

CLAIM SUMMARY / DETERMINATION

Claim Number:	S18010-0005
Claimant:	Allstate Insurance Company
Type of Claimant:	Insurance Company
Type of Claim:	Subrogated Real or Personal Property Damage
Claim Manager:	[REDACTED]
Amount Requested:	\$2,236.62

FACTS:

On January 18, 2018, an oil discharge was discovered in the vicinity of a pier west of Cannery Pier Hotel and Spa at 10 Basin Street, Astoria, Oregon. The discharge emanated from a 16' X 6' oil tank beneath the hotel's pier on the Columbia River, a navigable water of the U.S.

The oil spill was reported to the United States Coast Guard and Sector Columbia River personnel responded. The oil escaped the tank and migrated west toward the West End Mooring Basin marina, and eastward along the shoreline. Containment booms were placed to prevent migration of the oil, but the oil affected vessels and shorelines in the vicinity of the Cannery Pier Hotel.

The Cannery Pier Hotel assumed initial responsibility as a "responsible party" for the spill.

CLAIMANT:

The Claimant, Allstate Insurance Company (Allstate) is the subrogated insurer of a boat that was allegedly damaged by the oil spill.

CLAIM:

Allstate seeks compensation for the estimated \$2,236.62 damage to the boat.

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.

"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.

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 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.

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. §2712(h)(2).

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

The pertinent provisions of the regulations specifically relating to property damage claims follow:

33 CFR §136.213 Authorized claimants.

- (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 of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under §136.233.

33 CFR §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 injury occurred.

33 CFR §136.217 Compensation allowable.

- (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.

DETERMINATION:

Allstate claimed \$2,236.62 for damages to its insured's boat. Allstate would be eligible to submit this claim if it paid its insured for damages that resulted from this OPA incident because it would be subrogated to the damaged third party's claim. However, Allstate must still satisfy the same proof and documentation requirements that its insured would have had to satisfy if he had submitted the claim directly to the NPFC.

To support this claim, Allstate provided proof that it paid \$1,986.62 to the insured. It also provided a spreadsheet listing what appears to be the costs to haul out, clean and polish a boat. However, the spreadsheet is not titled or annotated with enough information to know who created it, what the subject of the estimate is, or the basis for the costs within it. Allstate provided no other evidence. It also did not provide the information and statements required by regulation and generally listed in the Optional OSLTF Claim Form.

Allstate did not provide proof of the identity of the vessel, vessel ownership or leasehold by its insured, oil damage to the property claimed, or the valuations required by the claims regulations at 33 C.F.R. §136.215. Although Allstate's estimate likely is for repair, it did not include a replacement value or the difference in value of the property both before and after the damage.

Additionally, the claimed amount includes \$250.00 that was not paid to the insured. This amount is not a subrogated amount to which Allstate may be entitled and would be denied even if any of the claimed costs were found to be compensable.

The NPFC determines that the claim must be denied. Should Allstate seek reconsideration of this claim, it must submit the information required by the regulations and generally listed in the Optional OSLTF Claim Form and provide evidence sufficient to satisfy the proof requirements outlined in the claims regulations found at 33 C.F.R. §136.215.

Claim Supervisor:

Date of Supervisor's review: 11/13/2018

Supervisor Action: *Approved*