

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/29/2008
Claim Number	: P05005-150
Claimant	: The Marwide Shipping Company, LTD
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$2,197.55

**BACKGROUND:**

**Oil Spill Incident:** On 26 November 2004, the Cypriot-flagged tank vessel ATHOS I struck a submerged anchor as it approached the CITGO Asphalt Refining Company terminal at Paulsboro, New Jersey. The anchor punctured the hull and caused the release of Venezuelan crude oil into the Delaware River. The FOSC issued a Notice of Federal Interest designating the vessel's owner, Frescati Shipping Company Limited, as the Responsible Party (RP). The RP denied all claims under the Oil Pollution Act of 1990 (OPA). The NPFC advertised for claims relating to the oil spill, so claimants do not have to submit claims to the RP prior to submitting them to the National Pollution Funds Center (NPFC).

**Claimant:** The Marwide Shipping Company, Ltd. (Marwide) is the owner of the M/V MAKRA which it time-chartered to STX Pan Ocean Co. Ltd. (STX), under a charter party executed on September 2, 2004. The vessel was operating under this time charter and unloading cargo at the Camden Marine Terminal at the time of the oil spill.

**Claim Description:** The claimant alleges that, as a result of the ATHOS I oil spill, the MAKRA was oiled and required cleaning. After the first cleaning, the master felt the vessel was not sufficiently cleaned. To prove it to the FOSC, the claimant hired a surveyor to document the remaining contamination of the hull. The surveyor's fee is the subject of this claim.

**Related Claim:** The claimant has a lost profits claim (P05005-151) pending on reconsideration with the NPFC.

**MAKRA Facts:** November 26, 2004-December 9, 2004 - Delaware River port call  
The MAKRA arrived in the Delaware Bay at 1830 on November 26, 2004 and docked in port at Camden, NJ after 0100 on November 27, 2004, not long after the ATHOS I spill occurred, affecting the area where the vessel was docked. The vessel remained docked in Camden while it discharged its cargo of steel through November 30, 2004, when it would have been ready to leave port. (See MAKRA deck logs). At that time, the Coast Guard had ordered that all vessels be inspected and cleaned before being allowed to leave port. On November 30, the USCG vessel evaluation team inspected the vessel and determined that decontamination was necessary. (See Barwil Statement of Facts/Port Log for Camden, email correspondence between STX and Barwil, and USCG Sitreps). The Coast Guard maintained a list of all vessels delayed by the spill. The MAKRA appeared on the list. As evidenced by the Coast Guard's Vessel Inspection/Decontamination Priority List and Vessel Decon List, the vessel was cleaned on December 4, 2004 at which time it was cleared to sail. However, the master observed that oil still clung to the hull and needed further cleaning. After the vessel's Protection and Indemnity Surveyor photographed the hull and presented the pictures to the USCG, the CG agreed that further cleaning was necessary, rescinded its clearance decision and returned the vessel to the decontamination list. The vessel was cleaned again on December 8<sup>th</sup>. The vessel was not

completely and satisfactorily cleaned until 1435 on December 9, 2004 (See Barwil Statement of Facts for Camden). The vessel left port at 1515 on the same day.

**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].

**DETERMINATION OF LOSS:**

The claimant has met its burden of providing evidence that its vessel was contaminated by the oil spill, that it required two cleanings, and that a surveyor’s services were required to ensure the vessel was completely decontaminated. The NPFC obtained emails between the vessel charterer and the port agent, which discuss the surveyor and how the pictures convinced the FOSC to rescind his decision that the vessel was clean and clear to sail. Based on the photographs the FOSC required a second cleaning of the vessel. The claimant provided copies of the photographs, a statement of facts/port log, and the surveyor’s invoice to show the necessity of this expense as a removal cost. However, the claimant has not provided proof that it paid the surveyor for his services. The NPFC requested this proof by letter dated February 19, 2008, by email July 11, 2008, by email August 12, 2008, and by email September 23, 2008. The claimant has not yet provided such documentation. Additionally, the NPFC contacted Alla Tsiring of Martin, Ottaway, Van Hemmen & Dolan, Inc. (the surveyor company). Ms. Tsiring stated that their firm had not been paid for the services provided for the MAKRA, which are the subject of this claim. The claim must be denied for this reason.

**AMOUNT: \$0.00**

**DETERMINATION:**

The claimant failed to provide proof that it paid for this removal cost. Therefore, the claim must be denied.

Claim Supervisor: <span style="background-color: black; color: black;">[REDACTED]</span>
Date of Supervisor’s review:
Supervisor Action:
Supervisor’s Comments: