

CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/10/2009
Claim Number	: P05005-144
Claimant	: [REDACTED] DBA Golden Point Marina
Type of Claimant	: Corporate (US)
Type of Claim	: Real or Personal Property
Claim Manager	: [REDACTED]
Amount Requested	: \$144,511.08

I. 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 National Pollution Funds Center (NPFC) advertised for claims relating to the oil spill, so claimants can submit claims directly to the Oil Spill Liability Trust Fund through the NPFC.

Claimant:

The claimant owns a marina located in Essington, Pennsylvania. At the time of the spill, the claimant had recently purchased the marina and was in the process of renovating it.

Claim Description:

The claimant alleges that his marina was significantly damaged by the Athos I oil spill. The claimant initially claimed property damage costs of \$971,238.00, which was later revealed by the claimant’s representative, during a telephone conversation, to be the entire cost to renovate his marina. He revised his claim down to \$144,511.08 and requested the alleged costs of major repairs and cleaning of the marina including pressure washing and replacement of oil-damaged decking and pilings. The process of repairing the marina allegedly lasted until April 2008. The claimant also submitted a lost profit (slip rental) component in claim P05005-143.

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.

"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.

A claimant must establish that the removal actions were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. See 33 CFR Part 136.203(c)

Compensable damage types are natural resource damages, damage to real or personal property, loss of subsistence use of natural resources, lost government revenues, lost profits or impairment of earning capacity, and increased costs of public services. See 33 U.S.C. 2702(b)(2).

The provisions of 33 CFR 136.213 – 136.217 provide the details for claims for real or personal property damages.

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.

DETERMINATION OF LOSS:

Causation:

The claimant's marina is within the area affected by the spill. (See area map). The claimant also provided photographs of the marina, docking and pilings showing extensive oiling and oiled debris, however, these pictures are not dated. The pictures do show that the renovation was already under way. It is not clear whether the photos were taken before or after the marina was cleaned during the incident response. However, the pictures appear to be pre-cleanup and show a condition similar to the photos taken by Hudson Marine Management Services on February 17, 2005, prior to cleanup.¹ The fact that the photos show similar conditions leads the NPFC to conclude that all the photos provided by the claimant to show oil damage were taken prior to the cleanup and are therefore, not persuasive.

The claimant alleges that its marina was not completely cleaned by the cleanup response teams. The claimant also alleges that only the parking lot, the house and the river bank were cleaned. He claims that his existing docks, new docks and pilings were oiled since they were rafted (i.e. stored, floating) in the river when the spill occurred because there was insufficient room on land to store the materials during the marina renovation. (See email from J.Fedena August, 6, 2008). The claimant's problem is that he has not met his burden to show that the CG cleaning was incomplete or that it created more damage.

The NPFC obtained a document titled M/T Athos I Marina Decontamination Procedures dated February 6, 2005 and approved by the FOSC, the three SOSCs, and the RP. We also obtained an earlier document titled Marina Decontamination Procedures dated January 27, 2005 provided by The O'Brien's Group. These two documents list the affected marinas and provide certain

¹ The photos taken by Hudson Marine Management were later delivered to the Coast Guard office in Philadelphia, among the documents for individual claimants. The local CG office provided the files to the NPFC.

procedures for the cleaning of each marina. The procedures cover high pressure cleaning of bulkheads/sea walls, floating/fixed dock structures, and pilings. The claimant's marina is listed in these documents.

The following CG FOSC documents represent status reports for the decontamination at Golden Point Marina:

1. Marina Ready for Decon – 2/17/05 - tasking number D21, brief description marina dock and fingers, and that Mr. Golden gave permission to decontaminate.
2. Marina Ready for Decon – 2/20/05 – Decon started in PM.
3. Unit Log – 2/21/05 – States “Golden Point was started yesterday.”
4. Marina Ready for Decon – 2/22/05 – 75% complete by end of day.
5. Marina Ready for Decon – 2/23/05 – 80% complete. Must work with the tide on last 20%.
6. ICS 209 – Incident Status Summary – 4/16/2005-4/18/2005 – These documents show Marina Decon Status as of 3/20/05, including Golden Point Marina with a 100% Decon Status.
7. Athos I Incident Response Shoreline Sign-Off Record – 5/9/05 – Division PA-5, Segment C (within which Golden Point was located) signed off by Federal and State On-Scene Coordinators.
8. Athos I Incident Response Shoreline Sign-Off Inspection Form for PA-5C - “Golden Point – Looked OK – Observed 5/7/05. Accessed by boat.”

This evidence seems to refute claimant's assertions. It is clear that the claimant's marina was cleaned. The evidence shows that the claimant's marina was recognized by the CG as requiring cleaning, that the marina owner gave permission for the cleaning, that cleaning was progressing and ultimately completed within the guidelines approved by the FOSC, otherwise the authorities would not have signed off on the inspection. According to Coast Guard records, the marina cleanup, specifically the claimant's marina decontamination, was complete no later than May 7, 2005. (See Shoreline Sign-Off Inspection Form stating that cleanup endpoint criteria were met for the area. Claimant's marina was specifically listed as inspected on 5/7/05.) The claimant has alleged differently, but has not proven its assertions with sufficient evidence. The evidence currently before the NPFC weighs against the claimant's assertion regarding the extent of oiling and oiled debris that was left at his marina after the spill response. The fact that there is so much oil in the provided photos leads us to believe that the photos were taken prior to the federally directed cleaning of the marina.

The NPFC attempted, through telephone calls and emails, to find information to corroborate the claimant's allegations. The NPFC contacted the CG representatives with both personal and documentary information and contacted the representatives of the Oil Spill Response Contractor² for the spill. No one was able to provide evidence to corroborate the claimant's assertions. Additionally, given the extent of the pollution response and cleanup after the oil spill, the evidence (i.e. the aforementioned documents) before the NPFC suggests that the claimant's docks, piers and pilings would not have been neglected as alleged during the response given the marina cleaning procedures and information showing that the marina cleaning was signed off. The claimant has not shown by a preponderance of evidence that his property was physically damaged by the oil spill. The photographs provided by the claimant do show oiled property, but they are not dated and could have been taken prior to the response contractor's cleaning. The evidence obtained by the NPFC shows that the claimant's marina was cleaned during the

² The O'Brien's Group

pollution response, and it is not clear how the marina would still have been as oiled as the claimant alleges after this cleaning.

Damage:

CG records of marinas for cleaning indicate that the claimant's marina was estimated to be 240 linear feet of dock with five finger piers. (See 2/17/05 status update "Marina Ready for Decon") Contrary to that estimate, the claimant alleged that he had 25 finger docks and 6 main docks in the water waiting to be installed at the time of the spill, although some weren't decked yet. (Telcon with Jim Fedena on 5/22/08). The claimant stated that dock repairs were completed over a four year period due to lack of funds. The repairs were undertaken as funds became available. (See Revised Claim Details attached to 5/9/08 letter from claimant). Invoices were provided to reflect this process. The claimant states that the docks were removed from the water, dismantled to clean the underside and reset in the water. Cleaning oil off of docks constitutes oil pollution removal, which requires compliance with certain regulatory standards. One requirement is that the oil removal be directed by the Federal On-Scene Coordinator or be determined by him to be consistent with the National Contingency Plan (NCP). The claimant must show that the party cleaning the oil complied with the NCP directives when removing the oil. Under the NCP the oil that was removed must be properly disposed. The claimant provided no disposal manifests to show this compliance.

Because the preponderance of evidence leads to the conclusion that the claimant's marina was cleaned during the Coast Guard response, we are unable to pay for any potential losses. It is possible that the claimant's property was damaged during the cleaning process, but that has not been claimed or shown. The claimant also has not shown residual damage from the oil. Based on the fact that claimant's marina was listed as clean by the federal and state representatives on scene, we would require evidence that the docks had remained oiled after the CG inspection. It is not clear why the CG would state the marina was clean if oil remained. That would not comply with the decontamination procedures set forth, and would have allowed the further spread of oil or sheening in the river.

Conclusion:

Because the evidence weighs against the claimant, who has not overcome his burden of proving that the oil spill damaged his marina, we are forced to deny the claim.

DETERMINED AMOUNT: \$0.00

Claim Supervisor: [REDACTED]

Date of Supervisor's Review:

Supervisor Action:

Supervisor's Comments: