

JONES, WALKER
WAECHTER, POITEVENT
CARRÈRE & DENÈGRE, L.L.P.

DEPT. OF TRANSPORTATION
PROGRAMS

99 JUL 27 PM 1:30

1225 NEW YORK AVENUE, N.W.
SUITE 475
WASHINGTON, D. C. 20005

R. CHRISTIAN JOHNSON
202-821-8363
FAX 202-821-6907

June 14, 1999

60299

The Honorable Clyde J. Hart, Jr.
Administrator
Maritime Administration
400 Seventh Street, S.W. - Room 7206
Washington, D.C. 20590

MARAD-99-5946-11

Re: Proposed Transfer of Crowley American Transport, Inc.'s
Maritime Security Program Contracts

Dear Mr. Hart:

As you know, the Maritime Administration ("**MarAd**") is **vested** with the responsibility to implement and enforce the Maritime Security Act of 1996, Pub.L. 104-239 (the "**Act**"). The policies and objectives of the Act are threatened by recent and contemplated actions of Crowley American Transport, Inc. ("**Crowley**"), one of the participants in the Maritime Security Program ("**MSP**"). As the letter of June 4, 1999, attached as Exhibit 1 hereto, clearly demonstrates, Crowley intends shortly to seek your approval of the sale and transfer to American **Automar**, Inc. ("**American Automar**") of its:

1. Three MSP contracts (Contract **MA/MSP-13** covering the U.S. flag vessel SEA FOX (the "SEA FOX Contract"), Contract **MA/MSP-14** covering the U.S. flag vessel SEA LION (the "SEA LION Contract"), and Contract **MA/MSP-15** covering the U.S. flag vessel SEA WOLF (the "SEA WOLF Contract")), and

2. Two remaining MSP vessels (the SEA LION and the SEA WOLF).

On behalf of our clients, Central Gulf Lines, **Inc.** ("**Central Gulf**") and Waterman Steamship Corporation ("**Waterman**"), we are writing to insist that **MarAd** immediately provide notice of the prior termination of the SEA FOX Contract due to the sale of the SEA FOX to Remington Shipping, Inc. ("**Remington**") on April 9, 1999. Furthermore, we urge you to scrutinize closely the proposed transfer to American **Automar** of the SEA LION Contract and the SEA WOLF Contract, together with the SEA LION and SEA WOLF, to ensure that these transactions are entirely consistent with the Act.

INTRODUCTION

The SEA FOX Contract. Crowley's expected request to transfer the SEA FOX Contract must be rejected by **MarAd** on both legal and policy grounds; the SEA FOX Contract must be found to have been terminated, regardless of when or if Crowley actually files an application seeking **MarAd's** approval of the proposed transfer; and the contract authority must be reallocated by **MarAd** to another eligible MSP carrier.

As a matter of law, the SEA FOX contract was unilaterally and irrevocably terminated by the sale of that vessel to Remington. As a result, **MarAd** should reclaim that contract authority and award it to an eligible MSP operator in accordance with existing **MarAd** policy and practice.'

As a matter of policy, **MarAd** must not allow an MSP contract to be sold or transferred unless the purchaser also acquires and agrees to commercially operate the vessel covered by that contract in the MSP. The proposed sale of the SEA FOX Contract to American **Automar** obviously cannot include the SEA FOX itself due to the previous sale of that vessel. Approval of the transfer of the SEA FOX Contract by **MarAd** would therefore raise serious and troubling questions about the future direction of the MSP.

The SEA LION and SEA WOLF Contracts. The June 4th letter from Crowley and American **Automar** indicates that Crowley intends to sell the SEA LION and the SEA WOLF to American **Automar** on or about July 7, 1999, and that the "transfer of the MSP contracts will occur at a later date". **MarAd** must consider if the sale of the SEA LION and the SEA WOLF without their **respective** MSP contracts will terminate those contracts on or about July 7th. Additionally, when Crowley submits more detailed information on its intentions regarding the sale of the SEA LION, the SEA WOLF, and their **respective** MSP contracts, **MarAd** must determine on policy grounds whether it is appropriate to approve the sale of those contracts to a carrier who plainly will not operate those vessels in the foreign commerce of the United States under the MSP. The SEA LION and the SEA WOLF have been fixed on long-term, 59-month charters, commencing in July of 1999, with the Military Sealift Command ("MSC"). Because **MarAd** has not faced a policy issue of this nature since the inception of the MSP program, and because an important precedent will be established by this case, **MarAd** should consider carefully whether the transfer authority in the Act should be limited to transactions, such as mergers or corporate reorganizations, where the vessels covered by the MSP contracts would thereafter be operated in commercial service under the MSP.

'One of our **clients** is prepared to offer a newly-built, militarily-useful, United States flag vessel for this open "slot" in the MSP program. The addition of such a vessel by **MarAd** to the MSP fleet will create new jobs for U.S. citizen mariners, diversify the fleet profile of the MSP, and bring much-needed new tonnage under the U.S. flag - all in accordance with the original policy objectives of the Act. **MarAd** has the authority to allocate this contract to an existing MSP operator without reopening the MSP application process.

BACKGROUND

The Maritime Security Act of 1994 The Maritime Security Act of 1996 established the **Maritime Security Program** for the purpose of retaining within the United States an “active, privately owned, U.S.-flag and **U.S.-crewed** merchant shipping fleet to meet national and foreign commerce needs and to provide sustainment **sealift** capability in time of war or national emergency.” **H.R. Rep. No. 229**, 104th Cong., 1 st Sess. 9 (1995) (emphasis supplied). During consideration of the Act on the Senate floor, Senate Majority Leader Trent Lott (R-Miss.) expressed the urgent need to maintain an active fleet of U.S. flag vessels:

... I also want to emphasize that the Maritime Security Act is first and foremost about security. It is about protecting our national security, by ensuring that we will continue to have at our disposal a fleet of militarily **useful** U.S.-flag commercial vessels, and a trained, loyal **American**-citizen maritime workforce, to provide our military with reliable, global sustainment **sealift** capabilities. And it is about economic security, because only through maintaining a viable U.S.-flag merchant fleet in international commerce can we assure fair ocean transportation rates for American businesses and consumers.

104 **Cong. Rec. S10964** (September 19, 1996). Similarly, Senator John Breaux (D-La.) strongly voiced the need for creating a **fully** operational MSP fleet:

... this legislation takes a very **careful** approach by helping to assist commercial vessels to operate with U.S.-trained crews, to have them available in times of national emergency. They are ready to go from day one. And every private company that gets an assistance program under this legislation has to agree in advance that the ship will be available in times of a national emergency.

104 **Cong. Rec. S 10961** (September 19, 1996) (emphasis supplied). Specifically, the Act phased out the pre-existing **operating-differential** subsidy program, removed operating restrictions on participants in the MSP, and authorized payments of \$2.3 million per vessel in the first year and \$2.1 million per vessel for the **remaining** nine years of the program to vessel operators who agreed to make their United States flag vessels in the MSP available to the Secretary of Defense upon request. With a total annual authorization of \$100 million, the MSP is limited to only 47 vessels.

Given the relatively small number of ships permitted to participate in the program, the Act places a special emphasis on the maintenance of a **fully** operational and active fleet of all 47 vessels in the MSP. Section 651(a) of the Act, for example, refers to “a fleet of active, militarily **useful**, **privately**-owned vessels.” (emphasis supplied). Section 652(e) **further** requires an annual certification from MSP participants that each MSP vessel “has been and will be operated . . . for at least 320 days in the fiscal year.” Clearly, Congress intended to require MSP ships to operate regularly in commercial service

to maintain eligibility for MSP payments, and thus meant to limit the lay-up of MSP vessels or the holding of contracts by MSP carriers without vessels operating thereunder?

MSP Application Process. In accordance with the provisions of the Act, on October 11, 1996, MarAd invited applications for participation in the MSP by advertisement in the Federal register. 61 Fed Reg. 53483 (1996). Crowley, Central Gulf and **Waterman**, among others, submitted applications to MarAd in response to this solicitation. Approximately 59 eligible vessels were offered for the program. Based upon these applications, and **after** a rigorous review of the economic and military **utility** of each vessel and of the appropriate mix of **vessel** types and capabilities, MarAd awarded 47 MSP contracts requiring an annual payment of \$98.7 million, including the award of three MSP contracts to Crowley, three MSP contracts to Central Gulf, and four MSP contracts to Waterman. Crowley executed the SEA FOX Contract, the SEA LION Contract and the SEA WOLF Contract on December 20, 1996, and commenced operation at that time of those vessels in the MSP.

During the entire period that the SEA FOX participated in the MSP, the documented owner of the vessel was Wilmington Trust Company, as Owner Trustee (**“Wilmington Trust?”**), under a financing or other contractual relationship between Wilmington Trust and Crowley (see Coast Guard Abstract of Title of the SEA FOX dated June 4, 1999, attached hereto as Exhibit 2). Wilmington Trust is the documented owner of the SEA WOLF under a similar arrangement. Vessel Management Services Inc. is the documented owner of the SEA LION and presumably has a management agreement with Crowley **covering** that vessel. Thus, **Crowley** exercised control of the SEA FOX at all relevant periods prior to the sale of that vessel to Remington, and continues to exercise control over the SEA LION and the SEA WOLF.

Award of MSC Charters for Crowley’s MSP Vessels. On June 12, 1998, MSC issued RFP N00033-98-R-3301 seeking offers for:

1. One or more **self-sustaining** U.S. flag vessels each with the capacity of carrying a minimum of 1400 to 2800 **TEUs** (20 foot equivalent units) to be used in the repositioning of Army general cargo in **Guam/Saipan**; and
2. One self-sustaining U.S. flag vessel with the capacity of carrying a minimum of 1569 ammunition laden **TEUs** for the repositioning of Air Force ammunition in Diego Garcia, as a set aside for small business.

Notwithstanding the fact that it had operated in the MSP for just over one year, Crowley offered its MSP vessels, the SEA LION and the SEA WOLF, for the first requirement set forth above, and

²In order to ensure an orderly transition process at the commencement of the MSP program, the Act and MarAd regulations permitted MSP contracts to be awarded to vessels on charter at that time to the MSC. No authority exists to allow vessels enrolled in the MSP to be chartered thereafter to the military and still maintain a valid MSP contract.

entered into an arrangement with **Sealift, Inc. (“Sealift”)**, a small business under applicable Small Business Administration regulations, to permit **Sealift** to offer the SEA FOX, Crowley’s other MSP vessel, for the second requirement. While we have not had the opportunity to review the **Crowley/Sealift** agreement, Crowley obviously committed therein to sell the SEA FOX to **Sealift** (or its nominee) upon the successful award of the MSC charter to **Sealift**.

As shown by the MSC Press Release attached hereto as Exhibit 3, the MSC announced on November **23, 1998**, that it had awarded to Crowley **59-month** long-term time charters of the SEA LION and the SEA WOLF. Those vessels are required to commence operation under those charters on or about July **7, 1999**, and will be eliminated from the MSP on or before that **date**.³ As reflected in the MSC Press Release attached hereto as Exhibit 4, the MSC announced on December **2, 1998**, that it had awarded to **Sealift** a similar **59-month** long-term time charter of the SEA FOX. That vessel is scheduled to commence operation under that charter in August 1999. Thus, as far back as December 2nd of last year, Crowley had contractual commitments to remove the SEA FOX; SEA LION and SEA WOLF from the MSP program. Despite the extraordinary amount of intervening time, Crowley failed to **identify** a replacement vessel for any of these vessels under their respective MSP contracts.

Crowley’s Sale of the SEA FOX On April **9, 1999**, Wilmington Trust, at **the** apparent direction of Crowley, sold the SEA FOX to Remington, an affiliate of **Sealift**. As the attached Abstract of Title demonstrates, this sale was recorded by the Coast Guard’s National Vessel Documentation Center on April **16, 1999** at **3:55** p.m. in Book No. 99-39 at Page 605. The Abstract further confirms that the name of the vessel was changed to MAJ BERNARD F FISHER, in accordance with the usual practice of naming most MSC afloat **prepositioning** ships after Medal of Honor recipients. As mentioned above, Crowley did not seek **MarAd’s** approval of the substitution of an eligible MSP vessel for the SEA FOX prior to its sale to Remington. Over two months have now passed since Crowley sold **the** SEA FOX. **MarAd** has not acted to provide notice of the termination of the SEA FOX Contract, and Crowley continues to operate under the false impression that it retains some rights thereunder.

**AS A MATTER OF LAW, THE SEA FOX CONTRACT IS TERMINATED
AND MUST REVERT TO MARAD FOR REALLOCATION TO
ANOTHER ELIGIBLE MSP OPERATOR**

Crowley’s sale of the SEA FOX is a voluntary repudiation of the SEA FOX Contract under traditional principles of common **law** and a fatal event of default under that contract. As a result of this act, the **SEA FOX** Contract is terminated and cannot be **transferred** to a third party. The only available option is for the contract authority to revert to **MarAd** for reallocation to another eligible MSP carrier.

³We note that as set forth in Exhibit **1**, Crowley intends to sell the SEA LION and the SEA WOLF, **without** their respective MSP contracts, to American **Automar** on or about July 7, 1999. In anticipation of the commencement of these military charters, Crowley has already changed the names of the vessels to the LTC **CALVIN P TITUS** and the **SSP5 ERIC G GIBSON**, respectively.

The SEA FOX Contract Has Been Repudiated and Terminated by Crowley. The SEA FOX Contract provides that the contract shall be governed by Federal law insofar as it is applicable (see Article I-27 of the SEA FOX Contract). It has long been recognized that Federal contract law is determined by reference to traditional common law principles. Minidoka Irrigation District v. Department of the Interior, 154 F.3d 924,926 (9th Cir. 1998), citing, First Interstate Bank v. Small Business Administration, 868 F.2d 340,343 n.3 (9th Cir. 1989).

It is well-established in the common law of contracts that the unilateral and voluntary act of a party to a contract which renders that party's performance impossible serves as a repudiation of the contract. The Restatement (Second) of Contracts defines a repudiation as "a voluntary affirmative act which renders the obligor unable or apparently unable to perform . . ." Restatement (Second) of Contracts §250 (1981). Cited expert on contract law, Arthur Corbin, states, "[I]f a promisor so conducts **himself as** to make the substantial performance **of his** promise impossible, this is a repudiation of his promise and has the same legal effect as would a repudiation in words." Arthur L. Corbin, Corbin on Contracts §984 (1960). The question of whether a party has repudiated a contract is generally one of fact. Minidoka Irrigation, 154 F.3d at 927. In this instance, Crowley's sale of the SEA FOX, as a matter of fact, has rendered performance under that contract to be impossible. Without the vessel subject to the contract, Crowley cannot meet any of its MSP obligations under the SEA FOX Contract.

Numerous federal courts have held that one who, by his or her actions, renders performance impossible has effectively repudiated the underlying contract. Roehm v. Horst, 178 U.S. 1, 20 S.Ct. 780, 44 L.Ed. 953 (1900); 200 East 87th Street Associates v. MTS. Inc., 793 F.Supp. 1237, 1253 (S.D.N.Y. 1992); City of Fairfax v. Washington Metropolitan Area Transit Authority, 582 F.2d 1321, 1326 (4th Cir. 1978); Strategis Asset Valuation & Management. Inc. v. Pacific Mutual Life Ins. Co., 805 F.Supp. 1544, 1550 (D.Co. 1992) (property owners repudiated a contract with real estate tax consulting firm when owners informed firm that they no longer required firm's services due to foreclosure on property which was basis of contract under which firm was to reduce taxable value of owners' property); Burlington Ldmark Associates v. RI-II Holdings, 27 F.Supp. 2d 95, 99 (D.Mass. 1998) ("An act -- or series of acts -- constitutes a **repudiation** if it renders the actor's performance actually or apparently impossible"); Monarch Photo. Inc. v. Oualex. Inc., 935 F.Supp. 1028, 1033 (D.N.D. 1996) ("An obligor repudiates the contract when he...takes voluntary, affirmative action which renders him **unable** or apparently unable to perform the contract."); Emanuel Law Outlines. Inc. v. Multi-State Legal Studies. Inc., 899 F.Supp. 1081, 1088 (S.D.N.Y. 1995). As a result of the voluntary sale of the SEA FOX, it is **impossible** for Crowley to perform its obligations under the SEA FOX Contract, and thus Crowley has terminated that contract with **MarAd**.

Crowley's Repudiation of the SEA FOX Contract Is a Fatal Event of Default, The sole object of the SEA FOX Contract is the SEA FOX itself The contract is replete with provisions specifying

the SEA FOX as the only vessel to be operated under the **contract**.⁴ For example, at the outset of the contract, the recitals provide:

The **[Maritime]** Administrator, after appropriate findings and determinations, has approved the grant of an Operating Agreement under Subtitle B of Title VI of the Merchant Marine Act, 1916, as amended, 46 U.S.C. 1101 et seq. (herein called the “Act”), to the Contractor [Crowley] for the operation of the militarily useful, privately-owned and self-propelled cargo vessel specified in Article I-3

Article I-3 of the SEA FOX Contract then specifically identifies the SEA FOX as the **only** vessel subject to that contract, as follows:

The Contractor shall operate the following Vessel (herein called the “Vessel”) under the terms of this Agreement:

Vessel	Official No.	Place built	Date built
<u>SEA FOX</u>	<u>679514</u>	<u>Foreign</u>	<u>2/21/85</u>

Numerous additional provisions similarly **specify** the SEA FOX as the sole vessel subject to this contract Article I- 1 (a) of the SEA FOX Contract states:

. . . the Contractor hereby agrees during the term of this Agreement to operate the Vessel specified in Article I-3 hereof, all in accordance with the provisions of the Act, the rules and regulations described in Paragraph I- 1 **(b)**, and this Agreement. (emphasis supplied)

Article I-2 (a) of the SEA FOX Contract similarly provides:

. . . the Contractor shall operate the Vessel described in Article I-3 hereof for a minimum of 320 days per fiscal year exclusively in the United States foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12 105 of title 46, United States Code . . . (emphasis supplied)

Finally, Article I-4 of the SEA FOX **Contract states**:

. . . the United States shall, pursuant to section 652 of the Act, pay to the Contractor an amount equal to **\$2,100,000** for the operation of the Vessel specified in Article I-3 for each fiscal year in which this Agreement is in effect . . . (emphasis supplied)

⁴Article 1-9 **of the** SEA FOX Contract permits Crowley to replace the SEA FOX with an eligible vessel upon the prior approval of the Maritime Administrator. From the time that the SEA FOX was offered for time charter to the MSC until the time the vessel was sold to Remington, Crowley did not seek **MarAd’s** approval for a replacement vessel. In the absence of a replacement vessel, the SEA FOX Contract required Crowley to operate the SEA FOX only.

The sale of the SEA FOX in April of 1999, without its MSP contract or the identification of a replacement vessel, contravenes the plain language of all of the SEA FOX Contract provisions set forth above, frustrates the sole objective of the SEA FOX Contract, and constitutes an event of default terminating that contract. Article I-20 of the SEA FOX Contract, entitled Events of Default, provides in pertinent part as follows:

The following shall constitute events of default under this Agreement: . . .

(b) The occurrence of any event causing the Contractor to be ineligible for this Agreement;

(c) Any material breach by the Contractor of this Agreement, . . . ; **or**

(d) The passing of the operation of the Vessel out of the direct and exclusive control of the Contractor by reason of any mortgage foreclosure, or any voluntary or involuntary receivership or bankruptcy **proceedings**, or of any arrangements with creditors under the order of any court whether or not the Contractor is continued in possession of the Vessel, or the dissolution or termination of the Contractor's existence.

Crowley's sale of the SEA FOX in April is an event of default under paragraphs **(b)** and (c) above and triggers the following **Termination Upon Default** language in Article I-2 1 of the SEA FOX Contract:

The United States may terminate this Agreement without advance notice to the Contractor in case of an event of default specified in Paragraph (a), **(b)** or (d) of Article I-20 hereof. In the event of default specified in Paragraph (c) of Article **I-20** hereof, the United States may elect to continue payments under such terms and conditions as it may prescribe.

As stressed **above, the** entire contract is based upon the operation of the SEA FOX by Crowley. That vessel was **specifically** selected for the MSP program by **MarAd** after an elaborate application process was employed to **identify** a diverse group of militarily useful vessels for the MSP. Crowley's sale of the vessel is an obvious repudiation and breach of the contract. Thus, the sale of the SEA FOX has caused Crowley "to be ineligible for this Agreement" and is a clear event of default under paragraph **(b)** of Article I-20. It is likewise a "material breach" of the contract under paragraph (c) of Article I-20.

The provisions of paragraph (d) of Article I-20 provide further persuasive evidence of a default under both paragraphs **(b)** and (c) of the SEA FOX Contract. That paragraph identifies as an event of default numerous situations wherein the vessel passes out of the "direct and exclusive control of the Contractor", including mortgage foreclosure and voluntary or involuntary bankruptcy. The thrust of this paragraph is to provide **MarAd** the authority to terminate an MSP contract if the vessel subject to the contract is no longer under the control of the MSP contractor. Obviously, with the sale of the SEA FOX in April to Remington, Crowley no longer is able to exercise any control over that vessel,

has materially breached its obligations under the SEA FOX Contract, and is now ineligible to continue as a contractor under that agreement?

Crowley may improperly argue that it has the right to transfer the SEA FOX Contract under the Act, **MarAd** regulations and Article I-8 of the contract Article I-8 of the SEA FOX Contract provides, in part:

The Contractor may transfer this Agreement (including all rights and obligations under this Agreement) to any person eligible to enter into this Agreement under the priority set out in section 652(i)(1)(A) of the Act **after** notification to the Administrator in accordance with regulations prescribed by the Administrator, unless the transfer is disapproved by the Administrator within 90 days after the date of that notification.

Any argument by Crowley that this provision allows a transfer of the SEA FOX Contract has no merit and should be disregarded by **MarAd**. Under the Act, MSP operators are provided with the right to transfer any valid and enforceable contract to another eligible operator. **In** this case, the SEA FOX Contract terminated on April 9, 1999, when Crowley voluntarily repudiated the contract by selling the SEA FOX to Remington. Because it has been terminated, the SEA FOX Contract is no longer an asset that Crowley can convey to another party. Furthermore, Article I-8 requires the transfer of the entire agreement, including “all rights and obligations” thereunder. The overriding “obligation” of Crowley under the SEA FOX Contract is to operate the SEA FOX in the foreign commerce of the United States. It is impossible for Crowley (or any proposed transferee of this contract) to honor this obligation now that the SEA FOX has been sold. In sum, as a matter of law, the SEA FOX Contract was terminated by Crowley when it sold the SEA FOX to Remington. That contract authority must revert to **MarAd** for reallocation to an eligible MSP operator.

**AS A MATTER OF POLICY, MARAD MUST NOT PERMIT THE TRANSFER OF AN
MSP CONTRACT UNLESS THE VESSEL COVERED BY THAT CONTRACT IS
SIMULTANEOUSLY TRANSFERRED TO THE SAME PURCHASER FOR
COMMERCIAL OPERATION IN THE MSP**

As a matter of policy, **MarAd** must not allow an MSP contract to be sold or transferred unless the purchaser also acquires the vessel covered by that contract for commercial operation in the MSP. **MarAd** must ensure that the U.S. maritime industry does not return to the controversial **trafficking** in government-created rights that permeated the industry after Congress created the Section 615 **foreign-building** program in the 1980's. **See** 46 App. U.S.C. 1185. The creation of a Section **615-type** market

⁵The impending sale of the SEA LION and the SEA WOLF on or about July 7, 1999 without their respective MSP contracts may likewise cause the termination of those contracts. **MarAd** should examine that proposed transaction carefully.

for MSP contracts could quickly lead to the profiteering that so tarnished that program. MSP carriers, like Section 6 15 license holders, were granted these federal privileges at no cost. They should not now be permitted to profit **from** the sale of the MSP contracts, especially when the vessels covered by those contracts have been or will be sold to carriers who will not operate those vessels in the MSP. While Crowley and American **Automar** may maintain that no consideration would be paid for the **SEA FOX** Contract, and though Crowley mistakenly believes that it retains some rights thereunder, it is obvious that the value of the **SEA FOX** Contract would **certainly** be included in the overall price that American **Automar** intends to pay for the package of assets described in the June 4th letter.

MarAd should also consider the debilitating impact that the sale of MSP vessels, separate and apart **from** their respective MSP contracts, will have on the program. It will disrupt the fleet mix carefully established by **MarAd**, thus **undermining** the integrity of the MSP program. Permitting **carriers** within the MSP program arbitrarily to sell their MSP contracts to the highest bidder would serve to limit the Congressionally-mandated discretion of **MarAd** to establish and maintain a diverse MSP fleet.

As mentioned above, Cmwley intends first to sell the **SEA LION** and the **SEA WOLF** to American **Automar**, and then, at some later unspecified date, separately sell those vessels' MSP contracts to the same purchaser. As Crowley and American Automat stated in their June 4th letter to **MarAd**:


The [SEA **LION** and the SEA WOLF] and certain related assets are expected to be transferred to **Automar** on or about July 7, 1999. . . . The transfer of the [three] MSP contracts will occur at a later date. (emphasis supplied)

This arrangement certainly **raises serious issues** for **MarAd** to address. **As a matter of policy**, **MarAd** should not approve the transfer of MSP contracts when the vessels covered by those contracts are **already** committed to MSC long-term charters, as are the **SEA LION** and **SEA WOLF**, and are clearly not going to be operated in commercial service under the **MSP**.

CONCLUSION

For all of the legal and policy reasons set forth above, Central Gulf and Waterman urgently request **MarAd** to declare the **SEA FOX** Contract to be terminated. That contract authority should be reissued expeditiously to another eligible MSP operator. Moreover, **MarAd** should closely review the proposed disposition of the **SEA LION** and the **SEA WOLF**, together with the MSP contracts covering those vessels, to ensure that any such transfer is entirely consistent with the purposes and policies of the Act. We look forward to your favorable action on this request.

Sincerely,



R. Christian Johnsen, Counsel
Central Gulf Lines, Inc. and
Waterman Steamship Corporation

EXHIBIT 1

AMERICAN AUTOMAR, INC.
6550 Rock Spring Drive
Suite 300
Bethesda, MD 20817

CROWLEY AMERICAN TRANSPORT, INC.
9487 Regency Square Boulevard
Jacksonville, FL 32225

June 4, 1999

The Secretary
Maritime Administration
U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

Re: MSP Contracts No. 13, 14, and 15

Gentlemen:

American Automar, Inc. ("Automar") and Crowley American Transport, Inc. ("Crowley") are writing to advise the Maritime Administration that they have entered into a contract providing for the sale to Automar or its subsidiaries of certain container assets of Crowley. Among the assets being transferred to Automar are two vessels previously known as the "SEA WOLF" and the "SEA LION" (Official Numbers D 676163 and D 687321), MSP Contracts 13, 14 and 15, which are the MSP contracts relating to the vessels previously known as the SEA WOLF, SEA FOX and SEA LION, and certain other related assets. Previously, on April 16, 1999, the vessel SEA FOX was sold to Sealift, Inc. In addition, Automar and Crowley will enter into a novation agreement with the Military Sealift Command pursuant to which Automar will perform the obligations previously undertaken by Crowley with respect to the vessels SEA WOLF and SEA LION.

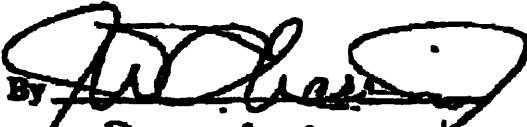
The vessels and certain related assets are expected to be transferred to Automar on or about July 7, 1999. This date is dictated by Military Sealift Command charters and related activities. The transfer of the MSP contracts will occur at a later date.

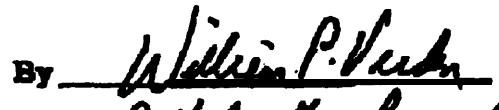
Pursuant to clause I-9 of the contracts, the vessels named in the MSP contracts will be replaced. Automar and Crowley intend to file an application for Maritime Administration approval of the transfer in accordance with Section 652(j) of the Merchant Marine Act, 1936. As soon as details of the replacement vessels are completed, the application will be filed for your consideration.

Very truly yours,

AMERICAN AUTOMAR, INC.

CROWLEY AMERICAN TRANSPORT, INC.

By 
Title President
Date 6/4/99

By 
Title S. V. P. & Her Crew
Date 6/4/99

· EXHIBIT 2

*

GENERAL INDEX OR ABSTRACT OF TITLE

CONTINUATION SHEET NO. 1

579 514

M
R
C
D
(1)
AMERICAN HAWAII
SEA FOX (6 Feb 1987)
Division of records

Printed name and
date

Printed name and
date

This vessel was built by _____
by _____
as appears by _____

PLAT	DATE	AMOUNT	REMARKS	RECORDED	INDEXED	FILED	REMARKS
L-5 26	1 Jun 1987	2:20 pm	John E. Drueger, Attorney in fact for R. S. Smith 1447 Bletcher Rd. Fenton, MI 48430	Recorded	Recorded	Recorded	
L-6 39	10 July 1987	10:00 am	Brady Marine Repair Co., Inc. 389 Turnbull St. Elizabeth, NJ 07208	Recorded	Recorded	Recorded	
L-6 40	10 July 1987	10:05 am	Brady Marine Repair Co., Inc. 389 Turnbull St. Elizabeth, NJ 07208	Recorded	Recorded	Recorded	
L-6 41	10 July 1987	10:10 am	Brady Marine Repair Co., Inc. 389 Turnbull St. Elizabeth, NJ 07208	Recorded	Recorded	Recorded	
L-6 42	10 July 1987	10:15 am	Brady Marine Repair Co., Inc. 389 Turnbull St. Elizabeth, NJ 07208	Recorded	Recorded	Recorded	
L-5 43	10 July 1987	10:20 am	Brady Marine Repair Co., Inc. 389 Turnbull St. Elizabeth, NJ 07208	Recorded	Recorded	Recorded	
L-5 44	10 July 1987	10:25 am	Brady Marine Repair Co., Inc. 389 Turnbull St. Elizabeth, NJ 07208	Recorded	Recorded	Recorded	
L-5 45	10 July 1987	10:25 am	Brady Marine Repair Co., Inc. 389 Turnbull St. Elizabeth, NJ 07208	Recorded	Recorded	Recorded	
L-5	11/17/87	3:47M	CLAYTON BRADY MARINE REPAIR CO., INC.	Recorded	Recorded	Recorded	
L-5	11/17/87	3:48PM	CLAYTON BRADY MARINE REPAIR CO., INC.	Recorded	Recorded	Recorded	
L-5	11/17/87	3:49PM	CLAYTON BRADY MARINE REPAIR CO., INC.	Recorded	Recorded	Recorded	
L-5	11/17/87	3:50PM	CLAYTON BRADY MARINE REPAIR CO., INC.	Recorded	Recorded	Recorded	

GENERAL INDEX OR ABSTRACT OF TITLE

CONTINUATION SHEET NO. 2

679514

(Channel number)

(1)

SEA FOX

(1) AMERICAN HAWAII

(Owner name port)

This vessel was built at

by

as appears by

GRANTOR	GRANTEE	Date of last- ment and date of port conveyed	Date of entry- and date of expiry interest	Consideration or value amount	Amount for record	Recorded	Time of endorsement and entry or approval of last port	Port where addressed
CLARKSON'S BRADY MARINE REPAIR CO., INC.	ALL	RET. REG. 9/25/87	—	\$3,262.00	—	11/17/87	L-5 11/17/87	
CLARKSON'S BRADY MARINE REPAIR CO., INC.	ALL	RET. REG. 9/25/87	—	\$3,356.00	—	11/17/87	L-5 11/17/87	
CLARKSON'S BRADY MARINE REPAIR CO., INC.	ALL	RET. REG. 9/25/87	—	\$7,204.00	—	11/17/87	L-5 11/17/87	

GENERAL INDEX OR ABSTRACT OF TITLE
CONTINUATION SHEET NO. 3

OFFICIAL NO.
679514

INSTRUMENT AGPM	% CONVEYED 100	DATE 12/3/93	AMOUNT	BOOK 93-12 PM	PAGE 41
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FILED PORT SAN FRANCISCO, CA	DATE 12/8/93	TIME 11:35 a.m.	DATE TERMINATED 12/9/93	RECORDED 3:00 p.m.
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GRANTOR
FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER OF THE NEW CONNECTICUT BANK AND TRUST COMPANY, N.A., RECEIVER OF THE CONNECTICUT BANK AND TRUST COMPANY, N.A., TRUSTEE

GRANTEE
STATE STREET BANK AND TRUST COMPANY, TRUSTEE

INSTRUMENT AMPM	% CONVEYED 100%	DATE 06 28 96	AMOUNT	BOOK 96-51	PAGE 119
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FILED PORT NVDC	DATE 07 05 96	TIME 9:35 AM	DATE TERMINATED
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GRANTOR
WILMINGTON TRUST COMPANY, TRUSTEE

GRANTEE
STATE STREET BANK AND TRUST COMPANY, TRUSTEE (Refers to PM-403, Page 47)

INSTRUMENT SPPM	% CONVEYED 100%	DATE 06 24 96	AMOUNT I	BOOK 96-51	PAGE 661
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FILED PORT NVDC	DATE 07 05 96	TIME 9:35 AM	DATE TERMINATED
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GRANTOR
WILMINGTON TRUST COMPANY, TRUSTEE

GRANTEE
STATE STREET BANK AND TRUST COMPANY, TRUSTEE (Refers to PM-403, Page 47))

INSTRUMENT SCL	% CONVEYED -	DATE 2-15-99	AMOUNT \$250,000.00	BOOK 99-21	PAGE 603
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FILED PORT NVDC	DATE 2-19-99	TIME 2:55PM	DATE TERMINATED
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GRANTOR
CLAIMANT: ROGER VAUGHAN, ATTORNEY IN FACT FOR GENE R SINCLAIR
REFERS TO: L-5:PG26

GRANTEE
NA

ISSUED AS AN ABSTRACT OF TITLE

ISSUED FOR CHANGE OF PORT OF RECORD

DATE: TIME:
PORT: PAGE OF

DOCUMENTATION OFFICER

DEPARTMENT OF
TRANSPORTATION
U.S. COAST GUARD
CG-1332A (Rev. 8-83)

GENERAL INDEX OR ABSTRACT OF TITLE
CONTINUATION SHEET NO. 4

OFFICIAL NO.
679514

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
SMTG	100	03 15 99	\$25,460,221.02	99-39	604

FILED PORT	DATE	TIME	DATE TERMINATED
NYDC	04 16 99	03 SS PM	- - -

GRANTOR

REFERS TO BOOK 403, PAGE 47
STATE STREET BANK AND TRUST COMPANY, TRUSTEE

GRANTEE

WILMINGTON TRUST COMPANY, TRUSTEE

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
BS	100	04 09 99	\$1.00	99-39	605

FILED PORT	DATE	TIME	DATE TERMINATED
NYDC	04 16 99	03 55 PM	- - -

GRANTOR

WILMINGTON TRUST COMPANY NOT IN ITS INDIVIDUAL CAPACITY BUT SOLEY AS OWNER TRUSTEE UNDER THE TRUST AGREEMENT DTD 2/1/85

GRANTEE

REMINGTON SHIPPING, INC.
****VESSEL NAME CHANGED TO: MAJ BERNARD F FISHER (4/9/99)****

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
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FILED PORT	DATE	TIME	DATE TERMINATED
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GRANTOR

GRANTEE

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
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FILED PORT	DATE	TIME	DATE TERMINATED
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GRANTOR

GRANTEE

ISSUED AS AN ABSTRACT OF TITLE

ISSUED FOR CHANGE OF PORT OF RECORD

DATE: JUN - 4 1999

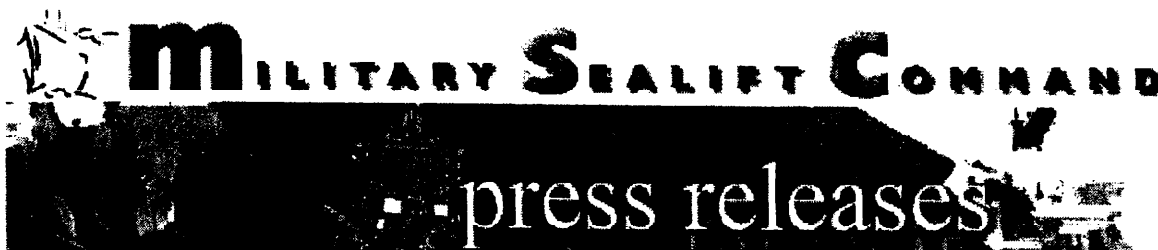
TIME: Asof 7:00 Am

PAGE 5 OF 5

PORT: NYDC

Robert W. Hamilton
DOCUMENTATION OFFICER

EXHIBIT 3



MSC PAO 98-60
 November 23, 1998
 For more information, contact:
 Marge Holtz or Dan Philbin
 (202) 685-5055

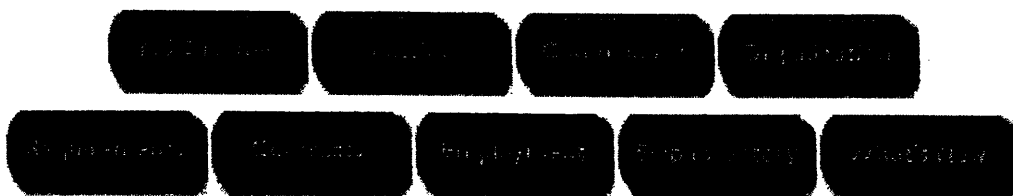
**Contracts announced for
 MV Sea Lion and MV Sea Wolf time charter**

The Military **Sealift** Command awarded two \$35.6 million time charter contracts to Crowley American Transport, Inc. of Jacksonville, Fla., each for a **59-month** charter of the container vessels, **MV Sea Lion** and **MV Sea Wolf**.

Sea Lion and Sea Wolf will function as part of **MSC's** Afloat Prepositioning program. Afloat prepositioning ships locate American military equipment and supplies at sea in strategic locations worldwide, ready to support U.S. forces, if called.

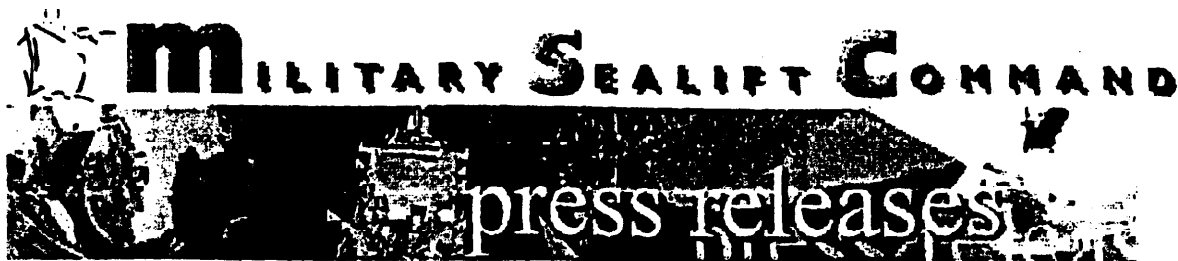
Eleven thousand square feet of roll-on/roll-off space with a starboard-side stem quarter ramp give Sea Lion and Sea Wolf the added benefit of accommodating military vehicles. With the capacity to hold nearly 2,000 containers of general U.S. Army cargo, Sea Lion and Sea Wolf will operate with **MSC's** Maritime Prepositioned Ship Squadron Three, based at **Guam/Saipan** in the Western Pacific Ocean. As with most MSC afloat prepositioning ships, Sea Lion and Sea Wolf will be renamed for Medal of Honor recipients before entering service in June 1999.

Military **Sealift** Command is the primary provider of maritime transportation for the Department of Defense in peacetime and war.



Enter a key word to search the MSC site:

. EXHIBIT4



MSC PA0 98-61
December 2, 1998
For more information, contact:
Marge Holtz or Dan Philbin
(202) 685-5055

Contract announced for
MV Sea Fox time charter

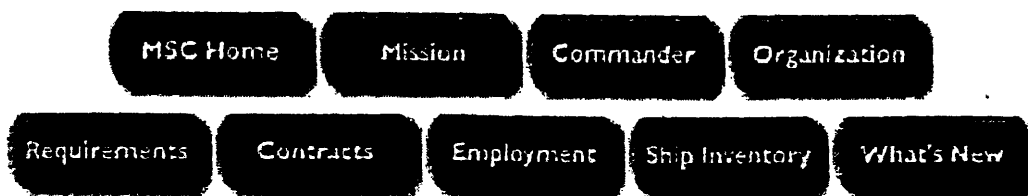
The Military Sealift Command awarded a \$4 1.2 million time charter contract to Sealift Inc. of Oyster Bay, N.Y., for a 59-month charter of the container vessel, MV Sea Fox.

Sea Fox will function as part of MSC's Afloat Prepositioned Ship program. Afloat prepositioning ships locate American military equipment and supplies at sea in strategic locations worldwide, ready to support U.S. fighting forces, if called.

Eleven thousand square feet of roll-on/roll-off space with a starboard-side stem quarter ramp gives Sea Fox the added benefit of accommodating military vehicles. With the capacity to hold nearly 2,000 containers of U.S. Air Force ammunition, Sea Fox will operate with MSC's Maritime Prepositioned Ship Squadron Two, based at Diego Garcia in the Indian Ocean,

As with most MSC afloat prepositioning ships, Sea Fox will be renamed for a Medal of Honor recipient before entering service in Aug. 1999.

Military Sealift Command is the primary provider of maritime transportation for the Department of Defense in peacetime and war.



Enter a key word to search the MSC site: