

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
August 07, 2013

VIA EMAIL:

IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
ATTN: Doug Davis
c/o Keesal, Young & Logan
1029 West Third Avenue Suite 650
Anchorage, AK 99501

RE: J05003-0025

Dear Mr. Davis:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2,677,168.01 is full compensable for OPA claim number J05003-0025. This reconsideration determination is based on an analysis of information submitted. All costs that are not determined as compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

Sincerely,

A handwritten signature in black ink, appearing to read "T. S. Morrison".

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: J05003-0025	Claimant Name: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
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I, the undersigned, ACCEPT this settlement offer of \$2,677,168.01 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Printed Name of Claimant or Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Printed Name of Witness	Signature

_____	_____	_____
*DUNS/EIN/SSN *Required for Payment	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION

Claim Number:	J05003-0025
Claimant:	IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claimant:	CLAIMANT TYPE
Type of Claim:	Limit of Liability
Claim Manager:	Donna Hellberg
Amount Requested:	\$2,832,010.08

I. INCIDENT

The M/V SELENDANG AYU (the vessel) was on a voyage from Seattle to China when, on the morning of December 6, 2004¹ while operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. The vessel drifted toward Unalaska Island and eventually grounded on December 8 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's bottom tanks, releasing approximately 330,000 gallons² of bunkers into the waters off Unalaska Island.

II. CLAIMANT AND CLAIM

The Claimants are the OPA responsible parties and their insurers. Ayu Navigation Sdn Bhd was the owner of the vessel and IMC Shipping Co. Pte. Ltd. was the operator of the vessel. Sveriges Angfartygs Assurans Forening (The Swedish Club), members of the International Group of Protection and Indemnity Clubs ("International Group"), and the International Group's re-insurers were their subrogated underwriters.

III. PROCEDURAL BACKGROUND:

Pursuant to 33 U.S.C. § 2708(a)(2) Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) seeking a limit on its liability for the incident. At the time of the incident the applicable limit per ton was \$600; the gross tonnage for the *Selendang* was 39,755 gross ton; therefore, its limit on liability, if granted, was \$23,853,000.00. The Claims Adjudication Division conducted an analysis of evidence and facts and determined that IMC Shipping Co. Pte. Ltd, et al demonstrated entitlement to its limit of liability on 27 January 2012.

IV. REMOVAL COST CLAIM

Claimant asserts that it incurred approximately \$148,651,185.13 in removal costs and hired 153 vendors to conduct the removal actions. The removal actions at the site ended on or about 23 June 2006, per a Pollution Report (PolRep) #110 dated 27 June 2006 issued by the FOSC for this incident. As required by 33 CFR 136.203, the RP worked

¹ See, Claimant Submission, Attachment 24, Government's Videotape Deposition of Kailash B. Singh Vol. I, 00074.

² See, Claimant's submission letter, page 3, paragraph 3.

closely with the FOSC throughout the response; MSO Anchorage provided FOSC coordination.

Based on the magnitude of the costs associated with this response, the NPFC anticipated that adjudication of this claim will be lengthy. Claimant and the NPFC agreed to adjudicate the costs on a phased basis. The NPFC separated the claim into smaller claims, based on vendors. Each smaller claim bears a separate claim number and after adjudication the NPFC will offer an amount for that claim. Claimant may accept the offer or request reconsideration pursuant to the Claims Regulations at 33 CFR Part 136.

V. TWELFTH REMOVAL COSTS CLAIM DETERMINATION³

The NPFC adjudicated this twelfth claim (J05003-0025) in the amount of \$2.83M. The RP, through its legal representative, provided 67 binders of invoices to document the \$2.83M in removal costs claimed in this twelfth determination package for costs associated with various third party contract suppliers in support of the response actions undertaken in this incident. This claim includes only the invoices paid by the RP to the various contract suppliers, who provided good and services in support of the cleanup actions undertaken by all response contractors. The NPFC claims manager reviewed each and every submitted invoice as well as every "daily" sheet submitted to substantiate the invoices. Additionally, the NPFC claims manager reviewed the payment record against the claimed costs for each invoice.

An offer was made on the claim on 16 July 2013 in the amount of \$2,555,041.36.

VI. REQUEST FOR RECONSIDERATION⁴

³ The NPFC adjudicated the first removal cost claim, Claim Number J05003-001, in the amount of \$24,500,453.89. The NPFC deducted the statutory limit on liability of \$23,853,000.00 and offered \$546,484.54 as full and final compensation on or about May 21, 2012. Claimants accepted the offer on June 7, 2012. The NPFC adjudicated the second removal claim, Claim Number J05003-003, and offered \$ 2,168,445.20 to the Claimants on June 26, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the third removal claim, Claim Number J05003-0004, and offered \$3,668,595.70 to the Claimants on July 3, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the fourth removal claim, Claim Number J05003-0015, and offered \$23,103,264.96 to the Claimants on August 20, 2012. Claimants accepted the offer on September 11, 2012. The NPFC adjudicated the fifth removal claim, Claim Number J05003-0016, and offered \$15,611,776.98 to the Claimants on October 17, 2012. Claimants accepted the offer on December 6, 2012. The NPFC adjudicated the sixth removal claim, Claim Number J05003-0017, and offered \$9,565,222.57 to the Claimants on November 20, 2012. Claimants accepted the offer on November 28, 2012. The NPFC adjudicated the seventh removal claim, Claim Number J05003-0018, and offered \$8,230,390.17 to the Claimants on December 13, 2012. Claimants accepted the offer on December 17, 2012. The NPFC adjudicated the eighth removal claim, Claim Number J05003-0019, and offered \$5,004,635.21 to the Claimants on February 19, 2013. Claimants accepted offer on February 27, 2013. The NPFC adjudicated the ninth removal claim, Claim Number J05003-0022, and offered \$2,166,024.24 to the Claimants on March 21, 2013. The NPFC adjudicated the tenth removal claim, Claim Number J05003-0023, and offered \$6,120,304.42 to the Claimants on April 02, 2013. Claimants accepted the offer on May 24, 2013. The NPFC adjudicated the eleventh removal claim, Claim Number J05003-0024, and offered \$2,099,476.94 to the Claimants on April 9, 2013. Claimants accepted the offer on May 15, 2013.

⁴The Claimant requested reconsideration via a letter dated 5 August 2013. The Claimant provided nine pages of supporting documentation.

On August 5, 2013, the Claimant sent a request for reconsideration to the NPFC stating they would like the NPFC to reconsider the claim. The Claimant provided nine pages of supporting documentation for the amount requested on reconsideration along with their rationale for the request.

NPFC Determination on Reconsideration

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 § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant's new information, the NPFC has determined that the majority of costs requested by the Claimant on reconsideration in this twelfth claim determination were reasonable and necessary to mitigate the effects of the incident and properly supported. Upon review of the information provided by the Claimant, the NPFC has determined that the following costs are again denied on reconsideration:

City of Unalaska – The Claimant requested reconsideration of the double credit that was inadvertently taken by the NPFC in its original determination. After review of the information, the NPFC has determined the Claimant is correct and the NPFC has removed the double credit.

Grand Aleutian – The Claimant has requested reconsideration of \$5,615.46. The NPFC has determined that it will approve \$4,820.35 and \$795.11 remains denied which are for costs associated with food/drinks on lodging bills whereby the underlying receipts were not provided.

VII. SUMMARY

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.203 and

136.205. The costs determined to be payable are for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, **\$2,677,168.01** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J05003-0025.

AMOUNT: \$2,677,168.01

Claim Supervisor:  **Thomas S. Morrison**

Date of Supervisor's review: **8/7/13**

Supervisor Action: **Reconsideration Approved**