

Ottawa, 11 July 2019
SOPF File: 120-841-C1-C
CCG File:

VIA REGISTERED MAIL

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

RE: *Noble Mariner* – Nippers Harbour, NL – DOI: 25 April 2018

We have completed our investigation and assessment of the claim for \$41,687.99 (the “Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the fishing vessel *Noble Mariner* (the “Vessel”). We find the Claim to be established, in part, in the amount of **\$36,601.67**. Accordingly, we hereby make an offer of compensation (the “Offer”) in that amount, plus accrued interest of \$1,573.88, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the “MLA”). The amount of the Offer plus interest comes to \$38,175.55.

Applicable Statutory Scheme

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* (the “CSA”) 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 25 April 2018, CCG was notified that the Vessel had sunk alongside a dock at Nippers Harbour and was discharging diesel. As the owner was not responsive, the quantity of pollutants on board was unknown, and local fishermen were concerned about contamination of their boats and equipment, three CCG environmental response personnel were mobilized to the scene the following day, after arranging for Sea-Force Diving Ltd (“Sea-Force”) to meet them on site.

CCG personnel deployed from St John’s, and substantial travel time was required for their journey to Nippers Harbour. Nonetheless, we find that this travel time, as well as attached salary and overtime hours, was reasonable in the circumstances.

When they arrived on scene on 26 April 2018, CCG personnel deployed sorbents around the Vessel and assessed the situation. The following day, CCG personnel returned to the scene to monitor the Sea-Force operation and to deploy further sorbents as needed. After the Vessel was

re-floated, CCG arranged for a Pardy's Waste Management & Industrial Services Ltd ("Pardy's") vacuum truck and crew to remove and dispose of all accessible pollutants. We find that it was necessary to raise the Vessel in order to access onboard pollutants for removal. We further find that all the measures described in this paragraph were reasonable in light of the demonstrated active oil pollution threat posed by the Vessel.

Assessment

As our reductions are limited to amounts claimed under Schedules 2 and 13, we limit our reasons to a discussion of those Schedules.

Schedule 2 – Contract Services

CCG claimed \$33,719.75 for the services of two contractors. Neither contractor was provided with a statement of work by CCG, and the invoices and "Incident Narrative" were the only pieces of evidence submitted in support of the claimed services under this Schedule.

Sea-Force raised the Vessel on 27 April 2018 at a total cost of \$28,351.06. As noted, we find the decision to raise the Vessel was reasonable in the circumstances, along with the bulk of attached measures, but our assessment does not simply end there. We note that given the paucity of documentation provided, particularly with regard to Sea-Force accommodations, meals, and mileage (three vehicles appear to have been used), the Office of the Administrator reached out to CCG for further details on 12 June 2019. No reply was received whatsoever. We have reduced the amount claimed for Sea-Force services by \$5,064.38, to account for the above items, plus HST, as we cannot properly assess expenditures that are wholly undocumented. Accordingly, the Sea-Force services are found to be established in the amount of \$23,286.68.

In addition to the Sea-Force raising operation, CCG claimed \$5,368.69 for the services of Pardy's, which included the use of a vacuum truck on 27 April 2018 to pump the Vessel of approximately 10,000 litres of pollutants and oily water. Also included were the disposal of the raw pollutants removed from the Vessel and of soiled sorbent booms and pads. We find these measures and their associated costs to be established in full.

Schedule 13 – Administration

CCG claimed \$121.07 in administration costs, representing a rate of 3.09% of the total of the amounts claimed for materials and supplies, travel, and salaries (including the employee benefits plan). As we have not yet been provided with evidence that demonstrates that this new, higher rate has a reasonable foundation, we will not recognize a rate higher than 2.53%.

Applying the existing recognized rate of 2.53%, we find the amount of \$99.13 to be established 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,

Anne Legars, LL.M., CAE
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
1 – Materials and Supplies	\$190.00	\$190.00
2 – Contract Services	\$33,719.75	\$28,655.37
3 – Travel	\$1,544.55	\$1,544.55
4 – Salaries – Full Time Personnel	\$1,836.75	\$1,836.75
5 – Overtime – Full Time Personnel	\$3,200.68	\$3,200.68
11 – Pollution Counter-measures Equipment	\$416.67	\$416.67
12 – Vehicles	\$658.52	\$658.52
13 – Administration	\$121.07	\$99.13
Total in Principal	\$41,687.99	\$36,601.67
Interest		\$1,573.88
Grand Total		\$38,175.55