



Date: 19991206  
Docket: T-2010-99

**MONTREAL, QUEBEC, THIS 6TH DAY OF DECEMBER 1999**

**PRESENT:** RICHARD MORNEAU, ESQ., PROTHONOTARY

**BETWEEN:** ST. LAWRENCE CEMENT INC.,  
a body politic and corporate of Quebec, Canada

Plaintiff

**AND**

THE OWNERS AND ALL OTHERS INTERESTED IN  
The Ship "ALCOR"  
-and-  
NEW WIND SHIPPING CO. LTD.  
a body politic and corporate of Malta

Defendants

Motion on behalf of Plaintiff for an urgent Order permitting Plaintiff and its representatives to:

- a) draw and remove samples of the M.V. "ALCOR's" steering system oil;
- b) obtain the vessel's system oil grade, system oil technical data and system oil analysis results for the last 12 months;
- c) attend any opening for inspection of the M.V. "ALCOR's" steering gear;
- d) take hull and internal thickness measurements of the M.V. "ALCOR's" hull by way of ultrasonic testing;
- e) examine the following original M.V. "ALCOR" documents (and take copies of):

1. Master's Report of Casualty + all deck and engine officers [*sic*] certificate and STCW endorsements.
2. Chief Engineer's Statement
3. Deck Log covering the period from arrival load port to time crew taken off
4. Engine Room Log Entries
5. Chart in use
6. Deck Bell Book from Escoumins Pilot to incident
7. Engine Room Bell Book from Escoumins Pilot to incident
8. Course Recorder for 8 hours before the incident and 1 hour after incident
9. Pilot Card
10. Crew List
11. Ship Certificates:
  - Load Line
  - Safety Construction
  - Safety Equipment
  - Class
  - Document of Compliance
  - ISM
  - Safety Radio
12. Hull Enhanced survey Programme (ESP) manual
13. Stability Book bulk cargoes + Appendix above for approved Loading/Unloading conditions

14. All Thickness Measurements taken at last drydock (Special Survey 1997) and thereafter
15. General Arrangement + Midships Section + Shell Expansion
16. Capacity Plan
17. Megger Test report
18. Vessels [*sic*] damage control plan – grounding
19. Classification Society's Survey Listing (including Outsanding Recommendations)
20. Class Survey Report re: last drydock (S.S.)
21. Steering Gear Manufacturer's Manual
22. Steering Gear Vessel Maintenance's Manual
23. Steering Gear grade of oil
24. Master's night order Book from 1/10 to leave ship
25. Chief Engineer order Book from 1/10 to leave ship
26. Bridge Standing orders
27. Engine Room Standing orders
28. Port Log entries for the last discharge and load

(Which documents may still be aboard the vessel), the whole with a view to allowing Plaintiff an opportunity to preserve such evidence pending the outcome of any arbitration between the parties herein.

The Plaintiff seeks to be relieved of its default to comply with Rule 362(1).

The Plaintiff also seeks the approval of the Court in serving this urgent motion on the Defendants' *de facto* attorneys (although not attorneys of record), Messrs. Langlois, Gaudreau, O'Connor, the whole with costs if this motion is contested.

**[Rules 324 and 377 of the *Federal Court Rules, 1998* and  
Article 9 of the *Commercial Arbitration Code, Commercial Arbitration Act*]**

**REASONS\* FOR ORDER AND ORDER**

[1] This motion by the plaintiff pursuant to Rule 377 of the Federal Court Rules (1998), heard on an urgent basis, is dismissed with costs. I consider that the plaintiff did not submit any real evidence which could meet the jurisprudential test applicable under this rule, both as to the physical evidence, that is the steering gear oil, and the documentary evidence. Evidence of a potential loss was not presented.

**Richard Morneau**

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Prothonotary\*

Certified true translation

Martine Brunet, LL. B.

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\* Only portion between asterisks translated from French to English – TR.

FEDERAL COURT OF CANADA  
NAMES OF COUNSEL AND SOLICITORS OF RECORD

**COURT No.:** T-2010-99

**STYLE OF CAUSE:** ST. LAWRENCE CEMENT INC.,  
a body politic and corporate of Quebec, Canada

Plaintiff

AND

THE OWNERS AND ALL OTHERS  
INTERESTED IN The Ship "ALCOR" and  
NEW WIND SHIPPING CO. LTD. a body  
politic and corporate of Malta

Defendants

**PLACE OF HEARING:** Montréal, Quebec

**REASONS FOR ORDER BY RICHARD MORNEAU, ESQ., PROTHONOTARY**

**DATE OF HEARING:** December 6, 1999

**DATE OF REASONS FOR ORDER:** December 6, 1999

**APPEARANCES:**

Ms. Mireille Tabib for the Plaintiff

Mr. John G. O'Connor for the Defendants

**SOLICITORS OF RECORD:**

Stikeman, Elliott for the Plaintiff  
Ms. Mireille Tabib  
Montreal, Quebec

Langlois Gaudreau O'Connor for the Defendants  
Mr. John G. O'Connor  
Quebec, Quebec

**FEDERAL COURT OF CANADA**  
**TRIAL DIVISION**

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Between:

**ST. LAWRENCE CEMENT INC.,**  
a body politic and corporate of Quebec, Canada  
**Plaintiff**

**AND**

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**INTERESTED IN The Ship "ALCOR" and NEW**  
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**corporate of Malta**

**Defendants**

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**REASONS FOR ORDER AND ORDER**

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