

## CLAIM SUMMARY / DETERMINATION

**Claim Number:** J05003-0030  
**Claimant:** IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd  
**Type of Claimant:** Corporate  
**Type of Claim:** Limit of Liability  
**Claim Manager:** [REDACTED]  
**Amount Requested:** [REDACTED]

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### **Incident:**

The M/V SELENDANG AYU (SELENDANG or vessel) was on a voyage from Seattle to China on December 06, 2004. While operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. While attempting to repair the engine, the vessel drifted and eventually grounded on December 08, 2004 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's hull and bottom tanks, causing a discharge of approximately 330,000 gallons of bunkers into the waters off Unalaska Island.

### **The Claimant and The Claim**

#### *Claimants*

Ayu Navigation Sdn Bhd (Ayu), IMC Shipping Co. Pte. Ltd. (IMC), Sveriges Angfartygs Assurans Forening (The Swedish Club), and International Group of Protection and Indemnity Clubs (International Group) (collectively "Claimants") are the responsible parties (RP) under the Oil Pollution Act of 1990 (OPA); Ayu owned the vessel, and IMC operated it. The Swedish Club, International Group, and the International Group's reinsurers were the subrogated underwriters.

Pursuant to 33 U.S.C. § 2708(a)(2), the Claimants presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) via the National Pollution Funds Center (NPFC) on December 07, 2007, asserting entitlement to a limit on its liability for oil removal costs and damages resulting from the incident. On January 27, 2012, the NPFC determined that the Claimants were entitled to their statutory limit of liability, \$23,853,000. The Claimants now seek reimbursement for incurred removal costs and for damages paid to third parties above their liability limit.

#### *Claim*

The Claimants, through their attorneys, Keesal, Young & Logan (KYL) sent a letter to the National Pollution Funds Center (NPFC) dated December 6, 2007 outlining the claims for which the RPs were seeking reimbursement for damages they paid to third parties. Attached to this letter were exhibits, including a summary of claimed costs. By letter dated March 21, 2012, KYL submitted a document entitled Third Party Claim Detail that listed all costs paid to third party claimants plus RP costs paid for certain vendors' services.<sup>1</sup> This claim before the Fund seeks reimbursement of \$108,900 Claimants paid for consulting services paid to MacSwain Associates.<sup>2</sup>

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<sup>1</sup> Initial submission, tab 2.

<sup>2</sup> The Third Party Claim Detail classifies MacSwain Associates as a "Landowner Claims Consultant/Vendor."

**Applicable Law**

The Oil Pollution Act of 1990 provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C §2702 (a).

A responsible party “may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that” it is entitled to a limitation of liability under §1004 of OPA. 33 U.S.C. §2708(a)

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Responsible parties who have demonstrated entitlement to a limit of liability may submit claims to the Oil Spill Liability Trust Fund for removal costs and damages incurred by the responsible party, plus amounts paid by the responsible party for claims asserted under section 1013 of OPA.

The Fund shall be available to the President for the payment of claims for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712(a)(4). Covered damages under U.S.C. §2702 (b)(2)(A) – (F) are loss of or damage to natural resources, damage to real or personal property, loss of subsistence use, loss of net government revenues, loss of profits or impairment of earning capacity and net costs to provide increased or additional public services.

**Determination**

According to the sparse information submitted with the claim it appears that MacSwain Associates was hired by KYL to provide appraisal and/or consulting services relating to Ounalashka Corporation, St. George Tanaq Corporation and Axtam Corporation landowner claims. KYL submitted several invoices listing only the number of hours worked, hourly rates and an amount due. Only one invoice (Bates MAC 14) provides a description of the services rendered, which was “Market Research, Appraisal Assistant” for \$400.00. KYL also submitted proof of payment for the invoices.

The claimed costs are costs the RP incurred for retaining consulting services related to third party landowner claims presented to the responsible parties. Claimants have provided no explanation of the expenditures or evidence that these are removal costs or damages that may be reimbursed from the Fund. This claim is denied.

Claim Supervisor: 

Date of Supervisor’s review: 11/20/2013

Supervisor Action: Denial approved.

Supervisor’s Comments: