CLAIM SUMMARY / DETERMINATION FORM

Date	: 11/22/2010
Claim Number	: N08057-068
Claimant	: BV Shipping, LTD (Owner) & Standard Shipping, Inc. (Operator)
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: Augusto C. Rios, Jr.
Amount Requested	: $63,429.59

I. FACTS

A. Oil Pollution Incident:

In the early morning hours of July 23, 2008, at approximately at 0130[1], the tank barge DM 932, an unmanned, non-self propelled, double hull, steel tank barge, bearing official number 546058, measuring 195 feet in length and 35 feet in breadth[2], 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 of oil[3] were released into the Mississippi River and the resulting spill response, coordinated by the FOSC Unified Command (FOSC/UC), initially closed the river to vessel traffic and later, when reopened, managed traffic for the duration of the response.

II. RESPONSIBLE PARTY

American Commercial Lines LLC (ACL) owned the DM 932 barge at the time of the incident and is a responsible party (RP) under the Oil Pollution Act. On 24 July 2008 the NPFC designated ACL as responsible party (RP), which it denied on 28 July 2008.

III. The Claimant and the Claim

This claim is presented by the vessel owner, BV Shipping, LTD, and Standard Shipping, Inc., the corporation owning BV Shipping Ltd. The claim is presented via their attorney, Wagner & Bagot, LLP. Claimant asserts that its vessel, the M/V Beijing Victory, sustained lost profits, impairment of earnings capacity and additional expenses when the vessel was delayed because of the closure of the Mississippi River. [4] Claimant presented its claim to ACL's agent, Worley Catastrophe Response, LLC on 16 September 2008.[5] The RP received and denied the claim. Claimant presented its claim to the NPFC on November 3, 2009 in the amount of $34,360.22. This amount represents delay time and increased costs associated with additional bunkers and pilotage.

At the time of the oil-spill incident, the M/V Beijing Victory (Beijing Victory or the vessel) was idle at the Gramercy Alumina LLC (GA) dock in Gramercy, LA (the Mississippi River

[1] SITREP-POL ONE dtd 23 July 2008.
[2] Complaint for Declaratory Judgment – filed 05/20/2009 - Factual Background (Pg 8) – US District Court – Eastern District of Louisiana – Civil Action No. 09-3657.
[3] House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008
[4] Standard Shipping Inc. – Claim submission dtd October 13, 2009 by Wagner & Bagot, LLP
[5] Complaint for Declaratory Judgment (filed 05/20/09) – Pg 54.

at Mile Marker (MM) 145.3) after having delivered a load of bauxite from Jamaica under the terms of a contract of affreightment (COA) between Standard Shipping, Inc.[6] and Gramercy Alumina LLC. The COA was a requirements contract and the parties to the COA agreed that the obligation of the Shipper (Gramercy) to ship and the obligation of the Owner to carry bauxite from Jamaica to Gramercy could fluctuate considerably because of the needs of the Shipper's business.[7] While the Shipper approximated that it would ship about 3.5 million metric tons (MT) per year; there was no guarantee as to the quantity of cargo to be shipped or the number of voyages to be performed.

The COA[8] set a fixed contract rate for the freight at $8.05 per metric ton of cargo. Included in the freight rate is $40,000 per round trip for port costs, which include agency fees, light dues, buoy or harbor dues, pilotage, launch service, dockage, tug service and any other normal port charges. Any port costs exceeding the budgeted $40,000 per round trip shall be for the Shipper's account. Additionally, the cost of fuel is budgeted into the freight rate, i.e., US $300/MT for fuel oil and US $600/MT for diesel fuel. The COA also provides that demurrage/dispatch rates are $15,000/$7,500 per day respectively.

Beijing Victory became idle after discharge operations at Gramercy had been completed on July 20, 2008. When the discharge occurred on July 23, 2008, the vessel was still idle at Gramercy, awaiting the arrival of a chief engineer and second engineer. On July 24, 2008, while the vessel remained idle, it suffered mast damage from a shore crane.[9] On July 27, 2008, a pilot was on board the vessel, which was ready to transit to Boland Marine's Perry Street Wharf (MM 96.2) for repairs. The Mississippi River was closed in the area and the vessel shifted to Grandview Anchorage (MM 146) at 1010 on July 27.

On July 29th at 1136 the USCG amended the restriction and allowed the Beijing Victory to proceed to the Perry Street Wharf. At 1530 of that same day, with pilot on board and tugs alongside, the agent was notified that the engines were not working properly. Because of a non responsive engine, at 1721 the USCG imposed a restriction on Beijing Victory that kept it at Grandview Anchorage[10]. This restriction was not amended until 2346 of same day and provided that "*Vessel is allowed to proceed directly to Perry St. Wharf, MM96 with Tugs of adequate horsepower for the first two hours of transit. After two hours and upon recommendation of the pilot tugs may be released for the reminder of transit.*" On July 30th at 0835 Beijing Victory sailed from Grandview Anchorage but had to anchor again at the Bonnet Carre Anchorage at 1000 as the river was still closed to traffic. At 1445 the vessel traffic center (VTS) advised its agent that the vessel could shift to Perry St. Wharf.[11] However, by the time the pilots were able to respond, the vessel's daylight sailing restriction prevented its movement until the next day. On July 31st at 1410 the vessel was all fast at Perry St. Wharf[12]. The vessel remained at the Perry St. Wharf until 1425 on August 12th, when it sailed to Port Rhoades, Jamaica.

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[6] Standard Shipping owns BV Shipping LTD.
[7] COA dated November 1, 2006, between Standard Shipping Inc. and Gramercy Alumina LLC.
[8] While the COA does not provide that the Beijing Victory was one of the designated vessels in the COA, Claimant submitted documentation substantiating that it was operating under the COA to transport bauxite from Jamaica to Gramercy.
[9] C.Starling's email to A.Rios of 21 April 2010 @ 4:14PM.
[10] Marine Safety Network (MISLE) Activity #3283553 of 07/29/2008@ 21:58.
[11] Claimant's Exhibit E-6.
[12] *Ibid.*

In a letter dated April 20, 2010, Claimant increased its sum certain to $63,429.59. This included an increase in the value of the delay time (91.4 hours) [13] and an increase in fuel consumption and pilotage services.[14]

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA 90) provides that the responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from the incident.

Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

"The Fund shall be available to the President for the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages." 33 U.S.C. § 2712(a)(4).

Congress directed the President to promulgate regulations "for the presentation, filing, processing, settlement, and adjudication of claims..." 33 U.S.C. § 2713 (e). Those regulations are found at 33 CFR Part 136.

In general, claims for removal costs or damages must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within ninety days, the claimant may commence an action in court against the RP or present the claim to the Fund. 33 U.S.C. § 2713(c).

Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the claimed amounts, the claimant shall immediately amend the claim. 33 CFR § 136.105(b)

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. § 2712 (h)(2)

Each claim must include at least the following, as applicable:

(12) A statement by the claimant that no action has been commenced in court against the responsible party or guarantor of the source designated under – 136.305 or, if any action has been commenced, a statement identifying the claimant's attorney and the attorney's address and phone number, the civil action number, and the court in which the action is pending. 33 CFR § 105(e)(12)

[13] C.Starling's ltr of 20 April 2010
[14] C.Starling's ltr of 9 April 2010; Page 4.

Under 33 CFR 136.105(a) and (b), 136.105(e)(6) & 136.105(e)(13), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a claim presented to the Fund should include, as applicable:

> "the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with the preparation of the claim." 33 CFR 136.105(e)(8)."

Claims for the loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property or natural resources may be presented to the Fund by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income.

"In addition, a claimant must establish the following-

(a) That real or personal property or natural resources have been injured, destroyed, or lost.
(b) That the claimant's income was reduced as a consequence or injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established." 33 CFR 136.233(a-d)

In any case in which the president has paid an amount from the Fund for any removal costs or damages specified under 33 U.S.C. 2712(a), no other claim may be paid from the Fund for the same removal costs or damages. 33 U.S.C. 2712 (i)

In addition to 33 CFR 136.105, claims for loss of profits and impairment of earning capacity must meet the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231, *et seq.* 233 & 235.

If a claimant is able to establish an entitlement to a loss of profits, then compensation may be provided from the OSLTF, but the compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for the net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident, all income from alternative employment or business undertaken, potential income from alternative employment or business not undertaken but reasonably available, and saved overhead or normal business expenses not incurred as a result of the incident, and State, local, and Federal tax savings. 33 CFR 136.235(a-e)

DETERMINATION OF LOSS:

A. Findings of Fact: :

1. The incident involved the discharge and continuing substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. Real or personal property or natural resources have been injured, destroyed, or lost; specifically oil was released into and injured the Mississippi River, a natural resource of the United States.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated damages.
4. The claim was presented within three years of after the date on which the injury and its connection to the incident were reasonably discoverable with the exercise of due care.
5. Claimant presented this claim to the responsible party prior to submitting it to the NPFC. The NPFC notified the responsible party that it received the claim.[15] In the process of adjudicating this claim, the NPFC Claims Manager collected additional information from the claimant and other sources to document what took place at the time of the incident.

B. Claimant's Analysis of the Claim:

- ***Vessel Delay Time:***

Claimant's original claim stated that the discharge of oil delayed the vessel for 20 hours (Start: 7/30/2008 at 10:00 – End: 7/31/2008 at 06:00 hours). In its 9 April 2010 letter, Claimant revised the delay time to 91.4 hours (7/27/08 at 1010 to 7/30/08 at 08:35 and 7/30/08 at 10:00 to 7/31/08 at 06:00). Claimant values this delay period at $43,591.14[16], by using the delay hours (3.8083 days) multiplied by claimant's stated average daily net profit of $11,446.25.

Based on the documentation provided and summarized below by claim manager, the Beijing Victory did experience periods of delay for various reasons as it travelled to the Perry Street Wharf for repairs. These delays are broken down by the claim manager into three periods and are different from claimant for these add up to 70 hours and 27 minutes (70.45 hrs) or 2.9354 days. With the following Beijing Victory chronology of events, assembled from the information gathered, each period will be individually discussed in the analysis section.

19 July		
	2230	Completed bulk discharge.
	2330	Commenced loading deck cargo
20 July		
	0050	Completed loading deck cargo
	0050	Idle at Gramercy dock; awaiting for Chief Engineer and 2nd Engineer's arrival[17]
24 July		
	xxxx[18]	Shore crane damages vessel's forward mast
27 July		
	0900	Idle at Gramercy dock

[15] NPFC ltr dtd 4 Nov '09 to ACL and ACL's counsel.
[16] C.Starling's ltr of 9 April 2010; Page 4.
[17] G.Starling's email to A.Rios of 21 Apr 2010 @ 4:14PM
[18] *Ibid.* No actual time provided.

0900	Pilot on board
0930	Tugs alongside (x2)
1010	Unmoored/sailed Gramercy Alumina (2 Tugs Assist)
1010	Continuous transit (w/1 tug escorting)
1040	Dropped first anchor at Grandview Anchorage (MM 146.5-147.3) **(Begin – 1st delay)**
1110	Anchored at Grandview Anchorage / FEW / pilot away
1110	Idle at Grandview Anchorage
29 July	
1136	USCG amended restriction to allow vessel to proceed to Perry St. Wharf / Pilot arranged **(End – 1st delay) – Delayed Time = 48 hrs and 56 min**
1430	Pilot on board
1515	Tugs alongside (x2)
1530	Agent is notified that engines are not working properly.
1625	Tugs away (x2)
1636	Pilot away
1721	USCG restricts vessel to Grandview Anchorage for non responsive engine. **(Begin – 2nd delay)**
1745	Class surveyor onboard.
2030	Class surveyor away.
2112	Class report submitted to USCG for approval.
2230	Pilot advises that vessel will only be moved during daylight hours.
2346	USCG amends restriction allowing vessel to proceed to Perry Street Wharf. **(End – 2nd delay) – Delayed Time = 6 hrs and 25 min**
2400	Pilot arranged for 0600 for shifting.
30 July	
0600	Pilot onboard and tugs alongside (x2).
0600	Vessel is idle at anchorage awaiting tractor tug assistance for berthing at Perry Street Wharf per USCG/Pilots request.
0835	Begin transit from Grandview Anchorage to Perry Street Wharf. 2 tugs assisting.
0900	Continuous transit to Perry Street Wharf with 2 tugs, as per USCG restriction.
0900	Escort tugs (x2) released
1000	One tug alongside for turning vessel into anchorage due to oil spill and river closure.
1445	Vessel Traffic Center advises agent vessel is cleared for shifting to Perry Street Wharf. Pilots are notified.
1500	Pilots advise that they are unable to shift due to the vessel's daylight restrictions. Pilot reordered for 31 July at 0600.
1500	Idle at Bonnet Carre Anchorage awaiting pilot. **(Begin – 3rd delay)**
31 July	
0606	Pilot onboard **(End – 3rd delay) – Delayed Time = 15 hrs and 6 min**
0725	Sailed from Bonnet Carre Anchorage (MM 127.5); 1 tug assisting.
1010	Continuous transit

1010	Tugs (x4) alongside to assist in turning vessel upriver.
1330	Commenced mooring
1410	All fast at Perry Street Wharf; 4 tugs assisting.
1410	Idle at Perry Street Wharf
1 August	
2325	DNY class surveyor report sent to USCG.
0005	USCG advises boarding required prior to being approved to depart.
1030	USCG approved / cleared vessel to depart Mississippi River
1310	Pilot on board
1345	Commenced unmooring
1425	Last line / sailed Perry Street Wharf assisted by 2 tugs.
1425	Start transit
2135	Outbound pilot disembarked at Southwest Pass

After a final entry at 2150 that shows "CO5P", the port log then shows "ETA to Port Rhoades Jamaica: August 15, 2008 @ 2000 hrs.

In summary, and based on the information above, the delay periods and the reasons for each are:

VESSEL DELAY TIMES

Delay Period #	DATE		Hours Delayed (HH:MM)	Days Delayed	Delay Reason
	BEGIN	END			
1	27 July 2008 at 10:40	29 July 2008 at 11:36	48:56	2.0388	Oil spill traffic restriction
2	29 July 2008 at 17:21	29 July 2008 at 23:46	06:25	0.2674	Engine trouble
3	30 July 2008 at 15:00	31 July 2008 at 06:06	15:06	0.629	Daylight travel restriction
TOTALS			70:27	2.9354	

B. Pilotage Fees – Crescent River & NOLA/Baton Rouge

Because of the oil-spill incident and other reasons detailed above in A (Vessel Delay Time), Beijing Victory's transit down the Lower Mississippi River to the Boland Marine's Perry Street Wharf was affected. For this item and to prove the damage, claimant provided Exhibit E-3 which are the pilotage charges (invoices) from four prior voyages (#17, through #20) along with the affected voyage (#21) to prove and demonstrate the uninterrupted and seamless transition of pilots, as Beijing Victory steamed downriver on its way back to Discovery Bay, Port Rhoades, Jamaica.

As claimant states in its 9 April 2010 letter, "*We calculate the pilotage for the four previous voyages (voyages 17, 18, 19 and 20) and subtract that average from the pilotage for voyage*

21, the voyage of the incident, and obtain the increased pilotage expense. The following are the four previous voyages. Invoices for such are set forth as Exhibit E-3."

Voyage #	NOLA/ BR Pilots (Cost)	Crescent River Port Pilots (Cost)
17	$5,345.33	$6,647.75
18	$4,930.76	$6,066.43
19	$5,395.54	$6,687.57
20	$4,963.61	$6,626.55
TOTAL	$20,635.24	$26,028.30
AVERAGE	$5,158.81	$6,507.08[19]
TRIP AVERAGE	$11,665.89	

After providing the information above, claimant then states that for voyage 21, there are two NOLA/BR Pilots invoices for $5,492.30 and $6,496.74, which when combined with the one invoice for Crescent River Pilots ($5,370.62) total $17,359.66. Based on this, claimant concludes that the portion of its claim, as it relates to pilotage should be amended to reflect $5,693.77 rather than the previous claimed amount of $11,989.04.

In its letter of 9 April 2010, claimant states, and the NPFC accepts, that the southbound leg of the voyage works the same as the northbound (in reverse). Claimant does this by explaining that a NOLA/BR pilot takes the vessel from Gramercy to Mile 90.5. At Mile 90.5 the pilot is then relieved and a Crescent River Port Pilots' Association pilot navigates the vessel from there to Pilot Town.

At this point, it is important to point out that the invoices from NOLA/BR Pilots for voyages #17 and #20 show detention times and related charges totaling $581.32 per voyage. During the damage measurement, these charges will be deducted from the computation of the average. Also, once the vessel was cleared for sailing by USCG at 1136 on July 29th, it wasn't' able to for the engines not working properly, which is unrelated to the oil-spill incident and directly related to the vessel's ability to sail. In addition, after this problem was reported, the USCG imposed a restriction for the vessel to only move during daylight hours. Again, this restriction is unrelated to the oil-spill incident, but related to the vessel's own ability to sail.

C. Additional Costs

- Launch Services
  - Belle Chase – Bonnet Carre Anchorage: $540.00[20]
  - Port Ship Service – Bonnet Carre Anchorage: $812.50[21]

[19] Rounding of number upward creates a minimal discrepancy of $0.02.
[20] Claimant's Exhibit C-1; initially claimed as $750.00, but revised to $540.00, per claimant's 9 Apr 2010 ltr. This figure is the result of taking $600.00 plus $120.00 in fuel surcharge, minus $180 (25% discount) for a new total of $540.00.
[21] Claimant's Exhibit C-1; initially claimed as $750.00, but revised to $540.00, per claimant's 9 Apr 2010 ltr. This figure is the result of taking $600.00 plus $120.00 in fuel surcharge, minus $180 (25% discount) for a new total of $540.00.

- This item relates to the unscheduled stop at Bonnet Carre Anchorage (MM 128), where Beijing Victory was detained starting at 1500 on July 30th until 0606 on July 31st.[22] As claimant explains, because the pilot who took the vessel from Gramercy to Mile 128 had to be taken from the vessel and because a new pilot needed to be brought out at Mile 128 to complete the leg of the voyage to Mile 90.5, two pilot changes were needed, which would not have occurred during a normal voyage down river.

- Tug Service – Assistance to/from anchorage $6,508.68

  - This item relates to two service requests to move Beijing Victory to the Bonnet Carre Anchorage (MM 127.3) on July 30th and a day later move out of anchorage on July 31st.
    - Exhibit C-9A shows an entry at 1000 on July 30th, where "1 tug is alongside for turning vessel into anchorage due to oil spill/river closure." That exhibit also has "Jackie B" handwritten next to the entry, which when compared to the Crescent Towing & Salvage Co. invoice (#197500) matches up with the Jackie B and the fees claimed for that day ($3,254.34).
    - Exhibit E-6 shows an entry for July 31st at 0725 for the vessel sailing out of anchorage with one tug assisting. When this is compared to the Crescent Towing & Salvage Co. invoice (#197502) it matches up with the Ned Perry and the fees claimed for that day ($3,254.34).

- Port of South Louisiana Harbor & Security Fee $800.00

  - As claimant states, and claim manager accepts, Beijing Victory would not normally anchor at Bonnet Carre Anchorage (BCA) on its transit down river from GA.
  - In its submission, claimant's Exhibit C-6 presents an invoice from Port of South Louisiana for the period starting at 10:54 AM on July 30th thru 7:43 AM on July 31st. This fee is based on the river being closed and the vessel not being allowed to proceed to the Perry Street Wharf due to the oil spill and instead having to anchor at the Bonnet Carre Anchorage. Though the vessel arrived at the anchorage at 10:54, it was not until 1445 when the Vessel Traffic Service cleared the vessel to move. By the time the pilot was ordered, 15 minutes later, a different restriction (daylight movement only) impeded the vessel movement to its destination, which didn't occur until the next morning.

D. Analysis:

DEMURRAGE/LOSS OF PROFIT (VESSEL DELAY TIME):

Standard Shipping submitted a claim which, with additional follow-up information and responses to NPFC requests, documented the circumstances that led to this claim. With this information, claimant asserts that Gramercy Alumina's (GA) chartered vessel was negatively impacted and

[22] Claimant's Exhibit E-6.

delayed by the DM 932 oil-spill incident. However, a vessel delay may not result in a loss of profits under OPA.

In accordance with the Contract of Affreightment[23] (COA), Standard Shipping, per voyage, receives $8.05 per metric ton of contract freight and a fixed fee per round voyage of $40,000[24] for port costs for the round trip from Jamaica to GA. The COA also provides a credit for certain fuel costs. Overage for these costs are paid by GA. GA also pays demurrage for all additional time over the allowable laytime for loading and discharging[25].

- In its 9 April 2010 letter, claimant states that the delay time should be referred to as a loss of profit rather than demurrage.

However, claimant is in conflict with its own argument because it wants to refer to its alleged loss as a loss of profits but wants to make a demurrage argument. It quantifies the loss using the demurrage rate of $15,000 per day. While a demurrage rate **may** be used to quantify a loss of profits, a claimant must first evidence that it suffered a loss of profits. *Skou v. United States*, 478 F. 2d 343, 345 (5th Cir. 1973). The mere stipulation of a liquidated sum for demurrage in a charter agreement does not obviate the need to show actual damages. *Trans-Asiatic Oil Ltd. S.A. v. Apex Oil,* 804 F. 2d 773, 782 (P.R. 1986). Claimant cites M/V Trahan v. Swendborg, 10 F. 3d 1190 (5th Cir. 1994) for proposition that a vessel under a charter agreement need only prove its loss with "reasonable certainty," which usually means that the vessel had been engaged in, and was capable of being, engaged in profitable commerce.

In this case, claimant provided evidence that it was paid the freight rate for the bauxite, when it was discharged on GA on July 20, 2008. Claimant also demonstrated that it did receive the monies it was due; a $40,000 round trip voyage fee for port costs and fuel costs. However, claimant has not evidenced that it lost a subsequent voyage due to the 2.0388-day delay resulting from the incident in the Mississippi River.[26]

For the reasons stated above, this portion of the claim attributed to demurrage/lost profits is denied.

Determined Amount: $0.00

ADDITIONAL COSTS:

- Launch Service
  - As discussed above in C, the disruptions in vessel traffic, caused Beijing Victory to incur two additional launch service fees totaling $1,325.50[27] related to anchoring at Bonnet Carre Anchorage (BCA) that it wouldn't have otherwise incurred, but for the oil-spill incident. These costs are for transporting pilots from and to the vessel, as claimant explains and the NPFC accepts; "…the pilot who took the vessel from Gramercy to MM 128 (BCA) had to be taken from the vessel

[23] Contract of Affreightment is defined a "An agreement for carriage of goods by water. This type of contract usually takes the form of a bill of lading or charterparty." – Black's Law Dictionary
[24] COA's "Agreement In Principle"
[25] COA; pg 7, para #8.a
[26] The remaining 0.8964-day delay was caused by the vessel's mast casualty and engine problems.
[27] Belle Chase Launch Service (540.00) + Port Ship Service Launch Service ($812.50) = $1352.50.

and because a new pilot needed to be brought out to complete the leg to Mile 90.5, two pilot changes were needed."

- The charges break out as follows:
  - Belle Chase Launch Service $540.00[28]
  - Port Ship Service Launch Service $812.50[29]
  $1,325.50
- Determined Amount: $1,352.50.

PILOTAGE FEES:

As discussed above in B, Beijing Victory experienced delays while in transit to the Perry St. Wharf, which in turn caused it to incur additional pilotage fees. Although it has been established that there were various reasons for the transit delays and this transit was not a "normal" one, when the costs claimed are considered individually for their root cause, one can see that they relate to the going in and out of the Bonnet Carre Anchorage, when the vessel was prevented from going into directly to the Perry St. Wharf on July 30th for the oil-spill incident. Given this, we recognize the causation of this specific item and measure it using the average costs that would be incurred with the NOLA/BR Pilots. As previously mentioned there were detention times and charges of $581.32 in two voyages, which the table in the following page discounts in arriving at the average.[30]

Voyage #	NOLA/ BR Pilots (Cost)	NOLA/ BR Pilots (**Revised** Cost)	Crescent River Port Pilots (Cost)
17	$6,647.75	$6,066.43	$5,345.33
18	$6,066.43	$6,066.43	$4,930.76
19	$6,687.57	$6,687.57	$5,395.54
20	$6,626.55	$6,045.23	$4,963.61
TOTAL	$26,028.30	$24,865.66	$20,635.24
AVERAGE	$6,507.08[31]	$6,216.42	$5,158.81
Revised TRIP AVERAGE	$11,375.23		
21		11,989.04	$5,370.62

After discounting the detention fees mentioned, the average trip cost drops from claimant's calculation of $11,665.89 to $11,375.23. Using this new average as the basis of the trip cost, after subtracting it from the total cost of voyage #21 ($17,359.66) a net difference of $5,984.43 is arrived at. This amount is the additional cost in pilotage fees that was incurred by claimant as a result of the oil-spill incident.

[28] Claimant's Exhibit E-7; $600, which is discounted 25% ($450) and then surcharged for fuel 20%(90.00) to arrive at $540.00

[29] Claimant's Exhibit E-8

[30] Invoices from NOLA/BR Pilots for voyages #17 and #20 show detention times and related charges totaling $581.32 per voyage

[31] Rounding of number upward creates a discrepancy of $0.02.

Determined Amount: $5,984.43

- Port of South Louisiana Anchorage Fee

  - As discussed above in C, the oil-spill incident caused Beijing Victory to anchor at the Bonne Carre Anchorage as it attempted to move into the Perry Street Wharf for repairs. This movement is directly related to the river being closed by the oil-spill incident. A fee of $800.00[32] was charged and paid by claimant.
  - Determined Amount: $800.00

- Assist Tugs (Crescent Towing & Salvage)

  - As claimant explains and NPFC adopts, the vessel cannot turn in the river by itself. It must face upriver when anchored and be turned downriver to proceed in that direction. The claimed costs are the result of Beijing Victory having to anchor at the Bonnet Carre Anchorage when the river was closed and couldn't proceed to the Perry St. Wharf. There were two iterations between July 30th and July 31st; the first one going into anchorage and the second one leaving anchorage. Each of these caused claimant to incur a fees of $3,254.34[33] after applying a 42% discount. In the end, claimant paid $6,508.68.

  Determined Amount: $6,508.68

- Fuel Consumption

Initially, claimant didn't include this in its original submission. With its April 20th letter, it included this item with its amended sum certain and valued it at $5,484.00. Claimant's reason for including this item is that extra bunkers were consumed while the vessel was at anchor and not making way towards its destination. This assertion is deemed reasonable and in keeping with accepted ship operations/practices by the claim manager.

Further, claimant asserts that Beijing Victory would only consume diesel fuel to power its generators and its auxiliary boiler. Claimant asserts that just like with its sister ship, M/V Amazonia (N08057-066), it does not have fuel consumption figures for the periods of delay. Instead, and as was done with Amazonia, claimant presents the personal log kept by Mr. Paul Sa, Managing Director of Standard Shipping, Inc. which records, among other things the fuel readings. Again, this assertion is deemed reasonable and will be used as the basis for calculating fuel consumption.

Ideally, records showing the beginning/end of the delay periods and their respective remaining fuel soundings would have been provided by claimant, thereby allowing for a straight calculation of the bunkers Amazonia consumed. Since the information isn't available, claimant provided a reasonable substitute for this lack of detail in correspondence dated 20 April 2010.

[32] Claimant's Exhibit C-6
[33] Claimant's Exhibit C-2 and C-3.

In support of using the log and to show how claimant arrives at a fuel consumption rate, we are pointed to Mr. Sa's personal log, where he captured fuel readings for Beijing Victory. Based on this log, claimant asserts that the diesel fuel consumption rate for Amazonia is about 0.11 metric tons per hour while at dock or anchor. In support of this assertion, claimant points to two different sets of entries in the log, which per claimant's description, are summarized below:

DATE	TIME	Elapsed TIME	DIESEL Fuel (Diesel)	Diesel Consumed
12/31/07	04:00	81.00 Hrs	49.0 MT	9.0MT
01/03/08	13:00		140.0[34] MT	
For this period, claimant calculates and states a consumption rate of 0.11 MT /HR of Diesel Fuel				
01/16/08	09:00	83.00 Hrs	94.1 MT	5.6MT
01/19/08	20:00		88.5 MT	
For this period, claimant calculates and states a consumption rate of 0.10 MT /HR of Diesel Fuel				
DATE	TIME	Elapsed TIME	DIESEL Fuel (Diesel)	Diesel Consumed
01/31/08	09:45	64.83[35] Hrs	43.2 MT	9.0MT
02/03/08	02:35		140.0[36] MT	
For this period, claimant calculates and states a consumption rate of 0.1 MT /HR of Diesel Fuel				

Though the cites to the log kept by Mr. Sa were verified, there were consumption rate calculation errors made by claimant. The correct consumption calculations are as follows:

12/31/07 – 01/03/08: 9.0 MT / 81.0 HR = 0.11 MT/HR
01/16/08 – 01/19/08: 5.6 MT / 83.0 HR = 0.07 MT/HR
01/31/08 – 02/03/08: 9.0 MT / 64.83 HR = 0.13 MT/HR

By adding all three consumption rates and averaging them, a consumption rate of 0.10 MT / HR is established, which confirms claimant's consumption rate assertion.

As was previously established above in A, the only delay caused by the oil-spill incident was the one that ran between July 27th at 10:40 and July 29th at 11:36 for a total of 48.93 (48:56) hours. The total consumption is arrived at by taking the hours times the rate; 4.893 MT. Using the claimant provided rate of $600.00/MT, as per COA, a calculation can be made of the additional expense; $2,935.80.

E. Determination:

Based on the above items in C, a summary of the determined items is found below:

[34] Claimant's letter of 20 April 2010; vessel received 100 MT of fuel while at anchor.
[35] Claim manager's calculation of actual hours (64:50 / HH:MM) and its conversion into hours.
[36] Claimant's letter of 20 April 2010. Fuel Consumption: Vessel received 100 MT of fuel while at anchor.

Item	Item Description	Claimed Amount	Determined Amount	Denied Amount
A	Demurrage/Loss of Profit (Vessel Delay Time)	$43,591.14	$0.00	$43,591.14
B	Launch Service	$1,352.50	$1,352.50	$0.00
D	Pilotage Fees	$5,693.77	$5,984.43	($290.66)
E	Anchorage Fee	$800.0	$800.00	$0.00
	Tug Fees	$6,508.68	$6,508.68	$0.00
	Fuel (Extra Bunkers)	$5,484.00	$2,935.80	$2,548.20
Totals		$63,430.09	$17,581.40	$46,139.34

Note: The total amount claimed is claim manager's summation of the individual items claimed, which was incorrectly claimed to total $63,429.59[37].

The NPFC hereby determines that the OSLTF will pay $17,581.40 in increased expenses that were not offset or mitigated by the fixed revenue claimant received from its customer, GA. These increased expenses paid by claimant are in fact lost profits for OPA defined damages which were submitted to the NPFC under claim # N08057-066 and are compensable and payable by the OSLTF.

DETERMINED AMOUNT: $17,581.40

[redacted]

Claim Supervisor: Thomas S. Morrison
Date of Supervisor's Review: 12/17/10
Supervisor Action: Okay
Supervisor's Comments:

[37] Claimant's letter of 20 April 2010..