CLAIM SUMMARY / DETERMINATION FORM

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| Date | : | 9/2/2010 |
| Claim Number | : | N08057-0087 |
| Claimant | : | Doris Decuir |
| Type of Claimant | : | Private (US) |
| Type of Claim | : | Personal Property |
| Claim Manager | : | Alyssa Lombardi |
| Amount Requested | : | $10,000.00 |

## I. Facts

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States. Approximately 282,828 gallons oil[1] were released into the Mississippi River and the resulting spill response, coordinated by the FOSC Unified Command, initially closed the river to vessel traffic and later, when reopened, managed traffic.

## II. Responsible Party

American Commercial Lines LLC (ACL), the Responsible Party (RP), owned the barge at the time of the incident and is a responsible party under the Oil Pollution Act.

## III. The Claimant and the Claim

The Law Offices of Frank J. D'Amico, Jr. (D'Amico) has submitted a claim into the National Pollution Funds Center (NPFC) for its (assumed) client, Ms. Doris Decuir. D'Amico asserts that the claim of $10,000.00 comes from fear, fright and an asthma attack to Ms. Decuir, caused by fumes as a direct result of the DM 932 oil spill.

## IV. APPLICABLE LAW

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan." 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal

[1] See House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008

costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

(a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
(b) That the removal costs were incurred as a result of these actions;
(c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC." [Emphasis added].

## V. DETERMINATION OF LOSS:

### A. *Causation:*

The Barge DM 932 oil spill did in fact release significant amounts of oil into and causing damage and injury to the Mississippi River, a natural resource of the United States. The USCG provided POLREPS to substantiate this fact.

**B.** ***Analysis:***

D'Amico's claim for its client, Ms. Doris Decuir., is very problematic. First, D'Amico was asked for supporting documents by the NPFC to specify for what this claim sought compensation.[2] The law office did not provide this very simple answer. The claim form lists, "fear and fright," "asthma attack," sending Ms. Decuir to the hospital for two days, but did not confirm that the claim was for Personal/Bodily injury, which are not costs/damages covered under OPA.

Also, D'Amico did not follow OPA requirements to first submit the claim to the named Responsible Party, giving it 90 days to settle the claim before coming into the NPFC for uncompensated damages. The claims manager provided D'Amico a link to the NPFC website that contained the OPA regulations and general claims requirements. Adding to this, D'Amico was asked to provide a written statement from the claimant (either in an affidavit or in a written letter) that it had a right to represent Ms. Decuir in the first place.[3]

Lastly, D'Amico was asked to provide proof by its client from where the claim of "$10,000.00" came. D'Amico submitted no documentation either with the claim or when requested.[4] The "Optional OSLTF Claim Form" submitted by D'Amico simply states that all documentation is "to be supplemented."[5] This did not happen, even after D'Amico was given an extension of 10 days to provide documentation.[6]

Since the claimant has not proven, based on the preponderance of the evidence, that he suffered any damage or uncompensated costs, this claim has been denied.

**C.** ***Determination:***

The NPFC hereby determines that the OSLTF will pay $0.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim

**VI. DETERMINED AMOUNT: $0.00**

Claim Supervisor: Thomas Morrison

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

[2] See email from Ms. Alyssa Lombardi, NPFC, to Mr. Frank J. D'Amico, Jr. dated 8/03/2010
[3] See email from Ms. Alyssa Lombardi, NPFC, to Mr. Frank J. D'Amico, Jr. dated 8/03/2010
[4] See email from Ms. Alyssa Lombardi, NPFC, to Mr. Frank J. D'Amico, Jr. dated 8/03/2010
[5] See claim submission, dated 7/30/2010
[6] See email from Ms. Alyssa Lombardi, NPFC, to Mr. Frank J. D'Amico, Jr. dated 8/18/2010

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail [redacted]@uscg.mil
Fax: 202-493-6937

5890
9/2/2010

**Via USPS First-Class Mail:**

Ms. Doris Decuir
1220 Kentucky Street
New Orleans, LA 70117

**Via Email: f[redacted]@damicolaw.net**

The Law Offices of Frank J. D' Amico, Jr.
ATTN: Mr. Frank J. D' Amico, Jr.
622 Baronne Street
New Orleans, LA 70113

RE: Claim Number: N08057-0087

Dear Sir and Madam:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N08057-0087 involving DM-932. Please see the claim analysis for further details.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N08057-0087.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

Alyssa Lombardi
Claims Manager
U.S. Coast Guard