

CLAIM SUMMARY / DETERMINATION on RECONSIDERATION

Claim Number:	919031-0001
Claimant:	Great American Insurance Group (GAIC) / Tishman Speyer Properties
Type of Claimant:	RP
Type of Claim:	Limit of Liability
Claim Manager:	(b), (b) (b), (b)
Amount Requested:	\$578,752.02
Action Taken:	Offer in the Amount of \$104,308.40

EXECUTIVE SUMMARY:

On February 14, 2017, the S.S. PETER STUYVESANT (“STUYVESANT”) discharged oil into the Boston Harbor, a navigable waterway of the United States. At the time of discharge, the STUYVESANT was lying on the seafloor adjacent to Pier 4, Boston, MA.¹ Tishman Speyer Properties, Inc. (“Tishman”), through its subsidiaries 130 Northern Avenue, LLC and 140 Northern Avenue, LLC, responded and hired Cyn Environmental Services to clean up the oil spill.² The CG National Response Center (“NRC”) was notified of the incident.³ U.S. Coast Guard Sector Boston (“CG Sector Boston”) also responded to oversee the pollution removal efforts of Tishman.⁴ A dive survey of the vessel identified the source of the discharge as residual oil present in the boilers or fuel lines that fed the boilers on-board the STUYVESANT.⁵ Due to the condition of the STUYVESANT and the consistency of the oil, a decision was made to remove the STUYVESANT in its entirety to mitigate any further threat of oil pollution into Boston Harbor.⁶

On May 5, 2017, CG Sector Boston personnel confirmed that the STUYVESANT had been successfully removed from the Boston Harbor and no further instances of oil discharge were observed originating from the site.⁷ Tishman incurred all of the costs associated with the response and submitted a claim to Great American Insurance Company (“GAIC”) for reimbursement. GAIC reimbursed 130 Northern Avenue, LLC, and 140 Northern Avenue, LLC, through Tishman⁸ pursuant to the terms of their insurance policy excluding a \$50,000 deductible. As a result, this claim was submitted by GAIC as well as 130 Northern Avenue, LLC and 140 Northern Avenue, LLC, through Tishman, (collectively referred to as “Claimants”) requesting compensation for removal costs that exceed the applicable limit of liability. Claimants sought a sum of \$572,071.94.⁹ The NPFC thoroughly reviewed all documentation submitted with the

¹ Haley Aldrich Incident Response Action Plan (IRA) dated April 13, 2017, page 3. Haley Aldrich is a Licensed Site Professional hired by Pier 4 Marina Owner, LLC, c/o Tishman Speyer to oversee the response and submit the IRA to the Massachusetts Department of Environmental Protection.

² Claim submission dated August 7, 2019. *See also* CG POLREP 1 DTG R231605Z Feb 17.

³ National Response Center Report #1171066, reported on February 14, 2017 by Haley Aldrich, on behalf of Tishman Speyer.

⁴ CG POLREP 1 DTG R231605Z Feb 17.

⁵ Haley Aldrich Incident Response Action Plan (IRA) Completion Report dated December 21, 2017, page 2.

⁶ CG POLREP 2 DTG R241511Z Feb 17.

⁷ CG POLREP 8 DTG R051448Z May 17.

⁸ GAIC wire transfer to 130 Northern Avenue, LLC, through Tishman Speyer dated April 26, 2018.

⁹ The Claimants originally asserted that the S.S. PETER STUYVESANT was a 1,121 gross ton non-tank vessel and applied a limit of liability rate of \$950.00 per gross ton to calculate their limit of liability of \$1,064,950.00 (1,121 x 950.00). Removing that limit of liability amount from the costs incurred by the Claimants resulted in a sum certain of \$1,442,999.09 (\$2,507,949.09 - \$1,064,950.00). *See* claim submission dated August 7, 2019, page 4. The

claim, analyzed the applicable law and regulations, and concluded that Claimants demonstrated an entitlement to limited liability. Additionally, the NPFC determined that removal costs totaling \$57,282.35 in removal costs in excess of the limit of liability were compensable and offered this amount as full and final compensation of this claim¹⁰ under the Oil Pollution Act (OPA).¹¹ On September 21, 2020, the NPFC received the Claimants' timely request for reconsideration.¹²

Requests for reconsideration are considered *de novo*. The NPFC has thoroughly reviewed the original claim, the request for reconsideration, all information provided by the Claimants, information it obtained independently, and the applicable law and regulations. Upon reconsideration, the NPFC concludes that the facts established within the NPFC's initial determination as well as information provided by the Claimants within their request for reconsideration support the Claimants' request for reconsideration and offers to reimburse the Claimants \$104,308.40 for uncompensated removal costs incurred as a result of the oil spill incident, as outlined in the original determination and below.

I. CLAIM HISTORY:

On August 7, 2019, the Claimants presented a claim for entitlement to limited liability to the NPFC for \$572,071.94.¹³ The NPFC thoroughly reviewed the original claim, all information provided by the Claimants or obtained independently, the relevant statutes and regulations, and ultimately determined that \$57,282.35 of the \$572,071.94 was compensable and denied the remainder of the claimed costs.¹⁴ The NPFC's initial determination is hereby incorporated by reference.

On September 21, 2020, the NPFC received the Claimants' timely request for reconsideration.¹⁵

Claimants subsequently revised their sum certain to \$1,400,221.94 (\$2,465,171.94 - \$1,064,950.00) after identifying computation errors contained within their claimed removal costs. *See*, letter from Claimants to the NPFC dated February 12, 2020, page 1. Later, the Claimants acknowledged that the STUYVESANT was a 1721 gross ton non-tank vessel and the limit of liability rate on February 14, 2017, was \$1,100.00 which resulted in an applicable limit of liability of \$1,893,100.00 (1721 GT x \$1,100.00) and resulted in a revised sum certain totaling \$572,071.94 (\$2,465,171.94 - \$1,893,100.00). *See*, email from Claimants to the NPFC dated June 8, 2020.

¹⁰ 33 CFR 136.115.

¹¹ 33 U.S.C. § 2703(a) and 33 U.S.C. § 2704(a).

¹² Letter from Claimants to the NPFC dated September 21, 2020, requesting reconsideration of the NPFC's determination dated August 27, 2020.

¹³ The Claimants originally asserted that the S.S. PETER STUYVESANT was a 1,121 gross ton non-tank vessel and applied a limit of liability rate of \$950.00 per gross ton to calculate their limit of liability of \$1,064,950.00 (1,121 x 950.00). Removing that limit of liability amount from the costs incurred by the Claimants resulted in a sum certain of \$1,442,999.09 (\$2,507,949.09 - \$1,064,950.00). *See* claim submission dated August 7, 2019, page 4. The Claimants subsequently revised their sum certain to \$1,400,221.94 (\$2,465,171.94 - \$1,064,950.00) after identifying computation errors contained within their claimed removal costs. *See*, letter from Claimants to the NPFC dated February 12, 2020, page 1. Later, the Claimants acknowledged that the STUYVESANT was a 1721 gross ton non-tank vessel and the limit of liability rate on February 14, 2017, was \$1,100.00 which resulted in an applicable limit of liability of \$1,893,100.00 (1721 GT x \$1,100.00) and resulted in a revised sum certain totaling \$572,071.94 (\$2,465,171.94 - \$1,893,100.00). *See*, email from Claimants to the NPFC dated June 8, 2020.

¹⁴ NPFC determination issued to Great American Insurance Group (GAIC) / Tishman Speyer Properties dated August 27, 2020.

¹⁵ Letter from Claimants to the NPFC dated September 21, 2020, requesting reconsideration of the NPFC's determination dated August 27, 2020.

II. REQUEST FOR RECONSIDERATION

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim. The claimant has the burden of providing all evidence, information, and documentation deemed necessary by NPFC to support the claim. When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of its request for reconsideration. The written decision by the NPFC is final.

On September 21, 2020, the Claimants timely submitted a request for reconsideration and provided information in support of costs denied by the NPFC totaling \$55,659.09.¹⁶ The NPFC reviewed the information and requested clarification of certain costs contained within the request.¹⁷ The Claimants re-evaluated their costs and revised their request for reconsideration of costs denied to \$48,044.53 after identifying mistakes within their request.¹⁸ The Claimants also identified \$6,680.08 in costs that they described as costs incurred by one of their contractors in response to the oil spill that were not included as uncompensated pollution removal costs within their original claim submission. As a result, the Claimants revised their sum certain to \$578,752.02 to include these additional uncompensated pollution removal costs.¹⁹ The NPFC determined that it will consider these additional costs. The consideration of removal costs previously denied and submitted for reconsideration as well as the removal costs presented as new are addressed below.

III. ANALYSIS ON REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim in accordance with our governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration. As the claimants have met their burden by providing their factual or legal grounds for relief along with cost documentation to better support costs previously denied costs, the NPFC provides its analysis of costs below.²⁰

NPFC Master Cost Summary Spreadsheet (SS) Tab 4 – The Claimants requested reconsideration of lines 10 -14 in the amount of \$4,442.80. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$4,442.80 as compensation for costs incurred.

¹⁶ Letter from Claimants to the NPFC dated September 21, 2020, requesting reconsideration of the NPFC's determination dated August 27, 2020.

¹⁷ Email from the NPFC to the Claimants dated October 20, 2020.

¹⁸ Email from the Claimants to the NPFC dated October 20, 2020.

¹⁹ Letter from the Claimants to the NPFC dated October 27, 2020. The claimants provided a spreadsheet of denied costs in which they were seeking reconsideration. Specifically, the denied costs were grouped by tabs that corresponded directly with the tabs contained within the NPFC's master cost summary spreadsheet.

²⁰ This analysis follows the format of the Claimants' request for reconsideration and the NPFC's master cost summary spreadsheet (NPFC SS).

NPFC SS Tab 5 – The Claimants requested reconsideration of line 17 in the amount of \$760.24. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$760.24 as compensation for costs incurred.

NPFC SS Tab 11 – The Claimants requested reconsideration of lines 117 – 120 in the amount of \$1,024.00. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$1,024.00 as compensation for costs incurred.

NPFC SS Tab 20 – The Claimants requested reconsideration of lines 11-14, 28-31, 43-46, and 59-63 in the amount of \$15,580.91. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$15,580.91 as compensation for costs incurred.

NPFC SS Tab 22 – The Claimants requested reconsideration of lines 15 and 35 in the amount of \$380.00. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$380.00 as compensation for costs incurred.

NPFC SS Tab 24 – The Claimants requested reconsideration of line 157 in the amount of \$2,061.91. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$2,061.91 as compensation for costs incurred.

NPFC SS Tab 25 – The Claimants requested reconsideration of line 112 in the amount of \$30.00. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$30.00 as compensation for costs incurred.

NPFC SS Tab 29 – The Claimants requested reconsideration of lines 30, 46, and 47 in the amount of \$1,019.96. Upon review, the NPFC agrees that the costs as presented are OPA compensable and offers \$1,019.96 as compensation for costs incurred.

NPFC SS Tab 31 – The Claimants requested reconsideration of lines 3-13, 40-49, 100, 104-110 and 158-162 in the amount of \$7,789.83. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 3-13, 40-49, 100, and 104-110 are OPA compensable and offers \$1,401.00 as compensation for costs incurred. The NPFC also finds that \$5,973.35 of \$6,388.83 for lines 158-162 are OPA compensable and offers compensation in that amount for costs incurred. The amount denied totals \$415.48 and consists of \$2.30 for line 158, \$412.64 for line 161 and the claimant had a \$0.54 math error which is also denied. Denied costs are not supported by the record with itemized receipts.

NPFC SS Tab 32 – The Claimants requested reconsideration of lines 3-4, 21-23, 28 and 52-54 in the amount of \$462.84. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 3-4, 21-23, and 28 are OPA compensable and offers \$273.00 as compensation for costs incurred. The NPFC also finds that \$90.99 of \$189.84 for lines 52-54 are OPA compensable and offers compensation in that amount for costs incurred. The amount denied totals \$98.85 as the costs are not supported by the record with itemized receipts.

NPFC SS Tab 33 – The Claimants requested reconsideration of lines 17-43, 67-78, 94 and 96 in the amount of \$5,716.15. After receiving the complete rate sheet pricing with

increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 17-43 and 67-78 are OPA compensable and offers \$5,555.50 as compensation for costs incurred. The NPFC also finds that \$129.15 of \$160.65 for lines 94 and 96 are OPA compensable and offers compensation in that amount for costs incurred. The amount denied totals \$31.50 for lines 94 and 96 as the costs are not supported by the record with itemized receipts.

NPFC SS Tab 34 – The Claimants requested reconsideration of lines 3, 15-33, 62-64, 69, and 71-79 in the amount of \$2,244.97. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 3, 15-33, and 62-64 are OPA compensable and offers \$1,915.00 as compensation for costs incurred. The NPFC denies all costs for lines 69 and 71-79 in the amount of \$329.97 as the costs are not supported by the record with itemized receipts.

NPFC SS Tab 35 - The Claimants requested reconsideration of lines 6-13 and 20-21 in the amount of \$790.25. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 6-13 are OPA compensable and offers \$616.00 as compensation for costs incurred. The NPFC also finds that \$37.80 of \$174.25 requested for lines 20-21 are OPA compensable and offers compensation in that amount for costs incurred. The amount denied totals \$136.45 for line 20 as no itemized receipt was provided.

NPFC SS Tab 36 - The Claimants requested reconsideration of lines 4-16, 25-33, 37, and 39 in the amount of \$1,941.67. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 4-16 and 25-33 are OPA compensable and offers \$1,925.50 as compensation for costs incurred. The NPFC also finds that \$9.94 for line 37 is OPA compensable and offers compensation in that amount for costs incurred. The amount denied totals \$6.23 for line 39 as no itemized receipt was provided.

NPFC SS Tab 37 - The Claimants requested reconsideration of lines 9-30 and 48-50 in the amount of \$1,758.00. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 9-30 and 48-50 are OPA compensable and offers \$1,758.00 as compensation for costs incurred.

NPFC SS Tab 38 - The Claimants requested reconsideration of lines 5-14 and 28 in the amount of \$1,160.00. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 5-14 and 28 are OPA compensable and offers \$1,160.00 as compensation for costs incurred.

NPFC SS Tab 39 - The Claimants requested reconsideration of lines 4-10 and 24 in the amount of \$446.00. After receiving the complete rate sheet pricing with increased labor rates provided by the Claimants within their request for reconsideration, the NPFC agrees that the costs as presented for lines 4-10 and 24 are OPA compensable and offers \$446.00 as compensation for costs incurred.

NPFC Tab 40 - The Claimants requested reconsideration of lines 10-16 and 31-33 in the amount of \$435.00. After receiving the complete rate sheet pricing with increased labor rates, the NPFC agrees that the costs as presented for lines 10-16 and 31-33 are OPA compensable and offers \$435.00 as compensation for costs incurred.

Costs presented as new - Within the Claimants' request for reconsideration, the Claimants identified additional uncompensated removal costs incurred by ACD for dates worked from 2/24/17 – 2/28/17 in the amount of \$6,680.08 that were not included within their original claim submission. The Claimants submitted these costs to the NPFC in support of this invoice and amended their sum certain from \$572,071.94 to \$578,752.02 to include the addition of these removal costs.²¹ The additional removal costs were reviewed by the NPFC and approved up to the amount of reimbursement requested by the Claimants within their request for reconsideration for the costs incurred under ACD invoice for dates worked from 2/24/17 – 2/28/17.²²

IV. CONCLUSION:

Upon reconsideration, the NPFC reviewed the revised costs submitted by the Claimants totaling \$48,044.53; and offers reimbursement for costs totaling \$47,026.05 and denies costs totaling \$1,018.48. When added to the NPFC's original offer of \$57,282.35, the NPFC's offer on reconsideration totals \$104,308.40. As a result, the NPFC offers \$104,308.40 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 919031-0001.²³

This determination is a settlement offer;²⁴ the claimants have 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁵ The NPFC reserves the right to revoke a

²¹ Letter from the Claimants to the NPFC dated October 27, 2020.

²² Within their original claim submission, the Claimants provided an Atlantic Coast Dismantling (ACD) invoice for dates worked from 2/24/17 – 2/28/17 totaling \$113,908.98 and claimed \$87,988.84 as uncompensated pollution removal costs. When adjudicating these costs, the NPFC approved \$75,885.93 and denied \$12,102.91 within their original determination. Within the Claimants' request for reconsideration, the Claimants requested reimbursement of costs totaling \$15,580.91 for this invoice and provided costs documentation in support that request. As the amount requested in reconsideration exceeded the amount previously denied, the NPFC contacted the Claimants for clarification. Upon review, the Claimants identified additional removal costs incurred by ACD for dates worked from 2/24/17 – 2/28/17 in the amount of \$6,680.08 that weren't included within their original claim submission. These additional removal costs were added to the Claimants' sum certain and increased the amount incurred for the ACD invoice from \$87,988.84 to \$94,668.92.

As discussed above, the NPFC offered the Claimants \$75,885.93 for the costs incurred for the ACD invoice. Adding the \$75,885.93 previously offered by the NPFC to the \$15,580.91 requested by the Claimants within their request for reconsideration totals \$91,466.84. However, the Claimants proved that they incurred a total of \$94,466.84 for this invoice. The difference between \$94,466.84 for costs incurred and \$91,466.84 in costs requested by the Claimants within their request for reconsideration is \$3,202.08. As presented, the \$3,202.08 in costs are not eligible to the Claimants for reimbursement as the Claimants didn't request reimbursement of these costs within their request for reconsideration. The NPFC contacted the Claimants and explained their inability to consider these costs. The NPFC also asked the Claimants if they wanted to include these costs and amend the amount requested within their request for reconsideration from \$105,326.88 to \$108,526.96 (\$105,326.88 + \$3,202.08). The Claimants declined. See, email from the Claimants to the NPFC dated October 28, 2020.

²³ See NPFC Summary of Costs spread sheet dated November 4, 2020.

²⁴ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also

settlement offer at any time prior to acceptance.²⁶ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

AMOUNT APPROVED: \$104,308.40

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Claim Supervisor:	(b), (b) (6)
Date of Supervisor's review:	<i>November 10, 2020</i>
Supervisor Action:	<i>Revised offer on reconsideration approved</i>

constitutes an agreement by the claimant to assign the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR 136.115(a).

²⁵ 33 CFR 136.115(b).

²⁶ *Id.*