

Ottawa, August 6, 2019  
SOPF File: 120-783-C1

**VIA REGISTERED MAIL**

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

**RE: *ATB Alouette Spirit & Wilf Seymour* – Lake Saint-Pierre, QC – DOI: December 25, 2017**

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We have completed our investigation and assessment of the claim for \$14,395.08 (the "Claim") that the Canadian Coast Guard ("CCG") submitted following its response of December 25, 2017, involving the articulated tug and barge unit *ATB Alouette Spirit & Wilf Seymour* (individually the "barge" and the "tug"), on Lake Saint-Pierre. We find the Claim to be established, in part, in the amount of \$44.38. Accordingly, we hereby make an Offer of Compensation (the "Offer") in the amount of \$47.13, including accrued interest of \$2.75, pursuant to sections 105 and 116 of the *Marine Liability Act* (the "MLA"), as it was at the time of the relevant facts.

The following reasons are provided to explain the disparity between the amounts claimed and the amounts found to be established.

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**Schedules 4 and 5**

On December 25, 2017, the CCG was notified that the *ATB Alouette Spirit & Wilf Seymour* had run aground just off the port side of the navigable waterway on Lake Saint-Pierre. The barge, with a draught deeper than that of the tug, was stuck in mud and surrounded by ice, while the tug, which was still attached to the barge, was not. The owner, McKeil Marine Ltd (McKeil), quickly informed federal agencies involved that there were no signs of hull rupture, water ingress, instability, or actual or anticipated discharge of oil. Consequently, Transport Canada approved McKeil's first attempt to refloat the barge without the assistance of other tugs. This first attempt was unsuccessful.

Between December 25 and 27, 2017 – the dates and the number of tugs indicated in the CCG's documents are different from those provided to the Administrator by counsel for the shipowner –

McKeil, with the approval of Transport Canada, attempted two or four times to refloat the barge with the help of additional salvage tugs. The CCG reported no change in the situation or the risks involved.

In the days following these unsuccessful attempts, on or about January 10, 2018, it was decided to leave the barge there for the winter and to wait until the spring when the barge could be lightened and refloated.

The barge was anchored outside the navigable waterway and illuminated as a precautionary measure until March 16, 2018.

The barge was finally brought back to port on March 23, 2018, where a hydraulic oil leak of no more than one tablespoon was observed. That same day, the CCG, which had been monitoring the situation remotely, ended its response.

### **Authority under section 180 and reasonability of measures**

The grounding of the tug is an "incident" within the meaning of Part 6 – Division 2 of the *MLA*, since (1) the *ATB Alouette Spirit & Wilf Seymour* is not a seagoing vessel within the meaning of International Conventions (Schedules 5 and 8 to the *MLA*), and (2) the grounding created a *threat* of pollution, although the threat was far from being grave and imminent. The CCG has the mandate to respond to this type of incident, which justifies incurring costs and expenses to assess the situation before responding or not (paragraph 41(1)(d) of the *Oceans Act*).

In so doing, in order to recover the costs and expenses it incurred in responding to this incident by submitting a claim to the Administrator under section 103 of the *MLA*, the CCG must demonstrate that the shipowner would be held strictly liable for those costs and expenses before the Admiralty Court under section 77 of the *MLA*. In order to engage such liability, the CCG must demonstrate that measures taken in response to the incident, as well as related costs and expenses, were reasonable.

In addition, the CCG – since it did not respond on site and that only McKeil took preventive measures at the scene – must demonstrate that it had the authority to take monitoring measures in accordance with paragraph 180(1)(b) of the *Canada Shipping Act (CSA)*, prior to dealing with the issue of McKeil's strict liability, namely the reasonability of measures taken under the circumstances. It goes without saying that a measure taken without the statutory authority to do so cannot be reasonable.

To that end, the CCG needed to prove on the balance of probabilities that, on the face of the record, it objectively believed on reasonable grounds that, during the salvage operation undertaken by McKeil, the *ATB Alouette Spirit & Wilf Seymour* "may discharge a pollutant" and

that it subjectively held those grounds. It is our opinion that the CCG has not demonstrated that such grounds existed, neither objectively nor subjectively, after December 25, 2017.

As mentioned above, even before the first attempt at refloating the barge, the CCG indicated in its statement of facts, which was corroborated in documents provided by the shipowner, that there were no signs of structural damage, water ingress or instability. The CCG provided no evidence of an actual or anticipated discharge on December 25, 2017, once the nature of the incident had been assessed. The situation remained unchanged after each subsequent attempt at refloating the barge, which could have justified taking further monitoring measures. It was not until December 27, 2017 that the quantity of oil on board the *ATB Alouette Spirit & Wilf Seymour* was reported by the CCG in its statement, despite the fact that it had been requested and was necessarily known to the CCG from the very first day it undertook its monitoring measures. If the quantity of oil had been of real concern, it should have been so more immediately. Furthermore, in its statement of facts, the CCG reported the quantity of oil on board the tug (121,917 litres of diesel) before that of the barge (6,000 litres of diesel and 3,500 litres of hydraulic oil), despite the fact that only the barge had run aground and was therefore *at risk* of causing a discharge, if at all.

Since the CCG was unable to demonstrate that it had the necessary authority, under paragraph 180(1)(b) of the *MLA*, to monitor the incident – which, in fact, was purely and simply a salvage operation – after having assessed the situation at the end of the day on December 25, 2017, we are unable to conclude that any measures taken by the CCG after that date were reasonable.

Consequently, we find the amount of \$44.38, representing costs claimed to assess the situation on December 25, 2017, to be established. The remaining costs and expenses claimed in Schedules 4 and 5 are related to measures which have been found to be unreasonable, and are therefore rejected.

### Discharge on March 23, 2018

Finally, with respect to the alleged discharge of one tablespoon of hydraulic oil on March 23, 2018, a few observations are in order.

Firstly, the shipowner denies there was a discharge.

Secondly, even if a discharge did occur, which we accept, the clean-up and recovery costs were covered by the shipowner, not the CCG. No additional costs and expenses for materials (flotation collars, booms, etc.) were incurred by the CCG, and it cannot be concluded that the discharge resulted in increased monitoring costs, since CCG personnel were already monitoring the incident remotely.

Thirdly, the discharge occurred at the port, after the tug had been successfully recovered and the initial threat created by the grounding had been eliminated.

Fourthly, such a discharge of hydraulic oil is inherent to any uncoupling of an articulated tug and barge unit, by the very nature of the metal-to-metal piston mechanism that connects the two vessels together.

And lastly, the quantity of oil discharged was *de minimis*.

Based on these observations, it is our opinion that the CCG cannot retroactively justify its response, for which no threat of a discharge of oil existed after December 25, 2017, by alleging a discharge of such a minimal quantity.

### Schedule 13

In this case, the CCG did not include administration costs in its claim, as submitted. Consequently, we cannot act *ultra petita* by offering an amount that was not claimed. Therefore, administration costs are entirely rejected.

We note that the rate used, but not claimed, for administration costs was applied to the sum of \$8,517.89. However, we fail to understand where this figure comes from, since it does not appear anywhere else in the claim.

We also note that, even if administration costs had been properly claimed, they would have been established only at the previously accepted rate of 2.53%. Therefore, for any subsequent claim, we expect the CCG to provide evidence that it actually sustained a loss, in that it incurred administration costs at a rate greater than 2.53%.

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In considering this Offer, kindly note the following time limits set out in the *MLA*. You have 60 days upon receiving this Offer to notify the Administrator whether you accept it. Alternatively, you have 60 days upon receiving this Offer to appeal its adequacy by filing a notice of appeal in the Federal Court naming the Administrator as a respondent, in accordance with rules 335, 337 and 338 of the *Federal Courts Rules*, SOR/98-106. The *MLA* provides that, if no notification of acceptance is received or if no notice of appeal is filed at the end of the 60-day period, you will be deemed to have refused the Offer and no further Offer will issue.

If you accept this Offer, the *MLA* provides that, as of the date the payment is made, the Administrator benefits from a statutory release and subrogation to the extent of the amount paid to you.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B.  
Deputy Administrator, Ship-source Oil Pollution Fund

Encl.: Summary

## **SUMMARY**

<b>Schedule</b>	<b>Claimed</b>	<b>Established</b>
1 – Materials & Supplies	0	0
2 – Contract Services	0	0
3 – Travel	0	0
4 – Salaries - CFT personnel	\$10,221.47	0
5 – Overtime - CFT personnel	\$4,173.62	\$44.38
6 – Other Allowances	0	0
7 – Salaries - Casual Personnel	0	0
8 – Ships Costs (excluding fuel & overtime)	0	0
9 – Ships Propulsion Fuel	0	0
10 – Aircraft	0	0
11 – PCME	0	0
12 – Vehicles	0	0
13 – Administration	0	0
<b>Principal</b>	\$14,395.08	\$44.38
<b>Interest</b>		\$2.75
<b>Total</b>		\$47.13