

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	J13014-0004
<b>Claimant:</b>	The Meredith Management Group, Inc.
<b>Type of Claimant:</b>	Corporation
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$23,488.04

### FACTS:

#### Oil Spill Incident:

On June 30, 2013 at approximately 0700, Sector Anchorage received a report that the 78' F/V LONE STAR had partially sank approximately 3.5 miles north of the mouth of Igushik River which flows southward from Amanka Lake into the Nushaguak Bay arm of Bristol Bay. The entire river is located within Togiak National Wildlife Refuge and flows through the village of Manoktak, where it is known for fishing.

The Lone Star's crew reported to the Coast Guard that the anchor line struck the vessel's transducer while they were anchoring the vessel. While at anchor, the tides swung the vessel around and ripped the transducer and cooling lines out, creating a hole in the steel hull. The vessel took on water, turned onto its side and overturned in 18 feet of water. Good Samaritan F/V TRADITION safely recovered all 4 people on board.<sup>1</sup>

At risk was an estimated 14,000 gallons of diesel fuel, 250 gallons of unleaded gasoline, 150 gallons of hydraulic oil, and 150 gallons of lubricating oils at the time of sinking. Sheen from the sunken vessel caused the Alaska Department of Fish and Game (ADF&G) to close the local set-net fishery until the pollution threat was mitigated.

#### Responsible Party:

The Responsible Party (RP) is Burrece Fisheries, Inc., owned and operated by Mr. [REDACTED] of Bellingham, Washington. The Spill Management Team (SMT) for this incident is The Meredith Management Co.<sup>2</sup> The RP's legal counsel is Mr. [REDACTED] of Pritchett & Jacobson, P.S.

#### Claim

The Claimant, The Meredith Management Group, Inc. (Meredith) presented a claim involving three separate invoices-- #6603, 6691 and 7295. The first invoice, # 6603 is a Meredith invoice which covers a time period of 8/19/13 – 9/1/13 in the total amount of \$2,985.50. This invoice is for a variety of Management activities performed by Mr. [REDACTED] and this invoice also includes a third party invoice from Alaska Media in the amount of \$210.50 which is for RP claims advertising.

The second invoice, # 6961 is a Meredith invoice which covers a time period of 9/1/13 – 1/31/14 in the total amount of \$8,880.00. This invoice is for a total of 48 labor hours for Mr. [REDACTED] who performed a variety of Management activities over a five (5) month period. The third and final invoice #

<sup>1</sup> ICS 209 – CG, DATED 7/17/2013, Prepared by: LT [REDACTED] (acting).

<sup>2</sup> Mr. [REDACTED] Regional Response Manager, Captain [REDACTED] President, and Mr. [REDACTED] VP Operations.

7295 is a Meredith invoice which covers costs originally billed by [REDACTED] under Chadux invoice # R13-036 for Mr. [REDACTED] the total amount of \$11,622.54.

On September 19, 2014, Meredith submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the total amount of \$23,488.04. The sum certain is comprised of three invoices, invoices 6603, 6691 and 7295.

#### **APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90 is liable for removal costs and damages. 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".

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". 33 U.S.C. § 2701(31).

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source. 33 U.S.C. 2713(a). If the claim is not settled by any person by payment within 90 days after the date upon which it was presented the claimant may elect to commence an action in court or to present the claim to the Fund. 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."

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. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, "a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC."

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National

Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

### **Determination of Loss:**

#### ***A. Findings of Facts***

1. FOSC coordination was made by USCG Sector Anchorage, via POLREPS and IAPs; 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
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 within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. Claimant properly presented the claim to the responsible party, who has denied payment;
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

#### ***B. Analysis***

The NPFC Claims Manager reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the costs were adequately documented and reasonable.

### **Invoices**

#### ***Meredith Invoice 6603:***

This invoice is for 15 hours of labor costs for Mr. [REDACTED] in his capacity as Incident Commander on behalf of the RP in the amount of \$2,775.00 and \$210.50 for an invoice from Alaska Media LLC for the purpose of claims advertising.

Upon review and adjudication of this invoice, the NPFC has determined that the Claimant has not clearly identified a time allocation for each activity performed and as such, the NPFC is unable to determine what amount of time is compensable for OPA removal cost activities. For example, the Claimant has identified Mr. [REDACTED] activities on 8/19/13 as... “Review, audit and approve Alaska Chadux and Magone Marine invoices, review claim documentation and process.”

In order for the NPFC to be able to determine the compensability of actions performed, the Claimant must provide the invoice numbers for each vendor being reviewed along with the time allocation for each description claimed and the Claimant must identify what exactly it means by review claim documentation and process. The Claimant must identify exactly what claim documentation was being reviewed, how much time was associated with that activity, and the Claimant must explain what process was being reviewed and the time associated with that activity. Based on the foregoing, the NPFC denies this invoice in its entirety based on lack of sufficient detailed support.

*Meredith Invoice # 6961:*

This invoice is for 48 hours of labor costs for Mr. [REDACTED] in his capacity as Senior Management. This invoice is billing for labor for services provided from September 1, 2013 through January 31, 2014 in the total amount of \$8,880.00.

Upon review of the details associated with Mr. [REDACTED] time billed, the Claimant has failed to identify the specific date and time allocation associated with each individual activity billed. The daily activity report for Mr. [REDACTED] identifies various activities being performed by Mr. [REDACTED] with bulk hours allocated by month for the overall description of activities performed and as such, the NPFC is unable to determine how much time is associated with each OPA compensable removal cost activity vice time associated with activities the NPFC may determine are not considered to be OPA compensable removal costs.

Should the Claimant come back on reconsideration, it will need to identify date, amount of time and individual activity being claimed. Additionally, any activities performed with regard to third party claims adjudication, or actions associated with any potential claimant that has presented a third party claim to the RP via its claims process, the third party claimant will need to be identified as it pertains to Mr. [REDACTED] activities claimed. Based on the foregoing, this invoice is denied in its entirety as the Claimant has not met its burden to substantiate and support the charges claimed.

*Meredith Invoice # 7295:*

This invoice is for third-party costs billed by the primary OSRO, Alaska Chadux, who originally presented a claim to the NPFC by Alaska Chadux under claim number J13014-0001. Alaska Chadux had been denied by the NPFC for these costs because the Claimant, Alaska Chadux, had not substantiated the costs in its claim submission to the NPFC. These costs are now presented again in this claim as a result of Meredith having reimbursed Alaska Chadux for the costs not paid by the NPFC. The Claimant has provided detailed background and documentation for the costs claimed for Mr. [REDACTED]

The NPFC reached out to the Claimant regarding these costs,<sup>3</sup> to which the Claimant offered the following explanation:

Mr. [REDACTED] was Operations for the SMT. Chadux was the OSRO and had made logistic arrangements and had agreed to pick up [REDACTED] expenses and include them in their invoice. At that time all pollution expenses were being paid by Great American Insurance with the next layer of pollution coverage provided by the P&I insurer. However, by the time Chadux got their invoice together the insurance limits had been reached and they had to go to the Fund for payment. [REDACTED]'s expenses were a legitimate pollution expense. The running out of funds prior to reimbursement to Chadux was not anticipated ... Mr. [REDACTED] was authorized to order resources to support operations and as is normal pollution response equipment is ordered through the OSRO or directly by the SMT.<sup>4</sup>

Documentation for these costs have been provided by both Meredith and Alaska Chadux via NPFC Claim # J13014-0001. Upon review of all cost documentation and further explanation by Meredith for the use of Mr. [REDACTED] the NPFC has determined that the actions performed by Mr. [REDACTED] are OPA compensable response activities and that they were appropriately documented and as such, are approved.

<sup>3</sup> See email from Ms. [REDACTED] NPFC, to Mr. [REDACTED] MMG, sent 9/26/2014.

<sup>4</sup> See email from Mr. [REDACTED] MMG, to Ms. [REDACTED] NPFC, sent 9/30/2014.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will offer **\$11,622.54** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #J13014-0004. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimants.

Claim Supervisor:



*J*

Date of Supervisor's review: *10/8/14*

Supervisor Action: *Approved*

Supervisor Comments: