

CLAIM SUMMARY / DETERMINATION

Claim Number:	911094-0001
Claimant:	Groton Pacific Carriers Inc.
Type of Claimant:	Corporate (US)
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$107,265.63

FACTS:

1. **Oil Spill Incident:** On March 30, 2010, the Coast Guard Marine Safety Unit Port Arthur made the initial report to the National Response Center (NRC) that there was a discharge of unknown oil from the Tank Vessel *Glenross* (T/V *Glenross*), currently moored at Sunoco Logistics Partners, LP (Sunoco) Dock #5 in Nederland, Texas.¹

At the time of the incident, it was reported that the vessel was discharging cargo and the oil was observed coming from the port side of the vessel. About an hour later, the incident was reported to the NRC by Beaumont Federal Reserve Fleet informing that an unknown dark black sheen, 500 feet long and 300 feet wide, was discovered in the Neches River.² And again, shortly after the incident had been reported the second time, the NRC received a third report of the incident informing that there was an unknown sheen in the water, the cause was unknown, and the incident was being investigated.³ The Neches River is a navigable waterway of the United States. The discharge that caused the sheen on the Neches River was identified as crude oil. The vessel was chartered to AET at the time of the incident.

The Coast Guard (USCG) arrived on-scene and started their investigation of the incident. Under the direction of O'Brien's Response Management Incorporated (O'Brien's), Garner Environmental Services, Incorporated (Garner) responded to the incident. Garner had deployed boom around the vessel and the dock, causing most of the oil to be trapped within the boom next to the vessel.⁴ Sunoco Environmental and Emergency Response Specialist, ██████████, informed the USCG that at about 12:02, he was contacted by their Duty Foreman, ██████████, regarding the incident.⁵

According to Mr. ██████████, he contacted the terminal's fire chief to deploy containment boom and contacted the Texas General Land Office (TGLO). He also contacted ██████████ of O'Brien's and was informed that O'Brien's corporate office had deployed an OSRO to the incident. TGLO's State On-Scene Coordinator (SOSC), ██████████, was on-scene and reported that the pipeline had been shut down and that clean-up was underway. The Federal On-Scene Coordinator Representative (FOSCR), MST2 ██████████

¹ See NRC Report #935577.

² See NRC Report #935589.

³ See NRC Report #935597.

⁴ ██████████ US Coast Guard Witness Statement, dated April 20, 2010.

⁵ ██████████ US Coast Guard Witness Statement, dated April 5, 2010.

██████████, worked with the SOSOC to create a Unified Command (UC) to devise a sampling plan and to get the clean-up response underway.

2. **Description of Removal Activities for this Claimant:** On March 30, 2010, ship manager International Tanker Management Holding (ITM) immediately reported the incident. ITM had entered into a contract for oil spill response services for tank vessels with O'Brien's on March 8, 2009.⁶ Per the Claimant, O'Brien's was the spill management team for the incident.⁷ Garner carried out the clean-up. As operations manager, Alongside Port Service (Alongside Port) assisted with the response, and hired vendors Marine Chemists Incorporated of Texas (Marine Chemists), Diver Dan Diving Services (Diver Dan), and Associated Marine Services, Incorporated (Associated Marine) to provide additional assistance regarding the incident. Vendors Viswalab and the American Bureau of Shipping (ABS) were brought in on the clean-up operations by ITM.

On March 31, 2010, Marine Chemists performed the survey of the vessel with regards to fire protection and issued a survey certificate. On March 31, 2010 and again on April 1, 2010, Diver Dan's dive team inspected the sea chests to find the location of the oil release. On April 2, 2010, Associated Marine provided launch boat services that transported ABS' ██████████ for pollution investigation. On March 31, 2010 and April 1, 2010, Alongside Port picked up fuel samples at the incident site and delivered them to Viswalab for testing. Viswalab received the samples on March 31, 2010 and tested the samples on April 1, 2010. On April 2, 2010, ABS conducted a vessel survey regarding damage for the pollution investigation of the incident.

On June 1, 2011, the USCG Hearing Office dismissed the civil penalty, without prejudice, against the Claimant. The Hearing Office concluded that there was insufficient evidence to find that they were responsible for the oil spill.⁸ Then, on June 17, 2011, TGLO dismissed their case against the Claimant. TGLO also concluded that there was insufficient evidence to prove that the Claimant was the responsible party for the incident.⁹

The responsible party has not been determined.

3. **The Claim:** The Claimant, Groton Pacific Carriers LTD, as agents for the vessel, worked in conjunction with ship manager ITM for the clean-up responsibility. On July 6, 2011, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of \$88,428.05 for cost incurred due to the oil spill response, as they were not the responsible party.

⁶ Contract for Oil Spill Response Services for Tank Vessels between ITM Limited and O'Brien's, dated March 8, 2009.

⁷ Electronic Mail from ██████████ to ██████████ re O'Brien's as spill management team, dated May 24, 2012.

⁸ Letter from ██████████, Coast Guard Hearing Office to ██████████, Benckenstein & Oxford, LLP re dismissal of charge, dated June 1, 2011.

⁹ Letter from ██████████, TGLO to ██████████, Benckenstein & Oxford, LLP re final determination dismissal, dated June 17, 2011.

The Claimant's October 28, 2011, Proof of Payment memorandum to the NPFC presented a new sum certain amount of \$109,815.63.¹⁰ In that memorandum, the Claimant provided detailed information regarding each payment made, as well as if the payment was made by Groton Pacific or ITM. The memo also included additional costs of \$2,550.00 from Benckenstein & Oxford, LLC (B&O) that noted that Groton Pacific made the payment to the West of England P&I Club for the services of the law firm; informed that \$8,850.00 was actual costs invoiced and paid for the services of Diver Dan Diving Services (Diver Dan), instead of \$8,825.00 requested in the original claim submission; and that the costs paid for the services of Viswalab was \$956.00, instead of the \$2,000.00 originally requested. In that same memo, the Claimant also added costs for the services of MTI Network for \$3,200.00, paid by ITM; and Freehill, Hogan & Mahar LLP for \$16,764.17, paid by the West of England P&I Club.

On June 19, 2012, the NPFC e-mailed the Claimant to request additional information and confirmation of the new sum certain amount requested in the amount of \$109,815.63.¹¹ The NPFC informed the Claimant that the proof of payment documents were reviewed and that the added B&O costs for \$2,550.00 appeared to be regarding a spill that occurred on September 27, 2009 and not related to the claim. The Claimant responded by e-mail on June 22, 2012 to confirm that \$107,265.63 was the new sum certain requested, after deducting the \$2,550.00 B&O costs that were submitted by mistake.¹²

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. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan" 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil."

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident."

¹⁰ Groton Pacific Carriers Inc. memorandum to the NPFC re proof of payment dated October 28, 2011.

¹¹ Electronic Mail from [REDACTED], NPFC to [REDACTED], Groton Pacific requesting sum certain confirmation and additional information, dated June 19, 2012.

¹² Electronic Mail reply from [REDACTED], Groton Pacific to [REDACTED], NPFC re sum certain confirmation and additional information, dated June 22, 2012.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFPC, all evidence, information, and documentation deemed necessary by the Director, NPFPC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFPC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Overview:

1. Federal On-Scene Coordinator representation was provided by MST2 [REDACTED] of the United States Coast Guard Marine Safety Unit Port Arthur.
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
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 removal costs.

4. The claim was submitted within the six-year statute of limitations for claims. 33 U.S.C. § 2712 (h)(1).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis:

The NPFC Claims Manager has reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, 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 FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC obtained a copy of the Coast Guard MISLE case and associated documentation regarding the incident.

The Claimant has requested reimbursement for all vendors involved in the incident. However, the OSLTF is available to reimburse Claimants for the actual removal costs associated with the incident. Therefore, any vendor costs that were not directly related to the actual oil response, are deemed not OPA compensable removal costs.

For services provided by vendor London Offshore Consultants Incorporated Americas (LOC), the Claimant requested reimbursement. LOC billed the Claimant a total of \$41,933.08 for providing oversight of the response on behalf of the Owners and P&I Club. The surveyors were billed at \$225.00 per hour, in which ten hours of work was billed as a full day of work.

LOC Invoice Number 7900 (Invoice 7900), dated June 16, 2010, billed *M/T Glenross*, in care of B&O, \$27,020.51 for their professional services performed from March 30, 2010 to June 15, 2010. Per the invoice, this amount consisted of 116 hours of personnel time and \$929.51 in travel, lodging, and communications expenses. LOC Invoice Number 8262 (Invoice 8262), dated December 13, 2010, billed \$14,912.57 for professional services performed regarding the incident. This amount consisted 62 hours of personnel time and \$962.57 in travel, lodging, and communications expenses. LOC surveyors, Andre L. LeGoubin and David Ireland, noted in their Summary of Hours Worked Job Timesheet Reports that the work they performed was on behalf of the owners and the P&I Club.

On the timesheet for Invoice 7900, for services performed from March 30, 2010 to June 15, 2010, the surveyors documented their attendance on board the vessel to investigate the incident and to “provide technical and marine advice to all parties on behalf of

Owners & P&I.”¹³ The Invoice 8262 timesheet, for services performed from October 25, 2010 to November 30, 2010, recorded Mr. [REDACTED]’s time spent reviewing documentation and preparing responses and affidavits, as well as attending a meeting with the TGLO to again “provide marine technical advice to all parties on behalf of vessels P&I interests.”¹⁴ Based on the information provided by the Claimant, the vendor’s actions were associated with the legal interests of the Claimant and not the actual removal management and the hiring of resources for removal response as that function was being performed by O’Brien’s. Therefore, the NPFC denies the \$41,933.08 requested by the Claimant for the services of LOC.

The same applies regarding the legal services provided by B&O. On July 20, 2010, the law firm billed \$22,523.72 via Invoice Number 44306 for professional services rendered described as “*M/T Glenross* and observation of oil pollution at Sunoco Berth 5, Nederland, Texas, March 30, 2010.”¹⁵ B&O billed for \$121.22 in disbursements regarding travel and communications and \$22,402.50 in legal services rendered by [REDACTED] (AGS), [REDACTED] (HOIV), and [REDACTED] from March 30, 2010 to June 30, 2010.

Attorney [REDACTED] services, billed at \$225.00 per hour for 55 hours, were documented on the invoice. His services included telephone conferences with various entities involved with the *Glenross* – B&O’s Hubert Oxford, [REDACTED] of Freehill, Hogan, International Tanker Management Holding Limited’s (ITM) [REDACTED], charterer’s agent Norton Lilly’s [REDACTED], charterer’s boarding agent [REDACTED], Owner’s Agent [REDACTED] of Alongside Port Service (Alongside Port), and O’Brien’s [REDACTED]; and retain LOC’s [REDACTED] and receive e-mail advice from him.

Attorney [REDACTED] services, billed at \$150.00 per hour for 62.85 hours, included travel to and attend spill site; communicate with United States Coast Guard (USCG) and TGLO personnel; review and respond to e-mails regarding the spill. And, Attorney [REDACTED], also billed at \$150.00 for 4 hours, noted research regarding pipelines in the vicinity of the Sunoco Berth No. 5 as the services he performed. The NPFC denies the Claimant’s legal fee costs of \$22,523.72, as those costs are not pertaining to the actual removal management and response.

[REDACTED] attended a TGLO meeting in Austin, Texas from October 28, 2010 to October 29, 2010. The Claimant agreed to pay his costs of \$1,330.51 to represent the Owners at the meeting regarding the March 30, 2010 incident.¹⁶ These costs are also denied, as they are not directly related to the actual response and clean-up of the incident.

¹³ LOC Americas - Houston Summary of Hours Worked Job Timesheet Report for Invoice Number 7900 for the period March 30 – June 15, 2010, dated June 16, 2010.

¹⁴ LOC Americas – Houston Summary of Hours Worked Job Timesheet Report for Invoice Number 8262 for period October 25 – November 30, 2010, dated December 13, 2010.

¹⁵ Benckenstein & Oxford, LLP Invoice #44306, dated June 30, 2010.

¹⁶ Electronic Mail reply from [REDACTED] to [REDACTED] re sum certain confirmation and additional information, dated June 19, 2012.

Again, as noted above, in his June 22, 2012 e-mail reply, the Claimant also explained that MTI Network was hired to assist due to the number of Coast Guard personnel, TGLO personnel and others onboard the *Glenross* for almost three days, the incident had the potential to escalate. MTI Network billed ITM \$3,200.00, at the rate of \$320.00 per hour for 10 hours of executive time, on Invoice 7252, dated May 4, 2010. The services provided by [REDACTED] were noted on the invoice as professional media response services in relation to the ITM vessel *Glenross* from March 31, 2010 to April 2, 2010.¹⁷ The costs for professional media are also denied by the NPFC as not response related.

Finally, the Claimant requested reimbursement of \$16,764.17 for attorney fees incurred by hiring Freehill Hogan from March 30, 2010 to June 27, 2011. This amount consists of Interim Invoice Numbers 130426, 131715, 133611, and Final Invoice 134314. The fees were billed to the Owners of *Glenross* in care of The West of England Insurance Services (Luxembourg) S.A. (West of England). Interim Invoice Number 130426 for \$4,907.50, dated May 6, 2010, billed for services provided by [REDACTED], at the rate of \$325.00 per hour for 15.10 hours. [REDACTED] services included teleconferences with O'Brien's, Owner's Manager [REDACTED], B&O, and [REDACTED]; review and respond to e-mails; and prepare status reports to West of England.¹⁸

Interim Invoice Number 131715 for \$6,439.66, dated October 13, 2010, billed for services from May 7, 2010 to October 12, 2010. The billed amount consisted of \$6,435.00 for 19.80 hours of attorney time at the rate of \$325.00 per hour and \$4.66 for digital reproduction and postage expenses. Mr. [REDACTED] services included review and prepare e-mail responses to West of England, [REDACTED], B&O, O'Brien's, Operations Manager [REDACTED], [REDACTED]; teleconferences with B&O, [REDACTED]; review TGLO Notice of Violation; and prepare e-mail report to West of England.¹⁹

Interim Invoice Number 133611, dated April 29, 2011, billed \$4,059.01 for attorney services from October 13, 2010 to April 29, 2011. [REDACTED] billed for 12.40 hours at the rate of \$325.00 per hour and \$29.01 for digital reproduction and telephone expenses. [REDACTED] services included review e-mail exchanges between B&O, [REDACTED] and [REDACTED] regarding USCG fine; review file regarding TGLO and USCG fines; teleconference with B&O regarding retaining a chemist; attend office conference with LOC expert Captain [REDACTED]; and prepare report to West of England.²⁰

Final Invoice Number 134314 for \$1,358.00, dated June 28, 2011, for Mr. [REDACTED] services from May 7, 2011 to June 28, 2011. The firm billed for 4 hours at the rate of \$325.00 per hour and \$58.00 for digital reproduction, postage expenses, and telephone expenses. His services included his tasks of preparing status e-mail to B&O, [REDACTED], and West of England; reviewing e-mails from B&O and [REDACTED]; review favorable decisions of USCG and TGLO; and review e-mail from [REDACTED] regarding possibility of filing claim with NPFC.²¹

¹⁷ Marine Technical International Inc. Invoice 7252, dated May 4, 2010.

¹⁸ Law Offices of Freehill Hogan & Mahar LLP Interim Invoice Number 130426, dated May 6, 2010.

¹⁹ Law Offices of Freehill Hogan & Mahar LLP Interim Invoice Number 131715, dated October 13, 2010.

²⁰ Law Offices of Freehill Hogan & Mahar LLP Interim Invoice Number 133611, dated April 29, 2011.

²¹ Law Offices of Freehill Hogan & Mahar LLP Final Invoice Number 134314, dated June 28, 2011.

The services provided by Mr. [REDACTED] were legal advice and assistance to B&O and the West of England. The Claimant's request for reimbursement of these legal fees in the amount of \$16,764.17 is denied.

Therefore, based on the NPFC's denial of \$85,751.48, the NPFC determines that the OSLTF will pay \$21,514.15 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 911094-0001.

C. Determined Amount:

The NPFC determines that the OSLTF will pay \$21,514.15 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim Number 911094-001 for removal costs.

AMOUNT: \$21,514.15

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/14/13*

Supervisor Action: *Approved*

Supervisor's Comments: