

Federal Court



Cour fédérale

Date: 20121003

**Dockets: T-424-11
T-484-11**

Citation: 2012 FC 1168

ACTION IN REM AGAINST THE SHIP "MCP ALTONA" AND IN PERSONAM

BETWEEN:

Docket: T-424-11

TAM INTERNATIONAL INC.

Plaintiff

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE SHIP "MCP ALTONA",
THE SHIP "MCP ALTONA",
MS 'MCP ALTONA' GMBH & CO., KG,
HARTMANN SCHIFFAHRTS GMBH & CO.,
HARTMANN SHIPPING ASIA PTE LTD.,
FRASER SURREY DOCKS LP AND
PACIFIC RIM STEVEDORING LTD.**

Defendants

ADMIRALTY ACTION IN REM AND IN PERSONAM

Docket: T-484-11

AND BETWEEN:

CAMECO CORPORATION

Plaintiff

and

**THE OWNERS AND ALL OTHERS
INTERESTED IN THE SHIP "MCP ALTONA",**

**THE SHIP “MCP ALTONA”,
MS ‘MCP ALTONA’ GMBH & CO KG,
HARTMANN SCHIFFAHRTS GMBH & CO,
HARTMANN SHIPPING ASIA PTE LTD.,
FRASER SURREY DOCKS LP AND
PACIFIC RIM STEVEDORING LTD.**

Defendants

ASSESSMENT OF SHERIFF’S COSTS - REASONS

Johanne Parent, Assessment Officer

[1] The Plaintiffs in these respective court files brought actions and effected arrests for several claims for damages allegedly flowing from damage to cargo on board the Ship “MCP Altona” [the *Altona*]. Notices of Caveat Release by other claimants were filed. Statements of Defence, Counterclaims and Third Party Claims have been filed.

[2] The Caveator, HSH Nordbank AG [Nordbank] brought a motion for judicial sale of the *Altona*. The supporting evidence indicated that Nordbank had been funding the necessary expenses for the operation of the *Altona* since its arrest and that it sought priority for said expenses over all other competing claims.

[3] By way of Order dated August 4, 2011 [the Sale Order], the Court directed that the *Altona* and appurtenances, including its bunkers, which were to be sold separately as specified later, be sold on an “as-is, where-is” basis by private contract.

[4] The Sale Order provided that:

2. ... The bunker fuel and diesel oil on board the Vessel shall be taken and paid for by the purchaser of the Vessel as a separate item together with the Vessel. The quantities of bunker fuel and diesel oil shall be determined and valued by an independent bunker surveyor retained by the Sheriff on the basis of market prices in effect at the Port of Vancouver, British Columbia, on the day before the sale.

3. Mr. Nick Bailey of Howe Robinson & Company Ltd. ("Howe") shall be appointed as an acting Sheriff of this Court (hereinafter the Sheriff). The Sheriff's commission on sale shall be 1.75 percent of the gross total sale price, which shall include payment for any brokering services provided by Howe or other agency in respect of the sale. Included in the aforesaid commission shall be the services of the Sheriff in contacting any prospective or potential purchasers, in arranging physical inspection of the Vessel, in liaising with the shipowners or managers for the ship-board attendances by potential purchasers, the negotiation of the purchase price, dealing with the deposit and the balance of the purchase price, instructing lawyers and assessing costs. The Sheriff may, in the event a situation arises in which he reasonably feels in need of independent legal advice, retain legal counsel, the cost of which shall be included as a Sheriff's cost, payable from the sale proceeds. In the event that the Sheriff has any uncertainty as to what items are covered by the commission, he has liberty to apply to the Court on short notice for directions in that regard.

4. The Sheriff is authorized and directed to sell the Vessel by way of private contract in accordance with this Order and as set out in the Commission of Sale, a copy of which is attached as **Schedule "A"** hereto. The bunker fuel and diesel fuel aboard shall be sold to the purchaser of the Vessel as a separate item on the basis of the amount aboard at the market price at the Port of Vancouver, British Columbia, as determined by the Sheriff on the day before the completion of the sale as set out in paragraph 2 above, and the costs of that determination shall be a Sheriff's cost payable out of the proceeds of the sale.

5. The Sheriff shall be required to promote the sale of the Vessel and seek out potential purchasers, and for such purposes may utilize the services of his own company. The Sheriff shall inform the solicitor for the Bank of any and all offers to purchase the Vessel. The solicitor for the Bank shall immediately forward that information to the solicitors for the other parties.

6. The Master and Crew of the Vessel, the Owner and Manager of the Vessel, and the Trustee in Bankruptcy of the Owner of the Vessel, shall provide to the Sheriff copies of any of the following documents in their possession or control: the Vessel's general arrangement plans, capacity plans, technical documentation concerning the Vessel's main machinery and auxiliaries and classification society certificates, and any other ship's documents requested by the Sheriff. The costs of reproduction of those documents being a Sheriff's cost payable out of the proceeds of the sale. The parties listed above and each of them shall provide and/or not impede access to the Vessel, and shall provide such documents to any ship broker, appraiser, surveyor, prospective purchaser or other person authorized by or on behalf of the Bank or the Sheriff to inspect, and show the Vessel to prospective purchasers, their inspectors, surveyors or agents, at any time of day and on any day of the week.

[5] Paragraphs 7-9 inclusive then instructed the Sheriff on details of advertisement of the sale of the *Altona* and the procedure for the filing of claims against the sale proceeds in three publications (Lloyd's List, TradeWinds and The Vancouver Sun); set out the various steps for completion of the sale and provided for the return of deposits if the sale could not be completed.

[6] The Sale Order then provided that:

10. In the event that the sale of the Vessel is approved by the Court, the Sheriff shall sign a bill of sale transferring to the purchaser the ownership of the Vessel in the same manner and to the same extent as though the Sheriff were the registered owner thereof, but free and clear of any liens or encumbrances pursuant to Canadian Maritime law. Similarly, the Sheriff shall have the right to transfer title to bunkers and fuel on board the Vessel by a bill of sale. The Sheriff shall be entitled to deliver such bill or bills of sale to the purchaser by delivery thereof to the purchaser's nominated agent at Vancouver, British Columbia.

11. Possession, risk and title to the Vessel, including its bunkers and fuel, shall pass to the purchaser on delivery by or on behalf of the Sheriff of an executed bill of sale to the purchaser or the purchaser's nominated agent in Canada.

12. All reasonable expenses of advertisement of the sale, agency fees, insurances and all other costs, disbursements, commissions and other expenses such as costs of the officers and crew, insurance, costs of berthage, security, reproduction of plans, photographs, courier services, survey reports, etc., necessary or inherent to giving effect to this order and the commission of sale and for the preservation, safekeeping or maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011 to the date of sale shall be treated as Sheriff's costs payable immediately after taxation by an assessment officer in priority to all other claims from the proceeds of the sale. Notwithstanding *Federal Courts Rules* 490(5) and 490(6), the Sheriff's account shall be submitted directly to the assessment officer who shall promptly examine it and who shall issue a certificate, authorizing all or such portion of the account as he or she deems appropriate, whereupon the amount set out in the certificate shall be paid out to the Sheriff or as the Sheriff shall direct, out of the proceeds of sale in priority to all other claims.

13. The proceeds from the sale of the Vessel, bunkers and fuel which are paid directly to Alexander Holburn Beaudin & Lang LLP in trust in United States dollars shall be held in a United States dollar interest bearing trust account and the funds so deposited shall be deemed for all purposes to be monies paid into this Court to the credit of all *in rem* claims against the Vessel and shall not be disbursed except in accordance with the further order of the Court.

Paragraphs 14-17 inclusive of the Sale Order then set out further and usual conditions, i.e. cross-examinations of affidavits of claim, reservation to the Court of all questions relating to the Sale Order and claims *in rem* and costs of the sale motion to Nordbank in priority to all other claims other than that of the Sheriff.

[7] By motion dated October 14, 2011, Nordbank moved for approval of the sale to PT Meratus Line [Meratus] for 4.8 million USD plus the value of the bunkers and other fuel oil as specified in the Sale Order. The supporting materials outlined the Sheriff's worldwide efforts to sell the *Altona* in a declining market and indicated that Nordbank had been paying all of the costs of maintaining

the vessel and crew, but would not continue to do so. On October 19, 2011, the Court, having taken into account that no party opposed the sale, granted the order as sought and discharged all caveats.

[8] By letter dated October 26, 2011, counsel for Nordbank indicated that Meratus needed an extension of time to November 15, 2011 for the Sheriff to execute a bill of sale and effect delivery of the vessel because of certain mandatory steps associated with transferring the *Altona* directly to a new Indonesian subsidiary company called Pt. Mitrarejeki Investa. Counsel urged approval of that extension of time given that 4.8 million USD (the sale price of the vessel) and 277,970 USD (an advance on the anticipated fuel price) had been paid in trust and that Pt. Mitrarejeki Investa had agreed to assume all vessel expenses effective midnight on October 28, 2011. Counsel for Nordbank subsequently advised the Registry of a refinement of the proposed arrangements, including completion date by November 14, 2011. The Court's Order dated October 28, 2011 gave effect to said arrangements.

[9] By letter dated November 9, 2011, counsel for Pt. Mitrarejeki Investa requested an extension to November 18, 2011, to which the Court agreed, for completion of the sale because of certain additional and mandatory steps associated with transfer of the flag.

[10] A copy of the Sheriff's Bill of Costs, showing the commission earned on the sale plus copies of the invoices for the disbursements incurred by and on behalf of the Sheriff by Nordbank as well as expenses related to the sale paid by the Sheriff's company or on behalf of his company, is found in the affidavit of Nicholas Bailey, shipbroker with Howe Robinson & Co. Ltd and acting Sheriff in

the matters before the Court, sworn December 9, 2011 and filed with the Court on December 13, 2011.

[11] The following Direction was issued to all parties on December 13, 2011:

The Senior Assessment Officer, Charles E. Stinson (the SAO), after having examined the Sheriff's bill of costs further to paragraph 12 of the Sale Order dated August 4, 2011 and after having been advised by the Registry further to a conference convened today by the Court that at least one creditor will be objecting to an item in the bill of costs, ie. vessel operating expenses, has directed that any creditor intending to object to a given item in the bill of costs identify the item or items by name in a letter to the Registry by December 20, 2011, with a copy to all other interested parties. For greater clarity, the SAO notes that written submissions do not need to accompany said letter as the SAO will issue a schedule after December 20th for the exchange of submissions on disputed items. The SAO will however, in the interests of the expediency intended by paragraph 12 of the Sale Order, issue a Certificate of Assessment as soon as possible after December 20th, without entertaining further materials from the parties, addressing all items of costs not in dispute.

[12] Further to the issuance of this Direction and having received parties additional representations, another Direction was issued on December 22, 2011, reading:

The Senior Assessment Officer having noted correspondence that all counsel, other than counsel for Cameco Corporation, have confirmed that their respective clients take no position in respect of the sheriff's bill of costs, and having further noted that Cameco Corporation would assert an objection to certain parts of the sheriff's bill of costs, convened a teleconference on December 21, 2011 with counsel for Cameco Corporation and counsel for HSH Nordbank AG in which it was confirmed that Cameco Corporation asserts an objection to Exhibit No. I for 341,564.08 Euros, but otherwise does not object to the sheriff's bill of costs. After hearing respective submissions on an approach to resolve the issues associated with Exhibit No. I, the SAO directed that counsel for HSH Nordbank AG prepare, serve on Cameco Corporation only and file, by December 28, 2011, a version of Exhibit I with page numbers and other necessary means to facilitate reference to the 87 sub-items of its 8 invoices, to be used to isolate if possible specific amounts in dispute or not in dispute. The

SAO further directed that Cameco Corporation and HSH Nordbank AG need serve documents on one another only for the assessment of the sheriff's costs. The SAO will however send to all counsel any decisions or directions arising out of the assessment of the sheriff's costs.

[13] The same day, after the parties having been requested to discuss the form of a certificate of assessment and after having submitted such, the following Certificate of Assessment of the Sheriff's costs was issued by the Senior Assessment Officer:

I HEREBY CERTIFY, further to a teleconference on December 21, 2011 and there being no objections, that from the proceeds from the sale of the 'MCP Altona' having been held in U.S. currency in accordance with the Order of August 4, 2011 (the Proceeds), the sum of US\$88,749.64 (or its Canadian equivalent as of the date of payment) shall be paid to the Sheriff.

I HEREBY FURTHER CERTIFY that from the Proceeds the sum of C\$7,309.84 (or its US equivalent as of the date of payment) and the sum of Euros 14,339.26 (or its Canadian equivalent as of the date of payment) shall be paid to HSH Nordbank AG.

[14] In light of the Senior Assessment Officer's Direction issued on December 22, 2011, counsel for Nordbank served and filed a paginated version of Exhibit I the same day. By letter that same day, counsel for Cameco Corporation [Cameco] advised the Registry of the Court and opposing counsel of the invoices remaining in issue. Counsel for Nordbank submitted on February 21, 2012, a letter together with two schedules: "A" representing the invoices not contested by Cameco and "B" representing the claims the Sheriff and Nordbank would not pursue as Sheriff's costs and agreeing that they are not recoverable. A Book of Contested Invoices of Hartmann Schiffahrts GmbH & Co. [Book of Contested Invoices], containing the remaining contested invoices was further filed on February 21, 2012 for ease of reference.

[15] Accordingly, on February 23, 2012, the Senior Assessment Officer issued the following Certificate of Assessment of the Sheriff's costs:

I HEREBY CERTIFY, further to a letter dated February 21, 2012 from counsel for HSH Nordbank AG confirming an agreement between the sheriff, Cameco Corporation and HSH Nordbank AG, and there being no objections, that from the proceeds from the sale of the "MCP Altona" having been held in U.S. currency in accordance with the Order of August 4, 2011, the sum of C\$19,646.85 (or its US equivalent as of the date of payment), the sum of US\$145,896.41 (or its Canadian equivalent as of the date of payment) and the sum of €8,121.78 (or its Canadian equivalent as of the date of payment) shall be paid to HSH Nordbank AG.

[16] The issuance of these Certificates of Assessment permitted immediate payment out of the proceeds of the sale of the "Altona" for the items not in dispute, namely Exhibits A, B, C, D, E, F, G, H, J, K, L, M and certain items of Exhibit I of the Sheriff's Bill of Costs.

[17] Counsel for Nordbank subsequently filed the affidavit of Joerg Schelp, Senior Vice-President of the Restructuring Unit of Nordbank, sworn March 7, 2012 [the March Affidavit]. Said affidavit provides underlying details of the invoices in the Book of Contested Invoices and confirms the invoices that were agreed as not recoverable as Sheriff's costs, thereby removing them from the list of contested invoices. At the request of counsel for Nordbank, a conference call was scheduled between the Senior Assessment Officer and counsel for Cameco and Nordbank, to address next steps. Further to that conference call on March 28, 2012, the Senior Assessment Officer set deadlines for Cameco to serve written interrogatories and for Nordbank to provide all answers to same. An additional affidavit of Joerg Schelp sworn May 29, 2012 [the May Affidavit], including the responses of Martin Escherhaus, Manager of Hartmann Schiffahrts GmbH & Co. [Hartmann] in respect to Questions 1 to 185 to the Written Examination, was served and filed. A teleconference

held on May 31, 2012 further permitted parties to endorse a timetable providing a schedule to serve and file their written representations on the Sheriff's costs.

[18] It is noted that through the assessment process, more specifically the parties' written representations and the List of Invoices remaining in issue found in the Affidavit of Patsy Chan sworn July 4, 2012, that some items claimed under Exhibit I were either not contested or withdrawn. The items not objected to are found in the Book of Contested Invoices at page 18 (359.71 USD), page 40 (34.24 EUR), page 42 (18.73 EUR), pages 47-52 (1350.31 EUR), page 114 (18 EUR), page 115 (34.24 EUR), page 171 (459.52 EUR), and pages 181-182 (68.48 EUR). The items withdrawn are found at page 68 (780 EUR) and page 186 (450 EUR). Considering the above, the amounts of 359.71 USD and 1983.52 EUR are allowed as expenditures not objected to by Cameco.

[19] I wish to reproduce at this stage, a portion of the letter received from counsel for Cameco dated December 20, 2011 [the December 2011 letter]. This letter sheds some light on Cameco's objection to Exhibit I being disbursements to Hartmann for vessel operating costs from August 3 to October 28, 2011. In that letter, Cameco states that:

...Hartmann was the vessel operator or manager of the vessel. Hartmann failed to provide services to the vessel upon its arrival in Vancouver in January 2011 and following, for such items as berthage, fuel, stevedoring, cargo removal and vessel repairs during the remediation process. It is also alleged in the course of the underlying litigation that Hartmann caused or contributed to the incident or the exacerbation of the effects of the incident. Hartmann also failed to disclose the underlying financial circumstances, and specifically the bankruptcy of the vessel owning company, in a timely manner. Accordingly, it would be inequitable to allow Hartmann to recoup expenses it claims it now incurred, when it refused to provide such expenses forcing Cameco to step in on

Hartman's behalf. In the circumstances, Hartmann's claim should not be treated as proper admiralty sheriff's expenses, but rather as other expenses for which it may have a claim against MS MCP ALTONA GmbH & Co. KG *in personam* or in the priority hearing generally. Secondly, there is no information as to why Hartmann incurred such expenses. The owners of the vessel sought bankruptcy protection as of February 14, 2011. Hartmann was not providing services to the vessel between February 14, 2011 and August 3, 2011. It would be inequitable and unjust to allow Hartmann to attempt to recoup such expenses under the guise of admiralty sheriff's disbursements.

[20] The letter also goes into details concerning different invoices and points out that the nature, reasons and period of time for which these expenses were incurred had not been justified to Cameco's satisfaction. The Written Examination on the Affidavit of Joerg Schelp sworn March 7, 2012 was filed in response and is part of the May Affidavit. Additionally, written representations were served and filed by Nordbank and Cameco for consideration in the assessment process of the Sheriff's costs.

[21] A first point of contention between Cameco and Nordbank is the role of Hartmann. Counsel for Cameco points out that "Hartmann was the vessel operator or manager of the Vessel". Counsel for Nordbank in his written representations submits that Hartmann was the Technical Manager of the MCP Altona prior to the arrest and continued to act in this role while the Vessel was under arrest. It is further asserted that Hartmann was paid by Nordbank for all of the expenses, claimed as Sheriff's expenses by Nordbank, at the time those expenses were incurred. In support, the May Affidavit reports at paragraph 3, that in order to answer the questions in the written examination, that "Although the Bank agreed to finance the preservation, safekeeping and maintenance of the "MCP Altona" (the "Vessel") pursuant to the Order of the Court of August 4, 2011, the Bank was not the ship manager, and therefore, we required the assistance of the Technical Manager of the

Vessel, Hartmann Schifffahrts GmbH. & Co. (“Hartmann”)...”. The relevant management contract dated February 15, 2011 is provided at appendix 54 to the May Affidavit.

[22] As covered in the December 2011 letter (segment reproduced at paragraph 19 of these reasons) and paragraph 6 of Cameco’s written representations, it is contended that the “expenses at issues are ones incurred by Hartmann, the managers and operators of the Vessel”. Their reimbursements in any event are “not to be divorced from the reality of the situation in giving rise to the Vessel’s arrest, sale and the claims against the sale fund”. Cameco’s counsel further presents a broad history of the incident giving rise to the litigation to be determined by the Federal Court, emphasising that a larger and broader context must be considered upon determining the Sheriff’s costs, and argues that to favour Hartmann in the circumstances would be “inequitable and unfair”.

[23] While I appreciate that both parties made certain that the Assessment Officer, in dealing with the Sheriff’s costs, was provided with a broader context of the matter before the Federal Court, I am of the opinion that my role in the present situation is not to determine the issues of the underlying litigation, but to assess the Sheriff’s accounts as per paragraph 12 of the Sale Order of August 4, 2011 which states:

All reasonable expenses of advertisement of the sale, agency fees, insurances and all other costs, disbursements, commissions and other expenses such as costs of the officers and crew, insurance, costs of berthage, security, reproduction of plans, photographs, courier services, survey reports, etc., necessary or inherent to giving effect to this order and the commission of sale and for the preservation, safekeeping or maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011 to the date of sale shall be treated as Sheriff’s costs payable immediately after taxation by an assessment officer in priority to all other claims from the proceeds of the sale.

I consider that the arguments raised in Cameco's Written Representations in the paragraphs found under "The underlying facts and equities" mostly relate to the issues that are currently at suit before the Federal Court. As an Assessment Officer, I lack the jurisdiction required to determine said issues.

[24] Counsel for Cameco further points out in his representations that the purpose behind the Sheriff's costs is the preservation of the Vessel "so that it does not deteriorate in value or become a "wasting asset" while it is awaiting the sale... This is distinct from the Vessel being treated as a normal revenue earning Vessel in the normal course of trading operations". Accordingly, it is contended that the Vessel could not and should not have been operated as if in normal revenue service and that during the sale process, "the Sheriff, or those seeking Sheriff's costs, have a duty to minimize expense to those which are necessary for the preservation and safe keeping of the Vessel or making it possible for the Vessel to be sold". It is Cameco's position that Hartmann and Nordbank have taken undue advantage of Cameco's efforts and that Hartmann "should not be allowed to benefit, by receiving money described as "Sheriff's expenses".

[25] In response, counsel for Nordbank states that "when the Order for Sale was made, the Bank had been paying to Hartmann the costs of preservation, safekeeping and maintenance [PSM] of the Vessel for several months". It is further contended that the advancing of funds pending the sale of the Vessel and priority status over the sums advanced by either party were argued before the Court and the results of those arguments are stated in paragraph 12 of the Sale Order. Considering that this decision was not appealed, the issues dealt with by the Court Order should not be opened for consideration by the Assessment Officer. Counsel for Nordbank further contends, while Cameco

suggests that only preservation costs are recoverable, that the Sale Order “provides that expenses for the officers and crew and for the PSM of the Vessel paid by the Bank shall be Sheriff’s costs”.

[26] In reply, counsel for Cameco submits that the words “reasonable” and “necessary” qualify the costs incurred by the Sheriff and “not all costs that may be incurred by the Sheriff or funded by the Bank, but only those which are reasonable and necessary to the Sheriff’s mandate, which is to sell the Vessel for the benefit of all creditors.” The Sheriff had the mandate of protecting the interests of all parties who claim liens against the Vessel and this did “not mean that the Sheriff should delegate responsibility for the preservation, safekeeping and maintenance of the Vessel without any question or scrutiny of the costs”. The role of the Assessment Officer should be to determine whether the expenditures incurred by the Sheriff were reasonable and necessary.

[27] To Nordbank’s argument that the Vessel was not in harbour but at a remote anchorage in Indian Arm and that it “had to be moved twice to accommodate the cargo owners (Cameco and Saxon Energy Services Inc.)” and that, as per the May Affidavit (Question 22), it was anticipated to be moved again, Cameco’s counsel replies that the two moves were done at their expense in order “to accommodate the Vessel owner and its managers (Hartman) since both had failed or refused to discharge the cargo or deal with the situation”. It is also contended that the Bank’s submission overlooks the fact that but for Cameco’s efforts, the Vessel would still be under a Transport of Canada detention order and would be worthless due to radioactive contamination”.

[28] The entitlement to the proceeds of the sale of the Vessel is currently before the Federal Court. I consider my role as Assessment Officer to be the determination of the reasonableness and

necessity of the expenditures found in the Sheriff's Bill of Costs in light of the Sale Order and not the determination of the issues that are ultimately to be decided by the Court. In the Sale Order, the Court at paragraph 12 refers to :

All reasonable expenses of advertisement of the sale... and all other costs, disbursements, commissions and other expenses such as costs of the officers and crew, insurance, costs of berthage, security..., etc., necessary or inherent to giving effect to this order and the commission of sale and for the preservation, safekeeping or maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011 to the date of sale....

[29] Both parties acknowledge the fact that the Vessel was moved on two occasions while under arrest. While I appreciate Cameco's argument regarding their efforts to move the Vessel, the fact remains that the Vessel was moved while under the Sheriff's care and therefore needed to be standing by, prepared to do so. As for Cameco's efforts to accommodate said moves, I expect that said costs would be part of the actual litigation before the Court, not the Sheriff's costs assessment. The parties' submissions generated certain concerns for me, relative to the need to preserve and keep the Vessel from deteriorating to ensure the best possible state for sale. My understanding of the core dispute before me, between Cameco and Nordbank, is not that the Vessel should not have been maintained and kept from deteriorating to ensure it remains attractive for potential buyers, but the extent to which that moneys had to be spent to achieve that result. Of further dispute is whether the ship's preservation and crew requirements during the period of sale necessitated that the Vessel be maintained to a state and level of full operational readiness.

[30] Considering the above, I will now proceed with the assessment of the Invoices remaining in issue under Exhibit I, referring to each claim by name and page number as found in the Book of Contested Invoices.

Hartmann Schiffahrts GmbH & Co. (pages 54, 70 and 138 of the Book of Contested Invoices)

[31] The March Affidavit points out at paragraph (v) that these charges are part of the Management fees as per Hartmann's management contract for services provided towards accounting, telephone, telex, e-mail communications, IT services and for warehousing spares and equipment. Nordbank's representations further specify that the Agency fees to Hartmann for communication charges were for services from the Hartmann office in Germany and that the other charges were for the Vessel communication's systems. In response to the filing of the claims related to invoices at pages 54, 70 and 138, counsel for Cameco argues that the claims are not satisfactorily explained as to the charges and whether the services provided were necessary for the preservation and safekeeping of the Vessel, claiming that some expenses are duplicative and unnecessary.

[32] In evidence before me are: questions 150-159 of the Written Examination attached as Schedule A to the May Affidavit and the invoices found in the Book of Contested Invoices at pages 54, 70 and 138 covering management services for the month of September (p.54), August (p.70) and October (p.138) as per the management contract signed between the MCP Altona GmbH & Co and Hartmann Schiffahrts GmbH & Co as reproduced at Schedule 54 to the May Affidavit.

Paragraph 12 of the Sale Order states that all reasonable expenses of advertisement of the sale, agency fees... necessary... for the preservation, safekeeping or maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011 to the date of the sale, are to be treated as Sheriff's costs. As put before me through the May Affidavit at paragraph 3, Nordbank, not being a ship manager, required the assistance of Hartmann to manage the Vessel for its preservation, safekeeping and maintenance. I am not in a position to doubt that statement, having

not been provided with evidence that those services were not necessary. Further, I was not presented with any specific evidence or indication that the amounts claimed were not reasonable and considering that there was no cross-examination on the Written Examination attached to the May Affidavit, the expenditures for accounting, telephone, telex, e-mail communications, IT services and for warehousing spares and equipment covered in the invoices all seem reasonable and within the timeframe set by the Sale Order and are allowed as claimed.

Hartmann Schiffahrts GmbH & Co. (page 154 of the Book of Contested Invoices and exhibit A to the Affidavit of Patsy Chan sworn July 4, 2012)

[33] These invoices from Hartmann are claimed as management fees from April 1 to Sept 30, 2011 – Invoice dated October 18, 2011 (p.154) and from October 1, 2011 to November 18, 2011 – Invoice dated December 22, 2011 (exhibit A). As per the March Affidavit, these expenditures were necessary for the PSM of the Vessel to provide for bunkers, officers and crew, accounting services, purchasing for the vessel, arranging communications and IT, arranging to maintain the Vessel in class, to obtain the necessary certificates and arranging for bunker analysis and classification surveys as per contract for services. It is further submitted in the March Affidavit, that the amount claimed in the invoice dated October 18, 2011 should be 11,800 EUR and not 36,600 EUR to cover for the period between August 3, 2011 to September 30, 2011 i.e.59 days at 200 EUR/day. In response, counsel for Cameco argues that no real explanation has been provided to warrant an expense of 200 EUR per day or why it was necessary to the PSM of the Vessel other than the management contract. In reply, counsel for Nordbank argues that the Bank could not manage the Vessel and therefore needed to hire a technical manager. It is further alleged that 200 EUR per day is a very reasonable charge.

[34] Nordbank, as clearly stated, is not in the business of managing vessels and as contended by its counsel, no evidence was presented to me to the effect that another technical manager could have done the necessary work for a lower fee. The management contract before me was not contested and I was not provided with any evidence to compare similar services in order to help me assess the reasonableness of the expenditures claimed. Therefore, I am satisfied that the services provided by Hartmann were necessary and reasonable charges to the PSM of the Vessel. Consequently, the claim presented at page 154 is allowed 59 days at 200 EUR per day for a sub-total of 11,800 EUR. With regard to the invoice at exhibit A, it is contended in the Affidavit of Patsy Chan that ‘Hartmann continued to charge the Bank for their services from October 1, 2011 until after delivery of the Vessel’. Therefore, this claim is allowed at 5,600 EUR taking into consideration the period covered by the Sale Order i.e. 28 days from October 1 to October 28, 2011 at 200 EUR per day.

Air compressor unit (page 10 of the Book of Contested Invoices)

[35] The March Affidavit at paragraph 5(b) states that ‘this invoice is for the transportation of a replacement for the air compressor for starting the auxiliary engine, which was shipped from China on July 29, 2011, and arrived on the ship a few days later. The replacement of the compressor was required by the class surveyor Germanischer Lloyd (“GL”) in order to keep the auxiliary engine operating, and keep the vessel seaworthy’.

[36] In response, counsel for Cameco contends that the part was ordered on June 23, 2011 and invoiced on July 29, 2011, before the time period encompassed by the Sale Order. In reply, counsel for Nordbank does not argue the date the part was ordered but contends that the part was delivered to the Vessel on August 13, 2011. Referring to the Written Examination in the May Affidavit,

counsel for Nordbank argues that the air compressor was “required for scheduled overhauling of equipment in range of normal maintenance” and was necessary to start the auxiliary engine to provide electricity for the Vessel when at anchor. It is further contended that the parts were invoiced to the Bank by Hartmann on September 20, 2011 and constituted an expense to the Bank for the PSM of the Vessel.

[37] I read from the Written Examination in the May Affidavit that the auxiliary engine was operational until its replacement and that there was “no class requirement” for the replacement of the air compressor. Despite the importance of this piece of equipment for the good functioning of the Vessel, the Sale Order speaks of expenditures for the “maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011...” The invoice at page 10 from Weijia Marine Engineering Co. Ltd. indicates that the order for the service provided is July 28, 2011, while the invoice is dated July 29, 2011. Considering, that the expenditure was incurred by Hartmann on behalf of Nordbank before the period covered by the Sale Order, the claim is not allowed.

Auxiliary Engine Parts (page 19 of the Book of Contested Invoices)

[38] As per the March Affidavit at paragraph 5(f), “these parts are necessary for repair of the auxiliary engine... necessary for the operation of the Vessel”. In response, counsel for Cameco contends that the parts were not required for the PSM of the Vessel during the period it was under arrest since the “Vessel was able to do without them until after the sale of the Vessel”. Further, it is argued that the parts were delivered to the Vessel on November 13, 2011 while its sale occurred on October 28, 2011, after the time provided for in the Sale Order. In reply, counsel for Nordbank

argues that the parts were ordered August 5, 2011, invoiced to Hartmann on August 6, 2011 and to Nordbank on September 20, 2011. It is Nordbank's position that although the delivery of the parts was delayed, the costs were incurred within the period covered by the Sale Order.

[39] Paragraphs 41, 42 and 43 of the Written Examination referred to in the May Affidavit specify that these parts required to be replaced as they had ceased to be operational in July 2011, and they were necessary to keep the generators running. The Sale Order speaks of expenditures for the "maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011...". From the evidence provided, I consider that this part was necessary for the maintenance of the Vessel. As per invoice from Weijia Marine Engineering Co. Ltd. (page 19 of the Book of Contested Invoices), I note that the order for the parts was made on August 5, 2011 and invoiced on August 6, 2011. I consider that the expenditure was incurred by Hartmann on behalf of Nordbank within the period covered by the Sale Order and the claim is therefore allowed.

Supplies (pages 31-35 of the Book of Contested Invoices)

[40] The March Affidavit at paragraph 5(j) states that "this invoice covers purchase of chemicals and supplies necessary for the operation of the Vessel, including treatment of the potable water, anti-fouling chemicals, hand cleaner etc". Paragraphs 66 to 68 of the Written Examination referred to in the May Affidavit refer to 2 X 25 litre of Bioguard, 2 X 25 litre of Autotreat and 4 X 5 litre of natural hand cleaner have been delivered on board the Vessel in August 2011.

[41] Referring to the quantities and rates shown on the invoice of Wilhelmsen Ships Services, counsel for Cameco objects to this expenditure arguing that no satisfactory explanation has been

offered for the “large quantity of consumable supplies” ordered as well as for the discrepancies between the amounts invoiced and the amounts delivered. In surreply, counsel for Nordbank details and explains the acronyms used on the invoice and refers back to the explanation contained in the Affidavit.

[42] My understanding of the manner in which those products are sold, from reading the affidavits and the parties’ arguments, leads me to agree with the arguments provided by counsel for Nordbank, well supported by the affidavits. The necessity and the period these items were purchased are not at issue and I consider that the items purchased were required and necessary. The claim is allowed as demanded.

Braitsch (pages 36-39 of the Book of Contested Invoices)

[43] To the claim for the customs clearance charges for parts for the turbocharger, counsel for Cameco responds that no explanation has been offered regarding the necessity of this expense for the PSM of the Vessel. Those constitute the only arguments before me on that matter. The only evidence can be found in the invoice at pages 36 to 39 of the Book of Contested Invoices.

[44] In spite of the invoice billed to Hartmann “MCP Altona” on August 19, 2011 for a total amount of 311.14 EUR, I fail to see how, with no further explanation, this expenditure was necessary for the PSM of the Vessel within the parameters of the Sale Order. Considering, this claim is not allowed.

Customs Clearance Charges (page 46 of the Book of Contested Invoices)

[45] The March Affidavit at paragraph 5(n) states that the invoice address “Customs clearance for spares for the auxiliary engine starting air compressor, which were shipped from Bremen, Germany to Vancouver”. Counsel for Nordbank argues that this expense was incurred within the period stated in the Sale Order. In response, counsel for Cameco contends that this invoice relates to the parts for which transportation was claimed for at page 10 in the Book of Contested Invoices. As these parts were ordered before the time encompassed by the Sale Order, their clearance should not be recoverable.

[46] Considering my conclusion regarding the claim at page 10 of the Book of Contested Invoices, found at paragraph 37 of these reasons, the claim for Customs clearance charges is not allowed.

United Maritime Suppliers (pages 55-57 of the Book of Contested Invoices)

[47] In response to the invoice provided by United Maritime Suppliers, counsel for Cameco argues that it covers the period of January 15 to September 15, 2011 and that only a fraction of that time would fall within the period of the Sale Order. It is further contended that no explanation has been provided as to whom this amount was paid or when the expenses were incurred. Additionally, the expenses for the rental of mobile phones seem to be duplicative over other charges for satellite phones and cell phones, while charges are claimed for the second time for agency fees with no further explanation.

[48] In response, counsel for Nordbank argues that of the statement provided by United Maritime Suppliers of Vancouver for a total amount of \$63,047.93 CAN, only the amount of \$11,534.20 CAN is claimed to cover for expenses incurred after August 3, 2011. It is further argued that the rental of mobile phones locally (in Vancouver) resulted in cheaper charges for correspondence with local authorities, agents and suppliers. As for the agency fee claimed, it is contended that this fee was for the local Vancouver agent for the clearance of the Vessel.

[49] Paragraphs 86 to 99 of the Written Examination referred to in the May Affidavit detail many of the expenses found in the statement provided by United Maritime Suppliers and specify that the amount of 11,534.20 CAN was paid for expenses incurred within the period of August 3 to October 28, 2011. It is asserted that the rental of mobile phones in Vancouver was necessary to save costs as local mobile phones had less expensive rates for local correspondence. The agency fees referred to in the statement as “miscellaneous expense” for 3000.00 CAN are for the clearance of the Vessel, more specifically for the agency acting for and on behalf of the Vessel. From an additional answer, it is contended that there was no contract between Hartmann and the agent Compass Marine as it would be unusual.

[50] Despite the argument made by the counsel for Cameco, I find the explanations found in the Affidavit of Mr. Schelp quite convincing as evidence for the expenses incurred to be related to the preservation, safekeeping or maintenance of the Vessel and the Agency fees to be in line with paragraph 12 of the Sale Order. Considering the adjustment made to the initial amount claimed, 11,534.20 CAN are allowed.

Charts (page 58 and page 153 of the Book of Contested Invoices)

[51] Paragraphs 100 to 104 of the Written Examination referred to in the May Affidavit assert that the charts were ordered automatically as per a contract with ChartCo Service. It is further stated that they were required “to keep the outfit of nautical charts and publications always up-to-date as per good seamanship”.

[52] Counsel for Cameco argues that the purchase of additional or new charts for the Vessel, while under arrest or at anchor, was unnecessary and that there is no reason why it could not have been suspended until the Vessel ownership was transferred.

[53] In support of these claims, paragraph 5(z) of the March Affidavit reiterates that the Vessel, while at anchorage, had been moved twice and could have been moved again. Therefore, I regard the charge for continuing the nautical electronic charting system of the Vessel as necessary. As per Nordbank’s representations, in order to reflect the period covered by the Sale Order and the invoices provided, the amount allowed for Seekarte’s invoice at page 58 is reduced to 565.24 EUR and the invoice at page 153 reduced to 262.72 EUR.

Bunker analysis (pages 65-66 of the Book of Contested Invoices)

[54] Paragraphs 109 to 114 of the Written Examination referred to in the May Affidavit state that the invoice for bunkers’ analysis fee covers for the third quarter of 2011, being July, August and September. Therefore, a third of the amount originally claimed falls outside the period covered by the Sale Order. It is further indicated that it “is normal good practice to regularly check the quality

of the ship's bunkers. Without proper bunkers the Vessel is not able to trade, i.e. Vessel will face major problems if poor bunkers are running through the main engine.”

[55] In response, counsel for Cameco argues that the Vessel was at anchor and that no explanation is provided regarding the necessity to conduct bunker analysis or how it relates to the safekeeping and preservation of the Vessel.

[56] I am satisfied that this expense was part of the Vessel's regular maintenance and the amount of 349.43 EUR, reflecting the reduction covered in Nordbank's representations, is allowed.

Bareboat Registry fees (page 102 – Republic of Liberia, page 139 - Germany and page 185 - Germany of the Book of Contested Invoices)

[57] Counsel for Nordbank contends that the “Vessel is a German registered Vessel which was bareboat chartered to a Liberian company”. The March Affidavit at paragraph 5(q) states that “it was essential to extend the bareboat registry, failing which the Vessel's registry, its entry into GL and its insurance would not have been in force”. Paragraph 5(w) of same Affidavit indicates that the German Registry fee “is the charge for continuing the bareboat charter registration of the Vessel in Germany which was necessary in order to maintain class and keep the Vessel insured”. Paragraph 5(ee) of the March Affidavit states for the fees claimed at page 185 that “these are the fees for the bareboat charter registry which was incurred prior to October 28, 2011 but not billed by the registry until November 1, 2011”.

[58] Paragraph 160 of the Written Examination referring to the German registration states that “the Vessel is not bareboat chartered in Germany, it is bareboat chartered in Liberia, and this invoice reflects the cost for the permission from German authorities to bareboat charter the Vessel and fly the Liberian flag”. Paragraph 126 of the Written Examination referred to in the May Affidavit further states that “if Hartmann failed to obtain an extension of the bareboat charter registry, the Vessel would have to revert to the underlying German registry, and due to the much more extensive requirements of that registry, that would produce additional expense of approximately Euros 200,000.00 per annum”.

[59] In response, counsel for Cameco contends that these expenses do not relate to the PSM of the Vessel “while under arrest and pending sale”. The bareboat charter (Liberia) was extended on September 21, 2011 for the period of October 22, 2011 to October 21, 2013, while the Vessel was in the course of being sold. It was a commercial decision for the benefit of Hartmann. It was not necessary to maintain the bareboat registry and there is no explanation as to why it was necessary to extend it.

[60] I understand through Question 162 of the Written Examination referred to in the May Affidavit that there was an “underlying registration of the Vessel as a German vessel”. Undoubtedly, registering the Vessel was necessary to its preservation and safekeeping, be it under Liberian or German flag, as it was needed to maintain the required entry in class with the Germanischer Lloyd [GL] for the insurance to be in force. In consideration for the time period covered by the renewal of the registry and the date to which the registration was extended, I fail to see how the charge for the registration of the bareboat charter registry with the Liberian Bureau of

Maritime Affairs should be considered fully recoverable. Considering the Sale Order and the date the registrations were renewed as well as the date the Vessel was sold and the change of registration of the Vessel from the Liberian registry to the Indonesian registry to take effect on November 15, 2011 (Court Order dated October 28, 2011), only a twenty-fourth (one month of the two year period refer to in paragraph 59) of the amount claimed at page 102 and 139 of the Book of Contested Invoices are allowed i.e. 48.75 USD and 12.5 EUR. The amount demanded at page 185 is allowed as claimed.

Paint (pages 131-132 of the Book of Contested Invoices)

[61] The March Affidavit at paragraph 5(q) states that “although the Vessel was under arrest, the crew continued to maintain her for the preservation and maintenance.” In response, counsel for Cameco argues that the paint was ordered on August 2, 2011, prior to the Sale Order. It is added that it was unnecessary as the Vessel was at anchor and waiting to be sold. It should have been for the new owners to paint the Vessel rather than being done at the Sheriff’s expense. In reply, counsel for Nordbank contends that the paint was received and paid during the period covered by the Sale Order and was for “spot repairs or portions of the Vessel as required”. As per paragraph 146 of the Written Examination referred to in the May Affidavit, “the Vessel was continuously painted in order to avoid corrosion and deterioration and to protect the value of the Vessel”.

[62] The Sale Order speaks of expenditures for the “maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011...” There is no doubt in my mind that this expenditure could be considered as necessary for the maintenance of the Vessel, however, from the perspective of a strict technical construction of the period defined by the Sheriff

responsibility for the Vessel, as defined by the Sale Order, its purchase date falls one day outside the time period even if I feel fairly certain that the paint itself was applied to the Vessel during said sale period. The amount will be disallowed.

Anti-piracy reports (pages 183-184 of the Book of Contested Invoices)

[63] The March Affidavit at paragraph 5(dd) indicates that “all of the vessels in the Hartmann fleet are provided with the anti-piracy software/intelligence reports due to the facts that the vessels trade worldwide”. Paragraph 184 of the Written Examination referred to in the May Affidavit further mentions that “the anti-piracy intelligence report is ordered for the entire fleet. Lump sum to be paid from all vessels pursuant to the Management contract”.

[64] I agree with the representations made by counsel for Cameco, there was no need to maintain this report for the MCP Altona since it was under arrest and was not to leave Canadian waters. The claim for anti-piracy reports is disallowed.

Crew Manning / Wages (pages 11-12: August 2011, page 98: September 2011 and page 104: October 2011 of the Book of Contested Invoices)

[65] The March Affidavit at paragraph 5(c) contends that the crew wage expenses in the Hartmann invoice for the month of August 2011 are of 32,866.00 USD. It is further stated that “the minimum safe manning level for this Vessel at anchorage is 15, during the period in question; there were only 16 officers and crew aboard the Vessel”. Paragraph 5(p) of the March Affidavit indicates that the sum of 31,200.00 USD was paid to the crew in September while paragraph (r) covers for crew wages for October 2011: 32,116.00 USD.

[66] Paragraph 21 of the Written Examination referred to in the May Affidavit specifies that the Minimum Safe Manning Certificate found at Schedule 21 of the Affidavit shows that a minimum of 13 crew members is necessary while the Vessel is operating or at anchor and that it was Hartmann's practice to add two or three additional crewmen to ensure that the Vessel was maintained in good order. Paragraph 22 answers the question why it was necessary to maintain a full crew when the Vessel was at anchorage: "After the arrival of the Vessel in British Columbia in January 2011, the Vessel had been moved at the request of the cargo owners on two occasions, and it was clear that the Vessel was going to be moved again. It was necessary to have a full crew aboard the Vessel in order to operate the Vessel..." E-mails confirming the plans to move the Vessel are attached. It is subsequently affirmed that 15 to 17 crew members is the normal crew complement of the Vessel when operational. When questioned about the practicability of employing a ship keeper while the ship was at anchor, discharging the crew as a result, paragraph 24 reports that it was not possible: "If the question assumes a skeleton crew, that is not possible while the Vessel is at anchor, as the Vessel cannot be operated with a skeleton crew either on a scheduled voyage or in an emergency". It is further asserted that 31,200.00 USD was the monthly lump sum paid to the crew agency Seagiant for the crew members on board. A list of 15 crew members is attached at Schedule 29.

[67] In response to this claim, counsel for Cameco contends that "Hartmann has sought a full complement of crew on board the Vessel while it was at anchor and up for sale". The owners of the Vessel having been bankrupt since February 2011, it was clear that the Vessel was to be sold to new owners. There was no need to maintain a full crew complement at all times and it should have been discharged leaving a minimal watch-keeping complement. Instead Hartmann, who was the manager of the Vessel before the incident which gave rise to the litigation, kept a full crew for no necessary

purpose, reducing the amount available for creditors. It is further argued that no satisfactory explanation was provided as to why this amount of crew was necessary, other than it was Hartman's policy, or why, while at anchor the Vessel was not kept with a ship keeper or other skeleton crew in order to reduce expense. The Minimum Safe Manning document produced indicates that the Vessel only required a crew of 13 "whenever it proceeds to sea". The Vessel was at anchor, under arrest further to the issuance of a Federal Court warrant, and was not to proceed to sea. Counsel for Cameco claims that the crew wages were an unnecessary and unreasonable expense and that they should be disregarded or substantially reduced.

[68] In reply, counsel for Nordbank contends that the statement with regard to leaving the Vessel with a skeleton crew or a shipkeeper, "ignores paragraph 12 of the Order which specifically provides for payment of the officers and crew, separately from the general provision for the PSM of the Vessel". It is further contended that the argument regarding the removal from the Vessel of the officers and crew, should have been made before the Court. Counsel for Nordbank specifies that the written evidence provided under oath is "that it is not possible to have a skeleton crew while the Vessel is at anchor. The Vessel must be manned by a full crew." The allegation that the Vessel could have been left with a skeleton crew or a shipkeeper is not supported by any evidence. On the issue of "Hartman policy" to maintain 15 to 17 crewmen on board rather than the bare minimum of 13, it is argued that it was to ensure that the Vessel was maintained in good order as per the provision for PSM in the Sale Order. The Reply of August 17, 2012 by counsel for Cameco, questions whether the costs and expenses claimed are reasonable and necessary, relative to paragraph 12 of the Sale Order providing for the payment of the crew.

[69] The “Minimum Safe Manning” Certificate found in the May Affidavit, asserts that the “Bureau of Maritime Affairs hereby states that, having regard to the requirements of Chapter V, Regulation 14/2 of the International Convention for the Safety of Life at Sea, as amended, and to the principles and guidelines set out in the IMO Resolution A.890(21) as amended, the ship named in this document is considered to be safely manned if, whenever it proceeds to sea, it carries not less than the numbers and grades of personnel shown in this document...”. The document clearly refers to 13 crew members being necessary on board the MCP Altona for the Vessel to be safely manned “when it proceeds at sea”. However, neither the Certificate nor the parties have submitted evidence regarding the required number of on board crew when the Vessel is in a holding pattern. Further, as put before me, and not contested, the Vessel was moved twice from its location while under arrest and was to be moved again. No additional evidence about crew requirements was provided by the parties. Bearing in mind the “Minimum Safe Manning” Certificate, as well as the fact that the Vessel was at anchor with a potential need to be moved again and the unsatisfactory evidence to explain the reasonableness and necessity for any additional crew or overtime request for the crew on board, I consider the necessary crew manning for the MCP Altona to be 13 crew members. Having said that, the only information found regarding each crew members’ salary at paragraph 30 of the Written Examination referred to in the May Affidavit, does not provide me with any specific information that would allow me to accurately calculate the salary for the 13 crew members. However, referring to the Officers’ wages claims at pages 17(August), 101(September) and 170(October) of the Book of Invoices filed on December 22, 2011, I note that six officers were on the Vessel payroll for the relevant months. In light of the “Schedule A – List of not contested invoices” attached to the letter from counsel for Nordbank dated February 21, 2012, I further note that the claim at page 101 for the month of September had not been contested by Cameco. In

consideration of the latter, I understand that the number of Officers on board the Vessel is not at issue. Bearing that in mind, I deduced that of the 15 crew members aboard the Vessel as provided in Schedule 29, 6 were officers and 9 were crew members as per Hartmann invoices found at pages 11 (August), 98 (September) and 104 (October). As per information found on the invoices provided, I have further utilized the amount of 31,200.00 USD as the “monthly lump sum” payment for the crew, as paid to the crew agency Seagiant by Hartmann, and divided it by 9 crew members. The resultant was then multiplied by 7, the number of crew members as per the “Minimum Safe Manning” Certificate to cover for what I consider a reasonable monthly crew manning payment per month. Having determined that the amount of 24,266.69 USD was the monthly lump sum allowable for the crew on board the Vessel, this amount was applied to the month of September and considering the dates set in the Sale Order, 22,649.00 USD are allowed for each month of August and October 2011.

Crew (Officers) wages (page 17: August 2011 and page 170: October 2011 of the Book of Contested Invoices)

[70] The March Affidavit at paragraph 5(d) specifies that the claim at page 17 of the Book of Contested Invoices is for “the wages to the officers of the Vessel for the month of August 2011” while paragraph 5(cc) specifies that the claim at page 170 is “for crew wages for October 2011”.

[71] As mentioned in paragraph 72 of these reasons, a similar claim in the amount of 20,748.00 USD for allotments in the month of September is found at page 101 of the Book of Invoices from Hartmann filed with the Court on December 22, 2011. Said claim was not contested as it appears in

the Schedule “A – List of not contested invoices” attached to the letter from Nordbank’s counsel received at the Court on February 21, 2012.

[72] In light of my earlier reasoning regarding the wages for the crew on board the Vessel, 21,248.00 USD is allowed for the claim at page 17 and 20,748.00 USD for the claim at page 170.

Cash advance – Compass Marine Services (page 6 and pages 126-128 of the Book of Contested Invoices)

[73] The March Affidavit at paragraph 5(a) stipulates that the cash advance was “made to the Master on July 23, 2011 – US\$6,932.36 of that amount was used prior to August 3, 2011, the balance was used for each advance to the crew members in August 2011”. Paragraph 1 of the Written Examination referred to in the May Affidavit, further details: “US\$15,000.00 cash to master... Such money has been used for advance payments to the crew, paying fresh water in the port, provisions, etc... For the purposes for which the advances were made, please see attached Schedule”1”.” Schedule 1 itemized the cash advances to the master from July to November 2011. The amount of 6,770.00 USD for August 2011 refers to “cash advance for crew members” and the statement at paragraph 10 of the Written Examination referred to in the May Affidavit confirms the cash advances made to different crew members. At paragraph 11, it is further stated that the crew reimbursed the cash advances from their wages or by other means.

[74] In response, counsel for Cameco argues that of the 15,000.00 USD claimed, 8,067.64 USD relates to the period authorized in the Sale Order. It is further contended that of that amount, 6,770.00 USD represents cash advances to crew members to be reimbursed by the crew and

therefore, there is no actual expenditure. It is added that, despite the reference for this money being used for provisions, there are no receipt or other verification as to what the cash has been used for.

[75] Counsel for Nordbank indicates in his representations in reply that the amount claimed should be reviewed with the subsequent cash advances found at pages 126-128 of the Book of Contested Invoices and of the two cash advances claimed, only 17,410.00 USD was used within the period covered by the Sale Order. The March Affidavit at paragraph (t) specifies that of the amount of 5,339.00 USD advanced to the master for October 2011, 5,300.00 USD is for advances to the crew members and 39.00 USD for cabin stores. Referring to the March Affidavit, it is argued that the cash advances are part of the normal Vessel's expenses. In regard to the cash advances to the crew, it is contended that there is no evidence of duplication, the amounts being in addition to the wages paid through their respective agencies. In surreply to Cameco's reply, counsel for Nordbank further argues that the point "missed by the Plaintiffs is that the advances of wages is that the advances of wages were deducted from subsequent wages paid through the agent Seagiant Shipmanagement" as per pages 11 and 98 of the Book of Contested Invoices. It is part of the expenses and not double accounting.

[76] I understand from Nordbank's arguments that it is necessary to have cash on board the Vessel to pay advances to the crew and to purchase fresh provisions. However, in regard to the cash advances to the crew, I fail to see from the Seagiant Shipmanagement's invoice referred to above, how I can allow the cash advances to said crew when I have already allowed a "monthly lump sum" for payment of that very same crew (paragraph 69 of these reasons) not taking into consideration the deduction from advances shown on the invoice. Undoubtedly, from the evidence in the March and

May Affidavits and the Seagiant invoice, said advances to the crew were reimbursed by the crew members but as far as I am concerned Seagiant had put a claim for “monthly lump sum” for the crew members’ wages that have already been considered and allowed as expenditures. I find that the cash advances to the crew are part of the expenses covered in the “monthly lump sum” and were further reimbursed by the crew members, resulting in no actual expenses. As for the other expenses to justify the remaining amount of money advanced to the master, there are no actual invoices or receipts that justify any amounts claimed including the claim of 39.00 USD for cabin stores as per Appendix I of Schedule 1 to the May Affidavit. The claims at pages 6 and 126 will not be allowed.

Agency fees – Associated Ship Management [ASM] (page 20, page 103 and pages 173-174 of the Book of Contested Invoices)

[77] The March Affidavit at paragraph 5(g) indicates that these fees relate to the provision of training and hospitalization for the crew. The Written Examination referred to at paragraph 46 of the May Affidavit further specifies that ASM is acting as crew agent for Hartmann in Germany, providing seaman and arranging for the training and medical coverage for the five Filipino crewmen on board the Vessel.

[78] In response, counsel for Cameco argues that no explanation is offered “as to what was done in order to earn this agency fee or why it was necessary”. With regard to the training fee, it is contended that the Vessel was not leaving Port Metro Vancouver and the crew was not operational and going to be discharged upon the taking over of the Vessel by the new owners. On that last argument, counsel for Nordbank argues that it would have been inappropriate to have untrained crew aboard.

[79] The Sale Order states that ...all reasonable expenses of advertisement of the sale, agency fees... necessary... for the preservation, safekeeping or maintenance of the Vessel incurred by the Sheriff and/or funded by or on behalf of the Bank from August 3, 2011 to the date of the sale, are to be treated as Sheriff's costs. The invoices from ASM itemize the monthly fees to be for: Agency fee, Hospitalization fee, Training fee, SSS & Philhealth contributions and HDMF contributions. Of the three invoices, only one refers to training fee for an amount of 128.57 USD. In light of my decision at paragraph 69 of these reasons, that thirteen crew members were necessary on board the Vessel during the period covered by the Sale Order and the invoices at pages 20, 103 and 173 as well as the summary of expenses found at page 174, and having not been provided with any evidence regarding the unreasonableness of the amounts charged, the expenditures at pages 20, 103 and 173 are allowed as claimed with the exception of the training fee, considering that the evidence provided in support of that claim did not convince me of its necessity to the safekeeping and preservation of the Vessel while under arrest.

Videotel (page 30 of the Book of Contested Invoices)

[80] The amount of 600.00 GBP or 684.38 EUR is claimed for the rental of a mini-Videotel On Demand for the period of August 19, 2011 to February 18, 2012 for the general training of the crew. As per the March Affidavit at paragraph 5(i), it was not possible to rent this type of video for a shorter period, and there was no reimbursement available from Videotel. In the March Affidavit, it is mentioned that it was "an essential expense for the preservation, safekeeping and maintenance of the Vessel". This statement is further revisited in paragraph 59 of the May Affidavit, when it is stated that it is "an essential part of good ship operations to have continuing training of the crew.

This is a standard practice of all of the Hartmann vessels and was carried on throughout the period that Hartmann was operating the Vessel”.

[81] I understand that the training of crew members on board an operating Vessel might be necessary but I fail to see with the evidence provided in support of that claim how the training that was provided was related and necessary to the safekeeping and preservation of the Vessel while under arrest and within the scheme of the Sale Order. This claim is disallowed.

Accounting charges – BPS (page 41 (August), page 116 (September) and page 180 (October) of the Book of Contested Invoices)

[82] The March and May Affidavits indicate that these charges are a regular expense incurred every month for the external IT based accounting system for calculating and recording the crew wages. It is further stated that said costs were not part of the agency fees of ASM or covered in Hartmann Management fees.

[83] Despite Cameco’s argument to the effect that no explanation is provided linking this expenditure to the PSM of the Vessel, I find that, in light of my decision at paragraph 69 of these reasons that thirteen crew members were necessary on board the Vessel during the period covered by the Sale Order, paired with the necessity to perform accounting charges for said crew members, and having not been provided with any evidence regarding the unreasonableness of the amounts charged in the invoices at pages 41, 116 and 180, that the expenditures at pages 41, 116 and 180 are allowable as claimed.

Medica Polska (page 64 (August) and pages 157-165 (September-October) of the Book of Contested Invoices)

[84] Paragraphs 107 and 178 of the May Affidavit indicate that the claimed invoices are for medical/health insurance for the Polish seaman and officers. Counsel for Cameco reiterates his comments relating to the need for the number of crew on board while the vessel was at anchor.

[85] In light of my decision at paragraph 69 of these reasons that thirteen crew members were necessary on board the Vessel during the period covered by the Sale Order and having not been provided with any evidence regarding the unreasonableness of the amounts charged in the invoices, these expenditures are allowed as claimed.

Provisions (pages 141-148 of the Book of Contested Invoices)

[86] The March Affidavit at paragraph 5(x) specifies that the invoices from United Maritime Suppliers are for food and supplies for the crew “which was substantially, if not entirely, used in October 2011”. Paragraph 163 of the May Affidavit further mentions that “the size of the order provides approximately 2 months supplies for the crew”.

[87] In his representations, counsel for Nordbank explains that the total costs for provisions at pages 141 to 148 of the BCI is 8,662.94 CAN. The substantial costs of transporting food and supplies to a vessel at anchor in Indian Arm are further argued as well as the unreasonable expectation for the food to run out on the day the Vessel transfers to new ownership while in fact, due to unforeseen circumstances, the Vessel was actually delivered in mid-November 2011. On the

provision of beer and wine for the crew, it is argued that it is a normal expense and it totalled 577.44 CAN for 16 crew members.

[88] Counsel for Cameco agrees that it was necessary to purchase food for the crew, but questions the quantity of food purchased as an appropriate expense considering the required crew members on board. It is also noted that two month supply of provisions was billed on October 11, 2011 while the sale agreement to transfer the vessel to new owners on October 28, 2011, had been reached on October 10, 2011. It is further argued that beer and liquor are not appropriate Sheriff's expenses.

[89] I note that the purchase order for the provisions claimed is dated October 4, 2011 while the invoice shows that the provisions supplied to the Vessel were billed on October 11, 2011 for food and water in the amount of 7,311.94 CAN (including 10% discount) plus beer, brandy and wine in the amount of 568.44 CAN (including 10% discount). While I think the provision for food and water is an essential and necessary expense for the required crew on board the Vessel, I note paragraph 12 of the Sale Order and its reference to "All reasonable expenses incurred..." and I fail to see the reasonableness for alcohol. To be consistent with my decision at paragraph 69 of these reasons, that thirteen crew members were necessary on board the Vessel during the period covered by the Sale Order, I have taken the amount of 7,311.94 CAN and divided it by 16 crew members as per Nordbank's representations and multiplied it by 13 crew members for a total of 5,941.00 CAN. I have further divided this amount by two in consideration of the dates covered by the Sale Order, the date the purchases were made and the representations of parties. Therefore, the amount claimed for provisions is allowed at 2,970.50 CAN.

Supplies (pages 149-152 of the Book of Contested Invoices)

[90] The March Affidavit at paragraph 5(y) specifies that the invoices from United Maritime Suppliers are ship “chandler’s invoices for safety equipment for the crew, tools and paint rollers etc. necessary for the ongoing preservation and maintenance of the Vessel”. The May Affidavit at paragraph 164 reveals that these supplies were necessary to keep the Vessel in good shape and operationally ready. In regard to the amounts ordered, paragraph 167 indicates that it had been calculated for two months to save on high delivery costs to anchorage position.

[91] In his representations in response, counsel for Cameco argues that the amounts and quantities purchased on October 4, 2011 are excessive considering that the Vessel was about to change hands, inferring that it was for stocking rather than for preservation and safe keeping of the Vessel.

[92] I find that a substantial portion of the supplies ordered on October 4, 2011 fall outside the parameters of the Sale Order considering that the Vessel was about to change hands. Having not been provided with any evidence on this point, I have divided the amount claimed by two in consideration for the date covered by the Sale Order. The amount claimed for supplies is allowed at 752.13 CAN.

[93] Accordingly, a Certificate of Assessment of the Sheriff’s Costs will be issued in the following terms:

I HEREBY CERTIFY, that the costs as set out in the Sheriff's Bill of Costs, not previously assessed, and payable from the proceeds from the sale of the "MCP Altona" having been held in U.S. currency in accordance with the Order of August 4, 2011, are assessed and allowed in the sum of 15,256.83 CAN (or its US equivalent as of the date of payment) and the sum of 116,125.12 US (or its Canadian equivalent as of the date of payment) and the sum of 26,031.78 EUR (or its Canadian equivalent as of the date of payment). The costs as assessed shall be paid to HSH Nordbank AG.

[94] Lastly, in their representations, counsels for Cameco and Nordbank have addressed the matter of costs in respect of this assessment. As an exception to Rule 400(1), Rule 408(3) of the *Federal Courts Rules* states: "an assessment officer may assess and allow, or refuse to allow, the costs of an assessment to either party". Having determined that Rule 408(3) vests an assessment officer with jurisdiction to assess costs, I find that the exercise performed in the assessment of the Sheriff's costs required a large amount of work on the part of both parties. That being said, counsel for Nordbank has submitted that a determination of the costs of this assessment might be premature "until the assessment officer has decided the issue as to the quantum to be allowed for the Sheriff's costs". Given this and considering that both parties have not had an opportunity to file representations on costs, the parties may, if they wish, once the Certificate of Costs has been issued, submit their Bill of Costs as per Tariff B of the *Federal Courts Rules* concerning the costs of this assessment, for which directions will be issued as to the service and filing of representations.

"Johanne Parent"
Assessment Officer

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-424-11

STYLE OF CAUSE: TAM INTERNATIONAL INC. v. THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP "MCP ALTONA", THE SHIP "MCP ALTONA", MS "MCP ALTONA" GMBH & CO., KG, HARTMANN SCHIFFAHRTS GMBH & CO., HARTMANN SHIPPING ASIA PTE LTD., FRASER SURREY DOCKS LP AND PACIFIC RIM STEVEDORING LTD.

DOCKET: T-484-11

STYLE OF CAUSE: CAMECO CORPORATION v. THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP "MCP ALTONA", THE SHIP "MCP ALTONA", MS "MCP ALTONA" GMBH & CO KG, HARTMANN SCHIFFAHRTS GMBH & CO, HARTMANN SHIPPING ASIA PTE LTD., FRASER SURREY DOCKS LP AND PACIFIC RIM STEVEDORING LTD.

ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES

REASONS FOR ASSESSMENT OF SHERIFF'S COSTS: JOHANNE PARENT

DATED: October 3, 2012

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