

Clipper Adventurer (2010)

Location: Coronation Gulf, Nunavut

Case number: 120-580-C1

The Incident

On August 27, 2010, the Bahamian-registered cruise ship, *Clipper Adventurer*, with 128 passengers and 69 crew on board, grounded on a shoal in the Coronation Gulf, Nunavut, in the Canadian Arctic. No pollution was reported. After several failed attempts to refloat the vessel, the captain ordered an evacuation of all passengers and non-essential crew on board. The evacuated people were transported to Kugluktuk (formerly Coppermine) by the Canadian Coast Guard (CCG) icebreaker *Amundsen*, which was tasked with the rescue mission.

The cruise ship reported sustaining considerable damage to its double bottom fuel tanks. However, there was no leakage of oil and no risk of sinking. Several days following the grounding, a light sheen was visible but it dissipated quickly. Upon the shipowner's request, the vessel's classification society developed a salvage plan, for which a Transport Canada Marine Safety inspector provided oversight. Transport Canada, Environment Canada and CCG maintained a monitoring role throughout the salvage operation to ensure an appropriate response. The CCG ship *Sir Wilfrid Laurier* was deployed to function as the local command centre.

On September 14, the *Clipper Adventurer* was successfully refloated and towed by tug to Cambridge Bay, Nunavut, for damage assessment and preliminary repairs in preparation for departure from the Arctic. On September 23, Transport Canada and the vessel's classification society granted clearance for the vessel to transit from Cambridge Bay to Nuuk, Greenland. The *Clipper Adventurer* departed Nuuk, Greenland, on October 28, 2010, and proceeded to the port of Gdansk, Poland, where permanent repairs were made from November 11, 2010, to December 31, 2010.

Measures taken by the Administrator

The Administrator instructed counsel to investigate the response operation and ascertain that the vessel had a Bunker Convention insurance certificate.

A Letter of Undertaking signed on September 23, 2010 and covering both the Administrator and the CCG, was received.

Administrator as Party by Statute

Two actions were launched with regard to the incident, with the Ship-source Oil Pollution Fund (SOPF) being a party by statute to both actions. The first lawsuit was brought against the Crown by the shipowner, Adventurer Owner Ltd., alleging negligence on the part of the Crown (CCG and the Canadian Hydrographic Service), in failing to properly notify shipowners of the shoal on which the *Clipper Adventurer* had grounded. The amount claimed was about \$15 million. About one year later, the Crown launched its own action against the shipowner in the amount of \$468,801.72 for costs and expenses it incurred arising out of the incident. The Crown contended that the existence of the shoal had been properly publicized to mariners in a Notice to Shipping.

The two actions have been joined as one action under case management by the Federal Court. A mediation was held by the Federal Court on February 10, 2016, but no agreement was reached by the parties. The case went to trial in November 2016. Judgment was rendered in January 2017,

dismissing Adventurer Owner Ltd.'s action and awarding the Crown a principal amount of \$445,361.64 plus interest at 5%.

On February 24, 2017, a notice of appeal was filed by Adventurer Owner Ltd. with the Federal Court. One of the plaintiff's request was the application of the interest provision provided at section 116 of the *Marine Liability Act* (MLA) to all claims against a shipowner by virtue of section 109 of the MLA, instead of the Admiralty interest, which was awarded to the Crown at trial. The counsel for SOPF sent a notice to the Federal Court to the effect that the SOPF would not appear nor be seeking to be involved.

On February 7, 2018, the Federal Court of Appeal upheld the Federal Court's judgment, which was in favour of the Crown. In addition, while elaborating on the SOPF's jurisdiction, namely the scope of the interest provision, it decided that section 116 of the MLA was inapplicable in this case since the claimant sued a shipowner directly. The shipowner has since applied for a leave to appeal before the Supreme Court of Canada (SCC). On November 29, 2018, SCC denied the application.

The Claim

On October 17, 2011, the Administrator received a claim in the amount of \$468,801.72 from the CCG on behalf of the Department of Fisheries and Oceans (DFO/CCG) to cover the monitoring costs and expenses incurred in respect of the incident pursuant to the MLA. However, the Administrator has kept assessment in abeyance pending the outcome of the litigation.

Court found the shipowner liable for the amount of \$445,361.64 plus interest and CCG claim was consequently settled by the shipowner. As a result, the Administrator decided to close the file.

Status

The file was closed on December 13, 2018.