

CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	N18035-0001
<b>Claimant:</b>	New Orleans Paddlewheels, Inc.
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Loss of Profits
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$129,357.38
<b>Action Taken:</b>	Denial

**EXECUTIVE SUMMARY:**

The M/V PAC ANTARES discharged fuel oil into the Mississippi River on April 12, 2018. PACC Ship Managers Pte. Ltd. (“PACC” or “RP”), who owned the vessel responsible for the discharge, is the responsible party (RP) as defined by the Oil Pollution Act of 1990.<sup>1</sup> The US Coast Guard closed the Mississippi River in response to the oil spill, which restricted the M/V CREOLE QUEEN from continuing its voyage. New Orleans Paddlewheels, Inc. (NOP), the owners of the M/V CREOLE QUEEN, presented its loss of profits for additional crewing and fuel costs, passenger transport and lost ticket sales to the RP. Having not received payment from the RP after ninety days,<sup>2</sup> NOP presented its loss of profits cost claim to the National Pollution Funds Center (NPFC) for \$118,612.47.<sup>3</sup> Subsequently, NOP withdrew some of the additional crew and fuel costs from the claim, and submitted new claimed costs for employee wages and lost food & beverage profits to the claim, which altered the sum certain from \$118,612.47 to \$129,357.38.<sup>45</sup> Claimant failed to respond to the NPFC’s continued requests for proof of presentment to the RP for these new claimed costs. Additionally, the claimant has failed to provide evidence for several requests for additional information.<sup>6</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that this claim must be denied in full because claimant failed to provide documentation requested to substantiate a loss of profits under the claims regulations.<sup>7</sup> Additionally, proof of presentment of the new costs noted above to the RP was not provided.<sup>8</sup>

**I. INCIDENT, RESPONSIBLE PARTY AND LOSS OF PROFITS:**

***Incident***

On April 12, 2018, the US Coast Guard received notice of an unspecified amount of fuel oil discharged from the M/V PAC ANTARES at MM100.6 on the Mississippi River due to a

<sup>1</sup> 33 U.S.C. § 2701(32).

<sup>2</sup> 33 CFR 136.103(c).

<sup>3</sup> New Orleans Paddlewheels, Inc. claim submission dated October 9, 2018.

<sup>4</sup> Letter from Blackburn & Associates, APLC to NPFC dated November 6, 2018.

<sup>5</sup> Email from [REDACTED] to Claims Manager [REDACTED] dated November 15, 2018.

<sup>6</sup> Email from Claims Manager [REDACTED] to [REDACTED] dated December 4, 2018, December 6, 2018 and December 20, 2018 and Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019.

<sup>7</sup> 33 CFR 136.231-235.

<sup>8</sup> 33 U.S.C. § 2713(a).

collision with the Nashville Avenue Wharf at the Port of New Orleans, LA.<sup>9</sup> Sector New Orleans IMD conducted an overflight with Air Station New Orleans and deployed a team of Pollution Responders who determined the vessel's fuel tank had been punctured, discharging approximately 47.61 BBLs into the waterway. The US Coast Guard closed the Mississippi River to vessel traffic from MM100.6 to MM91 on April 12, 2018 at 1058 hours and reopened on April 13, 2018 at 1400 hours.<sup>10</sup> On April 15, 2018 an overflight spotted no visible sheen in the affected area due to a storm and river surge, washing away most of the lighter ends.

### ***Responsible Party***

The owner of the M/V PAC ANTARES is PACC Ship Managers Pte. Ltd., a privately owned company. PACC Ship Managers Pte. Ltd took responsibility for the spill on April 12, 2018, and was issued a Notice of Designation (NOD) on April 26, 2018.<sup>11</sup> PACC activated their Vessel Response Plan and directed their Qualified Individual (QI) Gallagher Marine Services (GMS) to activate their Incident Management Team. The RP's Oil Spill Response Organization deployed 14,500 feet of hard boom to the spill site, a Marco Skimmer and 28 personnel to begin cleanup operations and developed an incident action plan for extended operations.<sup>12</sup>

MR & Associates, LLC (MR) is a limited liability company that provided claims and cost management responsibility on behalf of PACC Ship Managers Pte. Ltd., as confirmed by the RP's attorney, Fowler Rodriguez Counselors at Law.<sup>13</sup>

### ***Loss Of Profits***

In response to the M/V PAC ANTARES oil spill, the US Coast Guard closed the Mississippi River to vessel traffic from MM100.6 to MM91 on April 12, 2018 at 1058 hours and reopened it on April 13, 2018 at 1400 hours.<sup>14</sup> This closure period restricted the M/V CREOLE QUEEN from continuing its voyage upriver to its homeport at the Poydras Street Wharf, after its second of three trips that day and required them to return south and tie up at the Chalmette Battlefield until the river was re-opened. During this period of time, the vessel was unable to conduct its normal three cruise trips a day. Additionally the CREOLE QUEEN was oiled and required decontamination prior to assuming normal operations, which did not allow the vessel to continue with its planned trips until April 15, 2018.<sup>15</sup> As such, New Orleans Paddlewheels, Inc. (NOP), the owners of the M/V CREOLE QUEEN, is claiming a loss of profits during the river closure for lost food and beverage profits, wages paid for employees, passenger transport costs and lost ticket sales.

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<sup>9</sup> National Response Center report #1209141 dated April 12, 2018.

<sup>10</sup> SITREP-POL 2 dated April 27, 2018.

<sup>11</sup> NOD to PACC Ship Managers dated April 26, 2018.

<sup>12</sup> SITREP-POL 1 dated April 12, 2018.

<sup>13</sup> Phone Conversation with NPFC and [REDACTED] dated October 30, 2108.

<sup>14</sup> SITREP-POL 2 dated April 27, 2018.

<sup>15</sup> USCG Verification of Final Decontamination Doc #661140 dated April 15, 2018.

## **II. CLAIMANT AND RP:**

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>16</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>17</sup>

NOP's attorney, Blackburn & Associates, APLC<sup>18</sup> (Blackburn or Claimant) submitted its request for compensation to the RP of \$118,612.47 on May 22, 2018.<sup>19</sup> This submission combined costs for lost ticket sales, passenger transportation, additional crewing and fuel costs.

Claimant resubmitted the costs to RP on June 5, 2018 along with copies of the M/V CREOLE QUEEN's ticket sales receipts for the four day period preceding the incident, and the same four day period in the subsequent week.<sup>20</sup> Claimant submitted all costs for a third time on July 23, 2018 along with copies of the occupational license, state tax returns and vessel log entries for April 12, 2018 through April 15, 2018.<sup>21</sup>

In response to the July 23, 2018 resubmission of costs, the RP requested NOP submit federal tax returns and operation costs. NOP refused to submit federal tax returns as part of their claim submission,<sup>22</sup> and did not provide records that the RP deemed responsive to the request. The RP has not settled the claim.<sup>23</sup>

## **III. CLAIMANT AND NPFC:**

When a RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.<sup>24</sup> On October 9, 2018, the NPFC received a claim for loss of profits from NOP dated October 1, 2018. The costs presented to the NPFC in the amount of \$118,612.47 matched those submitted to the RP and could be substantiated using the information submitted with the claim.

On November 15, 2018, Blackburn submitted a withdrawal of the additional crewing and fuel costs in the amount of \$1,760.00 from their client's claim, and presented new costs for lost food & beverages in the amount of \$7,559.07 and wage expenditures in the amount of \$4,945.84; altering their claim total from \$118,612.47, to \$129,357.38.<sup>25</sup> Claimant has not confirmed these new costs were previously submitted to the RP.

On December 4, 2018, the NPFC requested Claimant present all new costs to the responsible party and allow 90 days for the RP to respond and/or deny the costs. The NPFC also requested additional information relative to the claim be provided along with verification of the date by

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<sup>16</sup> 33 U.S.C. § 2701 *et seq.*

<sup>17</sup> 33 CFR 136.103.

<sup>18</sup> *See*, New Orleans Paddlewheels, Inc. claim submission dated October 9, 2018.

<sup>19</sup> Blackburn & Associates, APLC payment Demand Letter dated May 22, 2018.

<sup>20</sup> Blackburn & Associates, APLC payment Demand Letter dated June 5, 2018.

<sup>21</sup> Blackburn & Associates, APLC payment Demand Letter dated July 23, 2018.

<sup>22</sup> Email from ██████████ to ██████████ dated September 14, 2018.

