent of any interest in the corporation is given to or permitted to be exercised by a person not a citizen of the United States.”
- (c) The SEC regulatory definition of “beneficial ownership” in 17 C.F.R. § 240.13d-3(a)<sup>1</sup> appears consistent with the description of “controlling interest” in 46 U.S.C. § 50501, and therefore may be useful, to vessel owners and operators in documenting their U.S. citizenship status for purposes of the Jones Act. [<sup>1</sup>That section provides, “For the purposes of section 13(d) and 13(g) of the Act a beneficial owner of a security includes any persons who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or (2) Investment power which includes the power to dispose, or to direct the disposition of, such security.”]
- (d) The Coast Guard is confident that there is no confusion in the regulated industry as to the meaning of those terms, or what the Jones Act requires. Indeed, in its latest annual report form 10 K filed with the Securities and Exchange Commission, Trico accurately describes its Jones Act obligation, on page 14, as follows:

“As we operate vessels in the U.S., we are also subject to the Shipping Act of 1916, as amended, (“the 1916 Act), and the Merchant Marine Act of 1920, as amended, (“1920 Act” or “Jones Act” and together with the 1916 act and implementing of [sic] regulations (Shipping Acts), which govern, among other things, the ownership and operation of vessels used to carry cargo between U.S. ports. The Shipping Acts require that vessels engaged in the U.S. coastwise trade and other services generally be owned by U.S. citizens and built in the U.S. For a corporation engaged in the U.S. coastwise trade to be deemed a U.S. citizen: (i)



the corporation must be organized under the laws of the U.S. or a state, territory or possession thereof; (ii) each of the president or other chief executive officer and the chairman of the board of directors of such corporation must be a U.S. citizen; (iii) no more than 25% of the directors of such corporation necessary to the transaction of business of the corporation may be non-U.S. citizens; (iv) at least 75% of the interest in such corporation must be owned by U.S. citizens (as defined in the Shipping Acts). The Jones Act also treats as a prohibited “controlling interest” any (i) contract or understanding by which more than 25% of the voting power in the corporation may be exercised, directly or indirectly, on behalf of a non-U.S. citizen and (ii) the existence of any other means by which control of more than 25% of any interest in the corporation is given to or permitted to be exercised by a non-U.S. citizen. Our charter contains provisions that limit non-U.S. citizen ownership of our stock and the status of certain officers and directors in the same manner as the Jones Act and authorizes us and our Board of Directors to take actions designed to effectuate the purpose of permitting us to remain eligible to engage in the U.S. coastwise maritime trade.”

- (e) However, the Coast Guard notes that it has also published guidance in the Federal Register, as follows [and as previously quoted under **Opinions**, paragraph 1, above]:

“The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. flag and acquire trading privileges. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system. Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes.” 58 FR 60256, 60258 (November 15, 1993)

- (f) It is the corporate vessel owner’s obligation, if it chooses to issue equity securities which are traded on national exchanges, thus subjecting it to SEC regulation, and if it wishes to have the privilege of engaging in the coastwise trade under the Jones Act, to structure itself and its equity securities in such a way, and to put in place procedures and mechanisms by which it can satisfy its obligations under the Jones Act. If, and to the extent that the NOBO<sup>2</sup> list is an element of and assists the vessel owner corporation in documenting satisfaction of its obligations under the Jones Act, the Coast Guard has no objection. On the other hand, if the corporation has structured itself such that the identity of the owner of one or more securities, representing a controlling interest of all or any part of the 75 percent necessary for, and by which the corporation seeks to establish its privilege to engage in the coastwise trade, is a beneficial owner, and that beneficial owner objects to revealing his / her / its identity, and that identity is a necessary element of the vessel owner corporation satisfying its obligation of establishing that the security is owned by a U.S. citizen, then the Coast Guard would deem that vessel owner to have failed to

demonstrate, “that at least 75 percent of the interest in the corporation is owned by citizens of the United States.” 46 U.S.C. § 50501; and 46 C.F.R. § 67.31. [<sup>2</sup>“NOBO” is a reference to “non-objecting beneficial owners”, or beneficial owners who do not object to their identities being revealed, periodic lists of which are obtainable from the SEC. Stockholders who object to their identity being revealed are referred to as “objecting beneficial owners” or “OBOs”. See 17 C.F.R. § 240.14b-1]

- (g) [I]f the company’s stock is owned by a mutual fund, such as Vanguard, Fidelity or any of the other thousands of funds, or similar investment structure, whose essential feature is that the individual mutual fund beneficial account holders have no voice in the voting, disposition or other control (or individual distributions or dividends) of those company shares by the fund (or any other investment the fund makes), the Coast Guard does not look beyond the citizenship of the mutual fund company to the individual fund account holders’ citizenship. However, we do not understand [Trico’s] reference to the DTC participants (Goldman Sachs, PNC Bank, and JP Morgan) in [Trico’s] question is with respect to those institution’s mutual funds or similar investment vehicles. Instead, we understand that they are similar to what Trico’s letter of January 18, 2010, referred to when it described the DTC participants in the company’s securities -- that they are “the investment advisors, banks and brokerages, who pass the voting rights and economics of the account on their account holders, i.e. their customers who may be individuals, companies, trusts [and] other entities.” In this latter case, the Coast Guard does look to the citizenship of the beneficial owner, as well as the holder of record. See, 46 U.S.C. § 50501(d).
- (h) [A] Jones Act company may not delegate its Jones Act compliance responsibilities to DTC. It may not, for example, simply state that its equity securities are registered with DTC, and point to and rely exclusively on a mere demonstration that the requisite 75 percent (or more) of its securities (without sufficient information and evidence as to the structure of the corporation and restrictions on the transfer of those securities to non-U.S. citizens) are held by participants in DTC and are entered in the Seg-100 System to satisfy its obligations under the Jones Act. The structure of the corporation may be demonstrated, for instance (and by example and not as a limitation on how the company can make the requisite showing), by evidence that the Articles of Incorporation and Bylaws provide that ownership of the sufficient equity or stock interest is restricted to U.S. citizens, and that the stock certificates themselves bear visible evidence of that restriction to ensure no possibility of failure to meet the 75% statutory standard. Additionally, (and again) solely by way of example and not as a suggestive methodology, those same corporate documents might contain additional measures to ensure that there are sufficient safeguards built in to prevent (and/or remedy) an inadvertent transfer to non-U.S. citizens of any of that equity interest that is restricted to U.S. citizens, so that there is no possibility of the company falling below the 75% threshold of U.S. citizenship.

4. Finally, at the meeting held on September 21, 2010, Trico representatives presented their arguments as to why the USCG should find that Trico Marine Services, Inc. had fully

complied with its Jones Act obligations, insofar as determining the citizenship of its shareholders. Essentially, it argued that it had done all it could to verify the U.S. citizenship status of those entities that held its common stock, given the fact that SEC rules allow Objecting Beneficial Owners (the so-called “OBO rules”) to object to their identities being disclosed to anyone but their broker/dealer. Trico further argued that because of the DTC, and its “Seg-100” system, and the fact that the broker/dealer members of DTC obtained from each of their customers a citizenship declaration that was consistent with the “maritime law and regulations” (the Jones Act restrictions on alien ownership or control of equity shares), that it had complied. Trico further presented a “doomsday” scenario for all Jones Act publicly traded companies by arguing that they did no more (and indeed could do no more) than what Trico did in that regard. Thus, if Trico were to be found to be non-compliant, it would have the effect of a finding that no publicly traded company was in compliance, thus forcing all publicly traded Jones Act companies being prohibited from engaging in the coastwise trade.

