

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

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Arlington VA 20598-7100  
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5890  
May 16, 2013

Sent Via Email [REDACTED]@kyl.com  
[REDACTED]@kyl.com

RE: J05003-0012

IMC Shipping Co. Pte. Ltd.,  
Ayu Navigation Sdn Bhd, and the Swedish Club  
C/o Keesal, Young & Logan  
Attn: Mr. Herbert H. Ray, Jr  
Suite 650 1029  
West Third Avenue  
Anchorage, AK 99501-1954

Dear Mr. Davis and Mr. Ray:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0012 involving the December 2004, M/V Selendang Ayu incident that took place near the north shore of Unalaska, Alaska. Compensation is denied for the reasons stated in the enclosed claim Summary/Determination form.

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 J05003-0012.

Mail reconsideration request to:

Director  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Boulevard  
Arlington, VA 20598-7100

Sincerely,

[REDACTED]

DAWN UNGLESBEE  
Claims Manager  
U.S. Coast Guard

Enclosures: Claim Summary / Determination

## CLAIM SUMMARY / DETERMINATION

**Claim Number:** J05003-0012  
**Claimant:** IMC Shipping Co. Pte. Ltd. et al  
**Type of Claimant:** Corporate  
**Type of Claim:** Loss of Government Revenue  
**Claim Manager:** Dawn Unglesbee  
**Amount Requested:** \$6,318.00

### Incident:

The M/V SELENDANG AYU was on a voyage from Seattle to China when on the morning of December 6, 2004 while operating in adverse heavy weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. The crew initially intended to repair the cylinder by changing the liner but determined to only isolate the cylinder. After some hours spent isolating the cylinder, the crew could not restart the engine. It was then decided to renew the piston rings in the No. 6 cylinder, which required removal of the cylinder head. While attempting to renew the piston rings, 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 gallons of bunkers into the waters off Unalaska Island.

### Claimant and the Claim

#### Claimant

The claimant is 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 Forenging (The Swedish Club), the members of the International Group of Protection and indemnity Clubs ("International Group"), and the International Group's re-insurers were their subrogated underwriters.<sup>1</sup>

#### Claim

Claimant sent a letter to the National Pollution Funds Center (NPFC) dated December 6, 2007 outlining their claims for reimbursement for third-party damage claims, which were paid for by the responsible party as a result of the M/V SELENDANG AYU oil spill.<sup>2</sup>

This claim is one of several third-party claims submitted to the NPFC and is identified as J05003-0012. Claimant seeks \$6,318.00 for a payment it made to the City of Unalaska for "the city's share of foregone fish tax revenues for closure of the Makushin/Skan Bay tanner crab fishery following the incident".<sup>3</sup>

<sup>1</sup> See J05003-001. Claimants seek reimbursement of removal costs and damages exceeding the applicable limit on liability.

<sup>2</sup> See letter dated March 21, 2012 to the NPFC from Keesal, Young, & Logan.

<sup>3</sup> See letter dated April 24, 2009 to the City of Unalaska from Keesal, Young & Logan (Bates TAX 10).

### **Applicable Law:**

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR § 136.225 is a claim for net loss of revenue due to the injury, destruction or loss of real property, personal property or natural resources.

Pursuant to 33 CFR § 136.225, claims may be presented by an authorized claimant for net loss of "revenue," defined as "taxes, royalties, rents, fees and net profit shares."

33 CFR § 136.227 require that:

In addition to the requirements of Subparts A and B of § 136, a claimant must establish-

- (a) The identification and description of the economic loss for which compensation is claimed, including the applicable authority, property affected, method of assessment, rate and method and dates of collection;
- (b) That the loss of revenue was due to the injury to, destruction of, or loss of real or personal property or natural resources;
- (c) The total assessment or revenue collected for comparable revenue periods; and,
- (d) The net loss of revenue.

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 § 136.229, the amount of compensation allowable for a claim involving loss of government revenues is "the total net revenue actually lost."

### **Analysis**

The Claimant seeks reimbursement for a \$6,318.00 settlement payment it made to the City of Unalaska on April 23, 2009. The Settlement Agreement states "...IMC shall provide to the State, receipt of which is hereby acknowledged, payment to the City of Unalaska in the total sum of ...(\$6,318.00) for the City's share of fish tax revenues (AS 43.75.015 Fisheries Business Tax) lost when the Makushin/Skan Bay tanner crab fishery was closed as a result of the oil spill".<sup>4</sup> It also states that it is "understood that this settlement is in compromise of a disputed claim".<sup>5</sup>

Claimant has not provided documentation to prove that the City of Unalaska suffered a loss of revenue.

<sup>4</sup> See, Claimant's Bates TAX 5; Settlement Agreement and Release between the State of Alaska and IMC Shipping Co. PTE. Ltd. Page 5 of 9.

<sup>5</sup> See, Claimant's Bates TAX 4; Settlement Agreement and Release between the State of Alaska and IMC Shipping Co. PTE. Ltd. page 4 of 9.

Claimant has not provided documentation to prove that the City of Unalaska suffered a loss of revenue.

33 CFR § 126.225 defines, "revenue" as, "taxes, royalties, rents, fees and net profit shares." For Claimant to substantiate a loss of government revenues, the regulations require that a Claimant must demonstrate that it sustained a "net loss of revenue,"<sup>6</sup> and limits potentially available compensation to "the total net revenue actually lost."<sup>7</sup> Therefore, in order to prove that Claimant sustained a loss compensable under OPA, it must provide evidence that any loss of fish tax revenue resulted in the City's total net loss of revenue for the claimed period. Additionally, Claimant must provide the total assessment or revenue collected for comparable revenue periods to substantiate its loss. 33 CFR § 136.227(c). Claimant must also provide the method of assessment, rate, and method and dates of collection. 33 CFR § 136.227(a).

The NPFC recognizes that the Tanner Crab season was closed in 2005.<sup>8</sup> However, for the Claimant to prove its claim it must demonstrate that the City of Unalaska's alleged loss of crab fishery revenues resulted in a total net loss of revenue, and that the City was unable to make up the alleged loss from other revenues that were gained during the claimed period.<sup>9</sup> During the extended spill response, it is evident that Unalaska attracted a higher than normal volume of people and vessels. How that would result in a total net loss of revenue has not been shown. Additionally, the fisheries business tax appears to go to the state and the NPFC has not been shown a basis or requirement for the State to provide it to the city, except through the Settlement Agreement.

### **Conclusion**

This claim is denied because Claimant failed to meet its burden to demonstrate that (1) the City of Unalaska sustained a total net loss of revenue in the amount of \$6,318.00 for the claimed period, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:  Robert C. Rioux

Date of Supervisor's review: 5/16/2013

Supervisor Action: *Denial Approved*

Supervisor's Comments:

<sup>6</sup> 33 C.F.R. § 136.227(d)

<sup>7</sup> 33 C.F.R. § 136.229

<sup>8</sup> Alaska Department of Fish and Game commercial Fisheries News Release.

<sup>9</sup> See, City of Unalaska, Alaska Schedule of Fees and Charges