

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

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|--------------------------|----------------------------------|
| <b>Claim Number:</b>     | UCGPH23006-URC001                |
| <b>Claimant:</b>         | Norton Lilly International, Inc. |
| <b>Type of Claimant:</b> | Corporate                        |
| <b>Type of Claim:</b>    | Removal Costs                    |
| <b>Claim Manager:</b>    | (b) (6)                          |
| <b>Amount Requested:</b> | \$96,725.60                      |
| <b>Action Taken:</b>     | Denial                           |

### **EXECUTIVE SUMMARY:**

On May 23, 20223 at approximately 6:00 pm local time, the United States Coast Guard's ("USCG") National Response Center (NRC) was notified by USCG Forces Micronesia/Sector Guam that a vessel broke free of its moorings and ran aground in the vicinity of Piti Channel, Guam.<sup>2</sup> The M/V Voyager was carrying 7200 gallons of fuel and oil mixture on board.<sup>3</sup> Norton Lily International, Inc. ("NLI" or "Claimant") asserts that the M/V Voyager was abandoned by its owner and/or operator and during Typhoon Mawar, was grounded near Piti Channel, Guam.<sup>4</sup> NLI is an international shipping agency who worked with the Port Authority of Guam and the USCG to mitigate the possible threat of oil discharge and pollution by the vessel.<sup>5</sup>

USCG Forces Micronesia/Sector Guam is the Federal On-Scene Coordinator (FOSC) for the incident. USCG Forces Micronesia/Sector Guam responded to this incident and after failed attempts to contact the owner, opened the Oil Spill Liability Trust Fund ("OSLTF" or "Fund") via Federal Project Number H23006 in order to mitigate the pollution threat.<sup>6</sup>

OPA defines the Responsible Party (RP) for a discharge from a vessel as "any person owning, operating, or demise chartering the vessel."<sup>7</sup> Ms. (b) (6) ("Ms. (b) (6)" or "RP"), is the owner and operator of the vessel and is responsible for the oil spill, and identified as the Responsible Party (RP)<sup>8</sup> as defined by the Oil Pollution Act of 1990.<sup>9</sup> The NPFC issued an RP

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<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant's rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant's rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

<sup>2</sup> National Response Center (NRC) Report # 1375028 dated May 25, 2023.

<sup>3</sup> NRC Report # 1375028 dated May 25, 2023.

<sup>4</sup> Original Claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024, p.1 of 12.

<sup>5</sup> *Id.*

<sup>6</sup> United States Coast Guard Situation Report SITREP POL 1 dated September 16, 2023.

<sup>7</sup> 33 U.S.C. § 2701(32)(A).

<sup>8</sup> USCG Notice of Federal Interest (NOFI) issued to Ms. (b) (6) c/o Norton Lilly International dated November 3, 2021.

<sup>9</sup> 33 U.S.C. § 2701(32)(A).

Notification Letter to (b) (6) dated February 21, 2024, informing them that the NPFC has received a claim from NLI.<sup>10</sup>

NLI via its authorized legal representative, Phelps, Dunbar LLP,<sup>11</sup> presented its claim for \$96,725.60 in uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$96,725.60 on February 14, 2024.<sup>12</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 the claim must be denied.

## **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

### ***Incident***

On May 23, 2022<sup>3</sup> at approximately 6:00 pm local time, , the United States Coast Guard's ("USCG") National Response Center (NRC) was notified by USCG Forces Micronesia/Sector Guam that a vessel broke free of its moorings and ran aground in the vicinity of Piti Channel, Guam.<sup>13</sup> The M/V Voyager was carrying 7200 gallons of fuel and oil mixture on board.<sup>14</sup> Norton Lily International, Inc. ("NLI" or "Claimant") asserts that the M/V Voyager was abandoned by its owner and/or operator and during Typhoon Mawar, was grounded near Piti Channel, Guam.<sup>15</sup> NLI is an international shipping agency who worked with the Port Authority of Guam and the USCG to mitigate the possible threat of oil discharge and pollution by the vessel.<sup>16</sup>

### ***Responsible Party***

OPA defines the Responsible Party (RP) for a discharge from a vessel as "any person owning, operating, or demise chartering the vessel."<sup>17</sup> Ms. (b) (6) ("Ms. (b) (6)" or "RP"), is the owner and operator of the vessel and is responsible for the oil spill, and identified as the Responsible Party (RP)<sup>18</sup> as defined by the Oil Pollution Act of 1990.<sup>19</sup> The NPFC issued an RP Notification Letter to (b) (6) dated February 21, 2024, informing her that the NPFC has received a claim from NLI.<sup>20</sup>

### ***Recovery Operations***

On May 25, 2023, the FOSC hired T&T Marine Salvage to remove fuel and oil from vessel, mitigate any other pollution issues, and un-obstruct the waterway.<sup>21</sup> On July 10, 2023, Trident

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<sup>10</sup> Responsible Party Notification Letter dated February 21, 2024.

<sup>11</sup> See, Authorization to Represent from Norton Lily International on behalf of Phelps Dunbar LLP dated March 8, 2024.

<sup>12</sup> Original Claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024.

<sup>13</sup> National Response Center (NRC) Report # 1375028 dated May 25, 2023.

<sup>14</sup> NRC Report # 1375028 dated May 25, 2023.

<sup>15</sup> Original Claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024, p.1 of 12.

<sup>16</sup> *Id.*

<sup>17</sup> 33 U.S.C. § 2701(32)(A).

<sup>18</sup> USCG Notice of Federal Interest (NOFI) issued to Ms. (b) (6) c/o Norton Lily International dated November 3, 2021.

<sup>19</sup> 33 U.S.C. § 2701(32)(A).

<sup>20</sup> Responsible Party Notification Letter dated February 21, 2024.

<sup>21</sup> United States Coast Guard Situation Report SITREP POL 1 dated September 16, 2023.

Cross LLC performed a dive survey at the request of NLI to assess the condition of the vessel.<sup>22</sup> NLI also hired Oil Spill Response Operations Co., LLC (“OSROCO”) to deploy containment boom around the vessel once potential release of oil was identified.<sup>23</sup>

NLI also hired (b) (6) dba Gen-X Sports via invoice # 2008 in the amount of \$300.00 for providing shuttle boat services to the M/V Voyager dated June 19, 2023 and invoice # 2010 in the amount of \$200.00 for providing shuttle boat services to the M/V Voyager dated July 8, 2023 for the dive survey that was performed on or about July 7, 2023.<sup>24</sup>

The FOSC confirmed that NLI’s response actions were completed on September 18, 2023 when the USCG assumed response activities.<sup>25</sup>

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

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>26</sup> require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.<sup>27</sup>

By December 18, 2023, NLI had satisfied its presentment requirements under OPA.<sup>28</sup> The invoices were inclusive of dive labor and dive equipment and photographic equipment, response personnel, equipment and materials, administrative fees, and shuttle services totaling \$96,725.60.<sup>29</sup> The RP has not paid any of the invoices subject of this claim.

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

Having not received payment from the RP after ninety days, NLI submitted its claim to the NPFC for \$96,725.60 on February 14, 2024. In its claim submission to the NPFC, NLI provided an executed OSLTF Claim Form; Supplemental Witness Information; OSROCO, LLC Invoices,

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<sup>22</sup> Trident Cross LLC Dive Survey dated July 12, 2023 provided by NLI via email on April 12, 2024. *See also*, Norton Lilly International, Inc original claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024.

<sup>23</sup> Norton Lilly International, Inc original claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024, OSROCO, LLC Invoice 04483 dated August 18, 2023. *See*, OSROCO invoice # 04433 in the amount of \$47,838.95 dated July 8, 2023; *See also*, OSROCO invoice # 04483 in the amount of \$44,386.65 dated August 18, 2023, respectively. P 6 & 8 of 12.

<sup>24</sup> Norton Lilly International, Inc original claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024. *See*, Gen-X Sports invoices 2008 and 2010 dated June 19, 2023 and July 8, 2023, respectively. P 10-11 of 12.

<sup>25</sup> *See*, Email from USCG FOSC to NPFC Re Norton Lilly International Inc. actions dated April 9, 2024.

<sup>26</sup> 33 U.S.C. § 2701 *et seq.*

<sup>27</sup> 33 CFR 136.103.

<sup>28</sup> NLI submitted four invoices to the RP. One on June 19, 2023 via OSROCO invoice # 04433 in the amount of \$47,838.95 dated July 8, 2023; Trident Cross LLC invoice 016-2023 dated July 12, 2023 in the amount of \$4,000.00; OSROCO invoice # 04483 in the amount of \$44,386.65 dated August 18, 2023; Gen-X Sports invoice # 2008 dated June 19, 2023 in the amount of \$300.00 Gen-X Sports invoice # 2010 dated July 8, 2023 in the amount \$200.00. These are the costs that are subject of this claim in the total amount of \$96,725.60.

<sup>29</sup> Norton Lilly International, Inc original claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024

(b) (6) DBA Gen-X Sports Invoices and Trident Cross LLC Invoice.<sup>30</sup> The NPFC requested additional information on multiple occasions and NLI provided the information available to them.<sup>31</sup> The RP did not settle the claim within 90 days from presentment.<sup>32</sup> As such, the NPFC adjudicated the claim.

## **VI. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>33</sup> As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

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>34</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>35</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 makes its determination based on the preponderance of the credible evidence.

## **V. DISCUSSION:**

An RP 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>36</sup> An RP's liability is strict, joint, and several.<sup>37</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 proof unfairly favoring those responsible for the spills."<sup>38</sup> OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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

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<sup>30</sup> Norton Lilly International, Inc original claim submission dated December 28, 2023, and received by the NPFC on February 14, 2024.

<sup>31</sup> See, Additional information provided by the Claimant dated April 12, 2024, May 22, 2024 and June 5, 2024.

<sup>32</sup> 33 CFR 136.103(c)(2).

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

<sup>34</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>35</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>36</sup> 33 U.S.C. § 2702(a).

<sup>37</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>38</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).

threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.”<sup>39</sup> The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”<sup>40</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>41</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>42</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>43</sup>

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.<sup>44</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>45</sup>

The NPFC analyzed each of these factors and determined the costs incurred by Claimant and submitted herein cannot be adjudicated due to the lack of supporting documentation.

Upon adjudication of the costs, the NPFC has determined that this claim must be denied for the following reasons:

The NPFC requested additional information regarding the contractor’s daily activity reports, breakdown of costs and rate schedule(s) or contractual agreements to pricing for services rendered, since the information NLI provided with the claim submission did not provide enough information to adjudicate the costs claimed.

In response to the NPFC’s request for supporting documentation, NLI stated the contractor(s) did not provide the documentation to them.<sup>46</sup> NLI, in turn, provided the NPFC generic invoice detail breakdowns however the generic responses are not based on detailed documentation obtained from the contractors that support accurate information needed to identify and adjudicate

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<sup>39</sup> 33 U.S.C. § 2701(31).

<sup>40</sup> 33 U.S.C. § 2701(30).

<sup>41</sup> *See generally*, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>42</sup> 33 CFR Part 136.

<sup>43</sup> 33 CFR 136.105.

<sup>44</sup> Email from USCG FOSC to NPFC Re Norton Lilly International Inc. actions dated April 8, 2024 and April 9, 2024 acknowledging the actions performed by NLI and its contractors, on behalf of NLI, were necessary to prevent, minimize, or mitigate the effects of the incident and were consistent with the National Contingency Plan.

<sup>45</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>46</sup> NLI Response to Request for Invoice Details included in email Re Additional Information Request Response dated May 22, 2024.

the personnel and equipment costs as invoiced. NLI was also unable to obtain and provide detailed daily work reports that describe the actions performed by date which the NPFC requires to understand the daily activities performed by the contractor personnel and support the costs invoiced.

For the following invoices, OSROCO, LLC Invoice # 4433 and 4488, Gen-X Sports Invoice #2008 and 2010, and Trident Cross LLC Invoice # 016-2023, there is not sufficient information to adjudicate the costs claimed. Additionally, NLI's claim submission does not describe the cost basis for each cost claimed or specification on who ordered the services provided and under whose oversight and direction.

**Denied Costs: \$96,725.60**

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Norton Lilly's International Inc. request for uncompensated removal costs is denied.

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|------------------------------|------------------------|
| Claim Supervisor:            | (b) (6)                |
| Date of Supervisor's review: | 7/22/24                |
| Supervisor Action:           | <i>Denial Approved</i> |
| Supervisor's Comments:       |                        |