

CLAIM SUMMARY / DETERMINATION

Claim Number: 914082-0002
Claimant: Reider Shipping BV
Type of Claimant: Corporate
Type of Claim: Loss of Profits and Earnings
Claim Manager: [REDACTED]
Amount Requested: \$8,056.82

Oil Spill Incident:

On November 30, 2013, USCG, Sector Houston-Galveston Incident Management Division (IMD) was notified of a discharge of 15 gallons of oil at the Jacintoport Terminal. The spill covered an area approximately 30 ft. x 30ft. and was 50 feet from the bow of the vessel, VLIET TRADER.¹ The Jacintoport Terminal, where the vessel was located, is a small dead end canal immediately adjacent to the Houston Ship Channel and is a half mile long.²

Background:

On November 29, 2013, the VLIET TRADER had taken on bunkers via barge BRYANT SEA, which had concluded in the early morning hours (0025) on November 30, 2013. At approximately 0830 on November 30th the ship's crew together with the stevedores observed oil spots/sheen in the forward end of the berth.³ At 0915 Coast Guard, Sector Houston-Galveston IMD was notified by the stevedores/terminal representative regarding the oil spill. By 0930 the oil spots/sheen started to spread. The oil was also observed toward the vessel's starboard side, between the dock and the ship's side near the number one hold.⁴

The U.S. Coast Guard (USCG) and Texas General Land Office⁵ (TGLO) personnel boarded the vessel at approximately 1204 and reviewed the bunkering documents, oil record book, and walked the deck areas to investigate the cause of the oil sheen extending from Hold No. 1 to the forward bank of the dock. After hours of investigating the vessel's documents and areas around the vessel, the USCG personnel were unable to identify the source of the oil spill. However, the USCG issued two letters to the VLIET TRADER, (1) Notice of Federal Interest for an Oil Pollution Incident,⁶ and (2) Letter of Undertaking (LOU) or Surety Bond Demand.⁷ TGLO also issued a Letter of State Interest regarding the oil spill incident.⁸ Charles Taylor Adjusting, Agent for the vessel Owner/Operator and their P&I Club, Standard Club Europe, sent an LOU dated December 1, 2013 to Secretary of Homeland Security care of Commander, U.S. Coast Guard Sector Houston-Galveston. Under the terms of the LOU Charles Taylor Adjusting accepted responsibility if a final judgment is entered, in favor of the United States against the vessel VLIET TRADER, or her Owner or Operator.⁹

¹ U.S. Coast Guard Investigator Statement, provided to the NPFC 6/10/2014 via email from MST3 [REDACTED]

² ECM Maritime Services Final Report, 2013 12 09.

³ 3D Marine Survey Report, dated December 2013 p. 6 of 10.

⁴ 3D Marine Survey Report, dated December 2013 p. 6 of 10.

⁵ USCG/TGLO Witness Statement, dated 12/1/2013, signed by an MST3.

⁶ Case # 1067140, signed by MST2 [REDACTED] dated 2013 11 30

⁷ See, United States Coast Guard Sector Houston – Galveston Texas Letter of Undertaking or Surety Bond Demand letter dated 2013 11 30 and signed by Agent/Vsl Rep Mr. [REDACTED] and MST2 [REDACTED]

⁸ See, Letter of State Interest GLO # 2013-3860

⁹ LOU from Charles Taylor Adjusting, dated December 1, 2013 and signed by Ms. [REDACTED]

USCG¹⁰ took 13 oil samples from the VLIET TRADER's MDO tank and two port tanks of heavy fuel (HSFO and LSFO) at 1836 on November 30. The Coast Guard Marine Safety Laboratory (MSL) received the samples on December 11, 2013. The vessel departed the Jacintoport Terminal at 1306 on December 1, 2013, after the Coast Guard received an LOU from Charles Taylor Adjusting.

On December 13, 2013, USCG Marine Safety Laboratory (MSL) completed the laboratory analysis of the samples and completed their report.¹¹ The Laboratory report concluded that there was no match between the spill samples and the suspected source samples (from the vessel). The spill samples contained various heavy fuel oils; the vessel samples contained light fuel oil.¹²

The MSL report was sent to USCG Sector Houston-Galveston. With no other possible or suspected sources in the vicinity of the discharged oil, the Coast Guard determined the discharge was a mystery spill.¹³

Claimant and Claim Description

The Claimant is Reider Shipping BV, Winschoten, Netherlands. Reider is the manager of the VLIET TRADER. Charles Taylor Adjusting, on behalf of Reider Shipping BV, submitted the loss of profits claim to the Fund on June 9, 2014, in the amount of \$8,056.82. The point of contact at Charles Taylor Adjusting is Ms. [REDACTED]. Claimant seeks \$5,781.25 of off hire (18 hours, 30 minutes) due to the vessel's detainment at Jacintoport, and \$2,275.57 in increased bunker costs for bunkers consumed during the delay.

Applicable Law:

The Fund shall be available to the President for the payment of uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. U.S.C. § 2712(a)(4).

Damages include damages equal to the loss of profits or impairment of earning capacity, due to the injury, destruction of, or loss of real property, personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

Damage claims to the Fund 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 U.S.C. §2712(h)(2).

Congress directed the President to promulgate regulations "for the presentation, filing, processing settlement, and adjudication of claims..." 33 U.S.C. § 2713(e). Those regulations are found at 33 CFR Part 136.

¹⁰ PO [REDACTED]

¹¹ MSL Oil Sample Analysis Report, Case No. 14-028, dated December 13, 2014.

¹² Id.

¹³ U.S. Coast Guard Investigator Statement, signed by MST3 [REDACTED] dated June 10, 2014.

With regard to claims for loss of 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.*

Under 33 CFR 136.105(a) and 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:

Pursuant to the provisions of 33 CFR 136.231, claims for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of 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 and B of 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 of injury to, destruction of, or loss of the property or natural resources, and the amount of the 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, comparative 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) – (e)

Claimant’s Argument

Off-Hire 18 Hours and 30 Minutes \$5,781.25

The claimant, manager of the owner of the vessel, asserts that it suffered a loss of profits because the vessel was delayed for 18 hours and 30 minutes due to the incident. Under the terms of a New York Produce Exchange Form Time Charter (the time charter), executed with the charterer, Seaboard Marine Limited,¹⁴ in the event of a loss of time due to deficiency of stores, fire, breakdown of, or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or dry-docking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the vessel, the payment of hire and overtime shall cease for the time lost.¹⁵ The rate of hire at the time of the incident was \$7,500 per day.¹⁶ Based on this rate Claimant seeks \$5,781.25.

¹⁴ NYPE Time Charter, p. 1, lines 1 – 6.

¹⁵ Id., lines 184-202

¹⁶ The original time charter, dated June 25, 2012, was amended on June 19, 2013, and the daily hire rate was increased from \$6,800 per day to \$7,500 per day.

Claimant asserts that, pursuant to the charter party, the costs of any fuel consumed in consequent of the off hire shall be for the owner's account and deducted from the hire.¹⁷ Claimant asserts that the vessel consumed 1.90 MT of MGO at \$1,027.84/MT, which equates to \$1,952.90 and 0.50 MT of IFO LS at \$645.33/MT, which equates to \$322.67, during the off hire. Claimant provided an Off-Hire Report, a Marine Fuel Delivery Note from Nustar Energy Services,¹⁸ documents from Harley Marine Services,¹⁹ as well as a Declaration of Inspection Prior to a Bulk Transfer and DOS from Harley Marine Services.²⁰ Claimant also provided excerpts from the Oil Record Book (Engine Room Logs).²¹

NPFC ANALYSIS

In this claim the Coast Guard initially believed that the VLIET TRADER was the source of the discharge of oil at the Jacintoport Terminal. The vessel had concluded bunkering several hours prior to the discovery of the discharge; the discharge was discovered near the vessel. After investigating the vessel, its tanks and documentation, the Coast Guard and TGLO took samples of the oil from the vessel's port and starboard tanks and the discharged oil in the water. According to the Coast Guard it detained the vessel because it was suspected of being the source of the discharge; it collected samples to determine the source of the discharge and thus to identify the responsible party.²²

In this incident, the claimant was delayed in leaving Port by direction of the FOSC. The vessel was held responsible to clean-up the oil spill.²³ The VLIET TRADER complied with the FOSC demands and stayed in port until the oil was removed.²⁴

The vessel was detained by the Coast Guard from 1830 on November 30, 2013 through 1306 on December 1, 2013. Under the terms of the charter party the charterer was not required to pay the VLIET TRADER for these 18 hours and 30 minutes. Claimant provided an Off-Hire Certificate dated December 5, 2013 and executed by Seaboard Marine Ltd on behalf of the charterer's agents, and the Master of the vessel for, and on behalf, of the vessel owner.²⁵ The Off-Hire Certificate certified that the VLIET TRADER was off-hire for 18 hours and 30 minutes under terms of the charter party, dated June 25, 2012.²⁶ Claimant also provided a Seaboard Marine, LTD Charter Hire Transmittal Form reflecting off hire period from November 30, 2013 to December 1, 2013 for 0.77 days (18 hours 30 minutes).²⁷ This form reflects that charterer deducted \$5,781.25 for the off hire.

¹⁷ Id., lines 200-202.

¹⁸ See, 6.02 in Survey Report

¹⁹ See, 6.03 in Survey Report

²⁰ See, 6.04 in Survey Report

²¹ See, 6.05 in Survey Report

²² Email communication from MST3 [REDACTED] to [REDACTED] NPFC dated August 11, 2014.

²³ The NPFC reimbursed the claimant for their removal costs via claim number 914082-0001.

²⁴ See Removal Costs claim 914082-0001 for the removal actions.

²⁵ See, Off-Hire Certificate.

²⁶ Id.

²⁷ Seaboard Marine, Ltd Charter Hire Transmittal Form to M/V Vliet Trader, dated December 23, 2013, Period 37th.

Based on the documentation submitted by the claimant and the Coast Guard information the NPFC finds that the claimant/vessel owner did suffer a loss of profits due to the 18 hour 30 minute off hire. The vessel complied with the Coast Guard order to remain in port. During this time the Coast Guard investigated the vessel, its tanks and documentation. The Claimant provided samples of oil from its port and starboard tanks. This detainment was part of the Coast Guard's attempt to identify the source of the oil and thus the responsible party. Based on the MSL report it was subsequently determined that the VLIET TRADER was not the source of the discharge.

Claimant provided a financial accounting reflecting that charterer deducted the off hire from its hire rate; therefore, this deduction was a loss of profits to the claimant. The NPFC determines that the costs associated with the off hire are reimbursable to the claimant.

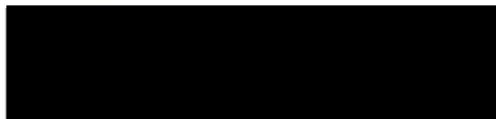
Claimant also established that it incurred additional bunker expenses while the M/V VLIET TRADER was detained at the Jacintoport Terminal. It provided an Off Hire Report, a Marine Fuel Delivery Note from Nustar Energy Services and other documents establishing the additionally consumed bunkers and associated costs. These documents represent an additional expense the owner would not have incurred had the vessel remained in the Charterer's active use. Additionally, the Charter Hire Transmittal Form reflects that the charterer deducted \$2,275.57 in bunker costs for bunkers consumed during the off hire.²⁸

The NPFC finds the amount of \$8056.82 compensable and payable to the claimant on behalf of the vessel owner.

Summary

The NPFC will offer \$8,056.82 as compensations for this claim.

Claim Supervisor:



Date of Supervisor's review: 10/17/2014

Supervisor Action: *Approved*

Supervisor's Comments:

²⁸ See Charter Hire Transmittal Form.