



LETTER OF DISALLOWANCE

Ottawa, 26 January 2024
SOPF File: 120-971-C1
CCG File:

BY EMAIL

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RE: M/V CELEBRITY 180 and BAJA 21 — Levis, Quebec
Incident date: 2018-09-13

SUMMARY AND DISALLOWANCE

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the motor vessels Celebrity 180 and Baja 21 (the “Vessels”), which collided on or about 13 September 2018, near Levis, Quebec (the “Incident”).

[2] On 12 September 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims totaling \$3,113.40 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

[3] The submission has been reviewed and a determination with respect to its claims has been made. This letter advances an offer of compensation to the CCG pursuant to sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

[4] The submission has been reviewed and a determination with respect to its claims has been made. It is determined that the limitation period under paragraph 103(2)(a) of the MLA arose prior to the submission of this claim to the Administrator. The submission is therefore not admissible under subsection 103(1) of the MLA.

[5] Reasons for the disallowance are set forth below.

THE SUBMISSION RECEIVED

[6] The submission includes a narrative that describes events relating to the Incident, which is summarized below.

The narrative

[7] According to the narrative, on 13 September 2018 at 2255 hours, the CCG was notified that two motorized pleasure craft collided near Paquet Wharf in Levis, Quebec. The Baja 21 sank quickly while the Celebrity 180 remained partially submerged at the surface.

[8] Both vessels contained internal fuel tanks and were capable of travelling at high speeds, which is believed to be a factor in the collision. The magnitude of the collision created a risk of oil pollution.

[9] CCGS *Cap Tourmente* towed the Celebrity 180 to the Chaudière Marina near the Quebec Bridge. A marker buoy was secured to the vessel at the wharf. Sometime after this, the vessel sank completely.

[10] On 14 September, two CCG personnel attended the incident site at 0730 hours. No oil pollution was detected. The marina owner and the Celebrity 180 owner worked out a refloating plan, which the CCG accepted.

[11] On 15 September, the vessel was raised successfully, and no pollution was observed. That concluded the CCG operation.

[12] The narrative does not provide any information regarding recovery attempts of the Baja 21. It is presumed that the vessel was abandoned.

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims under subsection 103(1)

[13] Under the subsection 103(1) mechanism, claimants may submit claims directly to the Administrator. Such submission must be evaluated against several statutory criteria before the substance of the claim may be investigated and assessed.

[14] In this case, the Incident resulted in oil pollution damage suffered, or the threat of such damage, within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

[15] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

[16] Some of the claimed costs and expenses arise from what appear to be reasonable measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA, and are therefore potentially eligible for compensation.

[17] The claim is therefore admissible, subject to the intervention of any applicable limitation period. The applicable period is the one set out at subsection 103(2) of the MLA.

Submissions under subsection 103(1) are subject to a limitation period

[18] Subsection 103(1) of the MLA, as it was at the time of the Incident, provides:¹

Claims filed with Administrator

103 (1) In addition to any right against the Ship-source Oil Pollution Fund under section 101, a person who has suffered loss or damage or incurred costs or expenses referred to in section 51, 71 or 77, Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention in respect of actual or anticipated oil pollution damage may file a claim with the Administrator for the loss, damage, costs or expenses.

Dépôt des demandes auprès de l'administrateur

103 (1) En plus des droits qu'elle peut exercer contre la Caisse d'indemnisation en vertu de l'article 101, toute personne qui a subi des pertes ou des dommages ou qui a engagé des frais mentionnés aux articles 51, 71 ou 77, à l'article III de la Convention sur la responsabilité civile ou à l'article 3 de la Convention sur les hydrocarbures de soute à cause de dommages — réels ou prévus — dus à la pollution par les hydrocarbures peut présenter à l'administrateur une demande en recouvrement de créance à l'égard de ces dommages, pertes et frais.

[19] Claims made under subsection 103(1) of the MLA are subject to the limitation periods set out in subsection 103(2):

Limitation period

(2) Unless the Admiralty Court fixes a shorter period under paragraph 111(a), a claim must be made

(a) within two years after the day on which the oil pollution damage occurs and five years after the occurrence that causes that damage; or

(b) if no oil pollution damage occurs, within five years after the occurrence in respect of which oil pollution damage is anticipated.

Délais

(2) Sous réserve du pouvoir donné à la Cour d'amirauté à l'alinéa 111a), la demande en recouvrement de créance doit être faite :

a) s'il y a eu des dommages dus à la pollution par les hydrocarbures, dans les deux ans suivant la date où ces dommages se sont produits et dans les cinq ans suivant l'événement qui les a causés;

b) sinon, dans les cinq ans suivant l'événement à l'égard duquel des dommages ont été prévus.

[20] The language of the limitation period was considered in a previous decision of the Administrator, in the matter of the F/V *Miss Terri*, decided 17 May 2021. That case was the subject of a Federal Court appeal (*Canada v. Canada (Ship-source Oil Pollution Fund)*, 2022 FC 1310 (CanLII)) The legal considerations set forth in those decisions are adopted and applied in this case.

¹ All references to the MLA herein are to the version that was in force at the time of the Incident.

[21] To apply the limitation period it must be determined whether there was a discharge of oil that caused oil pollution damage. If so, then a claim must be submitted within two years of the occurrence of the damage and five years of the occurrence.

This claim was submitted more than two years after a discharge occurred

[22] The narrative, with respect to day 1, acknowledges a genuine risk of a discharge of oil given the force of the collision - which ultimately sank both vessels involved. The narrative also acknowledges the difficulty of spotting a spill of hydrocarbons at nighttime. Both points are accepted as accurate.

[23] In this case, there is no documentation of a discharge of oil. However, the earliest stated observation of a lack of an oily sheen was at 0730 on 14 September 2018 – Day 2 of the response.

[24] It is improbable that neither vessel discharged hydrocarbons after sinking. While this baseline improbability can be overcome with evidence, the earliest evidence available on a lack of oil sheening was many hours after the sinkings. It is presumed that both vessels used gasoline fuel. Thus, it is plausible that any discharge would have evaporated by the time a visual observation could be made at 0730 on 14 September 2018.

[25] Moreover, the narrative reports that the CCG received a report of pollution believed to be associated with the Incident at 10:30 on 14 September 2018. While CCG personnel were not able to independently confirm this reported observation, that lack of confirmation does not undermine that a third party believed they saw pollution, from this incident, which incident would otherwise be expected to produce pollution.

[26] It is also noted that there is no evidence that the Baja 21 was ever raised. This raises the possibility of unobserved discharges of oil in the five years between when the Incident occurred, and a claim was submitted.

[27] Finally, it is noted as well that rather than providing direct evidence, the CCG relies on a narrative which was apparently prepared years after the incident. This heightens the danger of relying on the lack of a reported observation of a discharge to conclude that no discharge occurred despite the sinking of two ships.

[28] In the circumstances, it is concluded that it is more likely than not that a discharge of oil occurred from one or both vessels. Any claim to the Administrator under s. 103 of the MLA therefore had to be made by 13 September 2020.

[29] This claim submission is disallowed.

[30] In considering this Letter of Disallowance, please observe the following options and time limits that arise from section 106 of the MLA.

[31] Pursuant to s. 106(2) of the MLA, an appeal may be taken from a disallowance of a claim to an Admiralty Court within 60 days of receipt of the disallowance. This letter

includes a disallowance of a claim. If you wish to appeal the disallowance, pursuant to Rules 335(c), 337, and 338 of the *Federal Courts Rules*, SOR/98-106 you may do so by filing a Notice of Appeal on Form 337. You must serve it upon the Administrator, who shall be the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

Yours sincerely,

Chiamaka Mogo, MPPGA
Deputy Administrator, Ship-source Oil Pollution Fund