<sup>23</sup> MR & Associates, LLC letter to the NPFC dated November 5, 2018.

<sup>24</sup> 33 CFR 136.103.

<sup>25</sup> Letter from Blackburn & Associates, APLC to NPFC dated November 6, 2018 and Email from ██████████ to Claims Manager ██████████ dated November 15, 2018.

which the RP received these new costs.<sup>26</sup> The NPFC resubmitted this request on December 6, 2018, December 20, 2018 and January 31, 2019.<sup>27</sup> On February 4, 2019, Blackburn replied, requesting an additional two weeks for his response, and the NPFC agreed.<sup>28</sup> On February 26, 2019, Blackburn again requested an additional two weeks for his response; the NPFC granted the extension and reiterated the need for verification of the date that all new costs were presented to the responsible party.<sup>29</sup> As of the date this determination is issued, Claimant has not provided the NPFC any of this additional information requested or proof of presentment to the RP for the new costs presented to the NPFC on November 15, 2018.

#### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>30</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>31</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>32</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>33</sup> A responsible party's liability is strict, joint, and several.<sup>34</sup> When enacting 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

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<sup>26</sup> Email from Claims Manager ██████████ to ██████████ dated December 4, 2018.

<sup>27</sup> Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019.

<sup>28</sup> Email reply from Claims Manager ██████████ to ██████████ dated February 4, 2019.

<sup>29</sup> Email reply from Claims Manager ██████████ to ██████████ dated February 26, 2019.

<sup>30</sup> 33 CFR Part 136.

<sup>31</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>32</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>33</sup> 33 U.S.C. § 2702(a).

<sup>34</sup> See, H.R. Rep. No. 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

proof unfairly favoring those responsible for the spills.”<sup>35</sup> OPA was intended to cure these deficiencies in the law.

OPA provides that each responsible party for a vessel or facility from which oil is discharged, or which poses a threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive zone is liable for removal costs and damages.<sup>36</sup> Damage include damages equal to the loss of profits or impairment of earning capacity, due to the injury, destruction of, or loss of real property, personal property or natural resources, which shall be recoverable by any claimant.<sup>37</sup>

The NPFC is authorized to pay claims for loss of profits costs that are consistent with uncompensated damages.<sup>38</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>39</sup> The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.<sup>40</sup>

Damage claims to the Fund 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.<sup>41</sup> With regard to claims for loss of profits and impairment of earning capacity, the NPFC must independently determine that the proof criteria in OPA and the implementing regulations, at 33 CFR Part 136, are met, including the general provisions of 33 CFR 136.105, and the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231 *et seq.*

Before reimbursement can be authorized for loss of profits costs consistent with uncompensated damages, the claimant must demonstrate by a preponderance of the evidence:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant’s income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.<sup>42</sup>

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<sup>35</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>36</sup> 33 U.S.C. § 2702(a).

<sup>37</sup> 33 U.S.C. § 2702(b)(2)(E).

<sup>38</sup> 33 U.S.C. § 2712(a)(4).

<sup>39</sup> 33 CFR Part 136.

<sup>40</sup> 33 CFR 136.105.

<sup>41</sup> 33 U.S.C. §2712(h)(2).

<sup>42</sup> 33 CFR 136.233 (a) – (d).

The NPFC analyzed each of these factors while reviewing all of the information submitted by NOP in support of their claim. Information submitted by the United States Coast Guard, who served as Federal On-Scene Coordinator (FOSC) in response to the incident supported the exact timeline and full impact of the oil spill incident. FOSC records verify oil exited the M/V PAC ANTARES and entered the Mississippi River.<sup>43</sup> Documents cite to oil being released into the Lower Mississippi River, and the waterway being closed prior to and during the oil cleanup activities. Vessels transiting the Safety Zone were delayed between the dates of April 12, 2018 and April 13, 2018.<sup>44</sup> The FOSC explains closing the decontamination process on April 14, 2018 due to inclement weather and verifies informing all vessels, including the M/V CREOLE QUEEN, that if they had been contaminated due to the spill, they must notify the FOSC and await decontamination while ceasing operation until after the process is complete.<sup>45</sup> The FOSC also kept a vessel decontamination list citing both contaminated and detained vessels. The M/V CREOLE QUEEN is listed on the document.<sup>46</sup> Furthermore, Claimant provided proof that the vessel was not decontaminated until April 15, 2018,<sup>47</sup> and the FOSC verifies the M/V CREOLE QUEEN arrived on April 13, 2018 for vessel decontamination that was completed on April 15, 2018.<sup>48</sup>

