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October 2, 2024

Via Email

CONFIDENTIAL

Allen Garfinkle, Executive Director
Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun
660 Davis Street
San Francisco, CA 94111

RE: Global Marine Movements' Conflict of Interest Letter dated 9/11/24

Dear Members of the Board of Pilot Commissioners:

We would like to thank the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun ("Board") for the opportunity to respond to the allegations in the letter drafted by Mr. David Carl of Global Marine Movements, Inc. ("GMM"), dated August 23, 2024 ("Letter"). Our firm has been retained on behalf of Advantage Marine Services, LLC ("AMS"), to respond to the conflict of interest allegations in the Letter. In the Letter, Mr. Carl takes the position that Bar Pilots Capt. Casey Crowl and Capt. Shane Wehr, through their company AMS, are engaging in an outside business which creates a conflict of interest. Nothing could be further from the truth. Capt. Crowl and Capt. Wehr are not utilizing any information in their business with AMS related to vessel movements or vessel schedules that would violate the Board's Regulations and create a conflict of interest. Instead, AMS simply relies on vessel agents who contact AMS regarding potential crew movements to and from the local airports. At no point do

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Capt. Crowl or Capt. Wehr utilize or rely on any confidential information related to vessel movements or vessel schedules which they are provided in their positions as San Francisco Bar Pilots. To the contrary, Mr. Carl's letter appears to be nothing more than an attempt to rid himself and GMM of a potential competitor in this unique market space.

1. BACKGROUND

At the outset, it is important to clarify that David Carl is not the Chief Executive Officer (or "CEO") of GMM, as he claims to be. Instead, Vaidas Sukys is the Chief Executive Officer of GMM, as noted in the most recent Statement of Information filed with the California Secretary of State on August 8, 2024.[1] To the extent it is relevant, Vaidas Sukys is also the Assistant Superintendent of the Port of Stockton. Why Mr. Carl would make such a blatant misrepresentation to the Board in his Letter is unclear, but it does call into question the veracity and validity of all of the other statements and allegations in his Letter. Furthermore, it is unclear whether Mr. Sukys, as CEO, endorses the allegations in the Letter on behalf of GMM.

Putting that issue aside and turning to AMS, Capt. Crowl and Capt. Wehr started AMS because they saw an opportunity in the marketplace to provide vehicle transport services for crew members that needed to go to/from local airports in the Bay Area. They were aware that another company which provided similar crew transport services, TBC, and who had a contract with the San Francisco Bar Pilots from 2012 to 2023, had recently closed its business. This left an opening in the market for another crew transportation business.

Capt. Crowl and Capt. Wehr were also aware that while GMM had provided transportation services to the San Francisco Bar Pilots for a short period, GMM's rates for San Francisco Bar Pilots services had increased in that short time period. With that in mind, Capt. Crowl and Capt. Wehr started AMS on January 3, 2024. It is important to note that since the inception of AMS, the company has only been called on four times to provide crew transport services, and all of those services were requested by the vessel's local agent(s). None of those transport services involved the sharing of any information with the vessel's agent(s) related to vessel movements or vessel schedules that was not already public information. Suffice it to say, AMS's four trips in nine months is nothing substantial in terms of revenue.

2. GMM'S LETTER

Turning to the substance of the Letter, Mr. Carl's Letter levels a number of accusations, most of which are either baseless and without merit, or for which the context of the allegation

[1] https://bizfileonline.sos.ca.gov/search/business - Search "Global Marine Movements, Inc.", and then click on "View History" and then "Statement of Information".

is grossly misconstrued and misrepresented. The Letter is also filled with hyperbole and one-liners, with no evidence being provided to support the purported allegation(s). Bald accusations such as "spending untold hours in the presence of ship captains and their representatives" and "access to ship schedules likely extends to other ships of the same shipping line that are en route or scheduled to be on the way to the ports serviced by the SFBP" are untrue, but they also fail to make any specific allegation of wrongdoing by AMS that would give rise to a conflict of interest.

As specifically referenced in the Letter, it would appear that Mr. Carl has an axe to grind with the Bar Pilots, since GMM was not able to secure the future business of the San Francisco Bar Pilots' transportation services. But the simple fact is that the Letter fails to produce any credible evidence that Capt. Crowl and Capt. Wehr breached Section 222, subsections (a) and (b) of the Board's Regulations, entitled "Conflicts of Interest", as described in more detail below.[2] And the Letter certainly does not assert allegations that would give rise to a valid and credible claim under California Business and Professions Code Sections 17200, *et seq*.[3]

2.1 AMS' Bid to Provide Transportation Services for SF Bar Pilots

The first of the allegations in the Letter alludes to some type of insider information that Capt. Crowl and Capt. Wehr possessed simply by being pilots and having access to members of the Board or the San Francisco Bar Pilots' Policy Committee ("Policy Committee") at the same time that they started AMS. The Letter goes into some details about GMM providing a bid to the Policy Committee to continue offering their transportation services to the San Francisco Bar Pilots, but ultimately that bid was <u>denied</u> by the Policy Committee; ergo, no conflict of interest did or could exist. The Letter also details how AMS was started around that same time

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[2] The Board's Regulations, Section 222, subsections (a) and (b), reads in relevant part as follows:
§ 222. Conflicts of Interest.
(a) It is recognized that a pilot may acquire or have access to information, before it is available to others, **about the <u>movement of vessels</u>**. A pilot has a **duty not to utilize such information** for financial gain or to provide such information to others who may benefit or otherwise profit from obtaining such information before it is generally available to the public.
(b) A pilot **shall not provide information or knowledge regarding <u>vessel schedules</u>** obtained by the pilot, by virtue of his or her status as a pilot or Port Agent, to any entity except as is necessary to the discharge of his or her duties as a pilot or Port Agent.
(Emphasis added).

[3] Because the Board's correspondence dated Sept. 11, 2024 states, "what may be relevant to the Board is that your participation in this venture may be in violation of Section 222, subsections (a) and (b) of the Board's regulations…", this responsive letter will focus on the Board's Regulations and not address California Business and Professions Code Sections 17200, *et seq*.

period, and that the inception of AMS during that time period was somehow a conflict. It was not.

Capt. Crowl and Capt. Wehr did start AMS during the period that the Policy Committee was evaluating new potential transportation companies for the San Francisco Bar Pilots, and AMS even submitted a bid to the Policy Committee that was later declined. The Letter states that the two Captains "enjoyed extraordinary preferential access to the SFBP Board members as active pilots during the negotiations, regardless of the formal or informal nature of that access." The Letter goes on to make vague references about GMM going "weeks without a status update on that same contract negotiation." But the Board and the Policy Committee would know better than anyone else that Capt. Crowl and Capt. Wehr did not utilize any "preferential access" or exert any undue influence on the Policy Committee members or the Board members to gain an unfair advantage or have the Policy Committee accept the bid that AMS submitted. In fact, the Policy Committee specifically denied the bid of AMS on the grounds that it could be a violation of Board Regulations (potentially a conflict of interest), making this allegation a moot point. Instead, the Policy Committee chose to accept the bid of Bauer's Transportation Services, which has been in business for over thirty years in the Bay Area.

It is unclear what conflict of interest allegation Mr. Carl is trying to make in his Letter in this regard, but it appears to be baseless and without merit in terms of a breach of the Board's Regulations, as well as being a moot point since neither AMS nor GMM were awarded the contract by the Policy Committee.

2.2 The Purported Poaching of Zulfiqar Ali from GMM

In several places the Letter claims that Capt. Crowl and Capt. Wehr "poached" former GMM employee, Zulfiqar Ali, who is currently one of the partners of AMS. Under the Board's Regulations, this is clearly not a conflict of interest, as it has nothing to do with sharing confidential information about vessel movements or vessels schedules. Regardless, Mr. Ali approached Capt. Crowl and Capt. Wehr independently and of his own free will to inquire about starting a business with Crowl and Wehr. Furthermore, Mr. Ali had no written employment contract with his former employer, GMM, so any confidentiality requirements or potential noncompete clauses would be inapplicable. But that is beside the point: it is clear that an outside third party joining a business initiated by two San Francisco Bar Pilots does not violate Section 222, subsections (a) and (b) of the Board's Regulations. This allegation has nothing to do with exchanging confidential information about vessel movements or vessel schedules, as referenced in Section 222 of the Board's Regulations, and clearly does not present a conflict of interest.

2.3 Claimed "Unfair Business Advantage"

The Letter then alleges that Capt. Crowl and Capt. Wehr enjoy some type of claimed unfair business advantage simply by holding the title of San Francisco Bar Pilot, and the reputation that comes with that title, particularly as it relates to the marketing communications AMS sends out.

2.3.1 AMS Marketing Communications

Further alleging an unfair business advantage, the Letter claims that AMS sends marketing emails to potential new maritime agencies, although the Letter admits that the emails "do not overtly mention the SFBP". Instead, the Letter goes on to claim that a followup phone call is made by either Capt. Crowl or Capt. Wehr, "explicitly trading on the Pilots' name in their sales pitch". Mr. Carl seems to be arguing that simply because they hold the title of San Francisco Bar Pilot, that somehow gives Capt. Crowl and Capt. Wehr an unfair business advantage over GMM during these phone calls. But Capt. Crowl and Capt. Wehr have confirmed that they do not discuss their specific roles as San Francisco Bar Pilots during these calls, and certainly do not discuss vessel movements or vessel schedules, which could create a conflict. That is not to say, however, that the agencies that they contact are not already aware of their respective roles as San Francisco Bar Pilots, something they have no control over.

In one such phone call held by Capt. Wehr, the topic of why AMS's bid to provide the San Francisco Bar Pilots with transportation services not being accepted was discussed. Capt. Wehr clarified that the Policy Committee did not accept AMS's bid because of a potential conflict of interest or other violation of the Board's Regulations. The Letter grossly misconstrues that conversation, and even goes as far to say that Capt. Wehr "alluded to the need to stay 'behind the scenes' to make the connection with the SFBP less apparent". No such statement was ever made by Capt. Wehr during the call, and the use of the word "alluded" illustrates this point - it is a fabrication. Further, Mr. Carl fails to identify the individual who was on the call with Capt. Wehr. Nonetheless, Capt. Wehr and Capt. Crowl have gone to great effort to insure that none of the marketing emails sent by AMS mention the San Francisco Bar Pilots. In fact, the marketing emails sent out by AMS do not even identify Wehr and Crowl as Captains. A conflict of interest does not exist just because a member of the maritime community recognizes Wehr and/or Crowl as being San Francisco Bar Pilots, even when they are acting on behalf of AMS, something Capt. Wehr and Capt. Crowl have no control over.

2.3.2 Being a Pilot Does Not Preclude Involvement in an Outside Business

Mr. Carl takes the position in the Letter that Capt. Crowl and Capt. Wehr are improperly utilizing their positions as San Francisco Bar Pilots, and the immense reputation that a Pilot's position garners, to their advantage in their business. In other words, the Letter seems to

suggest that given the distinguished reputation a San Francisco Bar Pilot holds in the maritime community, Capt. Crowl and Capt. Wehr are utilizing that reputation to their benefit and that *per se* constitutes an unfair business advantage. For clarity, Capt. Crowl and Capt. Wehr are not intentionally or overtly utilizing their reputation as Pilots in their business, and the Letter suggests that merely holding the title of Pilot provides AMS with unfair business advantage, given the enormous respect that position garners.

First, nothing in the Board's Regulations specifically prohibits a Pilot from utilizing their reputation to support their outside business interests, provided they are not representing that their business is involved with, supported by or in partnership with the San Francisco Bar Pilots and/or the Board. As long as the Pilot is not making this representation to the public, and as long as they are not utilizing confidential information about vessel schedules or vessel movements to further those business interests (*see* Section 222 of the Board's Regulations), there is no conflict of interest. Next, there is little doubt that a San Francisco Bar Pilot's reputation is distinguished, and looked upon by others in the maritime community with admiration. Pilots endure a rigorous and lengthy training program, and a potential Pilot is only admitted to that training program after they have achieved the rank of Master (something that takes years to achieve as well), so naturally a Pilot's achievements are going to be looked upon with admiration. To become a San Francisco Bar Pilot is an amazing accomplishment in a mariner's career, and their standing in the maritime community garners much respect. But to take Mr. Carl's position and allegations to its logical end – if simply being a Pilot creates a conflict of interest by garnering great respect/admiration in the maritime community - that would mean a Pilot could never pursue any type of outside business or interest, particularly as it relates to any maritime related business, out of fear that they would be accused of improperly trading on their reputation, even if unintentionally, simply by holding the title San Francisco Bar Pilot. This simply cannot be the case, and is certainly not a violation of the Board's Regulations.[4]

3. CONCLUSION

As this Board is well aware, Capt. Wehr and Capt. Crowl are skilled Masters and San Francisco Bar Pilots. Capt. Wehr and Capt. Crowl would not do anything to tarnish their excellent reputations. So it is with the utmost respect for the Board and its members that they submit this responsive correspondence, at the Board's request. As detailed above, none of the allegations contained in GMM's Letter constitutes a conflict of interest under Section 222 of the Board's Regulations. Instead, Mr. Carl appears merely to be disappointed he was not able to secure the future transportation business of the San Francisco Bar Pilots, and wants to insure

[4] Surely no one would consider the formation and operation of Baydelta Maritime LLC to have been improper, or that anyone had a conflict of interest, merely because the founding principals of the that company were former S.F. Bar Pilots.

he does not have viable competitors in his market space, by improperly claiming that AMS has created a conflict of interest. There are simply no facts set forth in the Letter for the Board to investigate or act on.

We would again like to thank the Board for this opportunity to respond to GMM's Letter. Should you need any additional information, clarification or documentation, please do not hesitate to request it.

Sincerely,

Forrest Booth
Partner

Brad Pace
Partner
for Kennedys

FB:BP:jac

cc: Shane Wehr
Casey Crowl