

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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5890
October 15, 2013

VIA [REDACTED]@kyl.com

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: J05003-0021

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 \$3,343,027.32 is full compensable for OPA claim number J05003-0021. 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,

[REDACTED]

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

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

CLAIM SUMMARY / DETERMINATION

Claim Number:	J05003-0021
Claimant:	IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claimant:	Corporate
Type of Claim:	Limit of Liability
Claim Manager:	Donna Hellberg
Amount Requested:	\$3,592,850.08

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 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

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.

amount for that claim. Claimant may accept the offer or request reconsideration pursuant to the Claims Regulations at 33 CFR Part 136.

V. SECOND SUPPLEMENTAL REMOVAL COSTS CLAIM DETERMINATION³

The NPFC adjudicated this second supplemental claim (J05003-0021) in the amount of 3.59M. The RP, through its legal representative, provided 6 binders of invoices to document the \$3.59M in removal costs claimed in this second supplemental determination package for costs associated with costs incurred under the following response vendors: Alaska Maritime Agencies, Chumis Cultural Resource Services, Cultural Resource Consultants, Duncan Fitzgerald, Dunlap Towing, EML Environmental Mapping, Environmental Science Services, Foss Maritime Company, Graham Macdonald, ITOFF, Magone Marine, Maritime Technical International, Milwee Associates, Natural Resource Consultants, Newfields, Polaris, Jason Rogers, The Swedish Club, Travis/Petersen Environmental, Vanguard Research, and Young Environmental Services. 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.

The review of the actual costs, invoices and dailies focused on (1) whether the actions were taken to prevent, minimize or mitigate the effects of the incident; (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOOSC to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

An offer was made on the claim on 20 August 2013 in the amount of \$3,189,033.29.

VI. REQUEST FOR RECONSIDERATION⁴

On October 14, 2013, the Claimant sent a request for reconsideration to the NPFC stating they would like the NPFC to reconsider the claim. The Claimant provided 42 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

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 Claimants submitted a supplemental removal cost claim via a letter dated March 6, 2010 in the amount of \$11,274,607.07 which consisted of 24 additional vendors. This claim summary determination is the second claim determination. The first supplemental claim determination was made via claim number J05033-0020 in the amount of \$6,646,573.64 on January 7, 2013. The Claimant accepted that offer on January 22, 2013.

⁴The Claimant requested reconsideration via a letter dated 14 October 2013. The Claimant provided 42 pages of supporting documentation.

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 second supplemental 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 the following on reconsideration:

EML Environmental Mapping - \$18,277.90 – The Claimant provided additional documentation which demonstrates that the activity undertaken and invoiced by this vendor worked within the Dutch Harbor command center; handled “PEST” and shoreline surveys associated with response and as such, the NPFC has determined these activities are compensable in the amount requested;

Foss Maritime - \$41,381.32 – The Claimant provided detailed arguments with respect to the activities undertaken by the tug, SYDNEY FOSS. The NPFC originally denied this vendor stating it believed the tug was used for rescue effort vice response although on reconsideration, the Claimant was able to demonstrate that the tug in fact was only used for response to the SELENDANG AYU once its engine experienced failure in order to try to mitigate the substantial threat that existed as the vessel began to drift close to shore. The tug established a tow line to the ship and tried to tow the ship away from land to prevent her from grounding although the tow line parted. The tug remained on scene while it tried to reestablish a tow line and when it was determined the tug was no longer needed, it was released from service. The Claimant also produced a copy of an email from the NPFC Case Officer handling the costs under the Federal Project dated May 9, 2005 whereby the Case Officer advises the RP's Spill Management Team that he considers the actions undertaken by the tug to be response as it relates to mitigation of the substantial threat. Based on the foregoing, the NPFC has determined these activities are compensable in the amount requested;

ITOPF - \$23,224.74 – The Claimant requested reconsideration of this vendor as the NPFC originally approved \$29,748.81 for two invoices presented and then denied \$23,224.74 as unsupported by invoices although the Claimant pointed out that the two invoice totals were not in US Dollars and when you apply the currency conversion, the invoices do in fact total the amount requested by the Claimant and is supported by proper documentation. As such, the NPFC has determined these invoices once converted to US dollars is compensable in the total amount requested by the Claimant.

Maritime Technical International - \$71,110.07 – The Claimant originally requested \$219,943.03 which the NPFC denied as a whole stating these costs were for media and public relations and denied in their entirety. On reconsideration, the Claimant is asking for only a portion of this vendor's costs. They are requesting the costs for Mr. Mike Hanson's activity within the Joint Information Center (JIC) performing similar duties as the uniformed Coast Guard personnel which were billed to the Claimant and paid in full as response related. Based on the fact that the NPFC had paid and billed the Claimant for similar JIC duties as was being performed by Mr. Hanson and is supported by both Coast Guard documentation and documentation presented by the Claimant, the NPFC has determined that costs in the amount of \$71,110.07 for Mike Hanson are determined

compensable in the total amount of \$71,110.07 and all other costs for this vendor remain denied as originally stated by the NPFC.

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, **\$3,343,027.32** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J05003-0021.

AMOUNT: \$3,343,027.32

Claim Supervisor:  *Thomas S. Morrison*

Date of Supervisor's review: *10/15/13*

Supervisor Action: *Reconsideration Approved*

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: J05003-0021	Claimant Name: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
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I, the undersigned, ACCEPT this settlement offer of \$3,343,027.32 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	Bank Routing Number	Bank Account Number
*Required for Payment		