

2 March 2017

Mr Peter Boshier  
Chief Ombudsman  
Office of the Ombudsman  
P O Box 10 152  
WELLINGTON 6143

Dear Chief Ombudsman

**Ombudsman's inquiry into release of Rena Deeds**  
**Our Ref: MOT054/511**

1. In your letter dated 2 February 2017, you have asked the Attorney-General, the Hon Chris Finlayson to notify you by Friday 3 March 2017 whether he accepts your recommendation, and, if so, to confirm the steps he will take to give effect to it. You have indicated you are happy to receive this advice from Crown Law.
2. This letter responds to your above request.
3. Your final opinion reflected the recommendations from your provisional opinion dated September 2016, being:

However, when I turned to the countervailing public interest considerations favouring release (see section 9(1)) of the OIA), I formed the opinion that the Crown should release some additional information explaining certain terms of the settlement. Further, it is now difficult for members of the public to ascertain easily the exact nature of the information publicly available. To satisfy that public interest, I have recommended that the Crown provide the complainant with a statement containing the following information, and place that information on a Crown website accessible by all members of the public:

- the full text of the recitals to the Claims Deed and the Indemnity Deed, together with particulars of the parties as set out in those deeds;
- the full text of the Wreck Removal Deed;
- the nature of the role of the ship owner's insurer, The Swedish Club, regarding the Claims Deed;
- information pertaining to –
  - (a) the sum of \$10.4 million referred to in clauses 5 to 9 of the Wreck Deed, and whether the Crown will receive that sum;

- (b) the nature of the limitation on the ship owner's liability for the casualty;
- (c) the nature and the effect (if any) of the limitation proceedings referred to in the recitals to the Claims Deed on the settlement sums paid to the Crown; and
- Information contained in the two media releases and the Minister of Finance's statement, the text of which are in appendices 2, 3 and 4 to this opinion.

### Crown response

4. The Crown agrees to act on the above recommendation, as set out below. This response and the relevant attachments will be placed on the Crown Law website and made publicly available, as well as being provided to the complainant as soon as reasonably practicable after 3 March 2017:
  - 4.1 With respect to the first three recommendations, the Crown agrees (on the basis this information is effectively in the public domain through the Waitangi Tribunal proceedings):
    - 4.1.1 To release of the Wreck Removal Deed in full (as has already been disclosed on the Tribunal record). **Appendix A.**
    - 4.1.2 To release of those parts of the Deeds that are already effectively in the public domain through the Waitangi Tribunal process. This would mean disclosure mirrors what was agreed before the Tribunal, being:
      - (a) Claims Deed – details of parties, the recitals and background set out in paragraphs A – K. **Appendix B.**
      - (b) Deed of Indemnity – the parties, recitals and background set out in paragraphs A – E and the maximum amount of the indemnity (clause 7). **Appendix C.**
      - (c) The terms of the letter of guarantee in the Claims Deed, and thus the extent of The Swedish Club's liability under that Deed. **Appendix D.**
  - 4.2 With respect to the WRD, the Crown confirms there will be no payment of \$10.4 million as a result of the position taken by the Crown on the Rena resource consent application.
  - 4.3 With respect to the nature of the limitation on the ship owner's liability for the casualty, and the nature and the effect (if any) of the limitation proceedings referred to in the recitals to the Claims Deed on the settlement sums paid to the Crown, we have consulted with the Rena Owner on this.
  - 4.4 The Rena Owner has advised that: *“Both sets of a limitation proceedings have been concluded through settlements achieved at mediations without the need of the application of a settlement credit.”* In the light of the MV Rena owner's advice to the Crown that two sets of limitation proceedings relating to the Casualty are settled,

the amount which the owner and insurer agreed in the Claims Deed to pay to the Crown (and did pay in 2012) has, in effect, been confirmed as being in full and final settlement.

- 4.5 With respect to the release of the media releases, and statement of indemnity, we have no difficulty in them being made public again.  
**Appendix E.**

Yours sincerely  
**Crown Law**



Jeremy Prebble  
Team Manager/Crown Counsel

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DEED IN RELATION TO  
REMOVING THE WRECK ARISING  
FROM THE RENA CASUALTY

RECEIVED

Waitangi Tribunal

**16 Apr 2014**

Ministry of Justice  
WELLINGTON



Deed in relation to removing the Wreck arising from the Rena Casualty

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**DEED IN RELATION TO REMOVING THE WRECK ARISING FROM THE RENA CASUALTY**

**DATED** 1 October 2012

**PARTIES**

**BETWEEN:**

1. **DAINA SHIPPING COMPANY** of 80 Broad Street, Monrovia, Republic of Liberia; and
2. **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** (but in the case of the Minister of Conservation, subject to clause 11 of this Deed); and
3. **MARITIME NEW ZEALAND** and **THE DIRECTOR OF MARITIME NEW ZEALAND**; and

(each a "Party" and together the "Parties").

Party (1) shall be referred to as the "Owner".

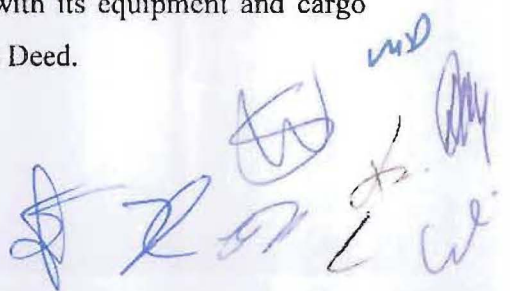
Party (2) shall be referred to as the "Crown".

Party (3) shall be referred to as "MNZ".

**THE PARTIES** record, acknowledge and agree as provided in this Deed.

**BACKGROUND**

- A. On 5 October 2011 the Liberian Flag containership "RENA" (*Vessel*), with IMO No. 8806802, ran aground on Astrolabe (Otaiti) Reef off Tauranga, New Zealand with the subsequent escape of oil, containers, debris and other material from the Vessel (*Casualty*).
- B. At the time of the grounding, the Owner was the registered owner of the Vessel.
- C. The Vessel has broken into two sections and, together with its equipment and cargo remaining on the Vessel, is referred to as the *Wreck* in this Deed.



**Deed in relation to removing the Wreck arising from the Rena Casualty**

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- D. Under the Maritime Transport Act 1994 (*MTA*) and the Resource Management Act 1991 (*RMA*) the Crown and MNZ have various statutory powers, duties and discretions in relation to the removal of the Wreck and protection of the marine environment.
- E. Since the grounding the Owner has complied with all notices, instructions and orders from the Crown and MNZ and has undertaken all necessary activities to date to secure and remove the Wreck and has confirmed its intention to continue to do so as, and to the extent, required by New Zealand law.
- F. The Owner has commenced a process of consultation and assessment so as to determine what further measures to take in relation to the removal of the Wreck including (but not limited to) the removal of part only of the Wreck. No decision has yet been made by the Owner as to any preferred measure.
- G. Following the process referred to the Owner may (at its sole discretion) apply for such consents, authorisations and permissions under the RMA and other legislation, including (but without limitation) the Marine and Coastal Area (Takutai Moana) Act 2011, as may be required to leave all or such part or parts of what will remain of the Wreck following completion of the bow reduction work currently under way as the Owner may choose and for any incidental activities, including without limitation those relating to the occupation of, and dumping, discharging and related activities within, the coastal marine area (*Consents* or, individually, *Consent*, the meaning of these terms being extended by clause 3).

**COVENANTS**

***Consents***

1. The Applicant (as defined in clause 2) will, within 12 months of the execution of the Deed or such longer period as the Crown may agree (which agreement will not unreasonably be withheld):
- (a) advise the Crown and MNZ of the Owner's intention to re-commence removal of the Wreck as, and to the extent, required by New Zealand law; or
  - (b) apply for one or more of the Consents.



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2. In the event the Owner, either directly or through a nominee (together the *Applicant*), decides to apply for one or more of the Consents the Crown and MNZ will:
  - (a) provide all assistance reasonably required by the Applicant to facilitate the preparation, lodging and progressing of an application or applications for the Consents provided always however that the Crown and MNZ shall not involve themselves in the independent decision making process by the relevant local authority, court or board of inquiry in respect of any such application or applications; and
  - (b) give (in the case of the Crown) written notice to the Owner of all claims notified to the Crown for recognition of customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 in relation to the location of the Wreck and recognise that the Owner would be directly affected by a recognition agreement or recognition order under the Marine and Coastal Area (Takutai Moana) Act 2011 that relates to the location of the Wreck; and
  - (c) not seek to recover in the Consents process, or have imposed by way of financial or other conditions of the Consents, any payment or other compensation.
3. The Applicant may apply for further or additional consents and may amend or withdraw any application for any one or more of the Consents provided it gives the Crown and MNZ not less than 10 days' notice of its intention to do so. Any further or additional consent that the Applicant applies for is included within the term "Consents" and is a Consent for the purposes of this Deed. In the event that the Applicant withdraws any application for a Consent the notice shall advise the Crown and MNZ of the Owner's intention with regard to removal of the Wreck as, and to the extent, required by New Zealand law.
4. In the event that the Applicant applies for a Consent, the Crown and MNZ will in good faith consider making a submission or submissions in support of the Consent taking into account the environmental, cultural and economic interests of New Zealand and the likely cost and feasibility of complete removal of the Wreck.



**Payment**

5. Subject to the conditions in the following paragraphs of this clause 5 the Owner will pay to the Crown NZ\$10,400,000 in accordance with clause 6. Payment is conditional on:
- (a) The Crown (including the Minister of Conservation) and MNZ not opposing the grant of any of the Consents whether directly or indirectly;
  - (b) The Crown and MNZ having complied with clauses 2 and 4 of this Deed;
  - (c) All Consents applied for by the Applicant having been granted on terms and conditions acceptable to the Owner after any appeals or challenges to the Consents have been withdrawn or resolved;
  - (d) The Applicant's intention being to commence and carry out the activities authorised by the Consents;
  - (e) There being a substantial cost saving (such as \$10.4 million) for the Applicant in carrying out the activities authorised by the Consents when compared with the cost of the removal of the Wreck to the extent required by New Zealand law.
6. The Owner will make the payment under clause 5 within 14 days of the later of:
- (a) the Owner notifying the Crown in writing that the conditions in clause 5 have been satisfied which notice shall be given not later than the 14 days after the latest of following dates, provided that if the Owner gives the notice prior to the latest of those dates then clause 9 shall apply:
    - (i) Where there is no right of appeal or challenge against the grant of any of the Consents then the day all the Consents have been granted;
    - (ii) Where there is a right of appeal or other challenge against the grant of any of the Consents, and no such appeal or challenge is made, then the last day on which any appeal or challenge could have been made against any of the Consents;



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- (iii) Where any appeal or challenge is made against any of the Consents then the day on which the last remaining appeal or challenge is withdrawn or finally resolved; and
- (b) the Crown nominating the public purposes for which the payment to be made by the Owners under clause 5 shall be used so that the people of New Zealand can enjoy the benefit of such payment.
7. The payment under clause 5 shall be made to the New Zealand bank account 03-0251-0037983-00 (Ministry of Transport – *Rena* Settlement Proceeds Trust Account). Payment to a bank account in accordance with this clause shall constitute performance of the Owner's payment obligation and shall be net of any bank charges. If the whole or any part of the payment is not paid by the due date for payment, the Owner will pay interest at the rate prescribed in the Judicature Act 1908.
8. The Owner's payment obligation under clause 5 will be guaranteed by The Swedish Club pursuant to a letter of guarantee in the form attached in Schedule 1.
9. If an appeal or challenge to a Consent is made or resolved after any sum has been paid pursuant to clauses 5 and 6, and such appeal or challenge is successful, the monies paid shall be repaid to the Owner by the Crown without set-off or deduction immediately upon demand by the Owner, together with interest at the rate provided in the Judicature Act 1908 from the date on which it was paid to the Crown.

***Acknowledgment of ending of obligations or liabilities in relation to the Casualty***

10. The Crown and MNZ agree and acknowledge that, upon the Owner complying with its payment obligations under clause 6 and upon the Applicant carrying out such activities as may be authorised by the Consents, or (at the Owner's option) removing the Wreck as, and to the extent, required by New Zealand law, the Owner will have satisfied all the requirements of New Zealand law and will have no further obligation or liability (whether present or future, actual or contingent) to the Crown or MNZ, or that might be enforceable by them, arising out of or in connection with the Casualty.



*Minister of Conservation as a Party*

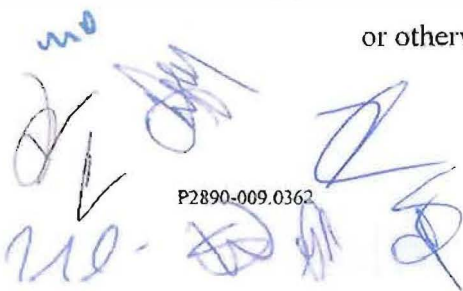
11. Notwithstanding the definition of Crown and except as otherwise expressly indicated, the Minister of Conservation is excluded as a party to this Deed in respect of the exercise of her powers, duties and discretions in Part 6AA of the RMA.

*Tax*

12. The Crown agrees and confirms that the payment to be made under clause 5 is not subject to goods and services tax under section 8(1) of the Goods and Services Tax Act. In the event GST is payable in respect of the payment to be made under clause 5, a valid tax invoice must be provided by the Crown to the Owner, before the date on which the GST amount is payable by the Owner.

*Confidentiality*

13. This Deed and all communications between the Parties and information in respect of the settlement negotiations must be kept confidential and must not be disclosed except to the extent:
  - (a) required by law; or
  - (b) necessary for the Parties to disclose details to shareholders, financiers, insurers, legal, accounting or banking advisors, auditors, and any regulatory authority all of whom, in turn, must be required to keep the terms of this Deed strictly confidential as required by any statutory or regulatory obligation or requirement and such information is to be used by the recipient solely for the purposes for which it was provided; or
  - (c) necessary for the Owner's parent company to disclose to the U.S. Security and Exchange Commission, the New York Stock Exchange and any other regulatory or stock exchange authority relevant for the Owner's parent; or
  - (d) necessary for giving effect to or enforcing this Deed, whether through litigation or otherwise; or



**Deed in relation to removing the Wreck arising from the Rena Casualty**

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- (e) any of the Parties wishes to disclose the Deed in legal proceedings as evidence of its response to the Casualty; or
- (f) disclosed in the discharge of Ministerial responsibilities to the House of Representatives; or
- (g) agreed to in writing between the Parties.

***Entire agreement***

14. This Deed sets out the entire agreement and understanding of the Parties in relation to the matters in it. No Party has entered into this Deed in reliance on any representation, warranty, assurance or undertaking that is not set out in this Deed and any liability that might otherwise arise from any such representation, warranty, assurance or undertaking is hereby excluded.

***Costs***

15. The Parties agree that they will bear their own costs in relation to this Deed.

***Notices***

16. Each notice or other communication under this Deed is to be made in writing and delivered by post (by airmail post if the address is outside the country in which the notice or other communication is posted), personal delivery, facsimile or email to the addressee at the addressee's physical address, facsimile address or email address (as applicable) marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee. Each Party's initial physical address, facsimile address or email address is set out below.

The Crown

Notices to: Crown Law Office

Attention: Deputy Solicitor- General (Public Law)

Address: Level 10 Unisys House, 56 The Terrace, PO Box 2858 Wellington 6140

Facsimile: +64 4 473 3482





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Email: DSG-PublicLaw@crownlaw.govt.nz

Notices to: Maritime New Zealand

Attention: The Chief Executive

Address: Level 10, 1 Grey Street, PO Box 27006, Wellington 6141

Facsimile: +64 4 494 1264

Email: Keith.Manch@maritimenz.govt.nz

Daina Shipping Company

Notices to: Daina Shipping Co.

Attention: K. Zacharatos

Address: C/o Costamare Shipping Company S.A., 60 Zephyrou Street and Syngrou Avenue, Athens, 17564, Greece

Facsimile: +30 210 9409051

Email: info@costamare.com

- (a) This contact information may be amended by written notice to the other Party.
- (b) A notice or other communication will be deemed to be received:
  - (i) in the case of a letter sent to the addressee's postal address, on the second business day after posting or, if the postal address is outside of the country from which it is sent, seven business days after posting by airmail post; and
  - (ii) in the case of a facsimile or email:
    - if sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the addressee's facsimile number,

**Deed in relation to removing the Wreck arising from the Rena Casualty**

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- if sent by email, at the time the email leaves the communications system of the sender, provided that the sender does not receive any error message relating to the email at the time of sending or any “out of office” message or equivalent relating to the recipient,

on the business day on which it is dispatched or, if dispatched after 5.00pm. (in the place of receipt) on the next business day after the date of dispatch; and

- (iii) in the case of personal delivery, when delivered.

***Waiver***

17. No Party will be deemed to have waived any right under this Deed unless the waiver is in writing and signed by the Parties. Any failure or delay by a party to exercise any right or power under this Agreement will not operate as a waiver of that right or power. Any waiver by a Party of any breach, or failure to exercise any right, under this Deed will not constitute a waiver of any subsequent breach or continuing of that right.

***Severability***

18. If any provision of this Deed is held by a court of competent jurisdiction to be illegal, void, or unenforceable, that determination is not to impair the enforceability of the other provisions of this Deed which are to remain in full force and effect.

***Amendment***

19. This Deed may be amended only by agreement in writing signed by all Parties.

***Execution***

20. The execution (and transmission of a facsimile copy of this Deed to the other Parties) by a Party shall be sufficient to bind that Party to the terms of this Deed.



***Joint and Several Liability***

21. Despite anything to the contrary in this Deed, the agreements, obligations and liabilities of the Crown and MNZ herein contained are joint and several and shall be construed accordingly. In this respect it is agreed and acknowledged by the Parties that:
- (a) any representation and agreement by the Crown and MNZ hereunder shall be deemed to be made separately by each of them; and
  - (b) the occurrence of a breach of this Deed with respect to either of the Crown or MNZ shall be deemed to have occurred with respect to both of them.

***Deed binding despite invalidity***

22. Each of the Crown and MNZ agrees and consents to be bound by this Deed despite the other of them not being effectually bound and despite this Deed being invalid or unenforceable against any one or both of the Crown and MNZ whether or not the deficiency is known to the Owner.
23. The Owner may release either of the Crown and MNZ from this Deed, and compound with, or otherwise vary the liability, or grant time or indulgence to, or make other arrangements with, either of them without prejudicing or affecting the rights and remedies of the Owner against the other.

***Construction***

24. Headings are not to affect the interpretation of this Deed.
25. In this Deed, unless the context otherwise requires, references to clauses and Schedules, are to be construed as references to clauses of, and Schedules to, this Deed and references to this Deed includes its Schedules.

***New Zealand law and jurisdiction***


26. This Deed shall be governed by New Zealand law and the Courts of New Zealand shall have exclusive jurisdiction to settle any claim or difference which may arise out of or in connection with this Deed.

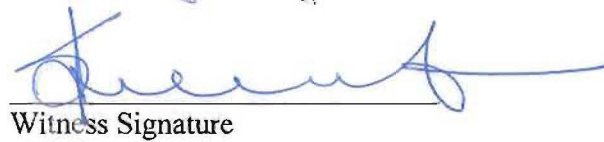
Deed in relation to removing the Wreck arising from the Rena Casualty

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**EXECUTION**

Signed for and on behalf of Daina Shipping Company

  
Konstantinos Zacharatos  
Attorney in fact  
Before:


  
Witness Signature

Dimitrios Sofianopoulos  
Name

Solicitor  
Occupation

126 Kolokotroni, Piraeus, Greece  
Address

Signed for and on behalf of the Her Majesty the Queen in Right of New Zealand by:

  
Maria Deligiannis  
Deputy Solicitor-General (Acting)  
Crown Law Office

Before:

  
Witness Signature

Matthew Andrews  
Name

Cour Counsel  
Occupation

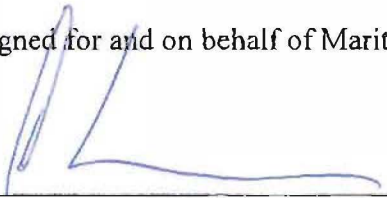
Cour Law Office, Wellington  
Address



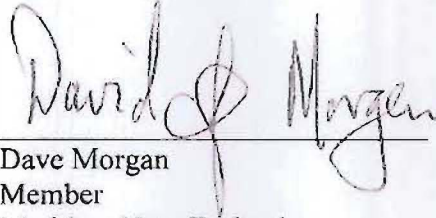
Deed in relation to removing the Wreck arising from the Rena Casualty

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Signed for and on behalf of Maritime New Zealand:



David Ledson  
Chairman  
Maritime New Zealand

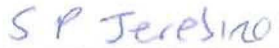


Dave Morgan  
Member  
Maritime New Zealand

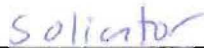
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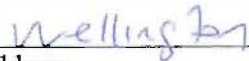
Witness Signature



Name



Occupation



Address

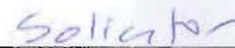
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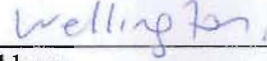
Witness Signature



Name

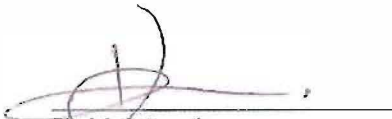


Occupation



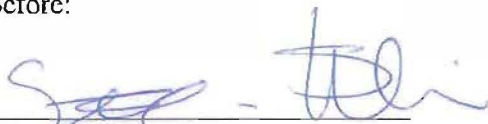
Address

Signed by the Director of Maritime New Zealand



Keith Manch  
Director of Maritime New Zealand

Before:



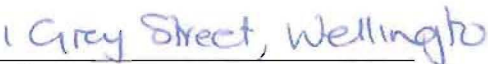
Witness Signature



Name



Occupation



Address



**SCHEDULE 1: THE SWEDISH CLUB LETTER OF GUARANTEE (CLAUSE 8)**

[To]

Ministry of Transport - *Rena* Settlement Proceeds Trust Account, as agent for:

The Crown and MNZ  
(as defined in the Deed referred to below).

[Date]

Dear Sirs

***Rena* - grounding on Astrolabe Reef on 5 October 2011**

In consideration of (a) your executing a deed of settlement in relation to removing the wreck of the *Rena* of even date between Daina Shipping Company (**Owner**) and Her Majesty the Queen in right of New Zealand and others (**Deed**), and (b) your complying with your obligations therein,

**we hereby undertake** to pay to you on demand the following sum when and if due to you from the Owner pursuant to the provisions of the Deed, namely, NZ\$10,400,000 (ten million and four hundred thousand New Zealand Dollars), as referred to in clause 5 of the Deed,

**provided always that:**

- (i) our liability hereunder shall not exceed NZ\$10,400,000, exclusive of interest and costs, and
- (ii) such liability shall be reduced by the amount of any payment(s) hereinafter made to you in respect of the said sum NZ\$10,400,000 either by us, or by the Owner.

This undertaking shall be discharged and extinguished when payment under clause 6 of the Deed has been made or upon the sum payable under clause 5 ceasing to be payable. Upon the undertaking being discharged the original of this Letter of Guarantee shall be returned to The Swedish Club forthwith.

This undertaking shall be governed by New Zealand law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the High Court of New Zealand.

The terms of this undertaking shall be read and interpreted in conjunction with the Deed.

Yours faithfully



Handwritten signature in blue ink, consisting of several stylized, overlapping loops and lines.

DEED IN RELATION TO CLAIMS  
ARISING FROM THE RENA  
CASUALTY

RECEIVED

Waitangi Tribunal

**16 Apr 2014**

Ministry of Justice  
WELLINGTON

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**DEED IN RELATION TO claims arising from the RENA CASUALTY**

**DATED** 1 October 2012

**PARTIES**

**BETWEEN:**

1. **DAINA SHIPPING COMPANY** of 80 Broad Street, Monrovia, Republic of Liberia; and
2. **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND**; and
3. **MARITIME NEW ZEALAND**; and
4. **NEW ZEALAND TRANSPORT AGENCY**; and
5. **ENVIRONMENTAL PROTECTION AUTHORITY**; and
6. **BAY OF PLENTY DISTRICT HEALTH BOARD**; and
7. **THE MINISTER OF LOCAL GOVERNMENT** (as the territorial authority, under section 22 of the Local Government Act 2002, for any part of New Zealand that does not form part of the district of a territorial authority, including Motiti and Mayor Islands).

(each a "Party" and together the "Parties").

Party (1) shall be referred to as the "Owner".

Party (2) shall be referred to as the "Crown".

Parties (2) to (7) shall collectively be referred to as the "New Zealand Government Interests".

**THE PARTIES** record, acknowledge and agree as provided in this Deed.



**BACKGROUND**

- A. On 5 October 2011 the Liberian Flag containership "RENA" (*Vessel*), with IMO No. 8806802, ran aground on Astrolabe Reef off Tauranga, New Zealand with the subsequent escape of oil, containers, debris and other material from the Vessel (*Casualty*). Oil, containers, debris and other material from the Vessel have landed on the New Zealand coastline and caused environmental damage.
- B. At the time of the grounding, the Owner was the registered owner of the Vessel.
- C. The Owner engaged salvors under the terms of a Lloyd's Open Form Salvage Agreement dated 6 October 2011, with SCOPIC incorporated and invoked.
- D. The Vessel has broken into two sections and, together with its equipment and cargo at the time of grounding, is referred to as the *Wreck* in this Deed.
- E. Since the grounding the Owner has been engaged in operations to secure and remove the Wreck (*Wreck Removal*).
- F. Under the Maritime Transport Act 1994 (*MTA*), the Resource Management Act 1991 (*RMA*) and the Local Government Act 1974 (*LGA*), the New Zealand Government Interests have various statutory powers and discretions in relation to the removal of the Wreck and protection of the marine environment.
- G. On 16 February 2012, the Owner commenced limitation proceedings in relation to the Casualty in the Admiralty Court of England & Wales (*London Limitation Proceedings*).
- H. The Owner intends to commence limitation proceedings under Part 7 of the MTA in the High Court of New Zealand in relation to the Casualty (*NZ Limitation Proceedings*).
- I. The NZ Government Interests have suffered loss and damage as a result of the Casualty and incurred costs and expenses through their response to the Casualty, and will continue to incur costs and expenses through the balance of the response, recovery and monitoring phases in relation to the Casualty.
- J. In this deed (*Deed*) the term *Claim*:

- (a) means any claim against the Owner by the New Zealand Government Interests, or any of them, in connection with or in respect of the Casualty of a kind falling within section 86(1) of the MTA (*section 86(1) Claims*); and
- (b) means all other possible claims against the Owner by the New Zealand Government Interests, or any of them, in connection with or in respect of the Casualty whether present or future, known or unknown, or of whatever kind or however arising; and
- (c) includes the following:
  - (i) any claim seeking an enforcement order (including, without limitation, an enforcement order under section 314(1) of the RMA);
  - (ii) any claim seeking an order for costs and expenses, in any proceedings;
  - (iii) any claim for breach of statutory duty or arising under legislation; but
- (d) does not include:
  - (i) subject to paragraph (c), the exercise of a statutory power under the MTA, the RMA, or the LGA in relation to Wreck Removal; or
  - (ii) a claim arising from any act or omission of the Owner which breaches New Zealand law and which occurs after the date of this Deed.

K. This Deed records the agreement of the Parties in relation to:

- (a) the payment of NZ\$27,600,000 to the Crown by the Owner to settle the section 86(1) Claims; and
- (b) the claiming of a credit by the Owner in limitation proceedings in relation to the Casualty for the payment referred to in paragraph (a); and
- (c) the other matters as set out in this Deed.

**DEED OF INDEMNITY**

**RECEIVED**

Waitangi Tribunal

**16 Apr 2014**

Ministry of Justice  
WELLINGTON

## DEED OF INDEMNITY

### BETWEEN:

- (1) HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND;
- (2) DAINA SHIPPING COMPANY of Liberia as the owner of the "Rena";

(each a "Party" and together the "Parties").

Party (1) shall be referred to as the "Crown".

Party (2) shall be referred to as the "Owner".

THE PARTIES record and covenant as follows:

#### Background

- A. On 5 October 2011, the containership "Rena" ran aground on Astrolabe Reef off Tauranga, New Zealand with the subsequent escape of oil, containers, debris and other material from that vessel (*Casualty*).
- B. The Crown is entering into this Deed of Indemnity (**Deed**) in accordance with its obligation under clause 15 of the *Deed in relation to Claims arising from the Rena Casualty* between the parties to this Deed, Maritime New Zealand, New Zealand Transport Agency, Environmental Protection Authority, Bay of Plenty District Health Board, and the Minister of Local Government (**Claims Deed**).
- C. The Owner will pay the Crown under the Claims Deed the amount of \$27,600,000 in settlement of the claims in connection with the Casualty specified in the Claims Deed.
- D. The Crown, acting through the Minister of Finance under section 65ZD of the Public Finance Act 1989, has agreed to indemnify the Owner, and the persons described or named in clause 3, against liability from certain claims by New Zealand public and local government claimants (as defined in clause 4), upon the terms and conditions of this Deed.
- E. The Minister of Finance considers it is necessary or expedient in the public interest that he give this indemnity.



**Maximum amount of indemnity**

7. The total amount of the Crown's obligations under clause 1 shall not exceed the aggregate of the amount paid by or on behalf of the Owner to the Crown under the Claims Deed and any other amount or amounts paid by or on behalf of the Owner to or at the direction of the Crown, or in accordance with an agreement with the Crown, in relation to the Casualty or the wreck of the Rena. However, the Crown's obligations under clause 1 shall not in any event exceed NZ\$38,000,000. In determining the total amount of the Crown's obligations under clause 1, any interest paid or payable by the Crown under this Deed is not to be taken into account.

Ministry of Transport – *RENA* Settlement Proceeds Trust Account, as agent for:  
The Crown, Maritime New Zealand, and the other New Zealand Government Interests that are parties to the Deed referred to below.

c/o Crown Law Office  
PO Box 2858  
Wellington 6140  
NEW ZEALAND

3<sup>rd</sup> October 2012

Dear Sirs

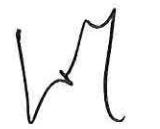

***Rena* - grounding on Astrolabe Reef on 5 October 2011**

In consideration of (a) your executing a Deed in relation to Claims arising from the *Rena* Casualty of even date between Daina Shipping Company (**Owner**) and Her Majesty the Queen in right of New Zealand, Maritime New Zealand, and the other New Zealand Government Interests that are parties (**Deed**) and (b) your complying with your obligations therein, we hereby undertake to pay to you on demand the following sum when and if due to you from the Owner pursuant to the provisions of the Deed, namely, NZ\$27,600,000 (twenty-seven million and six hundred thousand New Zealand Dollars), as referred to in clause 1 of the Deed, and **provided always that:**

- (i) our liability hereunder shall not exceed NZ\$27,600,000, exclusive of interest and costs, and
- (ii) such liability shall be reduced by the amount of any payment(s) hereinafter made to you in respect of the said sum of NZ\$27,600,000.

This undertaking shall be discharged and extinguished when payment under clause 1 of the Deed has been made. Upon the undertaking being discharged the original of the Letter of Guarantee shall be returned to The Swedish Club forthwith.

This undertaking shall be governed by New Zealand law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the High Court of New Zealand.

  
ctd... 

[www.swedishclub.com](http://www.swedishclub.com)

HEAD OFFICE GOTHENBURG

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Emergency No +46 31 151 328

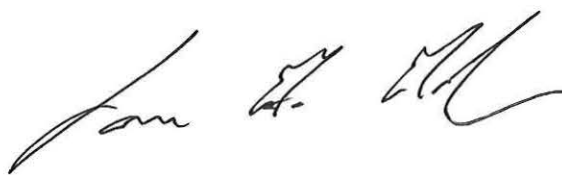
...2

The terms of this undertaking shall be read and interpreted in conjunction with the Deed.

Yours faithfully



Lars Rhodin  
*Managing Director*  
**The Swedish Club**



Lars A. Malm  
*Director, Risk & Operations*  
**The Swedish Club**

**beehive.govt.nz**

The official website of the New Zealand Government

**Gerry Brownlee****2 OCTOBER, 2012**

## Rena compensation agreed

Transport Minister Gerry Brownlee says compensation agreements worth up to \$38 million have been signed between the owners of the Rena and the Crown.

Under the agreements Daina Shipping will pay compensation of \$27.6 million to the Crown for costs incurred in clean-up after the ship grounded off Tauranga last October. A further \$10.4 million will be paid if Daina Shipping and The Swedish Club (the Rena's insurers) decide to apply for, are granted, and use a resource consent to leave part of the wreck in place, reflecting their reduced salvage costs.

"I want to stress that the consenting process is completely independent," Mr Brownlee says.

"These agreements are the result of careful negotiations over several months and I am satisfied they represent the best possible outcome for the people of New Zealand.

"Throughout this process Daina Shipping has negotiated constructively, and as a result we now have agreements that avoid costly and time-consuming court action with no guarantee of the outcome.

"Under maritime law when the Rena went aground Daina Shipping was only obliged to pay a maximum of approximately \$11.3 million compensation for losses caused by its grounding," Mr Brownlee says.

To date the cost to the Crown of the Rena grounding is approximately \$47 million.

"These agreements allow both New Zealand as a whole, and the Bay of Plenty region, to move on from what was, from an environmental standpoint, the worst maritime disaster in our history," Mr Brownlee says.

"I am confident Daina Shipping will continue to take a positive approach to all elements of the wreck removal process and their legal obligations."

The Marine Legislation Bill, currently going through the parliamentary process, will substantially increase the amount of compensation payable by ship owners for incidents like the Rena grounding. Legislation is expected to be in place in early 2013.

A joint statement from Maritime NZ and Daina Shipping can be found at [www.maritimenz.govt.nz](http://www.maritimenz.govt.nz).

Gerry Brownlee Transport







# Rena settlement reached

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**2 October 2012**

**The New Zealand Government and Daina Shipping Company (owner of the MV Rena) have reached a comprehensive financial settlement in respect of matters arising from the ship's grounding on 5 October 2011.**

Keith Manch, Director of Maritime New Zealand, confirmed that Daina Shipping Company will pay \$27.6 million to settle the claims of the Crown and public bodies including Maritime NZ, Bay of Plenty District Health Board, Environmental Protection Agency, the Minister of Local Government (signing as the territorial authority for Motiti island), and the New Zealand Transport Agency.

“This was a very complex negotiation given the range of issues and parties involved, and represents a good outcome for New Zealanders,” said Mr Manch. “As with any settlement it is about finding a solution that both sides can live with, and I would like to acknowledge the constructive approach taken by Daina Shipping Company and their continuing commitment to meet their obligations under New Zealand law.”

The settlement also recognises that Daina Shipping Company and The Swedish Club (the Rena's insurers) are currently investigating the environmental, social, cultural and economic impacts of different options for dealing with the wreck. In the event that they decide to apply for, are granted, and use a resource consent to leave part of the wreck in place, Daina Shipping Company will make an additional payment of \$10.4 million to the Crown, reflecting their reduced salvage costs.

Konstantinos Zacharatos, on behalf of Daina Shipping Company, said: “We have always sought to work closely with the New Zealand authorities to address all aspects of this serious incident. This settlement is a vital step forward in our progressive resolution of all the issues, and I want to thank the New Zealand authorities for all of their work that has gone into achieving this outcome.”

Media contact for owners, insurers, and salvors - **Hugo Shanahan +64 275 111 561**

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**Call the MNZ media line**

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## **Media centre**

Additional information for media.

## **Media archive**

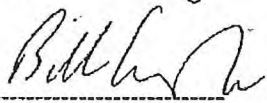
View our historic media releases.

**STATEMENT OF INDEMNITY GIVEN UNDER THE PUBLIC FINANCE ACT 1989**

Pursuant to section 65ZD(3) of the Public Finance Act 1989, the Minister of Finance makes the following statement:

"On the 15 day of October 2012, I, The Honourable Simon William English, Minister of Finance, on behalf of the Crown, entered into a deed of indemnity with Daina Shipping Company and which is to apply from the date of such signing (namely 1 October 2012)."

Dated at Wellington this 15 day of October 2012



Hon Simon William English  
Minister of Finance