

Mistann (2011)

Location: Prince Rupert, BC

Case number: 120-608-C1

The Incident

On October 14, 2011, the 37-foot fibreglass fishing vessel, *Mistann*, sank at the Yacht Club in Prince Rupert with approximately 1200 litres of diesel fuel and an unknown quantity of lube oil on board. The owner was informed of his responsibilities, but he replied that he could not respond since he had no insurance. Hence, the Canadian Coast Guard (CCG) assumed the role of On-Scene Commander. The CCG Environmental Response (CCG ER) personnel, judging that the vessel was a risk to the marine environment, deployed boom to contain the spill.

A local contractor, Wainwright Marine Services, was engaged to assess the vessel and mitigate the pollution. Divers assessed the vessel and noted that it was sitting upright with vents plugged. Meanwhile, the vessel was still polluting and it was difficult to determine the amount of pollutants still on board. A decision was subsequently taken to raise the vessel to remove the remaining hydrocarbons. The work was hindered by strong gusting winds, the tidal currents and the local Yacht Club traffic. Late on October 17, the vessel was finally raised to surface, dewatered, refloated and taken to the Wainwright Marine shipyard for further assessment. Repairs were made to the vessel engines.

On December 9, 2011, a Notice of Intent to put the vessel up for sale was sent by CCG to the vessel owner. However, it was returned to CCG as undeliverable. In January 2012, the *Mistann* was sold by CCG for \$1,200.

The Claim

On April 26, 2012, the Administrator received a claim, made pursuant to the *Marine Liability Act* (MLA), in the amount of \$113,787.48 from CCG, on behalf of the Minister of Fisheries and Oceans (DFO/CCG).

The Administrator determined that the claim was admissible under Part 7 of the Act.

Assessment and Offer

Investigation and assessment of the claim were carried out. A part of the Contract Services portion of the claim was disallowed since the vessel salvage operation over the weekend, which incurred premium costs, was not considered necessary. The costs relating to the repairs of the vessel engines were not accepted as reasonable either. Besides, the rate for the calculation of administration charges was adjusted.

On September 12, 2012, an offer for the established amount of \$100,462.51 plus interest was made by the Administrator to DFO/CCG as full and final settlement. DFO/CCG accepted the offer and received payment of \$103,428.74 (inclusive of interest) on or about September 27, 2012.

Recovery Action

On or about October 16, 2012, the counsel for the Ship-source Oil Pollution Fund (SOPF) sent a letter to the registered owner of the *Mistann* requesting payment of the amount paid by the SOPF to CCG. The letter was returned to the sender, marked with "moved/unknown". In order to try to locate the registered owner and identify assets that may be available for recovery purposes, a professional locator firm was engaged by the Administrator.

On September 20, 2013, the counsel for the SOPF served a Statement of Claim on the vessel owner at Port Edward near Prince Rupert. No Statement of Defence was filed. On January 29, 2014, a default judgment against the defendant was issued by the Prothonotary of the Federal Court in Vancouver.

In 2016, the Administrator learned that the owner of the *Mistann* also owned two other vessels. A legal action was subsequently taken to seize those assets. In February 2017, three vessels, generator sets and one vehicle belonging to the vessel owner were seized and sold, from which sale the SOPF recovered \$18,080.42, after costs.

In July 2018, a further search was conducted but no new pursuable assets or streams of income could be identified.

Status

The file remains open.