

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 30, 2013

sent via e-mail: [REDACTED]@kyl.com

IMC Shipping Co. Pte. Ltd.,
Ayu Navigation Sdn Bhd, and The Swedish Club
ATTN: Mr. Doug Davis
C/o Keesal, Young & Logan
1029 West Third Avenue, Suite 650
Anchorage, AK 99501-1954

Claim No.: J05003-0014

Dear Mr. Davis:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0014 involving the M/V SELENDANG AYU oil spill.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

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 J05003-0014.

Mail reconsideration request to:

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

Sincerely,

A large black rectangular redaction box covering the signature of Gina A. Strange.

GINA A. STRANGE
Claims Manager
U.S. Coast Guard

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number: J05003-0014
Claimant: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd, & The Swedish Club
Type of Claimant: Corporate
Type of Claim: Real or Personal Property
Claim Manager: Gina Strange
Amount Requested: \$1,407.00

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.

The Claimants and The Claim

Claimants

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), the members of the International Group of Protection and indemnity Clubs ("International Group"), and the International Group's re-insurers were their subrogated underwriters

Claim

Claimants provided correspondence to the National Pollution Funds Center (NPFC) 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.¹ Correspondence was also provided from MR & Associates that provided details regarding claims management and cost auditing services in this matter.²

This claim is one of several third-party claims submitted to the NPFC and is identified as J05003-0014. Claimants seek \$1,407.00 for a settlement payment they made to Joey Echeverria for alleged oil damage to his dive suit associated with the oil spill incident. Mr. Echeverria's

¹ See letters dated December 6, 2007 and March 21, 2012 to the NPFC from Keesal, Young, & Logan.

² See letter dated November 27, 2007 from MR & Associates to Keesal, Young and Logan.

original claim to the Claimants for oil damage to his suit was for \$2,600.00. The Claimant's \$1,407.00 payment was made through a Settlement Agreement and Release signed by Mr. Echevarria and Claimants claim representative, Mr. William McLellan.³ Proof of payment was provided.⁴

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.

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 136.213 "Authorized Claimants" are (a) A claim for injury to or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property (b) Any claim for loss profits or impairment of earned capacity due to injury to destruction of, or loss of real property must be included as subpart of the claim under this section and must include the proof under 136.233.

Under 136.215 "Proof"

(a) In addition to the requirements of Subparts A and B of this part, a claimant must establish –

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and
- (4) The value of the property both before and after the injury occurred

(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish –

- (1) That the property was not available for use and, if it had been, the value of that use;
- (2) Whether or not substitute property was available and, if used, the costs thereof; and
- (3) That the economic loss claimed was incurred as a result of the injury to or destruction of the property

Under 136.217 "Compensation Allowable:

³ See, Claimant Bates JHE 7-9.

⁴ See, Claimant Bates JHE 10.

- (a) The amount of compensation allowable for damaged property is the lesser of
- (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
 - (2) The difference between value of the property before and after the damage; or
 - (3) The replacement value.
- (b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property or the property lost, whichever is less. Compensation for loss of use for noncommercial property is not allowable
- (c) Compensation for a claim for loss of profits or impairment of earnings capacity under 136.213(b) is limited to that allowable under 136.235.

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

Analysis

The Claimants seek reimbursement for a \$1,407.00 settlement payment they made to Joey Echeverria on July 7, 2005 for damage to his dive suit that resulted from his involvement and association with this oil pollution incident. Specifically, Mr. Echeverria was a diver who was hired to recover the black box of the United States Coast Guard helicopter that crashed while trying to rescue crewmembers from the grounded M/V Selandang Ayu. Mr. Echeverria's claim to the Claimant was for oil damage to his dive suit.

In support of this claim, Claimants have included a "Claimant Loss Information Form" that is signed by Mr. Echeverria and describes his loss.⁵ The submission also contains an invoice from "Diving Unlimited International, Inc." for a total of \$507.00.⁶

Pursuant to the Claims Regulations that govern real or personal property, a Claimant must have an ownership interest in the property for which a damage or loss is being claimed. In addition, it must establish that the property was injured or destroyed, the cost of repair or replacement, and the value of the property both before and after the injury.⁷

⁵ See, Claimant Bates JHE 1-2.

⁶ See, Claimant Bates JHE 3-6 (two copies).

⁷ See 33 CFR 136.215.

Once a claimant has established the above, the amount of compensation allowed for the damaged property is the lesser of the "actual" or "estimated" net cost of repairs necessary to restore the property to substantially the same condition immediately prior to the damage; the difference between value of the property before and after the damage or the replacement value.⁸

Claimants failed to provide proof of damage to Mr. Echeverria's dive suit, the cost of repair or replacement and the value of the dive suit both before and after it was allegedly damaged. . Therefore, the NPFC cannot compensate the Claimants when none of the OPA requirements for Real or Personal Property damages has been provided.

As part of its submission to the Fund, the Claimant also provided a executed settlement agreement signed by both Mr. Echeverria and the Claimant's representative. This agreement states that the settlement amount to be paid to Mr, Echeverria is \$1,407.00, but it does not state how or why that amount was determined to be the settlement amount.

If the Claimant makes a decision to ask for reconsideration on this denial, they must establish all of the elements of the Claims Regulations, above. In addition, more specific information must be provided regarding the Settlement Agreement, including how the settlement amount was determined.

The documentation submitted in support of this claim does not allow the NPFC to provide compensation in the claimed amount of \$1,407.00. Therefore this claim is denied.

Claim Supervisor: Robert Kloux

Date of Supervisor's review: May 30, 2013

Supervisor Action:

Supervisor's Comments:

⁸ See 33 CFR 136.217.