



Thompson Coburn LLP | One US Bank Plaza | St. Louis, MO 63101

Coast Guard To Issue Notice Regarding Coastwise Citizenship for Public Companies

The Coast Guard intends to issue a Notice in the Federal Register asking for ideas on how public companies comply with the citizenship requirements to own and operate vessels in the U.S. coastwise trade. The Notice is being issued in response to a recommendation included in the Coast Guard's report of its investigation of the citizenship of Trico Marine Services, Inc., a public company that, through subsidiaries, owned vessels that operated in the coastwise trade. In this investigation, the Coast Guard found that Trico Marine failed to meet the applicable citizenship requirements.

In order to be eligible to participate in the coastwise trade, 75% of the stock or other ownership interests in a company must be held by United States citizens. This test is applied at each tier of ownership. The citizenship test is applied not only to vessel owner-operators but also to passive lessors that document vessels in the coastwise trade as United States citizens. (It does not apply to those lessors who document vessels under the foreign leasing exception). Public companies have many challenges in confirming their citizenship status because they usually do not know the citizenship of the underlying beneficial owners of their shares. In addition, if the stock and other ownership interests are held by entities rather than individuals (which is often the case), such entities must individually also establish their citizenship.

The U.S. Maritime Administration allows public companies to use a "fair inference test" to establish citizenship. This test allows companies under certain circumstances to make an inference that they meet the 75% test based upon the registered addresses of their shareholders. However, the Coast Guard has historically repudiated the use of this test in determining U.S. citizenship—even though both agencies are applying the same law—and confirmed its position in the report of the Trico investigation.

At the Spring meeting of the Marine Financing Committee of the Maritime Law Association of the United States, a representative of the Coast Guard stated that the Coast Guard does not intend to use responses to the Notice to initiate investigations of public companies. Even if this is not the intent, the Notice is a reminder that public companies must continually monitor their ownership structure to confirm compliance with the coastwise citizenship laws.

The maritime attorneys at Thompson Coburn have years of experience in advising public companies on these laws and regularly counsel clients on methodologies for determining their citizenship status. Please contact us if we can be of assistance.

Marjorie F. Krumholz	202-585-6913	mkrumholz@thompsoncoburn.com
Donald B. Dorwart	314-552-6028	ddorwart@thompsoncoburn.com
Gerald D. Stoltz	202-585-6919	gstoltz@thompsoncoburn.com
Eileen P. Brown	202-585-6906	ebrown@thompsoncoburn.com
Matthew Kaiser	202-585-6912	mkaiser@thompsoncoburn.com

Thompson Coburn LLP

Chicago | St. Louis | Southern Illinois | Washington, D.C.

www.thompsoncoburn.com

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