The flaw in Trico’s argument lies in its ignoring two fundamental principles: (1) the Jones Act trade is a restrictive trade, access to which is a privilege dependent on strict observance of the requirements that, among other things, not more than 25% of the control or equity shares be held by aliens, and, more critically for the present analysis, that the issuer of shares traded on a public exchange must take steps to ensure that its shares never fall into non-compliance; and (2) by reliance on the DTC and the Seg-100 system as the only method by which it attempts to satisfy this inquiry, and because it has not even attempted to show, much less shown, the U.S. citizenship of that portion of the 75% of its equity shares, it has not carried the burden of one who would participate in that restrictive trade to demonstrate its eligibility. In that respect it bears emphasis that the Coast Guard has by both regulation and by long-standing policy insisted that entities (in this case corporate hedge funds and other business entities) that contribute to the 75% U.S. citizenship required to be eligible for an owned vessel to be documented with a coastwise endorsement must themselves be eligible to document vessels with coastwise endorsements in their own right. There was no showing by Trico representatives, despite repeated requests both in writing in advance of the meeting and at the meeting, to supply this critical information. At most, all that Trico showed in this respect, despite the repeated and pointed requests for details as to the citizenship of those 75% shareholders, was the “Foreign Segregation Detail Report” from the SEG-100 system and an excerpt from the Service Guide containing certain Rules and Procedures from DTC.

Significantly, those procedures contain the following caveat: ***“Information is not independently verified by DTC and is not intended to be a substitute for obtaining advice from an appropriate professional advisor.*** (emphasis added) “Therefore, Participants and other authorized users are advised to obtain and monitor information independently... DTC DOES NOT REPRESENT THE ACCURACY, ADEQUACY, TIMELINESS, COMPLETENESS, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY INFORMATION (AS DEFINED ABOVE) PROVIDED TO PARTICIPANTS AND OTHER AUTHORIZED USERS, WHICH IS PROVIDED AS-IS.... Further, such information is subject to change. Participants and other authorized users should obtain, monitor, and review independently any available

documentation relating to their activities and should verify independently information received from DTC.” (emphasis in original)

In response to queries during the meeting as to what it had done to independently verify the information it received from DTC, Trico responded that it had checked with its transfer agent, BNY Mellon, but had done nothing else. In response to the query as to what procedures it had put into place in its by-laws or otherwise to ensure that no more than 25% of its equity shares had either intentionally or unintentionally been transferred to an alien, and to invalidate the voting rights of such shares, Trico responded it had not done that because the percentage never exceeded what it considered the necessary threshold –24.9%–for such action. When asked what citizenship information the broker/dealers in its securities obtained from their customers, that is in the case of corporations or other business entities (see 46 CFR 67.31(d)) whether they were “documentation citizens eligible to engage in the coastwise trade”, Trico responded it had not done that; instead, it pleaded that it was prevented from doing that by the SEC’s OBO rules. Because of the privileged and restrictive nature of the Jones Act trade, the Coast Guard considers that more could be and in this case should have been done.

## **Recommendations**

1. As of the most recent Effective Date (March 31, 2010) examined, it was the finding of this investigation that TMSI did not qualify as a U.S. citizen eligible in its own right to document vessels with coastwise endorsements and that, consequently, neither TMAI nor TMII were so qualified. This investigation further found that TMSI, and consequently TMAI and TMII, failed to so qualify for a continuous period of time which extended as far back, at a minimum\*\*, as the initial Effective Date examined by this investigation (September 30, 2008). As a result of these findings, there is no reason to believe that TMSI (and, consequently, TMAI and TMII) currently qualify as U.S. citizens or that they did as of the most recent annual renewal (or reissuance) of the Certificates of Documentation with coastwise endorsements of the TMAI and TMII vessels. Consequently, we believe that sufficient cause exists for the Director, National Vessel Documentation Center, to act pursuant to the authority of 46 U.S.C. § 12135 and 46 C.F.R. § 67.173 to declare that the issuance of those Certificates of Documentation was improper and to further declare that they are, therefore, invalid and subject to cancellation. **THEREFORE, IT IS THE RECOMMENDATION OF THIS INVESTIGATION THAT THE DIRECTOR BE AUTHORIZED AND DIRECTED TO INVALIDATE AND CANCEL THE CERTIFICATES OF DOCUMENTATION OF THE TMAI AND TMII VESSELS IDENTIFIED HEREIN, IF ANY REMAIN DOCUMENTED AS OF THE DATE HEREOF\*\*\*, AND TO DO SO FORTHWITH.**
2. (a) 46 U.S.C. § 12151(a) provides that persons who commit violations of the documentation laws are liable to the United States Government for a civil penalty of not

more than \$10,000 and, further, that each day of a continuing violation is a separate violation.

**(b) FOR THE REASONS THAT FOLLOW, IT IS THE RECOMMENDATION OF THIS INVESTIGATION THAT, TAKING INTO ACCOUNT BOTH THE EXTENT OF THE VIOLATION BUT ALSO THE REALITIES OF COLLECTION IN LIGHT OF THE CURRENT FINANCIAL IMPAIRMENT OF TMSI, THERE IS REASONABLE JUSTIFICATION FOR THE DAILY DOLLAR AMOUNT OF THE CIVIL PENALTY TO BE SET AT A MINIMUM OF \$1,000.**

First, it should always be borne in mind that there is really no reason to believe that the Period of Non-Compliance did not commence well before the first Effective Date examined by this investigation, nor that it ceased as of the last Effective Date. If so, the number of Vessel Violation Days for each of the vessels owned and documented by these owners could be considerably more than the Period of Non-Compliance found. Second, the burden of persuasion that a civil penalty in a lesser daily dollar amount is warranted should, by all rights, fall to the owners. If, for example, they wish to argue that the daily dollar amount of the civil penalty ought not to exceed the average daily profitability of each vessel (or some other measure) it would then be incumbent upon them to open their books for independent audit in order to ascertain the necessary facts. There might then be some basis upon which to consider the appropriateness of a lesser penalty.

At the same time, however, we note that outside counsel to TMSI (see, **Exhibit 2/V**, e-mail from C. Papavizas dated September 9, 2010), has represented as follows:

“You should be aware that Trico Marine Services and related companies filed a Chapter 11 bankruptcy petition on August 25, 2010 in Delaware. At the present time, relevant parties are working hard on developing a reorganization plan. It is anticipated by company management that the terms of the company’s reorganization plan will be known within four to six weeks and that it is likely that existing equity holders will be wiped out and that bond holders will wind up with all of the company’s equity. In connection with reorganization, it is also anticipated that all seven of the company’s U.S.-flag vessels will be either sold or transferred. Three of the seven are chartered in and four are owned.”

In light of the seriously impaired financial condition that TMSI, and its subsidiaries, now find themselves in, it is also reasonable to take into account the realities of the collectability of a civil penalty in determining its amount.

**(c)** On the basis of the total number of Vessel Violation Days for each of the vessels owned by TMAI and TMII, and assuming that a civil penalty in the daily dollar amount of \$1,000 were to be assessed, the civil penalties in this case would be calculated as follows:

**TMAI: \$1,000 per day X 4,882 Vessel Violation Days = \$4,882,000**  
**TMII: \$1,000 per day X 1,096 Vessel Violation Days = \$1,096,000**

**TOTAL CIVIL PENALTY: \$5,978,000**

**THEREFORE, IT IS THE RECOMMENDATION OF THIS INVESTIGATION THAT CIVIL PENALTIES BE ASSESSED AGAINST EACH OF TMAI AND TMII IN THE MANNER AS CALCULATED ABOVE.**

(d) Alternatively, the deciding authority in this case could elect to consider that the violations at issue, relating as they do to the corporate ownership of the vessels, ought to be assessed on the basis of the number of days of non-compliance by the owner, alone, and not on the basis of each vessel owned and documented with a coastwise endorsement by that owner. If so, and assuming again the daily dollar amount of the civil penalty assessed is \$1,000, the civil penalties in this case would be calculated as follows:

**TMAI: \$1,000 per day X 548 Non-Compliance Days = \$548,000**

**TMII: \$1,000 per day X 548 Non-Compliance Days = \$548,000**

**TOTAL CIVIL PENALTY: \$1,096,000**

**HOWEVER, IT IS THE RECOMMENDATION OF THIS INVESTIGATION THAT CIVIL PENALTIES OUGHT, MORE APPROPRIATELY, BE ASSESSED ON A PER-VESSEL BASIS RATHER THAN A PER-OWNER BASIS.** Or, to put it another way, since the violations in this case relate to the issuance to, and operation of each vessel under the authority of, Certificates of Documentation endorsed for coastwise trade without proper eligibility, and Certificates of Documentation with those endorsements were issued to each vessel which then operated under that authority without being eligible to do so, each day of each vessel's improper documentation should form the basis for the assessment of a civil penalty. Also, to do otherwise would establish a precedent that would penalize owners of large fleets on a significantly less onerous basis than owners of small fleets or owners of single vessels.

3. 46 U.S.C. § 12151(b) also provides for the further penalty of seizure and forfeiture to the United States Government of the vessels in violation. **ALTHOUGH WE MAKE NO RECOMMENDATION AT THIS TIME AS TO THE APPLICABILITY OF THIS REMEDY, PENDING FURTHER FINDINGS AS TO THE UNDERLYING MENS REA OF THE VIOLATING ENTITIES SUFFICIENT TO SUPPORT SUCH ACTION, WE DO RECOMMEND THAT THE POSSIBILITY OF ACTION UNDER THIS PROVISION NOT BE FORECLOSED.**
4. In the course of discussions TMSI has repeatedly stated that it has handled its citizenship obligations no differently than other publicly traded companies in the industry and that, should the Coast Guard adhere to a "strict" interpretation of its published standards, companies could not comply or, if they were to attempt to do so, terrible economic consequences would befall them---the so-called "doomsday" scenario referred to under

**Opinions**, paragraph 4. We believe that there are workable mechanisms that can be put in place to assure compliance with a well known and well understood requirement. In fact, the discussion quoted earlier herein of the Coast Guard's rejection of the "fair inference rule" suggested one such possibility when it stated that "corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system" (58 FR 60256, 60259 (November 15, 1993)). TMSI, itself, included within its Certificate of Incorporation a mechanism to declare certain shares as "Excess Shares", and thus not entitled to exercise voting rights or to receive dividends or distributions to the extent that the ownership of such shares would jeopardize TMSI's Jones Act compliance. (See, **Findings of Fact**, paragraph 7) Unfortunately, TMSI also acknowledged that it never made a determination that "Excess Shares" existed. (See, **Findings of Fact**, paragraph 8) **HOWEVER, BECAUSE THIS CONCERN WAS RAISED, IT IS THE RECOMMENDATION OF THIS INVESTIGATION THAT CONSIDERATION BE GIVEN TO THE POSSIBILITY OF POSTING A NOTICE IN THE FEDERAL REGISTER WHEREBY THE COAST GUARD WOULD SOLICIT IDEAS FROM INDUSTRY AS TO HOW THEY COMPLY WITH THE COAST GUARD'S CITIZENSHIP STANDARD FOR PUBLICLY TRADED COMPANIES.**

### **Exhibits**

1. Convening Order dated December 1, 2009.
2. The documents sent to and received from TMSI in connection with this investigation are collected in a separate binder, incorporated by reference herein, and consist of the following:

**Exhibit 2/A-** E-mail dated November 30, 2009, from Allen Black, Winston & Strawn, to RDML William Baumgartner and other addressees.  
**Request for a meeting.**

**Exhibit 2/B-** E-mail dated December 2, 2009, from Constantine Papavizas, Winston & Strawn, to Patricia J. Williams, Director, NVDC, and reply e-mail dated December 2, 2009, from P. Williams.  
**Request for a meeting and denial of that request.**

**Exhibit 2/C-** Letter dated December 17, 2009, from P. Williams to TMAI and TMII, sent by U.S. Postal Service and forwarded by e-mail dated December 17, 2009, to C. Papavizas.  
**Initial request for information and documentation.**

**Exhibit 2/D-** E-mail dated December 22, 2009, from C. Papavizas to P. Williams and reply e-mail dated December 24, 2009, from P. Williams.  
**Request for a meeting and denial of that request.**

**Exhibit 2/E-** Letter dated January 18, 2010, from Rishi Varma, Chief Operating Officer, Senior Vice President and General Counsel, Trico, to P. Williams.  
**Response to initial request for information and documentation.**

**Exhibit 2/F-** Letter dated February 3, 2010, from Douglas Cameron, Staff Attorney, NVDC, by direction of P. Williams, to R. Varma.

**Second request for information and documentation.**

**Exhibit 2/G-** E-mail dated February 18, 2010, from D. Cameron to C. Papavizas.  
**Explanation for telephone calls not returned.**

**Exhibit 2/H-** Letter dated February 23, 2010, from C. Papavizas to Denise R. Krepp, Chief Counsel,  
U.S. Maritime Administration.  
**Request for form of affidavit.**

**Exhibit 2/I-** E-mail dated February 23, 2010, from C. Papavizas to D. Cameron.  
**Request for a meeting.**

**Exhibit 2/J-** E-mail dated February 24, 2010, from D. Cameron to C. Papavizas.  
**Denial of request for a meeting and offer of additional time to respond.**

**Exhibit 2/K-** E-mail dated February 24, 2010, from C. Papavizas to D. Cameron.  
**Additional time declined pending request for clarification of the applicable citizenship standard.**

**Exhibit 2/L-** Letter dated March 1, 2010, from P. Williams to C. Papavizas.  
**Denial of request for a meeting and or response to request for clarification of the applicable standard.**

**Exhibit 2/M-** Letter dated March 12, 2010, from R. Varma to P. Williams.  
**Response to second request for information and documentation.**

**Exhibit 2/N-** Letter dated March 24, 2010 from P. Williams to R Varma.  
**Third request for information and documentation.**

**Exhibit 2/O-** E-mail dated March 29, 2010, from A. Black to RADM William Baumgartner and other addressees.  
**Request for clarification of issues.**

**Exhibit 2/P-** E-mail dated April 1, 2010, from Michael Pucci, Maritime Administration to C. Papavizas.  
**Transmitted form of affidavit.**

**Exhibit 2/Q-** Letter dated April 13, 2010, from P. Williams to A. Black.  
**Response to request for clarification of issues and revised inquiry to Trico.**

**Exhibit 2/R-** Letter dated April 30, 2010, from R. Varma to P. Williams.  
**Response to revised inquiry.**

**Exhibit 2/S-** Letter dated May 10, 2010, from P. Williams to R. Varma.  
**Request to “unlock” certain password protected exhibits in their previews response and to provide their final response by May 28, 2010.**

**Exhibit 2/T-** Letter dated May 11, 2010, from R. Varma to P. Williams.  
**Password to certain exhibits in their previous response provided.**

**Exhibit 2/U-** Letter dated May 28, 2010 from R. Varma to P. Williams.  
**Final response to revised inquiry.**



**Exhibit 2/V-** E-mails dated September 7, 9, 13, 15, 16, and 21, 2010 from and to D. Cameron, A. Weller, Attorney Advisor, U.S. Coast Guard, Maritime & International Law, and C. Papavizas.

**Invitation to meet and subsequent correspondence.**

**Exhibit 2/W-** Application For Initial Issue, Exchange, Or Replacement Of Certificate Of Documentation; Redocumentation (CG-1258).

**Exhibit 2/X-** Renewal Of Endorsements On A Certificate Of Documentation (CG-1280).

**Exhibit 2/Y-** Materials provided by C. Papavizas and co-counsel at meeting on September 21, 2010 and by e-mails dated September 22 and 30, 2010.

3. The documents received from the law firm of Holland & Knight immediately prior to and during the course of this investigation are collected in a separate binder, incorporated herein by reference, and consist of the following:

**Exhibit 3/A-** Letter date October 2, 2009, from Nancy Hengen and Stuart Dye, Holland & Knight, to Denise Krepp, Chief Counsel, Maritime Administration (and forwarded to the NVDC by the Maritime Administration).

**Outline of allegations of non-citizenship.**

**Exhibit 3/B-** Letter dated October 29, 2009, from N. Hengen and S. Dye to Patricia Williams, Director, NVDC.

**Outline of allegations and request for a meeting.**

**Exhibit 3/C-** Letter dated October 30, 2009, from N. Hengen and addressed to Commandant (CG-0941).

**Request for a meeting.**

**Exhibit 3/D-** Letter dated November 2, 2009, from N. Hengen to Douglas Cameron, Staff Attorney, NVDC, with enclosure.

**Binder of SEC filings enclosed.**

**Exhibit 3/E-** Letter dated November 11, 2009, from S. Dye and N. Hengen to CAPT Fred Kenney.

**Notification provided concerning recent SEC filings.**

**Exhibit 3/F-** Letter dated November 11, 2009, from N. Hengen and S. Dye to D. Krepp.

**Update of previous correspondence and request for clarification of position with respect to citizenship under Title XI.**

**Exhibit 3/G-** Letter dated November 24, 2009, from N. Hengen and S. Dye to D. Krepp.

**Update of previous information and filings.**

**Exhibit 3/H-** E-mail and fax dated December 9, 2009, from S. Dye to D. Cameron and reply e-mail dated December 9, 2009, from D. Cameron.

**Request for status of investigation Convening Order and reply.**

**Exhibit 3/I-** E-mail and fax dated December 17, 2009, from N. Hengen to D. Cameron, and e-mails dated December 18, 2009, from Thomas Willis, T L Willis LLC, to D. Cameron.

**Request for copy of the Convening Order.**

**Exhibit 3/J-** Letter dated January 4, 2010, from S. Dye to Kim Demory, Manager, FOIA Section.

**Request for vessel documentation under the FOIA.**

**Exhibit 3/K-**E-mail dated January 19, 2010, from S. Dye to D. Cameron and reply e-mail dated January 19, 2010, from D. Cameron.

**Allegations concerning the number of Directors asserted by Trico in connection with vessel forms CG-1258 and renewals.**

**Exhibit 3/L-** Letter dated January 21, 2010, from S. Dye to D. Cameron.

**Follow-up to e-mail dated January 19, 2010.**

**Exhibit 3/M-**Letter dated February 19, 2010, from Louise McAlpin, Holland & Knight, to various addressees at the Securities and Exchange Commission.

**Request for investigation of apparent violations of various securities laws.**

**Exhibit 3/N-** Letter dated February 25, 2010, from N. Hengen and S. Dye to D. Cameron.

**Request for conclusion to investigation.**

**Exhibit 3/O-**Letter dated February 26, 2010, from N. Hengen and S. Dye to D. Cameron.

**Update of previous information and filings.**

**Enclosures:** Addendum A

**Copy:** CG-094

CG-2

Office of Chief Counsel  
Maritime Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

\*Despite our repeated requests, TMSI declined to respond by recounting the beneficial owners of shares, including, in particular, those shares held by entities, which were said to comprise the required 75% of U.S. citizen ownership. Instead, they responded with information concerning the number of shares, and percentage, either acknowledged or alleged to be held by non-citizens. In doing so, they also focused on only those entities which had been alleged by Kistefos/Holland & Knight to be non-citizens. As long as the information that was provided, even though not wholly responsive, revealed that the percentage of shares held by non-Jones Act qualified U.S. citizens exceeded the 25% limitation, this investigation was able to proceed and to make Findings of Fact on the basis of that information. However, even in the event that such limited information were to reveal that the 25% limitation had not been exceeded, we would not then be able to make a Finding of Fact, conclusively, that U.S. citizenship had been established. Instead, we would then have no alternative but to insist upon a comprehensive response to our requests for information as to the beneficial ownership of the required 75%, as we had requested.

\*\*The earliest Effective Date that this investigation elected to examine was the last trading day of 3Q2008 (or, September 30, 2008). TMSI was determined not to have been

in compliance with U.S. citizen ownership interest requirements, and by a wide margin, as of that date. Had this investigation extended its inquiry further into TMSI's past, or should this investigation be continued for that purpose, it is logical to assume that the period of TMSI's non-compliance would be found to not have originated on that Effective Date.

\*\*\* Since March 31, 2010, and the vessel status indicated as of that date in Finding of Fact paragraph 1, for TMAI, and Finding of Fact paragraph 2, for TMII, the following vessels have been sold:

- (i) **As to TMAI:** SOUTHERN RIVER, O.N. 588735; STONES RIVER, O.N. 649356; WOLF RIVER, O.N. 653020; TRICO MOON, O.N. 1215615; and
- (ii) **As to TMII:** None

Consequently, as of the date of this report, the only remaining vessels documented as under the ownership of TMAI or TMII are the following:

- (i) **As to TMAI:** TRICO MYSTIC, O.N. 1212011; and
- (ii) **As to TMII:** SPIRIT RIVER, O.N. 1073988<sup>1</sup>; and HONDO RIVER, O.N. 1076616.

However, Abstracts of Title and Certificates of Ownership have periodically been requested as to all of these remaining vessels and, as earlier noted, on August 25, 2010, TMSI filed a petition for reorganization under Chapter 11 of the Bankruptcy Law. Since the request for an Abstract of Title and a Certificate of Ownership is often the precursor to the sale of a vessel, which has been the pattern in this case, it is possible that, by the time an order to invalidate and cancel the Certificates of Documentation of the remaining TMAI and TMII vessels is issued, none of such vessels will still be documented.

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<sup>1</sup> It is our understanding that a proposed sale foreign of the SPIRIT RIVER is currently pending approval by the Bankruptcy Court.

**ADDENDUM A**  
to  
**Report of Administrative Investigation of Trico Marine Services, Inc.**  
**dated January 12, 2011**

The Maritime Administration concurs with the Report's Findings of Fact with respect to each Effective Period under investigation.

With respect to the Report's Opinions, we note that the Maritime Administration may apply the fair inference rule under our regulations at 46 C.F.R. § 355.3(a) when making a citizenship determination. Under the fair inference rule, in order to prove U.S. citizen ownership in the required percentages for coastwise operation, 95 percent of the shares of the stock of each class or series must be shown to be held by persons having registered addresses within the United States to prove that 75 percent of the interest in the corporation is vested in citizens of the United States. 46 C.F.R. § 355.3(b). Given Kistefos AS's undisputed percentage of non-citizenship stock ownership of Trico Marine Services, Inc. during each Effective Period, we would not have been able to make a fair inference concerning the percentage of U.S. ownership at that tier of ownership.

The Maritime Administration recognizes the appropriateness of the measures that Coast Guard would take under its authority and regulations. On its part, the Maritime Administration declines to impose additional penalties for the following reasons. There is inadequate evidence in this case to prove that there has been a violation of 46 U.S.C. § 56101, which proscribes the transfer of a U.S.-flag vessel to non-citizens without the approval of the Maritime Administration. Although there is sufficient evidence to support a finding of a technical default by Trico in the Federal Ship Financing loan guarantee conditions applicable to the U.S. citizen ownership of the SPIRIT RIVER and HONDO RIVER, any action taken by the Maritime Administration on enforcing debt covenants will be accomplished in connection with its participation in the bankruptcy proceedings.