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Keokuk, 95 U.S. at 84-85.[19]

3. CBJ's Fee Expenditures On Projects And Activities That Are Not Reasonable Compensation For Services Rendered Directly To The Vessel, Including General Municipal Operating Expenses And Attorneys' Fees, Are Not Defensible As "Services Rendered To Vessels."

As set forth in Argument Point III.B.1. above, to rule favorably on CLIA's Tonnage Clause claims and, conversely, to deny CBJ's request for approval of some of its most obvious misallocations of the Entry Fee revenues (*e.g.*, general municipal operations and attorneys' fees to defend against claims of unconstitutional uses), this Court need only look to the standard for Tonnage Clause compliance set forth by the Supreme Court in *Polar Tankers*.[20] *Polar Tankers* instructs that where a vessel charge is imposed to compensate the charging authority for something other than a service rendered to a vessel, that charge is a prohibited Duty of Tonnage. 557 U.S. at 10. Supreme Court consideration of Tonnage Clause disputes teaches that a service rendered to a vessel for which payment can be demanded without Tonnage Clause consequences is a commercial-like service and specifically enables the vessel's movement in the flow of

[19] The service at issue in *Keokuk* and in many other 19th century Tonnage Clause cases was wharfage, a service provided directly to vessels that just as readily could be provided by a private wharfinger. If CBJ were merely charging commercially reasonable fees for wharfage, this case would not be before this COurt.

[20] In support of its cross-motion, CBJ argues that *Polar Tankers* "offers little guidance" to this Court. CBJ Mot. Summ. J. at 37 n.87. CBJ again relies on this Court's previous order denying CBJ's Motion to Dismiss to argue that because the levy at issue in *Polar Tankers* was an ad valorem tax and the levy at issue here is not a tax, *Polar Tankers* does not control. *Id.* This distinction is of no consequence in analyzing the validity of the levies under the Tonnage Clause. What matters is whether the charge, however denominated, is directed at vessels and is not compensatory for a particular service provided to those vessels. *Polar Tankers*, 557 U.S. at 10 (finding Valdez tax unconstitutional under the Tonnage Clause because it "applie[d] only to large ships" and was "not for services provided to the vessel[s]"); *see Maher Terminals II*, 805 F.3d at 109 ("What actually made the tax in *Polar Tankers* unconstitutional, and what Maher cannot show here, is that the tax was directed at *vessels* and was not in exchange for services."). In any event, CBJ contradicts itself on the point, later acknowledging that *Polar Tankers* itself recognized that the Valdez tax would have been unconstitutional even if it had been denominated a fee. CBJ Mot. Summ. J. at 62.