

CLAIM SUMMARY / RECONSIDERATION

Claim Number:	N08057-079
Claimant:	Sorrel Shipmanagement, Inc
Type of Claimant:	Foreign
Type of Claim:	Loss of Profits and Earnings
Claim Manager:	[REDACTED]
Amount Requested:	\$89,731.18 (Revised sum certain September 14, 2012)

FACTS:

Incident:

On July 23, 2008 at approximately 0130, the tank barge DM-932 sank as a result of a collision with the M/T TINTOMARA and discharged 282,828 gallons of No. 6 fuel oil into the Mississippi River, a navigable waterway of the United States. The Federal On Scene Coordinator (FOSC) and the Unified Command (UC) initially closed the Mississippi River to vessel traffic to conduct removal operations and later managed and restricted vessel traffic until the River reopened after cleanup was complete.

Responsible Party:

American Commercial Lines LLC (ACL) owned the barge at the time of the incident and is a responsible party (RP) under the Oil Pollution Act of 1990.

Claimant:

The Claimant is Sorrel Shipmanagement, Inc., of Athens, Greece (Sorrel or Claimant). The M/T OVERSEAS SERIFOS (OVERSEAS SERIFOS or vessel) is owned by Sorrel and managed by OSG Shipmanagement, Ltd, a wholly-owned subsidiary of Overseas Shipholding Group, Inc. (OSG).¹

At the time of the spill, the OVERSEAS SERIFOS was under a tanker voyage (ABSTANKVOY) charter party and Contract of Affreightment (COA) with PMI Trading Ltd., (PMI or charterer). The voyage charter party signed July 15, 2008 was for the OVERSEA SERFIOS to deliver 260,000 barrels of oil to the Conoco-Phillips Terminal in Alliance, LA for the lump sum fixture of \$390,000. The charter party demurrage rate was set at \$32,000 per day.

Initial Claim:

On March 17, 2010, the NPFC received Sorrel's claim for lost profits from Claimant's attorney [REDACTED] of Chaffe and McCall. Claimant alleged lost profits from the oil-spill, vessel delay of \$405,599.99 and alleged increased port costs of \$33,604.00. Claimant sought compensation from the Oil Spill Liability Trust Fund (OSLTF or Fund) for alleged demurrage and increased port costs totaling lost profits \$5439,203.99.²

Claimant alleged that the oil spill delayed the OVERSEAS SERIFOS and that the vessel had to abort its voyage to New Orleans and divert to Pascagoula. Claimant asserted that the oil-spill vessel delay began July 21 at 0000 hours when OVERSEAS SERIFOS tendered Notice of Readiness (NOR) in New Orleans and ended August 2, 2008 at 1612 hours when it tendered NOR in Pascagoula. Claimant calculated its oil-spill vessel delay to be 12 days, 16 hours and 12 minutes and applied its daily charter party demurrage rate of \$32,000 to arrive \$405,599.99 (12.1612 x \$32,000 = \$405,599.99).

In addition to alleged loss of profits from the oil-spill, vessel delay Claimant alleged lost profits for increased port expenses totaling \$33,604.00. Claimant alleged all port fees for pilotage, trade associations, Customs, auto-hire,

¹ See Claimant submission letter February 26, 2010, & Exhibit A charter party and fixture recap

² See Claimant's submission letter and Exhibits A through G

communications and agents overtime and launch expense from July 21 till August 2, 2008 were increased port costs due to the oil-spill.³

Claimant initially sought a total claim of \$439,203.99 in alleged lost profits (\$405,599.99 + \$33,604.00 = \$439,203.99).

Amended Claim:

On August 13, 2010 Claimant amended its lost profits/ vessel delay claim to the Fund. Claimant states, "Sorrel wishes to reduce the amount it seeks as compensation for lost profits from \$405,599.99, as originally claimed to \$70,566.67. In doing so, Sorrel points out that its claim now amounts to just over two days worth of delay, a small fraction of the spill's true impact. Having successfully mitigated its damages by recovering more than 80% of its oil spill related lost profit and earning capacity from PMI, Sorrel kindly requests that its remaining damages be compensated without delay."

As background, in August 2008 Sorrel presented PMI a demurrage claim totaling \$512,533.34 representing 16 days, - 0- hours and 24 minutes (16.016667 days) of delay time. Claimant received two demurrage payments from PMI, one for \$371,400 representing 11 days, 14 hours and 55 minutes (or 11.6064 days) and a second payment for \$70,566.67 representing an additional 2.205 days demurrage. The former payment represented non-oil spill lay time; the latter payment was to settle with Sorrel 50% of the disputed oil spill delay time.

Sorrel pursued PMI for the balance of its demurrage claim representing 4.41 days demurrage or \$141,133.34 (4.411-days @ \$32,000 = \$141,133.34). This represents delay time due to the River closure. Claimant states that PMI would not pay \$141,133.34 in demurrage because it attributed this portion to the oil spill and under its interpretation of the charter party; it was not liable for this amount. Therefore, Sorrel and PMI agreed to settle the 4.411-day delay and PMI paid Sorrel for 2.205-days or \$70,566.67. Sorrel now seeks reimbursement of the remaining \$70,566.67.

1. Lost profits & earnings "charter profits" (demurrage):	\$ 70,566.67
2. Additional bunkers consumed:	\$ 40,838.44
3. Increased pilotage:	\$ 14,607.90
4. Increased trade agency fees:	\$ 195.00
5. Increased launch fees:	\$ 3,270.60
6. Increased agency fees:	\$ 5,560.00
Total	\$138,909.11 ⁴

Claim Denial:

On June 14, 2012, the National Pollution Fund Center (NPFC) denied the claim for the lost profits because Claimant failed to demonstrate that it suffered any loss of profits or earnings due to the oil spill. Specifically, Claimant failed to demonstrate that it lost revenue on its voyage to New Orleans because Claimant stated that it earned its carriage (revenue) for freight on this voyage.

Also, Claimant failed to prove its allegation that all port costs incurred from July 21 to August 2, 2008 related to the oil-spill incident. Additionally, Claimant lacked evidence to support its assertions regarding the terms of its settlement agreement with PMI and the NPFC could not determine what costs if any were included in the demurrage settlement.

REQUEST FOR RECONSIDERATION:

On August 13, 2012, Claimant requested reconsideration and asked for an extension of time to submit supporting documentation. The NPFC granted Claimant until September 14, 2012 to submit its documentation. On September 14, 2012, the NPFC received Claimant's documentation.⁵

³ See Claimant's letter of March 17, 2010, Exhibit A

⁴ See Claimant's letter of August 13, 2010 pg 7 NOTE: NPFC calculates \$135,038.61 or a difference of \$3,870.50

⁵ See Claimant's letter of August 13, 2010, pg 6 Exhibit 1

RECONSIDERATION:

In its request for reconsideration, Claimant continues to allege that it lost profits of \$70,566.67 for about two days of demurrage. Claimant argued that PMI rejected paying demurrage for these two days because they relate to the oil spill.⁶ Therefore, Claimant is entitled to \$70,566.67 in demurrage from the Fund.

Additionally, Claimant revised its claimed lost profits due to increased port expenses. Claimant reduced its alleged fuel consumption to time that its vessel was in the Safety Zone from July 23 to July 29, 2008. Claimant also reduced its pilotage fees to just one cancelled pilotage on the day of the spill. Claimant's revised sum certain for compensation from the Fund is as follows:

1. Lost profits & earnings "charter profits" (demurrage)	\$70,566.67
2. Additional bunkers consumed	\$18,523.18
3. Increased pilotage	\$ 641.33
Total	\$ 89,731.18

DETERMINATION OF LOSS ON RECONSIDERATION:

The NPFC reviewed all documentation submitted by the claimant and contained in the administrative record.

A. Findings of Fact:

1. In accordance with 33 U.S.C. § 2712(h)(2) and 33CFR § 136.101(a)(1) the claim was submitted within the three year statute of limitations for loss of profits under OPA.
2. In accordance with 33 CFR § 136.103(a) the claimant presented its claim to the Responsible Party.
3. In accordance with 33 CFR 136.105(e)(10) copies of written communications and substance of verbal communications, between claimant and Responsible Party with the date claim was presented and the date that the claim was denied have been provided.
4. In accordance with 33 CFR § 136.105(b) claimant demanded a sum certain.
5. In accordance with 33 CFR § 136.105(e)(12), claimant certified no suit has been filed in court for the claimed loss of profits.
6. In accordance with 33 CFR § 136.111(a)(2) claimant asserts that the oil spill delay is not an insured peril and it has not submitted a claim to its insurer.

B. Summary of Claimant's Argument / Calculation on Reconsideration:

The only issue related to demurrage or lay time on reconsideration is Claimant's assertion that it is entitled to reimbursement of its \$70,566.67. In its request for reconsideration Claimant presented no new arguments. Claimant submitted emails that show that it negotiated a settlement with its charterer, PMI, for its entire demurrage. This proves that PMI agreed to, and in fact, compensated the disputed portion of the claim by paying Claimant half of the disputed portion. Claimant provided an invoice that reads: BALANCE DEMURRAGE AGREED IN FULL AND FINAL SETTLEMENT...\$70,566.67."⁷

Claimant continues to seek \$70,566.67 in demurrage from the Fund arguing that this represents the oil spill delay time that is not attributable to its charterer. The Claimant and PMI settled the dispute, agreeing to split the \$141,133.34 on a 50/50 basis. PMI paid its 50% share and Sorrel received that share from PMI. Thus, Sorrel has been compensated for PMI's 50% share and is not owed the remaining \$70,566.67 because it agreed to settle its 50% share. Thus, it is not entitled to reimbursement of this amount from the Fund.

C. Additional Port Charges:

⁶ See Claimant's letter of September 14, 2012, pg. 4

⁷ See Claimant's letter of September 14, 2012, Attachment B

Claimant seeks compensation for increased port costs for fuel consumed and the cost for cancelling a river pilot who was scheduled to take the OVERSEAS SERIFOS to the terminal on the day of the spill.

Increased Bunkers Consumed:

Initially, Claimant presented its claim for \$40,838.20 for 78.60 metric tons (MT) of bunkers purchased at \$519.57 per MT. This represented all bunkers consumed from July 20 through August 1, 2008 (12 days, 6 hours and 11 minutes) on the voyage to New Orleans/ Pascagoula, including the oil-spill delay period.

On reconsideration Claimant seeks \$18,523.18 for increased bunkers consumed from July 23 to July 29, 2008 or 6 days, 3 hours and 5 minutes. Claimant submitted the OVERSEAS SERIFOS' daily Engine Room Log signed by the vessel's Chief Engineer; and Claimant asserts that vessel's bunker consumption is confirmed by its Statement of Fuel Consumption, signed by the vessel's Captain and Chief Engineer. Claimant states that it is customary to record bunkers consumed from noon to noon the following day. Also, Claimant previously submitted its invoice from Chemoil dated May 15, 2008 totaling \$40,832.24 that shows Claimant purchased 1,000.710 MT of heavy fuel at \$519.57 per MT.⁸ Claimant calculated that it burned 35.65 MT of bunkers at \$519.57 per MT for increased fuel costs of \$18,523.18.

Analysis of Increase Bunkers Consumed:

In reconsideration, the NPFC finds that the OVERSEAS SERIFOS oil spill related delay was one hour less than Claimant alleged period for the oil spill delay. The NPFC used the time indicated in the port agent's Statement of Facts versus Claimant's Port Log.⁹ The NPFC finds that the OVERSEAS SERIFOS oil spill related delay began on July 23, at 14:30 hours, after the oil spill restricted vessel traffic at the Davant Anchorage, until July 29 at 16:35 hours the time that the vessel was decontaminated and cleared by the FOSC a total of 6 days, 2 hours and five minutes.

Using Claimant's daily fuel consumption chart while vessel was at idle the NPFC calculated the **average** daily burn rate of 5.82 MT (4074MT / 7-days = 5.82MT). Calculating the average daily fuel burn rate of 5.82MT by multiplying the days that the vessel was at idle in the Safety Zone (6.08 days) we arrived at the average total fuel consumed of 35.38MT (5.82MT x 6.08-days = 35.38MT). Taking the total of 35.38MT times the cost of \$519.57 per MT we calculate \$18,385.29 (35.38 x \$519.57 = \$18,385.29) in increased fuel expense.¹⁰

The NPFC finds **\$18,385.29** is the average total bunkers burned during the oil spill delay period of 6 days, 2 hours and 5 minutes.

Cancelled Pilots Fees:

Claimant seeks increased port costs for cancelling its pilot on July 23, the day the spill.

Claimant submitted an invoice from Crescent River Pilots Association (Invoice 216044) showing that Claimant incurred charges of \$363.00 for canceling a pilot and for transportation (round-trip). The OVERSEAS SERIFOS was expecting to shift to berth at 1400 hours on July 23, 2008 when residual oil from the DM-932 reached Davant Anchorage and contaminated the vessels hull. The FOSC imposed a Safety Zone that restricted vessel movement that negated the need for a pilot's services.

Analysis of Cancelled Pilots Fee:

Because the OVERSEAS SERIFOS was contaminated by oil and restricted to anchorage the NPFC finds that the Claimant had no need for a pilot at that time and had to cancel because of the spill. The NPFC recognizes that Claimant incurred increased port costs that were charged to the voyage and resulted in reduced voyage profits.

⁸ See Claimant's letter of August 13, 2010 Exhibits 3,4 & 5

⁹ See Determination pg.6 (NPFC finds OVERSEAS SERIFOS spill delay period is 6 days, **2 hours** and 5 minutes)

¹⁰ NPFC's calculation

Therefore, the NPFC finds that Claimant should be compensated **\$363.00** for its lost profits due to increased expenses for the pilot cancellation.

NPFC's Findings on Additional Port Charges:

Claimant demonstrated it incurred additional or extra expenses directly related to the oil-spill incident. Specifically, fuel consumed during the spill response and the pilots fee incurred after Claimant had to cancel the pilot because of the spill incident are directly caused by the spill and are compensable.

The NPFC finds that the Claimant is entitled to compensation for loss of profits resulting from additional expenses incurred due to the oil spill of **\$18,748.29**. This includes \$18,385.29 for bunkers and \$363.00 for pilot expenses.

AMOUNT: \$18,748.29

Claim Supervisor:

Date of Supervisor's review: 3/27/2015

Supervisor Action: *Approved*

Supervisor's Comments: