CLAIM SUMMARY / DETERMINATION FORM

Date	:	12/03/2009
Claim Number	:	N08057-043
Claimant	:	Thoresen Shipping Singapore Pte. Ltd.
Type of Claimant	:	Corporate
Type of Claim	:	Removal Costs
Claim Manager	:	[redacted]
Amount Requested	:	$215,412.05

I. Facts

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States. Approximately 282,828 gallons oil[1] were released into the Mississippi River and the resulting spill response, coordinated by the FOSC Unified Command, initially closed the river to vessel traffic and later, when reopened, managed traffic.

II. Responsible Party

American Commercial Lines LLC (ACL), the Responsible Party (RP), owned the barge at the time of the incident and is a responsible party under the Oil Pollution Act.

III. The Claimant and the Claim

TBS Adjusting, Inc. (TBS) has submitted a claim into the National Pollution Funds Center (NPFC) for their client, Thoresen Shipping Singapore Pte. Ltd (Thoresen). At the time of the collision, the M/V Blue Princess being chartered by Thorsen[2] and was in turn sub-chartered to Alfred C. Toepfer GmbH (Toepfer) for a single voyage.[3] The vessel completed cargo operations for this sub-charter on July 25, 2008 at approximately 02:45 AM.[4] The M/V Blue Princess was scheduled to depart New Orleans; however, because the USCG ordered the vessel to shift up river to the Bonnet Carre Anchorage due to the oil spill, they remained at anchorage until the vessel was cleared to sail on July 28, 2008.[5]

The charter agreement between the two parties (Thoresen and Toepfer) was set at $67,500.00 per day[6]. The M/V Princess was taken off-hire by Toepfer for a total of 2.869 days. Thoresen is claiming a direct income loss of $193,657.50 for this time period. Additionally, during these 2.869 days, Thoresen claims the vessel consumed 5.2 metric tons of MDO fuel, increasing costs by $6,728.80. Thoresen is also claiming additional pilots, tugs and launch fees totaled $15,025.75. When the income loss, increased bunkers and additional expenses are combined, Thoresen's claim totals $215,412.05.

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[1] See, House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008
[2] See, Time Charter between Met-pro Shipping Corp and Thoresen Shipping Singapore Pte. Ltd, submitted by TBS Adjusting to the NPFC on 11/24/2009
[3] See, Charter between Thoresen Shipping Singapore Pte. Ltd. and Alfred C. Toepfer International G m.b.H., submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009
[4] See, Port Logs, submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009
[5] See, Port Logs, submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009
[6] See, Section 19, Line 18 of the charter between Thoresen Shipping Singapore Pte. Ltd. and Alfred C. Toepfer International G m.b.H., submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009

IV. APPLICABLE LAW

In general, claims for the removal costs or damages must first be presented to the RP per 33 USC 2713(a). If the RP denies the claim or does not settle the claim within ninety days, the claimant may commence an action in court against the RP or present the claim to the Fund. 33 USC 2713(c)

The uses of the OSTLF are described at 33 USC 2712(a). It provides in relevant part that:

"The Fund shall be available to the President for the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to consistent with the National Contingency Plan or uncompensated damages."

Damages include damages for loss of profits or earnings capacity as a result of loss or destruction or real or personal property or natural resources. 33 USC 2702(b)(E) Damages are further defined to include the costs of assessing the damages. 33 USC 2701(5)

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 USC 2717 (h)(2)

In any case in which the president has paid an amount from the Fund for any removal costs or damages specified under subsection (a), no other claim may be paid from the Fund for the same removal costs or damages. 33 USC 2712 (i)

Congress directed the President to promulgate regulations "for the presentation, filing, processing, settlement, and adjudication of claims…" 33 USC 2713 (e) Those regulations are found at 33 CFR part 136.

Under 33 CFR 136.105(a) & 136.105(e)(6), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a claim presented to the Fund should include, as applicable:

> "the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with the preparation of the claim." 33 CFR 136.105(e)(8)."

With regard to claims for loss profits and impairment of earning capacity, the NPFC must independently determine that the proof criteria in OPA and the implementing regulations, at 33 CFR part 136 are met, including the general provisions of 33 CFR 136.105, and the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231, *et seq.*

Pursuant to the provisions of 33 CFR 136.231, claims for the loss of profits or impairment of earning capacity due to injury to, destruction or, or loss or real or personal property or natural resources may be presented to the Fund by the claimant sustaining the loss or impairment.

"In addition to the requirements of subparts A & B or this part, a claimant must establish the following-

(a) That real or personal property or natural resources have been injured, destroyed, or lost.

(b) That the claimant's income was reduced as a consequence or injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparable figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established." 33 CFR 136.233(a-d)

If a third party claimant or RP is able to establish an entitlement to lost profits, then compensation may be provided from the OSLTF, but the compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for the net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident, all income from alternative employment or business undertaken, potential income from alternative employment or business not undertaken but reasonably available, and saved overhead or normal business expenses not incurred as a result of the incident, and state, local, and federal tax savings. 33 CFR 136.235(a-e)

<u>V. DETERMINATION OF LOSS:</u>

A. *Overview:*

1. The incident involved the discharge and continuing substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. Real or personal property or natural resources have been injured, destroyed, or lost; specifically oil was released into and injured the Mississippi River, a natural resource of the United States.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. The claim was submitted on time.
5. The claimant seeks $215,412.05 in loss of profits, as a consequence of the M/V Blue Princess's additional time, fuel, and additional costs.
6. The claimant asserts that if not for the oil spill the voyage would not have resulted in additional time and fuel.
7. Presentment of costs to the RP was made by TBS, representatives for Thoresen, prior to the submission of the claim. The NPFC also made presentment of costs to the RP for which the RP responded denying responsibility for these costs.
8. In the process of adjudicating this claim, the NPFC Claims Manager collected additional information from the claimant to document what took place at the time of the incident.

B. *Causation:*

The Barge DM 932 oil spill did in fact release significant amounts of oil into and causing damage and injury to the Mississippi River, a natural resource of the United States. The resulting damage, injury and removal response disrupted shipping in and out of the Mississippi

River.[7] At the time of the spill, there were many large vessels in the area that were oiled due to the DM 932 oil spill. The Blue Princess had to stay in port upriver from the dirty zone awaiting USCG clearance to depart, which was granted on July 28, 2008.[8]

The Claimant provided a record of the incident by submitting Voyage Documents and "Statement of Facts," which clearly demonstrates that the Mississippi River had closed and vessel traffic was redirected during the oil removal efforts.[9] Additionally, the USCG provided POLREPS to substantiate that the Mississippi River was either closed to vessel traffic or open to limited traffic during the response period.

C. *Vessel Delay Time:*

Thoresen is claiming that the oil spill directly caused them loss of profits because the Blue Princess was sitting idle and the voyage was increased by 2.869 days. The Blue Princess was delayed as follows:

From 7/25/2008 @ 07:05 hours until 7/28/2008 @ 03:57 hours

The total stoppage time: 2 days, 20 hours and 52 minutes, or approximately 2.869 days.[10]

Per the terms of the sub-charter agreement between Thoresen and Toepfer, Thoresen charged a detention rate of $67,500 a day for the 2.869 days they were detained due to the oil spill. $67,500 daily rate times 2.869days of delay equals a claimed $193,657.50 in loss of revenue due to the oil spill and non-payment by Toepfer.[11]

D. *Increased Bunkers*

The documented delay resulted in an increase in the consumption of bunkers. In their claim submission, TBS correctly shows the breakdown of the amount of bunkers consumed during the idle period:[12]

Times and Dates:		**MDO**
07:05 on 7/25/2008 through		72.2
03:57 on 7/28/2008		-67.0

	Total:	5.2 mt

The top number represents the amount of oil (in tons) that were read at the time of the stoppage, subtracting the amount of oil read at the time that the Blue Princess resumed operations to find the difference.

At a cost of $1294.00/mt for the MDO, the additional bunkers consumed amount to $5,344.22 ($1294.00 x 5.2 mt = $6,728.80).[13]

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[7] Polreps 1-18; documenting river closures and traffic management through 8 August 2008.
[8] See, Port Logs, submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009
[9] See Claim submission forms, submitted by TBS Adjusting to the NPFC on 7/01/2009
[10] See Port Logs, submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009
[11] See, Charter between Thoresen Shipping Singapore Pte. Ltd. and Alfred C. Toepfer International G m.b.H., submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009
[12] See Vessel Log Book extract, in addendum documents, submitted by TBS Adjusting to the NPFC on 10/09/2009
[13] See Cockett Marine Oil fuel invoice, submitted with the claim by TBS Adjusting to the NPFC on 7/07/2009

E. *Additional Costs*

Thoresen is claiming additional costs due to increased pilots, tugs and launch fees.

Pilots:

Increased pilotage fees can be broken down in the following categories:[14]

Draft charges:	$2212.32
Tonnage:	$573.08
Mileage:	$249.35
Transportation:	$332.56
Communications:	$5.57
VTS Surcharge:	$147.65
Pension Surcharge:	$457.72
Total:	$3978.25

Tugs:

Increased tug fees can be broken down into the following categories:[15]

Assistance fees, 2 @ $3600.00	$7200.00
Gross Registered Tons fees:	$1300.00
Fuel Surcharge:	$3570.00
Discount for early payment:	$(2125.00)
Total:	$9945.00

Launch:

Increased launch amounted to: $1102.50.[16]

Total increased expenses due to oil spill and resulting USCG relocation and delay of the vessel: $15,025.75

F. *Analysis:*

TBS submitted a claim which, with the addition of follow-up information and responses to NPFC requests, was well-documented and easy to understand. They were able to demonstrate that Thoresen's chartered vessel was indeed negatively impacted and delayed by the DM 932 oil

[14] See New Orleans-Baton Rouge Steamship Pilots Association , in addendum documents, submitted by TBS Adjusting to the NPFC on 10/09/2009

[15] See Crescent Towing and Salvage Co. Inc., in addendum documents, submitted by TBS Adjusting to the NPFC on 10/09/2009

[16] See Belle Chasse Marine Transportation, Inc, in addendum documents, submitted by TBS Adjusting to the NPFC on 10/09/2009

spill. However, simply because a vessel is delayed, it does not always translate into a loss of profit claim under OPA, as is the case here.

The sub-contract between Thoresen and Toepfer calls upon Toepfer to pay demurrage for extra days or delays it caused in the planned voyage, an amount totaling $67,500.00 per day. It is demonstrated that Thorsen regularly receives payment for those charges. However, in the case of the oil spill incident that is the subject of this claim, the fact that Thorsen did not receive demurrage payments from Toepfer for the delayed period does not translate into lost profits under OPA. Thoresen may have had an agreement between Toepfer that the demurrage/detention rate would be $67,500.00 per day and therefore it may appear that Thorsen lost income, it did not.. Actually, had there been no oil spill, the opportunity to bill or increase revenue through demurrage would not have occurred. In fact, had Toepfer paid the demurrage, Thoresen would have made this profit *because of* the spill, not in spite of it. This is not say that, in this case, the delayed days did not result in a loss of profit. After studying the vessel's "Voyage Profit/Loss Report," it becomes apparent that Thoresen experience increased expenses for the delay at a rate of $25,500.00 per day[17] as a result in expenses resulting from its charter agreement with the vessel's owner Met-Pro Shipping Corp. The fact that the sub-charter did not reimburse or provide any compensation in mitigation of the oil delay results in the increased charter expenses translating into a direct loss of profit for the impacted period. These lost profits, however, do not total $193,657.50 for the 2.869 days of demurrage as Thoresen claims. Thoresen demonstrated the 2.869 days of delay due to the oil and this multiplied by the $25,500.00 per day paid results in a total of $73,159.50 in increased expenses applied to the fixed revenue and resulting in a loss of profit.[18]

Additionally, Thoresen does prove through documentation provided the NPFC that they also incurred $20,369.97 of increased bunkers, pilots, tugs and launch fees as a direct result of the oil spill. These added costs (as explained in sub-points D and E above) are valid and compensable.

G. *Determination:*

The NPFC hereby determines that the OSLTF will pay **$93,529.47**as full compensation for the damage costs incurred by the Claimant and submitted to the NPFC under claim # N08057-043. All costs claimed are for charges paid for by the Claimant for damages as that term is defined in OPA and, are compensable damages, payable by the OSLTF as presented by the Claimant.

VI. DETERMINED AMOUNT: $93,529.47

Claim Supervisor: [redacted]

Date of Supervisor's review:

Supervisor Action:

Supervisor Comments:

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[17] See, Time Charter between Met-pro Shipping Corp and Thoresen Shipping Singapore Pte. Ltd, submitted by TBS Adjusting to the NPFC on 11/24/2009

[18] See Voyage Profit/Loss Report, in addendum documents, submitted by TBS Adjusting to the NPFC on 10/09/2009