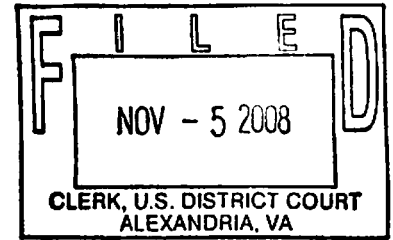


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



SHIPBUILDERS COUNCIL OF)
AMERICA, INC., et al.,)
Plaintiffs,)
)
v.)
)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY, et al.,)
Defendants,)
)
MATSON NAVIGATION COMPANY, INC.,)
Defendant-Intervenor.)

Case No. 1:07cv1234

ORDER

This matter is before the Court on (i) defendants' motion to dismiss; (ii) plaintiffs' motion for summary judgment; (iii) defendants' motion for summary judgment; and (iv) defendant-intervenor's motion for summary judgment. The motions have been fully briefed and the parties have presented oral argument. On September 30, 2008, an Order was entered that granted plaintiffs' motion for summary judgment and denied the motions of defendants and defendant-intervenor. The Order stated that no final order would be entered until the issuance of a memorandum opinion that would set forth the bases for these rulings.

Events in a related matter, however, have overtaken the September 30, 2008 Order. On April 24, 2008, a Memorandum Opinion was issued in *Shipbuilders Council of America v. United States Department of Homeland Security (The Seabulk Trader Case)*, 551 F. Supp. 2d 447 (E.D. Va. 2008). In that case, like in this one, plaintiffs challenged as arbitrary and capricious a Coast Guard decision to issue a certificate of documentation with a coastwise endorsement to a vessel that had undergone significant work in a foreign shipyard. Finding that

the administrative record did not support the Coast Guard's issuance of a coastwise endorsement, the court remanded the matter to the Coast Guard with instructions to revoke the endorsement. The decision rested on three grounds, one of which was the finding that the Coast Guard had used an impermissible construction of the statutory phrase "major component" in its determination that the vessel had not been rebuilt outside the United States.

The Coast Guard and Seabulk Energy Transport, Inc. ("Seabulk"), the owner of the vessel who had been allowed to intervene as a defendant, filed notices of appeal with the United States Court of Appeals for the Fourth Circuit and moved for a stay of judgment pending appeal. While considering the motion for stay pending appeal, however, the district court announced that it had determined that it should amend its April 24, 2008 Order and directed the Coast Guard and Seabulk to file a motion for stay and remand in the Fourth Circuit. *The Seabulk Trader Case*, No. 1:07cv665 (E.D. Va. Aug. 18, 2008) (Order). The court indicated that if the motion was granted, it would enter an order remanding the matter to the Coast Guard for a reevaluation of whether the vessel should receive a coastwise endorsement. *Id.* With the assumption that the Fourth Circuit was likely to grant appellants' motion to remand, it appeared prudent to proceed to the merits in this matter. Yet, on October 23, 2008, the Fourth Circuit issued an Order denying appellants' motion to remand. *The Seabulk Trader Case*, Nos. Nos. 08-1546 & 08-1702 (4th Cir. Oct. 23, 2008) (Order). Because the Fourth Circuit has announced its intention to review the Coast Guard's decision in *The Seabulk Trader Case* and because that review will involve a consideration of the Coast Guard's interpretation of "major component," a potentially dispositive issue in this matter, it is appropriate to stay this matter.

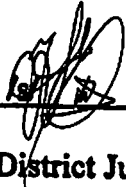
Accordingly, for these reasons and for good cause,

It is hereby **ORDERED** that the September 30, 2008, Order in this matter is **VACATED**.

It is further **ORDERED** that this matter is stayed pending appeal in *The Seabulk Trader Case*, 551 F. Supp. 2d 447 (E.D. Va. 2008), *appeal docketed*, Nos. 08-1546 & 08-1702 (4th Cir. May 13, 2008 & June 26, 2008).

The Clerk is directed to send a copy of this Order to all counsel of record and to place this case among the inactive matters.

Alexandria, Virginia
November 5, 2008



T. S. Ellis, III
United States District Judge