

Federal Court



Cour fédérale

**Date: 20131219**

**Docket: T-484-11**

**Citation: 2013 FC 1263**

***ACTION IN REM AGAINST THE SHIP “MCP ALTONA” AND IN PERSONAM***

**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**

**REASONS FOR ASSESSMENT OF COSTS**

**Johanne Parent, Assessment Officer**

[1] On January 10, 2013, the Court issued Reasons for Order and Order regarding the distribution of the proceeds of the judicial sale of the Ship MCP Altona and granting the payment out to the Caveator HSH Nordbank AG [Nordbank]. Further to the filing of a Motion for Costs by Nordbank, on February 20, 2013 the Court issued Reasons for Order and Order with regards to the costs on the Priorities Motion [the Costs Order], ordering that costs be taxed in favour of Nordbank at the low-end of Column IV of Tariff B and that Nordbank be entitled to reasonable disbursements,

including the reasonable cost of translation from German to English, and the costs of travel from Vancouver to Ottawa for the purposes of arguing the Priorities Motion. Upon receipt of Nordbank's Bill of Costs on July 12, 2013, Directions were issued at the party's request, informing Nordbank and the Plaintiffs Cameco [Cameco] that the assessment of costs would proceed in writing and of the deadline to file their representations. The affidavits and representations having been filed on behalf of both Nordbank and Cameco, I will now proceed with the costs assessment.

[2] At the outset, concerning the units claimed by Nordbank for the various assessable services, I examined the argument of Nordbank's counsel that the Costs Order "is a general guideline and does not prevent the assessment officer from actually reviewing the actual work required to be done for each tariff item by the party entitled to costs". I do not agree with this contention. As argued by Cameco's counsel, the Court's Order and Direction are not a recommendation or a suggestion. All the parties' arguments regarding the complexity of the case were put before the Court and with an in-depth knowledge of the file and the parties' arguments throughout, the Court had full discretionary power over the allocation of costs pursuant to Rule 400(1) of the *Federal Courts Rules*. Further to my reading of the Costs Order and the Court's Direction of March 25, 2013, there is no doubt that the Court, in directing the assessment officer on the scale of costs to be assessed, clearly exercised his discretion as established by the Rules. The assessment officer holds no authority to review this decision. Keeping this in mind, I will now review the assessable services claimed by Nordbank.

[3] Five units are claimed under Item 1 for the preparation and filing of a Caveat. In response, Cameco contends that Item 1 refers to "originating documents" as defined by Rule 2 of the *Federal*

*Courts Rules* as a document “referred to in Rule 63” and that a caveat does not fall within the parameters of Rule 63. In reply, Nordbank argues that “tariff item 1 reflects the first document originating a proceeding” and considering the Caveat was the originating document for Nordbank in this proceeding, the Tariff should not be interpreted narrowly. In reply, Cameco argues that Nordbank did not commence an action, but Cameco did and in addition arrested the Ship. The Caveat did not originate the action, the Statement of Claim did.

[4] Item 1 to Tariff B refers to the “preparation and filing of originating documents, other than a notice of appeal to the Federal Court of Appeal, and application records”. The definition of originating document at Rule 2 of the *Federal Courts Rules* refers to Rule 63 that reads:

**63.** (1) Unless otherwise provided by or under an Act of Parliament, the originating document for the commencement of

(a) an action, including an appeal by way of an action, is a statement of claim;

(b) a counterclaim against a person who is not yet a party to the action is a statement of defence and counterclaim;

(c) a third party claim against a person who is not yet a party to the action is a third party claim;

(d) an application is a notice of application; and

**63.** (1) Sauf disposition contraire d’une loi fédérale ou de ses textes d’application, l’acte introductif d’instance est :

a) une déclaration, dans le cas d’une action, notamment d’un appel par voie d’action;

b) une défense et demande reconventionnelle, dans le cas d’une demande reconventionnelle contre une personne qui n’est pas partie à l’action;

c) une mise en cause, dans le cas de la mise en cause d’une personne qui n’est pas partie à l’action;

d) un avis de demande, dans le cas d’une demande;

(e) an appeal is a notice of appeal.

e) un avis d'appel, dans le cas d'un appel.

(2) Where by or under an Act of Parliament a proceeding is to be commenced by way of a document different from the originating document required under these Rules, the rules applicable to the originating document apply in respect of that document.

(2) Lorsqu'une loi fédérale ou un texte d'application de celle-ci prévoit l'introduction d'une instance au moyen d'un document autre que l'acte introductif d'instance visé au paragraphe (1), les règles applicables à ce dernier s'appliquent à ce document.

Even in considering the second paragraph of Rule 63, as suggested by Nordbank, I cannot come to the conclusion that a caveat as defined by Rule 493 is an originating document. Further, as argued by Cameco, Nordbank did not commence the action before the Court, Cameco did, by filing a Statement of Claim on March 22, 2011. Therefore, the unit claimed under Item 1 will not be allowed.

[5] Four units are claimed for the preparation and filing of the uncontested Motion for Sale of the "MCP Altona"(Item 4). Cameco does not contest the validity of this claim, only the number of units demanded. However, and despite Nordbank's arguments regarding the complexity of the matter, I agree with Cameco's argument that the Court's Order and Direction are not a recommendation or a suggestion. The Costs Order awards fees at the low end of Column IV to Tariff B which provides for a range of 2 to 5 units. As mentioned earlier, I do not take the Court Order as a broad guideline but as a clear indication of the Court's intent as per Rule 400(3). The Court specified in the Costs Order that costs be taxed "at the low end of Column IV", not at "at the lower end of Column IV". I consider that it limits the assessment officer to the bottom of the scale

to the Column and does not justify the use of a bracket of available units at the lower end. I am mindful that a different wording could have opened the possibility for the assessment officer to use a range of units found at the bottom end of the scale but this is not the case here. For these reasons, two units are allowed under Item 4.

