

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number : J05003-0024  
Claimant : IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd, and The Swedish Club  
Type of Claimant : Corporate (US)  
Type of Claim : Limit of Liability  
Claim Manager : [REDACTED]  
Amount Requested : \$2,223,853.56

### I. INCIDENT

The M/V SELENDANG AYU (the vessel) was on a voyage from Seattle to China when, on the morning of December 6, 2004<sup>1</sup> 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 gallons<sup>2</sup> 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 Forenging (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

<sup>1</sup> See, Claimant Submission, Attachment 24, Government's Videotape Deposition of [REDACTED] Vol. I, 00074.

<sup>2</sup> See, Claimant's submission letter, page 3, paragraph 3.

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

## **V. ELEVENTH REMOVAL COSTS CLAIM DETERMINATION<sup>3</sup>**

The NPFC adjudicated this eleventh claim (J05003-0024) in the amount of \$2.223M. The RP, through its legal representative, provided 25 binders of invoices to document the \$2.223M in removal costs claimed in this eleventh determination package for costs associated with various third party contract suppliers in support of the response actions undertaken in this incident. This claim includes only the invoices paid by the RP to the various contract suppliers, who provided good and services in support of the cleanup actions undertaken by all response contractors. 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 FOSC to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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<sup>3</sup> 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 NPFC adjudicated the second removal claim, Claim Number J05003-003, and offered \$ 2,168,445.20 to the Claimants on June 26, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the third removal claim, Claim Number J05003-0004, and offered \$3,668,595.70 to the Claimants on July 3, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the fourth removal claim, Claim Number J05003-0015, and offered \$23,103,264.96 to the Claimants on August 20, 2012. Claimants accepted the offer on September 11, 2012. The NPFC adjudicated the fifth removal claim, Claim Number J05003-0016, and offered \$15,611,776.98 to the Claimants on October 17, 2012. Claimants accepted the offer on December 6, 2012. The NPFC adjudicated the sixth removal claim, Claim Number J05003-0017, and offered \$9,565,222.57 to the Claimants on November 20, 2012. Claimants accepted the offer on November 28, 2012. The NPFC adjudicated the seventh removal claim, Claim Number J05003-0018, and offered \$8,230,390.17 to the Claimants on December 13, 2012. Claimants accepted the offer on December 17, 2012. The NPFC adjudicated the eighth removal claim, Claim Number J05003-0019, and offered \$5,004,635.21 to the Claimants on February 19, 2013. Claimants accepted offer on February 27, 2013. The NPFC adjudicated the ninth removal claim, Claim Number J05003-0022, and offered \$2,166,024.24 to the Claimants on March 21, 2013. The NPFC adjudicated the tenth removal claim, Claim Number J05003-0023, and offered \$6,120,304.42 to the Claimants on April 02, 2013. Claimants have not yet accepted the outstanding offers at the time of the writing of this determination.

Please see the table below for an itemization of the vendor invoices which make up this eleventh payment claim determination. This determination is only deemed full and final for the identified vendor invoices listed below.

<u>Vendor</u>	<u>Binder #</u>	<u>Amount Claimed</u>	<u>NPFC Approved</u>	<u>NPFC Denied</u>
Alaska Wireless	76-78	\$117,012.41	\$116,899.86	\$112.55
American Safety Supplies	80	\$10,830.81	\$10,830.81	\$0.00
Arctic Fire & Safety	80	\$18,697.50	\$18,697.50	\$0.00
Arctic Office Products	80	\$10,218.36	\$10,218.36	\$0.00
Articom	80	\$20,224.72	\$20,224.72	\$0.00
Ballyhoo Lios Club	92	\$6,000.00	\$6,000.00	\$0.00
Cabaco	106	\$45,583.31	\$44,950.82	\$632.49
Carl's	106	\$4,248.48	\$4,243.29	\$5.19
Craig Taylor Equip.	111	\$33,065.19	\$33,038.94	\$26.25
Denali Alaskan Ins.	240	\$2,683.00	\$0.00	\$2,683.00
Dunlap Towing	113	\$463.50	\$463.50	\$0.00
Eagle Enterprises	113	\$3,000.00	\$3,000.00	\$0.00
Factory Trawler Supply	114	\$53,809.69	\$53,809.69	\$0.00
Gene E Watson	178	\$73,820.00	\$73,820.00	\$0.00
Glentel Inc	115	\$1,717.18	\$1,717.18	\$0.00
Graphic Products	115	\$468.26	\$468.26	\$0.00
Gregory, David	115	\$2,345.25	\$0.00	\$2,345.25
Harris Electric	115	\$7,701.07	\$7,701.07	\$0.00
Home Depot	115	\$6,378.24	\$6,378.24	\$0.00
Horizon Lines Alaska	115-116	\$59,268.61	\$59,268.61	\$0.00
Inventory Sale Proceeds	244	(\$99,766.01)	(\$99,766.01)	\$0.00
Island Business Services	240	\$605.49	\$605.49	\$0.00
Kirk Petersen	190	\$8,687.06	\$4,120.00	\$4,567.06
Landmark Legal Solutions	277	\$19,918.54	\$0.00	\$19,918.54
LR Acker Jr	119	\$105.00	\$105.00	\$0.00
Max Leclair	190	\$9,000.00	\$9,000.00	\$0.00
Mick D. Herring	190	\$6,400.00	\$6,400.00	\$0.00
Mike's Fire Equipment	119	\$1,455.91	\$1,455.91	\$0.00
More Boom Co	119	\$43,050.00	\$43,050.00	\$0.00
North Washington Implement	119	\$12,066.21	\$12,066.21	\$0.00
Northern Air Cargo	119	\$54,431.05	\$54,431.05	\$0.00
Northern Air Fuel	121	\$37,549.43	\$35,923.08	\$1,626.35
Northern Mechanical	121	\$95,132.06	\$88,567.40	\$6,564.66
Northwestern Arctic Air	121	\$21,838.75	\$21,338.75	\$0.00
Ocean Olympic	183	\$366,381.42	\$284,518.88	\$81,862.54
Polar Skiff - Lydia Emory	190	\$6,400.00	\$6,400.00	\$0.00
Renken's Rentals	190	8,092.00	\$6,592.00	\$1,500.00
Roger Rowland - Skiffs	190	\$3,296.00	\$3,296.00	\$0.00
Safeguard	149	\$93.88	\$93.88	\$0.00
Shelford's Boat - Zolotoi	188	\$242,320.00	\$242,320.00	\$0.00
Shelford's Venture - Zolotoi	188	\$679,276.70	\$679,276.70	\$0.00
Shuregood Adventures	190	\$26,622.00	\$26,340.00	\$282.00
Spenard Builders	149	\$882.65	\$882.65	\$0.00

Spraggins, Kathleen	149	\$29,486.76	\$29,486.76	\$0.00
State of Alaska DEC	66	\$200.00	\$200.00	\$0.00
Surefish	149	\$881.68	\$0.00	\$881.68
Surveyor's Exchange Co	149	\$2,472.75	\$2,472.75	\$0.00
Sweenhart Aleutian Charters	149	\$360.50	\$0.00	\$360.50
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UCSD Skills USA Club	151	\$750.00	\$750.00	\$0.00
Unisea	152	\$13,372.50	\$13,372.50	\$0.00
Unitech of Alaska	152	\$98,300.03	\$98,300.03	\$0.00
West Construction	152	\$49,677.37	\$49,168.81	\$508.56
<b>Total</b>		<b>\$2,223,853.56</b>	<b>\$2,099,476.94</b>	<b>\$124,376.62</b>

Claimant's sum certain for this claim is \$2,223,853.56.

The NPFC has determined that \$124,376.62 is not compensable from the OSLTF and will offer the Claimants \$2,099,476.94. As noted above, the NPFC deducted the RP's statutory limit on liability from the amount determined to be compensable under claim # J05003-001. Thus, \$2,099,476.94 is payable from the Oil Spill Liability Trust Fund.

## VI. 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". 33 U.S.C. § 2701(31).

The responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, may assert a claim for removal costs and damages under section 2713 only if the responsible party demonstrates that it is entitled to a defense to liability under section 2703 or to a limitation of liability under section 2704. 33 USC § 2708(a)(1) and (2).

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 NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, 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 NPFC 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].

## **VII. DETERMINATION OF LOSS:**

### ***A. Findings of Fact:***

1. MSO Anchorage, as the FOSC for this incident, determined that the actions undertaken by the State of Alaska were performed jointly with the FOSC and are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. A Responsible Party was identified. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were reasonable and allowable

under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial.

**B. Analysis:**

NPFC CA reviewed the actual cost invoices and dailies to confirm that the Claimant had obtained all rights, claims and causes of actions for the 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, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The NPFC has determined that the majority of costs incurred by the Claimant in this eleventh claim determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedules and/or contracts/charter agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined to be consistent with the NCP.

**Alaska Wireless Communications** – The NPFC denied \$112.55 which is for rounding issues on vendor bill or the denial of phone quantity not permitted by resource requests;

**Cabaco** – The NPFC denied \$632.49 in miscellaneous expenses for lack of itemized food receipts, laundry and long distance call not authorized;

**Carl's** – The NPFC denied \$5.19 of unidentified costs on invoice # 542923 and the associated tax;

**Craig Taylor Equipment** – The NPFC denied \$26.25 in finance charges which are not OPA compensable removal costs;

**Denali Alaskan Insurance** – The NPFC denied \$2,683.00 in workers compensation insurance premiums for [REDACTED] – not an OPA compensable removal cost;

**David Gregory** – The NPFC denied \$2,345.25 in personnel time as Ounalashka Corporation as landowner hired a consultant to be present during SCAT signoffs. Not an appropriate OPA compensable removal cost;

**Kirk Petersen** – The NPFC denied \$4,567.06 in costs associated with damages/repairs which are not OPA compensable removal costs;

**Landmark Legal Solutions** – The NPFC denied \$19,918.54 in costs associated with scanning all incident documents for the RP after the fact. Not an OPA compensable removal cost;

**Northern Air Fuel** – The NPFC denied \$1,626.35 in fuel costs that exceeded the amount authorized via resource request;

**Northern Mechanical** – The NPFC denied \$6,564.66 in costs that lacked proper supporting documentation or pricing did not match vendor rate schedule provided;

**Northwestern Arctic Air** – The NPFC denied \$500.00 in cancellation fee not prescribed contractually;

**Ocean Olympic** – The NPFC denied \$81,862.54 in costs determined to be NRDA via an email from GMS to the NPFC dated January 9, 2013;

**Renken's Rentals** – The NPFC denied \$1,500.00 in costs associated with damages/repairs which are not OPA compensable removal costs;

**Shuregood Adventure – Skiff Hire** – The NPFC denied \$282.00 in costs not paid by GMS but included in the amount requested to the NPFC based on vendor invoiced amount and not what GMS paid for the vendor;

**Surefish** – The NPFC denied \$881.68 for costs associated with potable water testing aboard vessels – not an OPA compensable removal cost;

**Sweenhart Aleutian Charters** – The NPFC denied \$360.50 in costs associated with the hiring of a boat and then the change in mind by cancelling the charter is not an OPA compensable removal cost;

**West Construction** – The NPFC denied \$508.56 in costs that are were reduced by GMS with no documentation or explanation.

The NPFC will not itemize all the denied costs here in this Claim Summary Determination but rather will attach the spreadsheets created by the NPFC for each vendor where the Claimant can see each line item billed, claimed, paid, denied and reason for each denial. All denied costs fall within one of the six categories referenced above.

***OVERALL DENIED COSTS = \$124,376.62***

## **VIII. 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, **\$2,099,476.94** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J05003-0024.

**AMOUNT: \$2,099,476.94**

Claim Supervisor:

Date of Supervisor's review: *4/9/13*

Supervisor Action: *Approved*



Vendor	Binder #	Claimed Amount	NPFC Approved	NPFC Denied	Comments
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TOTAL

\$2,723,853.56

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\$124,376.62