In response to NPFC's requests for additional information on October 18, 2018, October 24, 2018 and November 6, 2018, Claimant provided wage information records, food and beverage records, a proof of payment invoice to New Orleans Tours, NOP's 2017 Federal Tax Return and NOP's 2018 Corporate Financial Statements to September 1, 2018.<sup>49</sup>

After repeated requests,<sup>50</sup> the claimant has not provided proof that the new costs submitted to the NPFC have been presented to the RP.<sup>51</sup> Therefore, these costs are denied. Furthermore, all other claimed costs are denied because the claimant failed to prove a loss of profits versus a loss of revenue. NOP expenses were either not provided, or not in enough detail, to understand the actual loss of profits. This is outlined further below:

**A. Lost Ticket Sales:**

Claimant claimed \$115,352.47 in lost ticket sale revenue by averaging the ticket sale totals for the four day period preceding the incident with the ticket sale totals for the same four day period in the subsequent week. However, this loss of ticket sale revenue did not include any expenses that would offset the revenue, providing the true loss of profits. Two of the many expenses in operating a vessel are the cost of fuel, and the salary of employees. The NPFC made several requests for documentation for all fuel used (main engine(s) and generator(s)) for these

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<sup>43</sup> SITREP-POL 2 dated April 27, 2018.

<sup>44</sup> Marine Safety Information Bulletin dated April 13, 2018, IAP dated April 14, 2018 and 3<sup>rd</sup> Party Vessel Decon Plan dated April 14, 2018.

<sup>45</sup> Conference Call relative to Claim N18035-0001 dated November 2, 2108.

<sup>46</sup> USCG-FOSC Vessel Decon spreadsheet dated April 15, 2018.

<sup>47</sup> USCG Verification of Final Decontamination Doc #661140 dated April 15, 2018.

<sup>48</sup> USCG-FOSC Vessel Decon spreadsheet dated April 15, 2018.

<sup>49</sup> Letter from Blackburn & Associates, APLC to the NPFC dated November 6, 2018.

<sup>50</sup> Email from Claims Manager [REDACTED] to [REDACTED] dated December 4, 2018, December 6, 2018 and December 20, 2018 and Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019.

<sup>51</sup>33 U.S.C. § 2713(a)-(c).

comparative voyages.<sup>52</sup> The NPFC also requested Claimant provide the fuel invoice with cost per gallon/metric ton just prior to the comparative periods. We asked for this information because it represented the actual cost per metric ton/gallon for fuel burned during the affected period. Shoreside electricity costs were also requested, because these costs relate to a saved expense, which would offset the cost of fuel burned while away from homeport for an extended period of time. In response to the NPFC's request for salary of employees, Claimant provided spreadsheet records for salaried employees, trip employees and hourly employees for the four day periods a week prior and subsequent to the river closure.<sup>53</sup> The documents indicated crew names and wages but did not explain or support which employees were salaried and which were paid hourly. Additionally, the NPFC found some of the spreadsheet hourly rates to be much higher than the hourly rates claimed in the original submission. The NPFC made requests<sup>54</sup> for the Claimant to provide financial documents to support the spreadsheeted salaried costs provided or to identify with specificity the financial documents already provided that evidence the higher hourly wages and daily rate of pay (ROP). Support of and explanation of salaried/hourly costs, shoreside electricity costs, cost of fuel used and the fuel invoice with cost per gallon/metric ton just prior to the comparative periods has not been provided to the NPFC as requested. As such, the NPFC cannot determine the true loss of profits from ticket sales. Therefore, these costs are denied.

#### **B. Passenger Transportation Costs:**

NOP claimed \$1,500.00 in passenger transportation costs to the NPFC. Upon closure of the river, the M/V CREOLE QUEEN was directed to moor down river at the Chalmette Battlefield; approximately 6.8 miles from their homeport at the Poydras Street Dock.<sup>55</sup> According to the claim, NOP contracted for three coaches at \$1,500 with New Orleans Tours on April 12, 2018 to transport all passengers from the Chalmette Battlefield back to the vicinity of the M/V CREOLE QUEEN homeport dock. In response to the NPFC's request for proof of payment for these costs, Claimant provided inadequate documentation displaying amounts and dates inconsistent with those specified in this claim.<sup>56</sup> The NPFC requested more specific detail to show the payment of the claimed costs and that these costs are not normally incurred during daily tour activities. Claimant has provided no explanation for the discrepancies, and the NPFC cannot verify the amounts specific to those claimed were attributed to the invoice paid. As such, the NPFC denies payment for the costs totaling \$1,500.00.

#### **C. Lost Food & Beverage Profits:**

After the NPFC requested additional information requesting expenses that would offset ticket sale revenue, NOP submitted new claimed loss of profits for lost food & beverages in the amount of \$7,559.07. In review of all documentation provided, the NPFC found that the Claimant did not provide specific revenue or expense documentation for food, beverages or bands that can be

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<sup>52</sup> Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019 and Email reply from Claims Manager [REDACTED] to [REDACTED] dated February 26, 2019.

<sup>53</sup> Letter from Blackburn & Associates, APLC to the NPFC dated November 6, 2018.

<sup>54</sup> Email from Claims Manager [REDACTED] to [REDACTED] dated December 4, 2018, Emails from Supervisor [REDACTED] to [REDACTED] dated December 6, 2018 and December 20, 2018, and Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019.

<sup>55</sup> Google Map Chalmette Battlefield to Poydras Street Dock dated November 13, 2018.

<sup>56</sup> New Orleans Paddlewheels, Inc. Check #4468 to New Orleans Tours, Inc. dated July 18, 2018.

directly related to the two comparable periods and the affected period of this claim. Additionally, the affidavit and explanation of claimed extra food and beverage costs does not appear to take into account the M/V CREOLE QUEEN's food and beverage sales for the cruise on the morning of April 12, 2018, before the spill occurred, and the cruise on the evening of April 15, 2018, following decontamination. Regarding the "Daily Sales Report of Food and Liquor", the NPFC could not verify whether the document included food sales that were already included in some of the buffet ticket sales. It appears as though food and beverage sales would be a normal expense against the ticket revenue, not its own additional cost because of the oil spill. As such, the NPFC made several requests<sup>57</sup> for the Claimant to identify with specificity the appropriate documents that support these claimed expenses.<sup>58</sup> Information specific to these requests has not been provided to the NPFC, including proof that these costs have been presented to the RP. As such, all costs are denied.

**D. Wages Paid for Employees:**

After the NPFC requested additional information concerning employee expenses incurred to offset the revenue obtained from ticket sales, NOP claimed an additional \$4,945.84 in employee costs.<sup>59</sup> As noted above, the NPFC made several requests<sup>60</sup> for the Claimant to provide financial documents to support these costs, and prove that these costs have been presented to the RP. Claimant did not provide any information in response to these requests, and as such, these costs are denied.

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, NOP's request for compensation for alleged loss of profits in the amount of \$129,357.38 is denied. Should the claimant request reconsideration, claimant will need to provide proof that all costs were first presented to the responsible party,<sup>61</sup> and provide all evidence, information, and documentation already requested and deemed relevant and necessary to support and properly process the claim as cited under 33 CFR 136.105(a).

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/21/2019

Supervisor Action: Denial Approved.

<sup>57</sup> Email from Claims Manager [REDACTED] to [REDACTED] dated December 4, 2018, Emails from Supervisor [REDACTED] to [REDACTED] dated December 6, 2018 and December 20, 2018, and Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019.

<sup>58</sup> Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019 and Email reply from Claims Manager [REDACTED] to [REDACTED] dated February 26, 2019.

<sup>59</sup> Letter from Blackburn & Associates, APLC to NPFC dated November 6, 2018 and Email from [REDACTED] to Claims Manager [REDACTED] dated November 15, 2018.

<sup>60</sup> Email from Claims Manager [REDACTED] to [REDACTED] dated December 4, 2018, Emails from Supervisor [REDACTED] to [REDACTED] dated December 6, 2018 and December 20, 2018, and Letter from the NPFC to Blackburn & Associates, APLC dated January 31, 2019.

<sup>61</sup> 33 USC § 2713(a).