[6] The assessable services and number of units claimed under Item 10 for the preparation of Case Management Conferences – May 12, 2011, June 13, 2011, August 3, 2011, October 19, 2011, December 13, 2011 and January 31, 2012 are not contested and allowed as claimed at the low end of Column IV. On the other hand, the number of units claimed for the attendance at each of these Case Management Conferences (Item 11) is contested as it does not reflect the low end of Column IV. As per rationale previously enunciated, the number of units will be reduced to reflect the low-end of Column IV i.e. one unit, multiplied by the actual time each conference lasted. As a result, a total of 8.5 hour/units are allowed under this Item: May 12, 2011(1,5), June 13, 2011(1), August 3, 2011(1,5), October 19, 2011(2), December 13, 2011(1,5) and January 31, 2012(1). The number of units claimed under Item 6 for the appearance on a motion is not contested and allowed as claimed.

[7] Nordbank has submitted two claims under Item 7, one for discovery of the Caveator's documents (6 units) and one for discovery of Cameco's documents (8 units). In response to these claims, counsel for Cameco submits that the Costs Order provides for costs at the low end of Column IV and that the discovery of documents "encompasses both as the Tariff item uses the words "including listing, affidavit and inspection". That would mean the Tariff item includes both listing one's own documents, preparing one's own affidavit of documents, and inspecting the opposition's documents". With regards to the Caveator Discovery of Documents, counsel for

Nordbank contends that a very large number of documents had to be reviewed and that “although costs generally were allowed at the low end of Column IV, it would be completely unjust and inequitable to allow only 3 units...”. Concerning the Discovery of Documents re: Cameco, it is argued that “item 7 should be interpreted to provide for discovery of documents of both parties to an action”. It is further submitted that the “fact that the Tariff item includes listing affidavit and inspection does not indicate that only one item is assessable”.

[8] In response, counsel for Cameco submits that Item 7 applies to both the party’s own documents as well as the opposite parties’ documents, adding that the Court in awarding costs at the low end of Column IV was fully aware of the nature and manner in which documentary productions were exchanged between the parties, and had already dealt with the issue of documentary production and its associated volume at paragraph 13 of the Costs Order:

13. The Bank is correct in saying that in order to understand Cameco’s claim for priority, it had to review the affidavit of documents in the cargo claim. There were over 20,000 of them. Again, this is not unusual in applications. In PM (NOC) applications referred to above, the record may easily comprise 40 or more volumes.

[9] In conformity with the decisions in *Early Recovered Resources Inc. v Gulf Log Salvage Co-Operative Assn.*, 2001 FCT 1212 (par.14) and *Distrimed Inc. v Dispill Inc.*, 2011 FC 410 (par.64), I too consider that Item 7 can be claimed and allowed, when properly justified as is the case here, more than once. However, considering the award of costs at the low end of Column IV, three units will be allowed for each claim.

[10] Cameco did not take issue with Nordbank's claims under Item 8 for the preparation of the cross-examinations of W. Summach and K. Guenther, four units will be allowed for each claim.

[11] On the other hand, in consideration of the exact duration of the cross-examinations of W. Summach, K. Guenther and J. Schelp, as pointed out in the Affidavit of Marc D. Isaacs affirmed September 10, 2013 [the Isaacs Affidavit], counsel for Cameco questions the duration and the number of units claimed under Item 9, arguing that as per the Costs Order, the low end of the Tariff under this Item is 0. In response, counsel for Nordbank contends that the jurisprudence of this Court (*Janssen Inc. v Teva Canada Ltd.*, 2012 FC 48, par.45 [*Janssen*]) has established that “brief recesses and breaks are not deducted for the time calculation for trial, or for cross-examination of a witness on his or her affidavit.” In rebuttal, counsel for Cameco reaffirms that the low end of Item 9 is 0 and contends that, in Nordbank’s argument, was overlooked paragraph 44 of the *Janssen* decision which states that: “...it has been held on many occasions that the time for lunch breaks should be factored out of any calculation for counsel time per hour in Court...”

[12] As previously mentioned, the Costs Order stipulates that assessable services may be claimed at the low end of Column IV. Under Column IV, the low end of the range for Item 9 is zero units. Therefore, in keeping with the provision of the Costs Order, zero units will be allowed for the cross-examinations of W. Summach, K. Guenther and J. Schelp, albeit it is manifest that time was spent toward these cross-examinations.

[13] Six units have been claimed for the preparation for the Priorities Motion held in Ottawa on December 18 and 19, 2012 (Item 13). Counsel for Cameco argues that only five units should be

allowed while counsel for Nordbank contends that an allocation of six units is reasonable considering the complexity of this hearing. As per the Costs Order and the number of units specified at the low end of Column IV, five units will be allowed.

[14] With regards to the claim for attendance of counsel at the hearing (Item 14), counsel for Cameco argues that Nordbank's claim should be reduced to reflect the fact that part of the hearing "involved the Bank's unsuccessful appeal of the Assessment Officer's Order in relation to the Sheriff's costs". In response, counsel for Nordbank contends that approximately 15 minutes was in connection with this appeal.

[15] The Minutes of Hearing found in the Court Record indicate that the appeal of the assessment officer's decision on the Sheriff's costs lasted 24 minutes of the two day hearing. Costs on this appeal having already been dealt with by the Court, I have reduced the number of units from 14 units/hours to 13 units/hours.

[16] Counsel for Nordbank claims several units under Item 24 for counsel to travel to attend cross-examinations and hearing: Vancouver to Saskatoon (2 units), Saskatoon to Vancouver (7 units), Vancouver to Ottawa (5 units) and Ottawa to Vancouver (5 units). In response, counsel for Cameco contends that the Costs Order does not provide for travel between Vancouver and Saskatoon but for cost of travel in relation to the priorities hearing in Ottawa and that Nordbank's request of 5 units each way for the travel to Ottawa is contrary to the Costs Order in that the number of units claimed is not at the low end of Column IV. It is further stated in the Isaacs Affidavit, attaching the Court's Direction of March 25, 2013 and letters from counsel for Nordbank and



Cameco, that the issue of travel costs between Vancouver and Saskatoon had been dealt with by the Court when Mr. Justice Harrington directed that he was not prepared to entertain a motion for reconsideration of the Costs Order. In rebuttal, counsel for Nordbank refers to the duration of that trip as a consequence of the winter weather conditions in Saskatchewan and Alberta, further arguing that the effect of the Court Direction was “to leave this issue to the assessment officer”.

[17] At paragraph 20 of the Costs Order, the Court states: “The Bank shall also be entitled to reasonable disbursements, including...the costs of travel from Vancouver to Ottawa for the purposes of arguing the priorities motion.” In the Direction of March 25, 2013, the Court, referring to the parties’ written representations on Nordbank’s request for reconsideration of the Costs Order on this specific issue, directs that “it is not prepared to entertain a motion for reconsideration of the Order dated 20 February 2013”. As put by counsel for Nordbank in his letter of March 14, 2013 requesting a direction that Item 24 for the travel to and from Saskatoon be allowed, “...absent a direction from the Court, travel costs for counsel may not be allowed (*Carr v Canada*, 2009 FC 1196)...” Given that Item 24 clearly states that travel by counsel is at the discretion of the Court and that assessment officers are not considered in the definition of Court as per Rule 2 of the *Federal Courts Rules*, I am without jurisdiction to allow costs under Item 24 as the Court did not exercise its discretion. Therefore, the units claimed for the travel portion to Saskatoon and back are disallowed. Further, in consideration of the Costs Order, the units claimed under Item 24 for travel from Vancouver to Ottawa and Ottawa to Vancouver are allowed at the low end of Column IV.

[18] Cameco did not take issue with Nordbank’s claims under Items 25 (services after judgment) and 26 (assessment of costs). They are allowed as claimed.

## DISBURSEMENTS

### Photocopies

[19] The amounts of \$9,704.75, \$2,105.63 and \$706.00(colour printing) are claimed for photocopies in Nordbank's Bill of Costs. The Affidavit of David F. McEwen sworn July 11, 2013 [the McEwen Affidavit] attaches three documents entitled "Cost Recap. Summary by Cost Code" for client: 204744 – HSH Nordbank AG. The documents refer to the total number of copies, black and white printing and colour printing for three different time periods between November 30, 2011 to "present". The Affidavit further stipulates that the claims for black and white printing and copies were reduced to reflect \$0.25 per page instead of the \$0.30 per page charged to the client. With respect to the colour photocopies, the affiant specifies that the charges per page were brought down to \$1.00 per page.

[20] In response, the Isaacs Affidavit states that Nordbank seeks the reimbursement for 55,664 photocopies, claiming that the number of photocopies is grossly exaggerated. Corroborated by the system Cameco's law firm utilises to collect data for their clients, Mr. Isaacs affirms that the total number of photocopies incurred by their office for this client, was approximately 18,500 copies. Citing the numerous legal issues involved in this matter, it is further stated that, as counsel to Cameco, they were "dealing with litigation of many orders of magnitude and complexity as compared to the priority dispute matter. The priority dispute was only one of the many aspects to which the 18,500 photocopies would have applied". It is further contended that the Priorities Motion Record itself was measured to be approximately 1.75 inches thick and "even assuming that the motion record, books of documents and books of authorities, were a total of 8 inches thick at 500

pages per 2 inches, this equates to approximately 2,000 pages. Multiplied by 5 for photocopying for Court submissions purposes (...) this equates to roughly 10,000 pages, or less than 20% of the amount claimed". In addition, it is mentioned that Cameco's counsel delivered its productions in electronic format using an external hard drive, taking the "unusual step of accommodating opposing counsel in this matter by creating not only a list of documents and productions, but also creating a fully searchable and hyperlinked database", this system eliminating the need for costly and wasteful photocopying. With regards to the colour photocopies, Mr. Isaacs states that the 706 colour copies were not included in the Motion Record or other documents submitted in connection with the priorities dispute. In Cameco's Written Representations on costs, it is argued that the number of photocopies claimed is out of "scope and scale of the litigation in which the bank was involved" and "was either not incurred or if it was, it was not reasonable and necessary for the conduct of the priorities hearing". It is further acknowledged that photocopies are required in any litigation and that \$0.25 per page is a proper amount but evidence needs to lead to the necessity of the photocopies in the conduct of the litigation (*Diversified Products Corp. v Tye-Sil Corp.*, [1990] F.C.J. No.991). The only evidence that they were charged to the client is insufficient to support the claim, "there needs to be evidence as to what was photocopied and the necessity for it" (*Windsurfing International Inc. v BIC Sports Inc.*, [1985] F.C.J. No.826). It is further alleged that although disbursements can be established via an affidavit, the reasonableness of the expense cannot, leaving the assessment officer with the discretion to review the amount claimed to a more reasonable amount (*Abbott Laboratories v Canada* [2009] F.C.J. No.494). Counsel for Cameco therefore submits that the claim for photocopies should be reduced from \$12,516.38 to \$1,250.00, representing 5,000 pages at \$0.25 per page.

[21] In response, the Affidavit of David F. McEwen sworn September 26, 2013 [the second McEwen Affidavit] states that both counsels' offices deal with documents in a different manner. While counsel for Nordbank produced hard copies of most relevant documents, Cameco's documents were never printed out. As an example, it is mentioned that the exhibits to the Affidavits of Mr. Summach and Ms. Guenther were submitted on discs by Cameco while counsel for Nordbank printed them out taking up to five 3-1/2" binders for Ms. Guenther and two 3" binders Mr. Summach. Mr. McEwen confirms that the Motion Record was approximately 500 pages but over the required copies for the Court and the parties, was further delivered to the Court and Cameco's counsel the exhibits from the cross-examination of Mr. Summach which contained 113 documents (596 black and white copies and 32 colour copies) and one exhibit to Ms. Guenther's containing 79 pages including several colour photocopies. Referring to Cameco's hard drive listing 21,816 documents, the affiant states that the Affidavit of Documents itself, not inclusive of the documents, filled a 3-1/2" binder, that not all documents were relevant, that they were not identified properly and needed to be reviewed and printed in order to be used in the cross-examination of the deponents. It is estimated that if Cameco's documents were printed out, they would amount to more than 100,000 copies. It is further stated that "at the cross-examination of the Cameco witnesses, Cameco had all of the documents on their hard drive, whereas the Bank had 3 full banker's boxes of documents, many of which were put to the witnesses, and marked on the cross-examinations, and later provided to the Court with the transcripts of the cross-examinations". With regard to the colour copies, Mr. McEwen affirms that a number of the cargo and the discharge process photographs produced by Cameco were printed and some of them placed in the cross-examination exhibits book. In their Written Representations, Nordbank argues that they are claiming 47,242 photocopies, not 55,564 as stated by Cameco.

[22] In reply, counsel for Cameco contends that the “extent of photocopies and printing were the result of counsel for the Bank’s reluctance or refusal to adopt the electronic documentation provided by counsel for Cameco” and that Nordbank’s counsel had chosen to print out the documents, rather than view them electronically. Lastly, it is argued at paragraph 26 in Cameco’s Reply Written Representations that:

26. The fact remains, that most of the photocopying and printing out of documents were for the ease of counsel for the Bank in relating to the documents, rather than for presentation of the case in Court. As has been noted by this Court in other assessments: there must be evidence justifying the necessity of the photocopies claimed: a law office is not in the business of making a profit on its photocopying equipment; and photocopies are an allowable disbursement only if it is essential to the conduct of the action (*Janssen* at paragraphs 63 and 65)

[23] Mr. McEwen attempted to establish through his Affidavit the disbursements incurred for photocopies as well as their reasonableness. Tariff B1(4) provides that no “disbursement...shall be assessed or allowed under this Tariff unless it is reasonable and it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or is payable by the party”. The supporting evidence on this issue is far from exhaustive and does not assign to counsel, in place of the assessment officer, the responsibility to decide reasonableness (*Abbott Laboratories v Canada*, 2008 FC 693, par.63 & 64 [*Abbott*]). The three “Costs Recap. Summary” documents submitted in support of the disbursements claimed only serve to prove that a number of copies were made between November 30, 2011 to the date the file was finalized. The reference in the counsel’s representations to the larger documents copied i.e. the Motion Record, the Affidavit of Documents and exhibits to cross-examinations provide an idea of an approximate number of copies made once one looks at the Court Record. It is apparent that real costs were incurred and as held in *Sarasin Consultadoria e Servicos LDA v Roox's Inc.*, [2005] F.C.J. No. 907, the absence of exhaustive

proof should not preclude recovery of these expenses. Nonetheless, after my review of the record and the arguments before me, I find that the evidence provided in this matter is not sufficient to justify the total number of copies claimed. In the circumstances, I find the comments made in *Abbott* (previously cited) to be useful:

[70] I still hold to my view, often expressed further to my approach in *Carlile* (decided May 8, 1997) and the sentiment of Lord Justice Russell in *Re Eastwood (deceased)* (1974), 3 All.E.R. 603 at 608, that assessment of costs is “rough justice, in the sense of being compounded of much sensible approximation,” that discretion may be applied to sort out a reasonable result for costs equitable for both sides. I think that my view is reinforced by the editorial comments (see: The Honourable James J. Carthy, W.A. Derry Millar & Jeffrey G. Gowan, *Ontario Annual Practice 2005-2006* (Aurora, Ont: Canada Law Book, 2005)) for Rules 57 and 58 to the effect that an assessment of costs is more of an art form than an application of rules and principles as a function of the general weight and feel of the file and issues, and of the judgment and experience of the assessment officer faced with the difficult task of balancing the effect of what could be several subjective and objective factors.

[24] The Federal Court of Appeal also commented on the subject of “rough justice” in *Merck & Co. v Apotex Inc.* 2008 FCA 371:

**14** In view of the limited material available to assessment officers, determining what expenses are “reasonable” is often likely to do no more than rough justice between the parties and inevitably involves the exercise of a substantial degree of discretion on the part of assessment officers. Like officers in other recent cases, the Assessment Officer in this complex case, involving very large sums of money, gave full reasons on the basis of a careful consideration of the evidence before him and the general principles of the applicable law.

[25] The “rough justice” approach is not to suggest that parties need not provide sufficient evidence, and to only rely on the discretion and experience of the assessment officer. I see the role of the assessment officer, while faced with less than exhaustive evidence, and as real disbursements were incurred, to ensure that the successful party is not denied reasonable indemnification while the

unsuccessful litigant is not burdened with unreasonable costs. In consideration of the required number of copies for the filing and service of the Priorities Motion Record and the List of Documents and productions associated to the cross-examinations (inclusive of the documents served and filed with the Court), multiplied by \$0.25 per page (amount uncontested by the parties), I have roughly estimated the amount to \$4600.00 for black and white photocopies. With regard to the availability of the List of Documents and productions in electronic format, I appreciate, when considering the number of copies handled by the parties in this matter, counsel for Cameco's intention in trying to eliminate unnecessary photocopies. However, my reading of the affidavits leads me to believe that this cost saving/waste reduction method of proceeding had its limit during the cross-examinations and for the filing with the Court and I, therefore, did not take it into consideration in my decision. Lastly, in consideration of the specific evidence before me, the amount claimed for the colour printing has been reduced to \$60.00.

[26] Counsel for Nordbank agreed in their representations in reply that the third party copying charges claimed for the copy of the hard drive from Giaschi & Margolis should be deducted from their Bill of Costs. This claim will therefore be taxed at zero.

Vancouver Sun (Advertise Legal Notice)

[27] A disbursement of \$3,104.64 is claimed in the Bill of Costs in relation with the advertisement of the sale of the Ship "MCP Altona". In response, paragraphs 9 to 11 of the Isaacs Affidavit state that this invoice was already included in the Sheriff's Bill of Costs and had already been "agreed to by Cameco as part of the properly payable Sheriff's costs". The affiant further mentions that this invoice relates to the judicial sale of the Ship and is not related to the priorities

dispute between Nordbank and Cameco. Cameco's Written Representations specifies that this expense would have been incurred in any event of the priorities dispute, in order to carry out the judicial sale of the Ship. It is further contended that this claim is inappropriate as the invoice has already been paid to Nordbank as part of the Sheriff's costs.

[28] In reply, it is stated in the second McEwen Affidavit that the Court Order of August 4, 2011 ordering the sale of the Ship "MCP Altona" dealt with the procedure regarding claimants and the establishment of their respective priorities. At paragraph 8 of the McEwen second Affidavit, it is further mentioned that:

8. In respect of paragraph 10 of the Affidavit of Mr. Isaacs, as found by Mr. Justice Harrington at paragraph 2 of his Reasons for Order on January 10, 2013, the balance owing to the Bank was more than Euros 6,862,139.60 while the Vessel was sold for US\$4,800,000.00. The point for determination is simply that although the Sheriff's costs were approved by Cameco and allowed by the Court, they have not been repaid to the Bank, as they were paid out of the Fund which represented only a portion of the Bank's debt, which fund was much smaller than the mortgage debt owing to the Bank, therefore, in effect, the Bank has paid itself, and Cameco has not paid any of these invoices".

[29] In rebuttal, counsel for Cameco submits in his Written Representations that the Sheriff's costs are payable by the Fund and are not payable by either party. At paragraph 29, it is further argued:

29. It is the amount left over from the sale fund, following deduction of the Sheriff's costs that is distributed to the parties, based on their priority. There was a shortfall for which the Bank now tries to shift an additional amount onto Cameco's shoulders by trying to classify it, improperly, as a litigation disbursement.



With regards to Nordbank's argument that they could have obtained more money if Cameco had not made a claim, reference is made to paragraphs 15 and 16 of the Costs Order in which the Court states that Nordbank could not have moved the Ship to the Far East and obtain a better price, adding that "it is illusory to think that the Bank under a power of sale in its mortgage could have achieved a better price" adding further that "Cameco had a reasonable arguable case and was entitled to arrest the ship".

[30] The disbursement associated to the advertisement of the sale of the Ship "MCP Altona" is disallowed. As put by counsels, this disbursement had already been claimed and allowed in the Sheriff's Bill of Costs, to be paid out of the Fund. I do not consider this expense to be related to the priorities dispute between Cameco and Nordbank as the sale of the Ship was clearly an expense incurred by the Sheriff in the performance of his duties as per the Court Order of August 4, 2011. The expense claimed would have had to be incurred in any event and is not in relation to the dispute between Cameco and Nordbank regarding the entitlement of the sale proceeds. Nordbank cannot utilize this costs assessment to get reimbursed for any expenses for which they experienced a shortfall in the process.

Postage and long distance telephone charges

[31] The charges incurred for postage and long distance telephone are listed in the exhibits to the Affidavit under "Costs Recap. Summary by Costs Code", that show the total expenditures incurred by the law firm. The McEwen Affidavit states that these disbursements are in-house charges for which no invoices had been generated.

[32] In response, Cameco's counsel argues that the amounts should be disallowed as no evidence and proper particularisation have been offered as to the necessity and reasons for those expenses.

[33] In reply, the second McEwen Affidavit states that counsel for Cameco are located in Toronto, Ontario and their client Nordbank and its representative are located in Hamburg, Germany and that it was necessary to communicate by mail and by long distance telephone on many occasions, adding that all the calls made were not charged.

[34] In the conduct of a matter of this type, I accept that, considering the location of Cameco's counsel (Toronto, Ontario), Nordbank (Hamburg, Germany) and Nordbank's counsel (Vancouver, British Columbia) minimal disbursements were incurred and made necessary for postage and long distance telephone charges. I consider the amounts claimed reasonable and they are allowed as claimed.

#### Scanning

[35] The McEwen Affidavit asserts that the disbursements claimed for scanning are in-house charges for which no invoices had been generated. The total charges incurred by the law firm are listed in an exhibit to the Affidavit, i.e. the "Cost Recap Summaries" as generated by the law firm accounting department and showing the total charges incurred for the scanning service.

[36] In response, Mr. Isaacs in his Affidavit states, copies of letters and invoice in support, that the scanning charges have already been paid. After having received the Affidavit of Documents, he affirms that he had requested from Nordbank's counsel its production in electronic format and that

before doing so, he had to pay the law firm the sum of \$353.02, as demanded for the scanning charges. In his Written Representations, counsel for Cameco argues that the amount claimed appears to be excessive as the only documents scanned and provided to counsel for Cameco were related to Nordbank's Affidavit of Documents.

[37] In his second Affidavit, Mr. McEwen states that the charges related to the documents, as referred to in Mr. Isaacs' Affidavit are not included in the Bill of Costs. He further points out that "many of the pleadings, letters, motion records etc. were served electronically, and therefore there were scanning charges in respect of almost every filing with the Court", sometimes at the Court's request. Nordbank's Written Representations further mentions an agreement between the parties that all documents other than the lengthy ones, were scanned and exchanged by e-mail.

[38] In rebuttal, counsel for Cameco contends that other documents may have been scanned, to be sent out to the parties, but these are part of the law firm's overhead; it is the same as printing a document and sending it by mail. All the charges for the documents scanned and provided for Cameco's counsel use have on the other hand been paid.

[39] The evidence provided for this claim is far from extensive and I fail to see, but for the Priorities Motion Record and related documents i.e. affidavits and exhibits, any evidence of documents served and filed with the Court in relation with the priorities issue that could have been scanned and for which charges had not already been reimbursed. Neither party referred to the scanning of the Priorities Motion Record nor can I find evidence on the matter. Considering its volume and the contention before me regarding the agreement of parties on the scanning of lengthy

documents, I take that no charges are claimed for the scanning of the Priorities Motion Record. Undoubtedly, other documents have most likely been scanned in the course of the dispute between Cameco and Nordbank but no evidence has been brought before me to help evaluate the reasonableness of this claim. Considering the lack of information to help substantiate the documents scanned, the necessity for scanning said documents and whether the scanning charges claimed were related to the issue at hand, this expenditure will be assessed at zero.

#### Translation fees

[40] Translation fees are claimed in the amount of \$16,000.00. In support, invoices provided by Sievers-Redekop Law Corp. are attached to the McEwen Affidavit. As per Mr. McEwen, the charges claimed represent the “services of a German lawyer, who is also a member of the British Columbia Bar, to attend at AHBL (Alexander Holburn Beaudin & Lang) and to provide a rough translation of the numerous documents that our client has provided to us.” The affiant mentions that in his opinion the translation services were necessary as neither himself nor his colleagues could understand the thousands of e-mails and documents from his client. The services of Sievers-Redekop Law Corp. were chosen as a cheaper option to having all the documents completely translated in the English language.

[41] In response, Mr. Isaacs in his Affidavit affirms that the documents in connection with the priorities dispute contained very few German language documents which had been translated into English. From his review of the Motion Record, the German documents that were translated into English and submitted to the Court included the mortgage documents, documents from the German Insolvency Court and some invoices from Hartmann Schiffahrts. It is further added that Mr. Isaac’s

office was not provided with the translation of the German documents and that some of the documents, namely invoices, were already paid as part of the Sheriff's Bill of Costs. Mr. Isaacs adds that no translations of Sievers-Redekop Law Corp. were provided to Cameco's counsel or submitted to the Court or filed as part of the Motion documents. Lastly, Mr. Isaacs attests that the charges are excessive considering that, in the preparation for the hearing of this matter, his office also retained German to English language translation assistance. As per invoices attached to the Affidavit, said interpreter attended his office for three days to review documents at \$525 per day.

Counsel for Cameco further argues in the Written Representations that the amount of \$16,000.00 "for nine days of German speaking lawyer's time" should not be allowed. The translated documents were not submitted to the Court in connection with the priorities dispute. Out of the documents included in the Court record, it is argued that the "translation of the mortgage documents were necessary on the motion for sale of the vessel and would have been incurred even if there was no competition for the proceeds of sale or a priority dispute between the Bank and Cameco". Further, the mortgage on the Ship was not contested by Cameco. It is argued that the "translation costs sought is for that of a lawyer's time rather than a translation service" and that Sievers-Redekop Law Corp. acted as agents of Nordbank, which costs are not recoverable as disbursement under the Tariff. If the costs were incurred to review documents, it is contended that it is not a disbursement as it is captured under Item 7 of the Tariff (*Mathias v Longpoint First Nation* [2012] F.C.J. No.183 at paragraph 22). It is further submitted that

"...the incurring of translation costs to this extent was unnecessary. The instructing client for the Bank, who swore the Affidavit of Documents as well as attended at the cross-examinations on behalf of the Bank, Mr. Joerg Schelp, is fluent in English. Mr. Schelp was cross-examined in Vancouver, in the English language, without the assistance of an interpreter. The documents which are involved are

the Bank's own internal documents and correspondence. There is no reason why these documents, to the extent any interpretation may have been necessary for counsel's own benefit, could not have been provided for by discussion with the client, who spoke English and provided the documents in the first place. Accordingly, it is respectfully submitted that it was unnecessary to incur the expense of a German speaking lawyer to spend what amounted to nine days reviewing documents, which could have been reviewed with the client directly. If the involvement was to catalog the documents as part of the discovery process, then that same time would have been incurred under Item 7, whether the documents were in German or English."

Referring to *Janssen* at par.133, counsel for Cameco further contends that reasonableness and necessity must be established and that it should be noted that Cameco, who did not have the benefit of a German speaking client, needed the assistance of German translation to review the documents provided by Nordbank and to that effect, retained the services of a translator for three days in preparation for cross-examination at a costs of \$1,575.00. Lastly, it is submitted that the costs of translation from German to English should be for documents that were actually submitted to the Court and the opposite party for the priorities hearing. Otherwise, it "would be akin to a party incurring the costs of an expert report, but then not serving that expert report or using it at trial and then seeking costs for obtaining it".

[42] In the second Affidavit sworn by Mr. McEwen, it is stated that counsel for Cameco "was adamant" that all relevant documents of Nordbank had to be produced. Said documents, the majority in German language, once printed amounted to 16 volumes contained in 3-1/2" binders, which contained a small amount of irrelevant material, duplicated documents and a large amount of privileged documents. Mr. McEwen asserts that the costs of translation should they have chosen to have the documents translated at \$50.00 per page would have been more expensive "than retaining

an individual knowledgeable in the German language to explain the contents of each document in order that a decision could be made as to whether that document should be listed in the Bank's Affidavit of Documents...". Therefore, rather than hiring a translator, counsel for Nordbank decided to retain the service of Ms. Sievers-Redekop, a "knowledgeable translator" from a law firm with the principal being a German speaking attorney. It is further stated that she worked as a translator, not a lawyer, with Mr. McEwen's junior for nine days to review, translate and provide proper descriptions of documents in order to prepare the Affidavit of Documents. After said Affidavit was provided to counsel for Cameco, only 248 of the 421 documents listed were requested. Considering that 59% of the producible documents were demanded, it would explain the reasons why counsel for Cameco only needed the assistance of an interpreter for three days to review the documents. In respect to the argument regarding Mr. Schelp, Mr. McEwen states that Mr. Schelp resides and works in Hamburg, Germany and it was impractical to ask him to translate the documents.

[43] In the Written Representations in rebuttal, counsel for Cameco submits that:

"if Ms. Sievers-Redekop was acting as a translator, and solely as a translator, then the rates for translation should be at translator rates, not lawyer rates. There is no need to have a lawyer simply read a document and to then have another lawyer decide if the document is relevant, privileged etc. The appropriate rate for translation services, as shown by the Able Translations invoices is approximately \$75.00 per hour or \$525.00 per day, not \$2,000.00 a day as charged by Ms. Sievers-Redekop".

Referring to the Costs Order at paragraph 14, it is argued that the translation expenses incurred were not for documents relied upon by Nordbank in this case as the documents were translated in order to support Nordbank's claim to enforce the mortgage and sell the vessel. The expenses for translation would have been incurred in any event and despite Cameco's claim for priority to the sale funds.

[44] In a letter signed and received on September 13, 2013, counsel for Nordbank specifies in response to Cameco's arguments in regard to the costs of translation of the Hartmann invoices in the amount of \$560.00 that it was indeed allowed as a Sheriff's disbursement and paid out of the Fund in Court. However, "as the Fund in Court was held to be payable in its entirety to HSH Nordbank AG (the "Bank"), whose mortgage claim substantially exceeded the Fund in Court, the translation costs of the Hartmann invoices required for the assessment of the Sheriff's costs due to the opposition of the Cameco companies was borne entirely by the Bank and has not been reimbursed". In response to this letter, counsel for Cameco submits that Nordbank's letter is not accurate as the Order from the Court dated January 10, 2013 provided that:

"After payment of the marshal's fees and disbursements, the balance remaining in trust from the sale of the MCP ALTONA, including accumulated interest, shall be paid out to the Caveator, HSH Nordbank AG."

As submitted, it would be incorrect to say that the "fund in Court was held to be payable in its entirety to HSH Nordbank" as "the fund was comprised in two parts. First, there was the amount for the payment of marshal's fees and disbursements. Second, there was the remaining amount which was to be paid to HSH Nordbank AG." The cost of translation of the above mentioned invoice was allowed as a Sheriff's disbursement and cannot be paid again as it had been paid from the Court fund.

[45] With regard to the translation of documents used in this matter, counsel for Cameco submits that the dispute opposing the parties contained very few German language documents that needed to be translated into English. However, while arguing the necessity for the claiming party to establish reasonableness and necessity for this disbursement, counsel for Cameco contends that not having



the benefit of a German speaking client, he retained the services of a translator for three days in preparation for the cross-examinations. From the evidence, I further understand that the translated documents would not have been provided to all parties or the Court. However, the Court in the Costs Order at paragraph 20 states that Nordbank “shall also be entitled to reasonable disbursements, including the reasonable cost of translation from German to English...” It is apparent that the Court, with an in depth knowledge of the file and after having heard the parties arguments considered that translation services were necessary for counsel to prepare. However, I agree with counsel for Cameco that translation services were not necessary for all documents as a certain number of those documents would have been translated in the course of this matter, well prior the priority issue discussions. Further, I find that it would not have been reasonable for Nordbank’s client representative to look after the translation of all or any of the documents. A client representative might be expected to review documents with counsel in order to prepare a list of documents but not to provide translation services.

[46] As per the Costs Order, only reasonable disbursements for translation services should be recoverable. Counsel for Nordbank submitted invoices from Sievers-Redekop Law Corp for nine days of translation service at \$2,000.00 per day. Considering the arguments and evidence before me, I do not think that employing a German-English speaking lawyer to translate documents was reasonable in a party and party costs assessment. Although it might have rendered the preparation of the List of Documents easier for counsel, I do not judge that the costs of hiring a lawyer to translate documents should be borne by the opposing party. In consideration of the above and Cameco’s evidence regarding actual translation services costs and the fact that an indeterminate portion of the documents submitted for translation might not specifically

correspond to the Priorities Motion or could have already been translated in the course of other proceedings, the costs for the translation services from German to English will be reduced to \$3,675.00.

#### Travel

[47] Attached to his Affidavit, Mr. McEwen presents invoices to support his claim with respect to his travel to Saskatoon to attend the cross-examinations of W. Summach and K. Guenther on November 6 and 7, 2012 for a total amount of \$2,688.94 (Airfare: \$742.25, Hotel: \$1,288.84, Taxi: \$111.42, Rental car: \$497.02 and Meals: \$49.41). Mr. McEwen explains that the cross-examinations, although set for three days, were completed in two days. For that reason, he had tried to board an earlier flight back to Vancouver, to no avail. Upon the scheduled returned date on November 8, he was advised at the Saskatoon Airport that his flight had been cancelled due to the closure of the Calgary Airport. At that time, he had rented a car to drive to Regina and caught a flight to Edmonton, as he was informed that the next available direct flight from Saskatoon to Vancouver was on November 11.

[48] In response, Mr. Isaacs affirms in his Affidavit that the cross-examinations of the deponents took place at the Cameco's office in Saskatoon on November 6 and 7, 2012. He further refers to the Costs Order stating that the Court "directed its mind to travel expenses" in allowing at paragraph 20 costs associated to the travel expenses incurred for the travel to attend the hearing on the priorities motion in Ottawa only. Raising an exchange of letters between parties that took place after the Costs Order, by which Nordbank "sought to have the costs of travel for counsel from Vancouver to Saskatoon and return provided for in the Costs Order", it is further stated that the Court on March

25, 2013, issued a Direction in respect of costs directing that it was “not prepared to entertain a motion for reconsideration of the Order dated 20 February 2013”. In Cameco’s Written Representations, it is therefore argued that the amounts claimed are inappropriate as they had been specifically raised with the Court, and are not keeping with the Costs Order and the Court Directions. Arguing that the issue of the costs for the Saskatoon trip had already been dealt with since the Court “chose not to award costs and exercised its discretion by not awarding the costs of the Saskatoon trip or entertaining a motion for reconsideration of the Costs Order”, counsel for Cameco contends that travel costs are in the discretion of the Court and requires specific direction (*Carr v Canada* [2009] F.C.J. 1575 and *Abbott Laboratories v Canada* [2009] F.C.J. 494 (*Abbott Laboratories*)).

[49] In the second Affidavit sworn by Mr. McEwen, it is asserted that counsel for Cameco insisted that the cross-examinations took place in Saskatoon. It is further specified that the subject that was addressed in the letter to the Court referred to fee Item 24, not the disbursements. The Court did not deal with the disbursements. He further submits that:

“In the Direction from Mr. Justice Harrington, at page 2, he said, “Considering that pursuant to rule 414 of the Federal Courts Rules a party who is dissatisfied with an assessment by an assessment officer may, by motion, request that the award be reviewed by a judge.” I took that Direction to mean that the item 24 issue was to be addressed before the Assessment Officer, and then taken up with a judge on appeal, if necessary.”

[50] In the Costs Order, the Court specified at paragraph 20 that: “The Bank shall also be entitled to reasonable disbursements, including the reasonable cost of translation from German to English, and the costs of travel from Vancouver to Ottawa for the purposes of arguing the priorities motion.” Following that Court Order, counsel for Nordbank, as per letter of March 14, 2013, moved the

Court to address Item 24 of Tariff B for counsel travel to Saskatoon from Vancouver and return. In the Direction that followed, the Court considered Nordbank's informal request for reconsideration of the Costs Order to conclude that it was not prepared to entertain a motion in reconsideration, making no specific direction regarding the award of Item 24. As a consequence, I disallowed Nordbank's claim for travel to Saskatoon under Fee Item 24 (see paragraph 17). I take from the Costs Order and Direction that followed that the Court "put his mind to travel expenses" for both the travels to Ottawa and Saskatoon. In awarding costs and travel disbursements on the Priorities Motion (Ottawa), while choosing not to award any travel costs for the trip to Saskatoon and back, the Court was clearly directing that expenses for the Priorities Motion were the only disbursements awarded. In keeping with the Court's decisions, the disbursements claimed for the travel by Nordbank's counsel to Saskatoon are therefore disallowed. The travel disbursements to attend the priorities hearings (Ottawa) are not contested and will be allowed as claimed.

Electronic legal researches (Quicklaw and Westlaw Carswell)

[51] Mr. McEwen specifies in his Affidavit that the services provided by Quicklaw and Westlaw Carswell encompass all the various matters for which their services are sought and billed monthly to his law firm, making it therefore impossible to obtain individual billing. The total charges incurred by the law firm with regard to this client, for the period of time at issue, are listed in an exhibit to the Affidavit: the "Cost Recap Summaries" as generated by the law firm accounting department and showing the charges incurred for the services.

[52] In response, counsel for Cameco contends in their Written Representations that the amount claimed for electronic legal searches should be significantly reduced, to the order of \$400.00,

moreover that computer search expenses should be considered an office overhead expense. On this issue, it is further stated that:

“Prior to the advent of computerized legal research, law firms were compelled to subscribe to reporting services in order to stock their libraries with the law reports. The provisioning of a lawyer’s office library is traditionally an office overhead expense. With the use of computerized legal research, law firms no longer need to subscribe to bound hard copy of books of law reports and have therefore eliminated that expense from their office overhead. In turn, legal research services can be tracked to a particular file and then billed to the client. However, the savings in law firm office overhead is not accounted for when then sought as party and party costs. If a lawyer is to consult the law reports then the expense of pulling it up on Quicklaw is effectively the same as the expense of having a subscription to the law reports, which would be office overhead.”

Referring to the decisions in *Abbott Laboratories* and *Janssen Inc.* (previously cited), counsel for Cameco contends that should this claim be allowed, sufficient information should be provided that the research was relevant to the matter before the Court.

[53] In response, Mr. McEwen in his second Affidavit attests that Cameco had raised four separate bases upon which they claimed priority. These arguments were relatively complex and extensive legal research needed to be done on all four grounds, as reflected in the charges claimed.

[54] Counsel for Nordbank claims a total amount of \$1,615.15 (Quicklaw: \$1006.89 and Westlaw Carswell: \$608.26) for electronic legal research. Considering the paucity of evidence submitted, it is not clear whether the amount claimed is linked to searches done with regard to the priorities issue. I generally have no issue allowing claims for on-line legal searches. However, their necessity and relevance to the issue need to be clearly justified. In the circumstances of the Motion on Priorities, although it was relatively complex and heavily disputed, I find that I am not provided

with the necessary evidence to support a claim of \$1,615.15. As in *Janssen* (previously cited) at paragraph 152, I find that parties should not have to spend a disproportionate sum of money to prove a disbursement. However, a minimum amount of information should be provided as to why these searches were proper and relevant to the matter at hand and I would add, why they could not have been done using free on-line services. Furthermore, I was not provided with any relevant information as to the manner in which Mr. McEwen's law firm pay for on-line research, yet I am aware that many law firms the size of Alexander Holburn Beaudin & Lang, generally pay a monthly fee to take advantage of systems like Quicklaw and Westlaw Carswell. Further, I agree with Mr. Isaacs' representations that performing legal research using tools like Quicklaw has now replaced the use of the law firm legal library. As stated in *Truehope Nutritional Support Ltd v Canada* 2013 FC 1153 [*Truehope*], there might still be circumstances when on-line legal research could be a justifiable claim but the requirement to prove relevancy and necessity will continue to exist. In the case at bar, I do not find that Nordbank provided the necessary evidence to justify the amount claimed, nor the justification linking the research done to its relevancy to the Priorities Motion. As in *Truehope* (previously cited), I find it difficult to assess the relevance and necessity of the claim in consideration of the paucity of evidence submitted. In consideration of the fact that no clear justification has been provided to substantiate the amount claimed and the fact that I regard legal computerized research, unless otherwise proven, as office overhead expense as it compares to the subscription services law firms library had to maintain in the past and which were also considered office overhead, the disbursements claimed for electronic legal research are not allowed.

Courier fees (Federal Express)

[55] Several invoices are attached to the McEwen Affidavit with regards to the use of Federal Express Courier services. Considering that the period covered by the Bill of Costs overlaps the period while counsel were also dealing with the assessment of the Marshall's costs, Mr. McEwen indicates that he caused, in an effort to properly and fairly account for all disbursements, for certain disbursements to be split 50/50 between the two issues. The courier fees are one of these expenses.

[56] In response, Cameco submits that these expenses should be disallowed as many are duplicates and have already been sought in the assessment of the Marshall's costs. Attaching the Affidavit of Mr. McEwen sworn July 8, 2013, as it was submitted in connection with the claim for Marshall's costs, Mr. Isaacs attests in his Affidavit that the invoices of January 5, February 17, May 7 and August 3, 2012 had already been claimed as part of the Marshall's costs.

[57] Mr. McEwen in his second Affidavit mentions that the four invoices referred to were effectively in the Sheriff's costs but that these expenses were not duplicated because as mentioned earlier, they were prorated 50% to the Sheriff's costs and 50% to the priorities issue.

[58] The courier invoices provide information on the dates the services were utilized and to whom the packages were delivered. In consideration of the size of the documents dealt with, the parties' location as well as their counsels', documents have most likely been couriered in the course of the dispute opposing Cameco and Nordbank. In the conduct of a matter of this type, I accept that courier services were necessary and the Affidavit of Mr. McEwen as evidence that the charges were

not duplicated as they were divided between the two issues dealt with by the parties in concomitance and that courier charges had been incurred. The amounts requested are allowed as claimed.

[59] All other disbursements claimed in Nordbank's Bill of Costs are not contested, and are allowed as claimed.

[60] The Bill of Costs presented by the Caveator HSH Nordbank AG is assessed and allowed at \$28,827.12.

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"Johanne Parent"  
Assessment Officer

Toronto, Ontario  
December 19, 2013



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**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 COSTS:** JOHANNE PARENT

**DATED:** December 19, 2013

**SOLICITORS OF RECORD:**

Bull Housser & Tupper LLP  
Vancouver, BC

FOR THE PLAINTIFF  
(Tam International Inc.)

Isaacs & Co.  
Toronto, ON

FOR THE PLAINTIFF and THIRD PARTY  
(Cameco Corporation and Cameco Europe)

Fasken Martineau DuMoulin LLP  
Vancouver, BC

FOR THE DEFENDANT and THIRD PARTY  
(Fraser Surrey Docks LP and Pacific Rim Stevedoring Ltd.)

Borden Ladner Gervais LLP  
Vancouver, BC

FOR THE DEFENDANTS  
(MS "MCP Altona" GmbH & Co Kg,  
The Ship "MCP Altona",  
Hartmann Schiffahrts GmbH & Co., Kg and  
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FOR SAXON ENERGY SERVICES INC.