

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/17/2010
Claim Number	: 910068-001
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Claim Manager	: [REDACTED]
Amount Requested	: \$1,294.00

FACTS:

On morning of September 19, 2009, at approximately 7:00 AM and while traveling to an offshore fishing spot on the Gulf of Mexico and off the coast of Louisiana, a navigable water of the US, claimant unexpectedly ran across an oil slick that stained his boat's gel coat.

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].

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.

Under 33 CFR 136.213 a claim for injury to, or economic loss resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.

Under 33 CFR 136.215 a claimant must establish an ownership or leasehold interest in the property, that the property was injured or destroyed, the cost of repair or replacement; and the value of the property both before and after injury occurred.

Under 33 CFR 136.217 the amount of compensation allowable for damaged property is the lesser of:

- actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- the difference between value of property before and after the damage; or
- the replacement value.

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.”

DETERMINATION OF LOSS:

The claim was received in time and within three years from the time the damage was discoverable and claimant did present it to whom he believed to be the responsible party (RP) as required by the claim regulations (33 CFR 136) and was denied. Claimant asserts in its claim submission that it is not in litigation to recover the costs subject of this claim and is not planning on submitting to its insurer to recover the claimed loss.

The damage claimed is the result of stains left by the oil on claimant’s boat after unintentionally running through an oil slick on his way to a fishing spot offshore from the Louisiana coast. Though claimant attempted to mitigate the damage upon returning to shore, attempts to remove the stains were unsuccessful and required the employment of a detailer to repair the damage.

Claimant is the owner of the damaged property as evidenced by the property title. Digital pictures submitted demonstrate stains on the hull around the waterline. An estimate from The Crew Detail LLC was submitted to quantify the damage to the property. Claim manager contacted¹ the detailer and got additional information that helped to further understand the magnitude of the damage and what it would take to repair it.

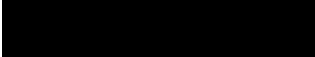
The amount claimed, which is documented with an estimate, breaks down as follows:

¹ Phonecall btwn [REDACTED] of 02/17/10 @ 09:30.

- Wash:	\$104.00
- Topside (Wax):	\$182.00
- Lowerside ² :	\$546.00
- Supplies:	\$162.00
Transport ³	<u>\$300.00</u>
Total	\$1,294.00

I have determined that the costs for uncompensated damages of \$1,294.00 are reasonable and appropriate and the claim should be paid as presented. This recommendation is based on an analysis of the supporting documentation provided by the claimant and additional research conducted by claim manager.

DETERMINED AMOUNT: \$1,294.00

Claim Supervisor:	
Date of Supervisor's Review:	
Supervisor Action:	
Supervisor's Comments:	

² Compound, polish and wax of hull – waterline area.

³ Two (2) round trips of 142 miles each to pick up and drop off boat – Hammond, LA – Venice, LA at \$150.00 per round trip.