

VIA REGISTERED MAIL & EMAIL

Director, Operational Business
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

Re: *Arch's Pride* – Bonavista, NL – DOI: 23 November 2018

We have completed our investigation and assessment of the claim for \$12,183.58 (the “Claim”)¹ that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the wood and fibreglass fishing vessel *Arch's Pride* (the “Vessel”). We find the Claim to be established, in part, in the amount of **\$11,830.86**. Accordingly, we hereby make an offer of compensation (the “Offer”) in that amount, plus accrued interest of \$296.21, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the “MLA”). The amount of the Offer plus interest comes to \$12,127.07.

Applicable Statutory Scheme

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* and the *MLA* as they were at the time of the incident. All references to these statutes herein refer to them as they were before the changes introduced in Bill C-86 came into force.

Overview of the Decision

On 22 November 2018, CCG became aware that the Vessel had sunk alongside a wharf at Bonavista during or soon after a windstorm. A diesel sheen was observed around the Vessel on 23 November. The same day, CCG spoke with a representative of the Vessel’s insurer, who indicated that a plan to raise the Vessel was being formulated.

Poor weather caused delays, and the insurer ultimately declined to act, perhaps due in part to the uncertain ownership of the Vessel following the owner’s death a few months prior to the sinking. As a result, CCG began its response on 27 November 2018 and engaged Bulldog Contracting Ltd (“Bulldog”) to raise, pump, and remove the Vessel, which continued to discharge pollutants, from the marine environment. Three CCG personnel departed St John’s to monitor this operation on 28 November. We find that the raising and removal operation, along with the CCG

¹ We note that the Cover Letter and Cost Summary submitted with the Claim include a total of \$12,183.57. This amount likely represents a minor rounding error.

monitoring, were reasonable measures in the circumstances given the active pollution threat posed by the sunken Vessel. We also find that the costs associated with these measures were reasonable.

Following removal, the Vessel was stored on the hard in the care of Bulldog, with CCG incurring a daily storage charge. CCG made repeated attempts to hand the Vessel over the insurer before ultimately reaching an agreement with the deceased owner's son on 6 February 2019 whereby he accepted responsibility for storage fees from that day forward. Given the uncertainty surrounding the Vessel's ownership status, its demonstrated unseaworthiness, and the unwillingness of the insurer to take action, we find that the storage of the Vessel from the date of its removal to 6 February was a reasonable measure with an attached reasonable cost.

Assessment

As we find the amounts claimed under Schedules 2, 4, 5, and 12 to be established in full, we limit our reasons below to a discussion of Schedules 3 and 13, both of which have attracted reductions.

Schedule 3 – Travel

CCG claimed \$853.65 for travel costs, which include meal costs and accommodations for three personnel for 28 and 29 November 2018. The accommodations portion totals \$479.55. While we find the meals and overnight stay at Bonavista to be reasonable in keeping with safe working practices, and while we appreciate the generally fulsome evidence submitted under this Schedule, we note that CCG has provided three identical invoices for \$159.85 (all for Room 304) from the Harbor Quarters Inn. Given this duplication and the lack of clarity on rooming arrangements, we have accepted just one of these hotel invoices. Accordingly, we find the amount of \$533.95 to be established under this Schedule.

Schedule 13 – Administration

CCG claimed \$113.74 in administration costs, at a rate of 3.09% of the total amounts claimed for travel and salaries (including the employee benefits plan). The Administrator had previously accepted a rate of 2.53% as reasonable, and she is currently reviewing CCG submissions on this new, higher rate. Until such time as we find the new rate to be reasonable, we will continue to apply the existing rate of 2.53%.

Taking into account the reductions made under Schedule 3, the application of the 2.53% administration rate yields an established amount of \$80.72 under this Schedule.

We look forward to receiving notification of your acceptance so that payment can be made without delay. In considering this Offer, kindly note that you have 60 days upon receipt to notify

the undersigned whether you accept it. Alternatively, you have 60 days upon receiving this Offer to appeal its adequacy in the Federal Court. The *MLA* provides that if no notification is received at the end of the 60-day period, you will be deemed to have refused the Offer.

If you accept this Offer, the *MLA* provides that the Administrator benefits from a statutory release and subrogation to the extent of the payment made to you in relation to the subject incident.

Yours sincerely,

Mark AM Gauthier, BA, LLB
Deputy Administrator, Ship-source Oil Pollution Fund

Encl.: Appendix (1)

c.c.: A/Regional Director, Incident Management, Atlantic Region

Appendix: Summary Assessment Table

Schedule	Claimed	Established
2 – Contract Services	\$7,693.50	\$7,693.50
3 – Travel	\$853.65	\$533.95
4 – Salaries – Full Time Personnel	\$2,656.49	\$2,656.49
5 – Overtime – Full Time Personnel	\$510.96	\$510.96
12 – Vehicles	\$355.24	\$355.24
13 – Administration	\$113.74	\$80.72
Total in Principal	\$12,183.58	\$11,830.86
Interest		\$296.21
Grand Total		\$12,127.07