

MAR 24 2023

No. 232406  
Vancouver Registry



In the Supreme Court of British Columbia  
Admiralty Action *in Rem* Against  
The Ship "MORNING CLOUD" and *in Personam*

Between

NORTHERN HEALTH AUTHORITY

Plaintiff

and

THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP  
"MORNING CLOUD", THE SHIP "MORNING CLOUD", VITCAY  
MARITIME (UK) LIMITED, VITCAY MARITIME INC., ZODIAC  
MARITIME LIMITED, G.W. NICKERSON CO. LTD. and NACL  
MISEL

Defendants

**NOTICE OF CIVIL CLAIM – ADMIRALTY (IN REM AND IN PERSONAM)**

Name and address of each plaintiff:

Northern Health Authority  
c/o Norton Rose Fulbright Canada LLP  
1800-510 West Georgia Street  
Vancouver, BC V6B 0M3

Description of Ship and/or other property:

The Ship "MORNING CLOUD", Liberian Flag, Official IMO Number 9532197, 40,325 GT

Name and address of the defendants in personam:

Vitcay Maritime (UK) Limited  
Registered office  
5<sup>th</sup> Floor Portman House  
2 Portman Street  
London  
W1H 6DU  
United Kingdom

Vitcay Maritime Inc.  
c/o Zodiac Maritime Ltd.

24MAR23 2305354 RISS 200.00  
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5<sup>th</sup> Floor Portman House  
 2 Portman Street  
 London  
 W1H 6DU  
 United Kingdom

Zodiac Maritime Limited  
 c/o registered office  
 5<sup>th</sup> Floor Portman House  
 2 Portman Street  
 London  
 W1H 6DU  
 United Kingdom

G.W. Nickerson Co. Ltd.  
 c/o registered office  
 30-342 3rd Ave West  
 Prince Rupert, BC V8J 3P4

Naci Misel  
 8 Baris Street  
 Kilitkaya, Cyprus

**To the defendants:**

TAKE NOTICE that this action has been started against you by the plaintiff for the claims set out in this notice of civil claim.

IF YOU INTEND TO RESPOND TO this action, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to civil claim in Form 2 in the above registry of this court within the time for your response to civil claim described below and SERVE a copy of the file response to civil claim on the plaintiff's address for service.

YOU OR YOUR LAWYER may file the response to civil claim.

APPLICATION FOR JUDGMENT AGAINST THE SHIP OR OTHER PROPERTY MAY BE MADE AND JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

**Service on ship:**

The time for response to civil claim is 21 days from the service of this notice of civil claim on the ship or other property described in this notice of civil claim (not including the day of service).

**Service on the defendant in personam:**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

A response to civil claim filed on behalf of a ship or other property must set out the nature of the interest of that you claim in the ship or other property.

#### Claim of the Plaintiff

#### Part 1: STATEMENT OF FACTS

1. The plaintiff, Northern Health Authority ("NHA"), is a regional health authority operating pursuant to the provisions of the *Health Authorities Act*, RSBC 1996, c 180 (the "HAA"), and has an address for service in this proceeding at 1800 – 510 W Georgia Street, Vancouver, BC, V6B 0M3.
2. NHA delivers health care services within NHA's designated region. NHA owns and operates various hospitals, including Prince Rupert Regional Hospital ("PRRH") and Mills Memorial Hospital ("MMH").
3. The defendant, Vitcay Maritime (UK) Limited and Vitcay Maritime Inc. (collectively, "Vitcay"), is a company incorporated pursuant to the laws of Liberia and/or the United Kingdom and has a registered office c/o Zodiac Maritime Ltd., 5<sup>th</sup> Floor, Portman House, 2, Portman Street London, W1H 6DU, United Kingdom. At all material times, Vitcay was the owner of the defendant ship "MORNING CLOUD".
4. The defendant, Zodiac Maritime Limited ("Zodiac"), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at 5<sup>th</sup> Floor, Portman House, 2, Portman Street London, W1H 6DU, United Kingdom. At all material times, Zodiac was the manager of the defendant ship "MORNING CLOUD", its operations and its crew.
5. The defendant ship, "MORNING CLOUD", is a bulk cargo carrier sailing under the Liberian flag, bearing IMO number 9532197 and has a gross tonnage of 40,325.
6. The defendant, G.W. Nickerson Co. Ltd. ("G.W. Nickerson"), is a company incorporated pursuant to the laws of British Columbia and has a registered office at 30-342 3rd Ave

West, Prince Rupert, BC, V8J 3P4. G.W. Nickerson operates as a vessel agency and customs brokerage out of the Port of Prince Rupert, B.C. At all material times, G.W. Nickerson acted as the ship's agent for the defendant Vessel and Vitcay.

7. The defendant, Naci Misel ("Mr. Misel"), was, at all material times, a non-resident of British Columbia and Canada. He was not covered by British Columbia's Medical Services Plan and he was not a citizen or landed immigrant of Canada. Mr. Misel was, at all material times, a seafarer on the ship "MORNING CLOUD". NHA's last known address for Mr. Misel is 8 Baris Street, Kilitkaya, Cyprus.
8. On or about January 7, 2021, Mr. Misel was a crew member of the defendant ship, which was then berthed at the Port of Prince Rupert, B.C. He was employed by Vitcay, the defendant ship's owner and, or in the alternative, the defendant ship's manager, Zodiac.
9. Mr. Misel was authorized to enter Canada as a crew member of the defendant ship which was engaged in the international carriage of goods.
10. On or about January 7, 2021, Mr. Misel left the defendant ship to seek emergency medical care at PRRH. Mr. Misel was admitted to PRRH and received emergency care (the "PRRH Services") and was transferred to MMH for inpatient treatment the same day.
11. On or about January 8, 2021, G.W. Nickerson contacted NHA and requested G.W. Nickerson be invoiced directly for the healthcare services provided to Mr. Misel.
12. From in or about January 7 to 14, 2021, Mr. Misel received various medical treatments and services at MMH (the "MMH Services").
13. By accepting the PRRH Services and the MMH Services (collectively, the "Services"), Mr. Misel expressly and/or impliedly agreed to pay NHA at its non-resident rate schedule for the Services upon being invoiced (the "Agreement").
14. On or about January 14, 2021, Mr. Misel was discharged from MMH.
15. On or about January 15, 2021, as requested by G.W. Nickerson, NHA delivered an invoice to G.W. Nickerson for the MMH Services in the amount of \$40,368.00 (the "MMH Invoice").
16. Subsequently, NHA has invoiced G.W. Nickerson for further amounts in relation to Mr. Misel's initial admission to the emergency room at PRRH on or about January 7, 2021 in

the amount of \$3,991.00 and an ambulatory care visit to MMH on or about January 18, 2021 in the amount of \$1,130.00 (the "Additional Invoices").

17. The total amount of the indebtedness as at March 21, 2023 on the MMH Invoice and the Additional Invoices (collectively, the "Invoices") is \$45,489.00 (the "Debt").
18. The amount of the Invoices was calculated by NHA in a manner approved by the Minister of Health (the "Minister"), based on rates or charges approved by the Minister.
19. To date and despite demand, none of Mr. Misel, G.W. Nickerson, Vitcay nor Zodiac have paid the Debt, and the Debt remains due and owing.
20. Receipt of the Invoices by Vitcay and Zodiac was confirmed by reason of the fact that they appointed counsel in B.C. to dispute the entitlement of the PRRH and MHH to charge non-resident rates for the Services.

## **Part 2: RELIEF SOUGHT**

1. Judgment against the Defendants, or any of them, in the amount of the Debt and interest thereon at Admiralty rates, or in the alternative, at the rate prescribed in the *Court Order Interest Act*, RSBC 1996, c 79;
2. Condemnation of the Ship "MORNING CLOUD" and/or its bail, if any, for any judgment made against The Owners and all Others Interested in the Ship "MORNING CLOUD";
3. Costs; and
4. Such further and other relief that this Honourable Court may deem just.

## **Part 3: LEGAL BASIS**

1. The Agreement forms a valid and binding contractual relationship between NHA and Mr. Misel, and Mr. Misel's non-payment of the Debt constitutes a breach thereof.
2. G.W. Nickerson confirmed in writing, expressly or impliedly, that it would pay for the Debt and asked NHA to invoice it accordingly. In breach of this agreement, G.W. Nickerson has failed or refused to pay the Debt.
3. Pursuant to section 10(1) of the *Hospital Insurance Act*, RSBC 1996 c 204 (the "HIA"), the government is not liable for payment of the cost of providing any hospital service or treatment rendered to a person that is not a beneficiary. For the purposes of the HIA, a

beneficiary is a resident of British Columbia that is enrolled pursuant to the *Medicare Protection Act*, RSBC 1996, c 286.

4. Pursuant to section 10(3) of the *HIA*, despite a contract or any other Act, payment for hospital services or treatment rendered to a person who is not a beneficiary must be made to the hospital by the person or on the person's behalf.
5. Pursuant to section 10(4) of the *HIA*, the hospital providing services to persons that are not beneficiaries must compute the amount owing in a manner approved by the British Columbia Minister of Health, and each computation must be based on the rate or charge approved by the Minister.
6. Pursuant to section 10(5) of the *HIA*, if a patient is not a beneficiary, the hospital has a cause of action against the patient or the person legally liable to pay for the hospital services or treatment rendered to the patient for the amount owing in respect of them.
7. Mr. Misel is not a beneficiary for the purposes of the *HIA*.
8. The persons legally liable to pay for the hospital services or treatment received by Mr. Misel include G.W. Nickerson and his employer, one or both of, Vitcay and Zodiac.
9. The amount of the Invoices was computed based on rate or charges approved by the Minister, in a manner approved by the Minister.
10. Mr. Misel's non-payment of the Debt constitutes a breach of the *HIA*, and NHA is entitled to recover the Debt against Mr. Misel.
11. Further, G.W. Nickerson agreed to pay for the MMH Services provided to Mr. Misel and is therefore liable for the Debt but has failed or refused to pay the Debt.
12. Further, Vitcay and Zodiac, as the carrier bringing Mr. Misel to Canada, are liable to pay for the Services provided to Mr. Misel.
13. Further, or in the alternative, the failure of Vitcay and Zodiac to pay the Debt constitutes a breach of the *Maritime Labour Convention*, 2006 and NHA is entitled to recover the Debt against Vitcay and Zodiac and the defendant ship.

14. In the further alternative, NHA is entitled to compensation from Mr. Misel, or in the alternative, G.W. Nickerson, Vitcay and Zodiac, for the Services rendered on a *quantum meruit* basis.
15. NHA also pleads and relies on the provisions of the *HAA* and the *Financial Administration Act*, RSBC 1996, c 138, as well as the regulations prescribed thereunder.

Place of Trial: Vancouver, British Columbia

Plaintiff's address for service: 1800 – 510 West Georgia Street  
Vancouver, British Columbia  
V6B 0M3

The address of the registry is: The Law Courts  
800 Smithe Street  
Vancouver, British Columbia  
V6Z 2E1

Norton Rose Fulbright Canada LLP

Date: 24/Mar/2023

per:  FOR:  
Signature of lawyer for plaintiff

Scott Boucher

Rule 7-1 (1) of the Supreme Court Civil Rules states:

1. Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff, Northern Health Authority, claims the right to serve this pleading on the Defendants, Vitcay Maritime (UK) Limited, Vitcay Maritime Inc. , Zodiac Maritime Limited and Naci Misel outside British Columbia on the grounds that the proceeding:

- (a) is for the recovery of taxes or other indebtedness and is brought by the government of British Columbia or by a local authority in British Columbia;
- (b) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (c) concerns contractual obligations, and the contractual obligations, to a substantial extent, were to be performed in British Columbia.



## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Debt claim for provision of health care services.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above

do not know

**Part 4:**

*Court Order Interest Act*, RSBC 1996, c 79;

*Federal Courts Act*, RSC 1985, c F-7;

*Financial Administration Act*, RSBC 1996, c 138, as well as the regulations prescribed thereunder;

*Health Authorities Act*, RSBC 1996, c 180;

*Hospital Insurance Act*, RSBC 1996, c 204; and

*Maritime Labour Convention*, 2006