

CLAIM SUMMARY / DETERMINATION

Claim Number:	S18010-0007
Claimant:	AFNI C/O American Family Mutual Insurance Company S.I.
Type of Claimant:	Corporation
Type of Claim:	Property Damage
Claim Manager:	[REDACTED]
Amount Requested:	\$4,559.70

FACTS:

Oil Spill Incident:

On January 18, 2018, an oil discharge was discovered in the vicinity of a pier west of the Cannery Pier Hotel and Spa at 10 Basin Street in 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. Total capacity of the tank was 3,381 gallons. The source was recovered via contracted crane barge. Approximately 2,239 gallons of bunker oil remained inside.

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.

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

Description of Removal Activities for this Incident:

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. Product recovered for disposal was 160 cubic yards of oiled debris and sorbent material; 3400' of contaminated hard boom; 2,239 gallons of bunker oil from tank; and 6,150 gallons of oily water collected with skimmer and vacuum truck. Cleanup operations concluded on March 7, 2018.

Claim:

A sailboat owner/the insured party incurred damages to a 1979 White Islander Freeport 36 SL and filed a claim with his insurance company (American Family Mutual Insurance Company S.I.). AFNI is the subrogated insurer of the sailboat.

On October 22, 2018, the NPFC received a property damage claim from AFNI, hereinafter known as the Claimant, seeking compensation for cleaning and replacement costs paid to the insured, in the total amount of \$4,559.70.

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".

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. 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].

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).

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 OF LOSS:

A. Overview:

The Claimant seeks compensation for cleaning and replacement costs paid to the insured, in the total amount of \$4,559.70. In support of their claim, they provided:

1. Proof of two payments to the insured party from the insurer (in the amount of \$1,074.75 and \$2,484.95, respectively). Proof of one payment to Autoclaims Direct Corporation (ACD) in the amount of \$425.00 to estimate the loss.
2. Vessel repair estimates from ACD.
3. Pictures of the insured's vessel damage caused by the oil spill.
4. Documentation from American Family Mutual Insurance Company S.I. affirming AFNI as the contracted third party administrator for this claim.

Upon initial review of the claim submission, the NPFC made a request, via email, for additional information to the Claimant on November 9, 2018 as described below¹.

- 1) Documentation or information to show the basis for ACD's estimate of the parts, labor, and replacement costs.
- 2) Explain why the initial estimate and supplemental estimate from ACD were added together as it appears that they both cover the same damages, but with slight adjustments.
- 3) Provide documentation to prove the value of the vessel and other claimed property before and after the damage, the repair value of the other damaged property claimed, and the replacement value of the vessel. Also, provide documentation to prove ownership of the damaged vessel, maintenance records and age and life expectancies of claimed vessel property such as buoys, fenders and lines. These requested items are required by the regulations.
- 4) Provide a copy of any release between American Family Mutual Insurance Company S.I. and the insured party. Also, provide documentation showing that the issued payments were received by the insured. The claimant was given a date of November 23, 2018 by which a response was expected by the NPFC.

On November 27, 2018, the Claimant contacted the NPFC via email and requested a two-week extension to submit the requested information. The NPFC granted the extension and gave the Claimant a submission deadline of December 11, 2018, to which the claimant understood and accepted.²

¹ November 11, 2018 email sent to claimant from [REDACTED]

² November 27, 2018 email thread between claimant and [REDACTED]

B. Analysis:

In response to the NPFC's request for additional information, the Claimant provided the following documentation via email³:

1. A copy of a check issued to the insured from the insurer on March 26, 2018 in the amount of \$1,074.75. The check was cashed/deposited by iQ Credit Union on April 9, 2018.
2. A copy of a check issued to the insured from the insurer on May 10, 2018 in the amount of \$2,484.95. The check was cashed/deposited by iQ Credit Union on May 23, 2018.

NPFC Review of Evidence

The claimant submitted proof that the insured received the payments from the insurer; however, the claimant did not provide any of the additional documentation that was requested in order to support its claimed losses. The documentation provided was insufficient to support payment of the claim as it did not satisfy the regulatory proof requirements for a damage claim under OPA. The claimant has not met its burden of demonstrating entitlement to compensation for damages to their insured's property. As such, the NPFC finds the claim must be denied. Should the claimant seek reconsideration of its claim, the claimant must provide the items requested in the aforementioned November 9, 2018 email correspondence from the NPFC.

Claim Supervisor: [REDACTED]
Date of Supervisor's review: 12/18/2018 [REDACTED]
Supervisor Action: Denial Approved.
Supervisor's Comments:

³ December 11, 2018 email from claimant to [REDACTED]