

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: P15001-0001
Claimant	: Foremost Insurance Company
Type of Claimant	: Corporate (US)
Type of Claim	: Affirmative Defense
Amount Requested	: \$41,235.69
Action Taken	: Denied

**EXECUTIVE SUMMARY:** “THE GOOD LIFE”, a vessel owned by Mr. [REDACTED] caught fire and caused another vessel to catch fire, which ultimately resulted in both vessels sinking and discharging diesel fuel and gasoline in a marina near Baltimore, Maryland. Mr. [REDACTED] was insured by the Foremost Insurance Company (“Foremost” or “claimant”). Foremost, through counsel<sup>1</sup>, asserts it is entitled to \$41,235.69 as reimbursement for expenses it incurred on behalf of Mr. [REDACTED].<sup>2</sup> Foremost asserts that it is entitled to a complete defense to liability under 33 U.S.C. § 2703(a)(3), and seeks recovery under 33 U.S.C. § 2708 for the \$41,235.69 as uncompensated removal costs in accordance with 33 U.S.C. § 2713.<sup>3</sup> After careful consideration, the NPFC has determined that Foremost is not entitled to a defense to liability for the reasons set forth below. As such, the claim for \$41,235.69 is denied.

**I. INCIDENT:**

At approximately 0200 on November 3, 2014, the pleasure craft THE GOOD LIFE, owned by Mr. [REDACTED], caught fire while moored at the Belts Wharf Landing Yacht Club in the Fells Point section of Baltimore, MD. The fire burned through the vessel’s mooring lines setting it adrift. THE GOOD LIFE was carried by the wind and currents approximately 100 feet into Henderson’s Wharf Marina where it came to rest against the pleasure craft LADY BUG. The fire spread from THE GOOD LIFE onto the LADY BUG, sinking both vessels and discharging diesel fuel and gasoline into the Northwest Harbor Channel near Baltimore, MD. The LADY BUG contained approximately 270 gallons of diesel fuel at the time of the fire and sinking. THE GOOD LIFE contained approximately 10 gallons of gasoline at the time of the fire and sinking.<sup>4</sup>

<sup>1</sup> Rubin, Fiorella, and Friedman, LLP.

<sup>2</sup> Original claim submission dated June 12, 2018. (Specifically, \$19,253.69 for the “[p]ayment to the Coast Guard for pollution clean-up” and \$22,000 for the “[p]ayment to McClean (sic) Contracting to haul wreckage from the water”).

<sup>3</sup> In order to be eligible to receive compensation from the Oil Spill Liability Trust Fund, a claimant must demonstrate that it possesses the ability to subrogate “all rights, claims and causes of action that the claimant has under any other law” to the United States. (33 U.S.C. § 2715). Specifically, Foremost is responsible for providing evidence of this ability to the National Pollution Funds Center (NPFC). There has been considerable dialogue over the past several weeks between Foremost’s counsel and the NPFC in which Foremost’s counsel offered to provide a fully executed assignment of rights (AOR) from Mr. [REDACTED] to Foremost. The NPFC agreed in principle that an AOR of this nature would be sufficient evidence to meet the requirements of 33 U.S.C. § 2715. NPFC also noted that without the AOR, the claim could be denied *ab initio*. As of the date of this decision, NPFC has not received the AOR from Foremost. However, since Foremost’s counsel has made assurances that an assignment of rights exists and is forthcoming, the NPFC has analyzed this claim under this assumption. Given its decision to deny the defense and resulting claim, the NPFC believed it was in the interest of all parties not to delay its decision further pending receipt of the AOR.

<sup>4</sup> CG Pollution Report (POLREP) 1 dated November 4, 2014. *See also*, All Boat & Yacht Inspections Report dated November 6, 2014.

## **II. RECOVERY ACTIONS:**

USCG Sector Baltimore responded to the incident and accessed the Oil Spill Liability Trust Fund under Federal Project Number (FPN) P15001 to fund the pollution removal activities as it was initially unclear who was liable for the discharged oil. Sector Baltimore hired Miller Environmental Group, Inc., which boomed the area and performed cleanup of the discharged oil with the use of sorbent materials. Cleanup continued through November 7, 2014, when the LADY BUG was successfully salvaged and removed from the water by McLean Contracting Company, which eliminated the continued threat of oil discharge into the water. Upon successful salvage of the vessel, Sector Baltimore personnel surveyed the area and deemed the cleanup complete, releasing Miller Environmental Group.<sup>5,6</sup>

Upon completion of the pollution removal activities, Sector Baltimore approved payment to Miller Environmental Group for \$19,235.69 for its services associated with the containment and removal of oil from the Northwest Harbor Channel and forwarded those costs to the USCG National Pollution Funds Center (NPFC) for cost recovery. The NPFC billed Mr. [REDACTED] and Foremost for those removal costs on April 12, 2016. Foremost paid the removal costs in full on June 7, 2016. Foremost includes the pollution removal costs for \$19,235.69 as part of the sum certain in its claim submission.<sup>7</sup>

In addition, Foremost includes \$22,000.00 in salvage costs associated with the salvage of the LADY BUG. LADY BUG had approximately 270 gallons of diesel on-board at the time of the fire and its subsequent sinking. CG Sector Baltimore considered LADY BUG a substantial threat to discharge oil and remained on-scene until the vessel was successfully salvaged and removed from the water.

The \$19,235.69 in removal costs and \$22,000.00 for salvage of the LADY BUG total \$41,235.69 and represent the total sum certain as claimed by Foremost.<sup>8</sup>

## **III. CLAIMANT AND CLAIM:**

Foremost provided watercraft insurance to Mr. [REDACTED] and is asserting a complete defense to liability under 33 U.S.C. § 2703(a)(3).<sup>10</sup> If Foremost succeeds on this complete defense, it may assert a claim for removal costs and damages.<sup>11</sup>

## **IV. DETERMINATION PROCESS:**

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<sup>5</sup> CG POLREP 4 dated November 10, 2014.

<sup>6</sup> The day after the Coast Guard deemed the response complete, THE GOOD LIFE was salvaged and removed from the water by McLean Contracting Company. The salvage of THE GOOD LIFE is not the subject of this claim.

<sup>7</sup> As documented in the NPFC Oracle/CIMS database.

<sup>8</sup> Note that the owner of LADY BUG did not contribute to any of the costs associated with the pollution removal activities or salvage of either vessel.

<sup>9</sup> Policy provided by Rubin, Fiorella & Friedman, LLP, in an email dated August 29, 2018.

<sup>10</sup> Original claim submission dated June 12, 2018.

<sup>11</sup> 33 U.S.C. § 2708.

The NPFC utilizes an informal process when adjudicating claims against the OSLTF.<sup>12</sup> As a result, 5 U.S.C. § 555 (e) requires the NPFC to provide a brief statement explaining its determinations. This determination is issued to satisfy that requirement for the Claimant's claim against the OSLTF.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.<sup>13</sup> The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>14</sup> If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and finds facts and makes its determination based on the preponderance of the credible evidence.

#### V. DISCUSSION:

A responsible party is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.<sup>15</sup> A responsible party's liability is strict, joint, and several.<sup>16</sup> When enacting the Oil Pollution Act (OPA), Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."<sup>17</sup> OPA was intended to cure these deficiencies in the law.

Notwithstanding the above, under limited circumstances the Oil Spill Liability Trust Fund, administered by the NPFC, may reimburse a responsible party for its uncompensated removal costs and damages when the responsible party establishes an entitlement to a defense to liability under 33 U.S.C. § 2703.

Under the plain meaning of 33 U.S.C. § 2708(a), a responsible party must demonstrate that a defense applies before the OSLTF can reimburse removal costs or damages. Consistent with this statutory requirement, the OSLTF's claims regulations also require all claimants to carry the burden of proving an entitlement to reimbursement.<sup>18</sup> Therefore, as with any other claimant, a responsible party must prove an entitlement under the OPA before receiving reimbursement from

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<sup>12</sup> 33 CFR Part 136.

<sup>13</sup> See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." citing *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010).

<sup>14</sup> See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

<sup>15</sup> 33 U.S.C. § 2702(a).

<sup>16</sup> See, H.R. Rep. No. 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>17</sup> *Apex Oil Co., Inc. v. United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002)(citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722.).

<sup>18</sup> See, 33 CFR 136.105(a) ("The claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim."); and 33 CFR 136.105(e)(6)(Requiring that each claim include evidence to support the claim).

the OSLTF. If a responsible party fails to introduce evidence in support of any of the elements necessary to establish entitlement to compensation from the OSLTF, or fails to establish each of the elements by a preponderance of the credible evidence, the NPFC must deny the claim.<sup>19</sup>

In order to prevail on its defense, Foremost must establish by a preponderance of the evidence that the discharge or substantial threat of discharge of oil and the resulting damages or removal costs were caused solely by an act or omission of a third party.<sup>20</sup> In addition, Foremost must establish by a preponderance of the evidence that the responsible party:

(a) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances and

(b) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions.<sup>21</sup>

In order to meet its burden, Foremost must offer credible evidence showing that the incident was solely caused by a third party. Foremost may not rely on unsupported contentions to satisfy its burden of proving a third party defense.<sup>22</sup>

**A. “... evidence that the discharge or substantial threat of discharge of oil and the resulting damages or removal costs were caused solely by an act or omission of a third party”**

Security Camera Footage. Cardinal to its claim for an affirmative defense, Foremost contends that there exists security camera footage that captured an unidentified individual, not fitting the description of Mr. ██████ boarding THE GOOD LIFE and then departing the area shortly before the fire started.<sup>23</sup> Foremost proffers that the unknown person observed in the

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<sup>19</sup> OPA’s legislative history makes it clear that a responsible party has the burden of showing an entitlement to OSLTF compensation under 33 U.S.C. § 2708. As explained in the House Conference Report on OPA:

Section 1008 of the House bill allows a responsible party..., or a guarantor for that responsible party... to assert a claim for removal costs and damages *only if the responsible party... can show that the responsible party... has a defense to liability, or is entitled to a limitation of liability.*

H.R. Conf. Rep. 101-653 at 110 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 788 (emphasis added). *See also, Apex*, 208 F.Supp.2d 642 (claimant failed to carry its burden of proof with respect to the “act of God” defense); *International Marine Carriers v. OSLTF*, 903 F.Supp. 1097 (S.D. Tex. 1994) (claimant must show elements of a third party defense by a preponderance of the evidence); *Water Quality Insurance Syndicate v. United States*, 632 F.Supp.2d 108, 113-114 (D. Mass. 2009) (holding that a responsible party has the burden of showing an entitlement to OSLTF compensation under 33 U.S.C. § 2708).

<sup>20</sup> 33 U.S.C. § 2703(a)(3).

<sup>21</sup> *Id.*

<sup>22</sup> *See e.g., United States v. Kilroy*, 71 ERC 1219, 2009 WL 3633891 (W.D. Wa. 2009). *See also, United States v. W.R. Grace & Co.-Conn.*, 280 F.Supp.2d 1135 (D. Mt. 2002) (analyzing analogous third-party defense under CERCLA).

<sup>23</sup> Original claim submission dated June 12, 2018.

security camera footage started the fire onboard THE GOOD LIFE.<sup>24</sup> Foremost did not provide the security camera footage in its claim submission.<sup>25</sup> Attempts to locate and review the security camera footage by NPFC were unsuccessful.<sup>26</sup>

The Baltimore City Police Arson Investigation Unit responded and investigated the cause of the fire. The NPFC contacted the Baltimore City Police Department Arson Investigation Unit and obtained a copy of its investigation. The investigation does not document the cause of the fire.<sup>27</sup> The NPFC also contacted Detective [REDACTED] the arson investigator for the Baltimore City Police Department. According to Detective [REDACTED] the cause of the fire onboard THE GOOD LIFE was undetermined.<sup>28</sup> When asked about the security camera footage, he stated he reviewed the footage and none of the thirteen cameras that provided the footage pointed toward the dock where THE GOOD LIFE was moored. As such, he did not witness anyone in the vicinity of THE GOOD LIFE nor anyone boarding and then departing THE GOOD LIFE immediately before the fire. Detective [REDACTED] stated that the only thing he saw from the video footage was the walkway adjacent to the condominiums and the glow of the fire from THE GOOD LIFE.<sup>29</sup>

The Baltimore City Fire Department also responded to the fire and conducted an investigation into the cause of the fire. According to its report, the fire appeared to have originated in the aft section of the GOOD TIMES.<sup>30</sup> The Fire Department could not determine the cause of the fire.<sup>31</sup> NPFC personnel attempted to contact the Baltimore City Fire Investigator for comment on his report and to determine if he witnessed the security camera footage but was unsuccessful.<sup>32</sup>

The Claimant hired All Boat & Yacht Inspections, LLC, to conduct a survey of THE GOOD LIFE.<sup>33</sup> The investigator from All Boat and Yacht inspection noted that he “would try to obtain any surveillance video that may be available... ”<sup>34</sup> There is no indication that this investigator was able to obtain or review any video footage related to the event. As part of its survey, All Boat & Yacht Inspections, LLC, hired S-E-A, Ltd to conduct an investigation into the fire

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<sup>24</sup> *Id.*

<sup>25</sup> Letter from Rubin, Fiorella & Friedman, LLP, dated July 25, 2018. Foremost stated that it does not have a copy of the video footage but received a description of it from its fire investigator. Presumably, Foremost is referring to the description provided by S-E-A’s investigator in its June 25, 2015 report (*see discussion of this report, infra*). There is no evidence that All Boat and Yacht’s investigator reviewed any video footage.

<sup>26</sup> NPFC contacted Mr. [REDACTED] Property Manager for the Belts Landing Condo Association on June 15, 2018; Mr. [REDACTED] president of the Belts Wharf Landing Yacht Club on June 18, 2018; and Detective [REDACTED] Baltimore Police Department on September 4, 2018 in an effort to obtain and review the video.

<sup>27</sup> Baltimore City Police Department Arson Unit Investigation obtained by NPFC personnel on August 29, 2018.

<sup>28</sup> Summary of phone conversation between Mr. (b) (6) NPFC and Mr. [REDACTED] Baltimore City Police on September 4, 2018.

<sup>29</sup> *Id.*

<sup>30</sup> The NPFC assumes that the Baltimore City fire investigator was referring to THE GOOD LIFE and not the GOOD TIMES.

<sup>31</sup> “[T]he cause of this fire cannot be fully ascertained at this time.” Baltimore City Fire Department Report dated November 3, 2014.

<sup>32</sup> On August 29, 2018, NPFC personnel contacted the Baltimore City Fire Department and learned that Captain [REDACTED] the Primary Investigator into the fire on THE GOOD LIFE had retired from the fire department in 2017.

<sup>33</sup> All Boat & Yacht Inspections report dated November 6, 2014.

<sup>34</sup> *Id.*

onboard THE GOOD LIFE and provide a professional opinion regarding the origin and cause of the fire.<sup>35</sup>

In S-E-A's investigation report, there is a reference to the video footage, but there is no indication that S-E-A obtained or reviewed it. The report references Baltimore City Investigators and states that "[v]ideo surveillance coverage was reviewed by Baltimore City Investigators, which showed an unidentifiable person in the approximate area at the time of the fire incident; however, to date, [March 25, 2015]<sup>36</sup> this person has not been identified.<sup>37</sup> The S-E-A investigation concludes that the cause of the fire was undetermined.<sup>38</sup>

It is clear that there is not a consensus on what the video footage indicates about the morning of November 3, 2014. Foremost in its claims submission indicates that the video indicates an individual (not fitting Mr. [REDACTED] description) boarding the boat and leaving the area shortly before the fire started. It also states that fire detectives have confirmed that they have an image from the footage of the individual. In a subsequent letter, Foremost explains that it does not have the video, but it received a description of it from its fire investigator who reviewed the video while it was in the custody of the Fire Department. We assume that Foremost is referring to the S-E-A-fire investigator. However, the S-E-A investigator does not state that he reviewed the video but only that it was reviewed by Baltimore (Fire) Investigators, which showed an unidentifiable person in the approximate area at the time of the fire. There is no information from the Baltimore Fire Investigators as to what the video may or may not have shown. Additionally, through its independent investigation, NPFC spoke with the Baltimore Police Arson Investigator who stated that none of the 13 cameras he reviewed pointed in the direction of THE GOOD LIFE and he did not see an individual on the footage he reviewed.

Notwithstanding the various, conflicting accounts of what may be found on the video footage, Foremost asserts that an unidentified individual started the fire that caused this incident. However, it provides no evidence to support its assertion. Even assuming, *arguendo*, this unidentified individual could be seen on the video footage, there is nothing in the record to support that this individual actually set fire to THE GOOD LIFE. Notably, the Baltimore Police Arson Investigation Unit, the Baltimore Fire Department and Foremost's own fire investigators (S-E-A) each concluded that the cause of the fire was undetermined.

Foremost is required to establish by a preponderance of the evidence that the discharge or substantial threat of discharge of oil and the resulting damages or removal costs were caused solely by an act or omission of a third party. Courts have been clear that claimants cannot rely on unsupported contentions or hypothetical possibilities to meet their burden and must prove this element by a preponderance of the evidence.<sup>39</sup> Conflicting descriptions of a video allegedly

<sup>35</sup> S-E-A investigation report dated March 25, 2015.

<sup>36</sup> This person had not been identified four months after the fire. There was no evidence provided to NPFC that this individual has ever been identified.

<sup>37</sup> S-E-A report.

<sup>38</sup> *Id.*

<sup>39</sup> See, *supra* note 18 and accompanying text. See also, *United States v. Kilroy*, 71 ERC 1219, 2009 WL 3633891 (W.D. Wa. 2009). Accord, *United States v. Poly-Carb, Inc.*, 951 F. Supp. 1518, 1531 (D. Nev. 1996) (noting that the responsible party probably would not prevail with its third party defense at trial because the defendant could not show how the spill occurred); *United States v. W.R. Grace & Co.-Conn.*, 280 F.Supp.2d 1135, 1147 (D. Mt. 2002) (holding that the defendant's unsupported and hypothetical contentions were insufficient to prove the incident was solely caused by a third party); and *City of Gary v. Shafer*, 2009 WL 1601536 (N.D. Ind. 2009) (noting the

depicting a person entering and leaving the boat before the fire does not establish that an OPA third party was solely responsible for this oil spill. While one of the many possibilities could be that an unidentified arsonist caused this incident, one could equally speculate that it was caused by a spark which ignited the propane or gasoline fumes that might have built up on the vessel.<sup>40</sup>

NPFC finds that Foremost simply did not meet its burden under the statute and the claim to a complete defense must be denied.

***B. "... evidence that the responsible party exercised due care and took precautions against foreseeable acts"***

Even if there was enough evidence in the record to find that Foremost met its burden as to the incident being caused solely by an act of a third party, Foremost must also establish by a preponderance of the evidence that the responsible party<sup>41</sup>:

(a) exercised due care with respect to the oil concerned, taking into consideration of the characteristics of the oil and in light of all relevant facts and circumstances and

(b) took precautions against foreseeable acts or omissions any such third party and the foreseeable consequences of those acts of omissions.

Due care has been described by the courts as being "derived not only from statutory standards, but also from the dictates of reasonableness and prudence under the given circumstances of a case."<sup>42</sup> As a result, Mr. ██████ was required to take reasonable precautions to prevent both intentional and accidental spills in light of all the relevant facts and circumstances. When interpreting OPA's predecessor statute, the U.S. Court of Claims held that "... a claimant cannot recover, even if a vandal or third party immediately caused the spill, if the claimant does not prove that reasonable action had been taken to prevent or forestall such intervention by the third party."<sup>43</sup>

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defendant's unsupported allegations that illegal dumping may have been responsible for the pollution were insufficient to establish a third party defense). Courts interpreting CERCLA's analogous third party defense language are instructive for claims under OPA.

<sup>40</sup> This represents another potential cause of the incident based on a review of the record. THE GOOD LIFE was a gasoline-powered vessel with three propane tanks aboard, which had been left unattended for three weeks prior to the incident with at least one electrical appliance running. In its original claim submission, Foremost stated that there were no other flammables aboard the vessel other than gasoline and that no electrical appliances were plugged in at the time of the incident. However, in response to NPFC's inquiries, Foremost admits that Mr. ██████ kept one large and two small propane tanks on the vessel. Moreover, Foremost's investigator (All Boats and Yachts) reported that Mr. ██████ stated there was [at least] one electrical appliance running at the time of the incident. In any event, the Baltimore Police Arson Investigation Unit, the Baltimore Fire Department and S-E-A's investigator each determined the cause of the fire to be "undetermined" or "not fully ascertained".

<sup>41</sup> For clarity, while we have been treating Foremost as the constructive responsible party for purposes of analyzing its claim to a defense and rights under 33 U.S.C. § 2703 and § 2708, for the purposes of this analysis we must treat Mr. ██████ as the responsible party in order for the remainder of the analysis of the statute to proceed logically.

<sup>42</sup> *Baby Oil, Inc. v. United States*, 938 F. Supp. 2d 640, 646 (E.D. La. 2013) (citing *Coumou v. United States*, 107 F.3d 290, 295-96 (5th Cir. 1997), *withdrawn and superseded in part on reh'g by Coumou v. United States*, 114 F.3d 64 (5th Cir. 1997)).

<sup>43</sup> *Union Petroleum Corp. v. United States*, 228 Ct. Cl. 54, 73, 651 F.2d 734, 745 (1981) (citing *Chicago, Milwaukee, St. Paul & Pacific R.R. Co. v. United States*, 216 Ct. Cl. 155, 159, 575 F.2d 839, 841 (1978)).

While the yacht club where THE GOOD LIFE was moored is protected landside by a 6- foot high security fence and each of the piers is accessed through a gate that is equipped with a cypher lock, the combination to the locked gates is provided to each yacht club member and is only changed on a yearly basis. Additionally, the yacht club does not provide a security guard or any type of roving security to provide physical protection to the vessels maintained within its boundaries.<sup>44</sup>

Mr. [REDACTED] had not attended to his vessel in the three weeks prior to the fire. Mr. [REDACTED] did not have an alarm system or motion detectors. He also did not have security cameras in addition to the ones discussed above. Additionally, because the vessel is maintained in the water, nothing stops a potential intruder from accessing the vessel from the waterside. Moreover, Mr. [REDACTED] told the All Boat and Yacht investigator that he “had lots of parties on the vessel”, which could be interpreted to mean that many people knew how to access his vessel. And notably, Mr. [REDACTED] told the same investigator that he “leaves (sic) his vessel unlocked.”<sup>45</sup>

Based on the information in the record, NPFC finds that Mr. [REDACTED] failed to exercise due care or take precautions against foreseeable acts of a third party and this too, would be a reason to deny its claim to a complete defense.

**VI. CONCLUSION:**

Based on a comprehensive review of the record and for the reasons above, Foremost Insurance’s assertion that it has demonstrated entitlement to a sole fault third party defense under 33 U.S.C. § 2703 (a) (3) is denied along with its claim for \$41,235.69 in removal costs.

Claim Supervisor:

(b) (6)

Date of Supervisor’s review: *November 1, 2018*

Supervisor Action: *Denial Approved*

Supervisor’s Comments (if any):

<sup>44</sup> NPFC contacted Mr. (b) (6) Property Manager for the Belts Landing Condo Association on June 15, 2018 and Mr. (b) (6) president of the Belts Wharf Landing Yacht Club on June 18, 2018.

<sup>45</sup> All Boat & Yacht Inspections report dated November 6, 2014.