U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

4200 Wilson Blvd Stop 7100
Arlington VA 20598-7100
Staff Symbol: Ca
Phone: 703-872-6105
[redacted]

5890
March 12, 2014

[redacted]

IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
[redacted]

Re: J05003-0033

Dear Mr. Davis:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0033 involving M/V SELENDANG AYU oil pollution incident..

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number J05003-0033.

Mail reconsideration request to:
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard
Arlington, VA 20598-7100

Sincerely,

[redacted]

Claims Manager
U.S. Coast Guard
By direction

Enclosures: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number:	J05003-0033
Claimant:	IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claimant:	**Corporate**
Type of Claim:	Limit of Liabi[redacted]
Claim Manager:	Gina Strange
Amount Requested:	$39,628.81

I. INCIDENT

The M/V SELENDANG AYU (the vessel) was on a voyage from Seattle to China when, on the morning of December 6, 2004[1] while operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. The vessel drifted toward Unalaska Island and eventually grounded on December 8 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's bottom tanks, releasing approximately 330,000 gallons[2] of bunkers into the waters off Unalaska Island.

II. CLAIMANT AND CLAIM

The Claimants are the OPA responsible parties and their insurers. Ayu Navigation Sdn Bhd was the owner of the vessel and IMC Shipping Co. Pte. Ltd. was the operator of the vessel. Sveriges Angfartygs Assurans Forenging (The Swedish Club), members of the International Group of Protection and Indemnity Clubs ("International Group"), and the International Group's re-insurers were their subrogated underwriters.

III. PROCEDURAL BACKGROUND:

Pursuant to 33 U.S.C. § 2708(a)(2) Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) seeking a limit on its liability for the incident. At the time of the incident the applicable limit per ton was $600; the gross tonnage for the *Selendang* was 39,755 gross ton; therefore, its limit on liability, if granted, was $23,853,000.00. The Claims Adjudication Division conducted an analysis of evidence and facts and determined that IMC Shipping Co. Pte. Ltd, et al demonstrated entitlement to its limit of liability on 27 January 2012.

IV. REMOVAL COST CLAIM

Claimant asserts that it incurred approximately $148,651,185.13 in removal costs and hired 153 vendors to conduct the removal actions. The removal actions at the site ended on or about 23 June 2006, per a Pollution Report (PolRep) #110 dated 27 June 2006 issued by the FOSC for this incident. As required by 33 CFR 136.203, the RP worked closely with the FOSC throughout the response; MSO Anchorage provided FOSC coordination.

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[1] *See,* Claimant Submission, Attachment 24, Government's Videotape Deposition of Kailash B. Singh Vol. I, 00074.
[2] *See,* Claimant's submission letter, page 3, paragraph 3.

Based on the magnitude of the costs associated with this response, the NPFC anticipated that adjudication of this claim will be lengthy. Claimant and the NPFC agreed to adjudicate the costs on a phased basis. The NPFC separated the claim into smaller claims, based on vendors. Each smaller claim bears a separate claim number and after adjudication the NPFC will offer an amount for that claim. Claimant may accept the offer or request reconsideration pursuant to the Claims Regulations at 33 CFR Part 136.

V. THIRTEENTH REMOVAL COSTS CLAIM DETERMINATION[3]

The NPFC adjudicated this thirteenth claim (J05003-0033) in the amount of $39,628.81. The RP, through its legal representative, provided approximately 50 pages or so of documentation to document the $39,628.81 in removal costs claimed in this thirteenth determination package for costs associated with St. George Tanaq Corporation in support of the response actions undertaken in this incident. This claim includes only the invoices paid by the RP to St. George Tanaq Corporation, who provided Scientists to support SCAT surveys conducted in support of the cleanup actions undertaken. The NPFC claims manager reviewed each and every submitted invoice as well as every "daily" sheet submitted to substantiate the invoices. Additionally, the NPFC claims manager reviewed the payment record against the claimed costs for each invoice.

The review of the actual costs, invoices and dailies focused on (1) whether the actions were taken to prevent, minimize or mitigate the effects of the incident; (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

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[3] The NPFC adjudicated the first removal cost claim, Claim Number J05003-001, in the amount of $24,500,453.89. The NPFC deducted the statutory limit on liability of $23,853,000.00 and offered $546,484.54 as full and final compensation on or about May 21, 2012. Claimants accepted the offer on June 7, 2012. The NPFC adjudicated the second removal claim, Claim Number J05003-003, and offered $ 2,168,445.20 to the Claimants on June26, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the third removal claim, Claim Number J05003-0004, and offered $3,668,595.70 to the Claimants on July 3, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the fourth removal claim, Claim Number J05003-0015, and offered $23,103,264.96 to the Claimants on August 20, 2012. Claimants accepted the offer on September 11, 2012. The NPFC adjudicated the fifth removal claim, Claim Number J05003-0016, and offered $15,611,776.98 to the Claimants on October 17, 2012. Claimants accepted the offer on December 6, 2012. The NPFC adjudicated the sixth removal claim, Claim Number J05003-0017, and offered $9,565,222.57 to the Claimants on November 20, 2012. Claimants accepted the offer on November 28, 2012. The NPFC adjudicated the seventh removal claim, Claim Number J05003-0018, and offered $8,230,390.17 to the Claimants on December 13, 2012. Claimants accepted the offer on December 17, 2012. The NPFC adjudicated the eighth removal claim, Claim Number J05003-0019, and offered $5,004,635.21 to the Claimants on February 19, 2013. Claimants accepted offer on February 27, 2013. The NPFC adjudicated the ninth removal claim, Claim Number J05003-0022, and offered $2,166,024.24 to the Claimants on March 21, 2013. The NPFC adjudicated the tenth removal claim, Claim Number J05003-0023, and offered $6,120,304.42 to the Claimants on April 02, 2013. Claimants accepted the offer on May 24, 2013. The NPFC adjudicated the eleventh removal claim, Claim Number J05003-0024, and offered $2,099,476.94 to the Claimants on April 9, 2013. Claimants accepted the offer on May 15, 2013. The NPFC adjudicated the Twelfth removal claim, Claim Number J05003-0025, and offered $2,555,041.36 to the Claimants on July 1. 2013. Claimants accepted the offer on August 19, 2013.

Please see the table below for an itemization of the vendor invoices which make up this thirteenth removal cost claim determination.

Vendor	Invoice #	Amount Claimed	NPFC Approved	NPFC Denied
TDX Corp.	0135699-IN	$1,140.50	$0.00	$1,140.50
TDX Corp.	0135587-IN	$14,374.84	$0.00	$14,374.84
TDX Corp.	0135963-IN	$5,887.90	$0.00	$5,887.90
Chadux Travel	Various	$1,691.94	$0.00	$1,691.94
GM Costs	Various	$7,105.00	$0.00	$7,105.00
G&A Labor	N/A	$1,553.86	$0.00	$1,553.86
G & A Expenses	N/A	$2,886.90	$0.00	$2,886.90
TDX Corp.	0136223-IN	$4,282.05	$0.00	$4,282.05
Tanaq (Mr. Pawlowski)	Oct & Nov 2005	$140.00	$0.00	$140.00
Tanaq markup	0136223-IN	$535.25	$0.00	$535.25
Tanaq markup onTanaq markup onMr. Pawlowski labor	Oct & Nov 2005	$30.62	$0.00	$30.62
Unidentified difference		$(.05)		$(.05)
TOTAL		**$39,628.81**		**$39,628.81**

Claimant's sum certain for this claim is $39,628.81.

The NPFC has determined that $39,628.81 is not compensable from the OSLTF. As noted above, the NPFC deducted the RP's statutory limit on liability from the amount determined to be compensable under claim # J05003-001. Thus, this claim is denied in its entirety.

VI. 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. 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".

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. 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 responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, may assert a claim for removal costs and damages under section 2713 only if the responsible party demonstrates that it is entitled to a defense to liability under section 2703 or to a limitation of liability under section 2704. 33 USC § 2708(a)(1) and (2).

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].

VII. DETERMINATION OF LOSS:

A. *Findings of Fact:*

1. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
2. A Responsible Party was identified. 33 U.S.C. § 2701(32).

3. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
4. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the removal costs presented should be denied. The claimant failed to provide sufficient evidence to support the claim for costs in accordance with the Claims Regulations. 33 CFR 136.205

B. ***Analysis:***

NPFC CA reviewed the actual cost invoices and dailies to confirm that the Claimant had obtained all rights, claims and causes of actions for the 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 actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon review of all documentation provided in support of this claim submission, the NPFC was not able to determine how the Claimant arrived at amounts claimed for the four TDX Corp. invoices, nor was the NPFC able to determine exactly what each person was doing that appeared in the invoicing and as such, the NPFC requested additional information. On February 14, 2014, the Claimant responded via a letter which provided the rationale and explanation of how the Claimant arrived at the amounts for all four TDX Corp. invoices along with a brief description of overall duties being performed.

Claimant Counsel states in its letter of February 14, 2014, that the Claimant retained SLR International Corporation to provide scientists to support the SCAT surveys. Claimant further states that SLR was retained in cooperation with St. George Tanaq (claimant), TDX Corporation, and two other Alaska Native corporations and as such, the Claimant is only requesting one-third of each TDX Invoice as the costs were split amongst the other interested parties. [4]

It is important to note that the Claimant's methodology of dividing the costs into "thirds" is not sufficient when requesting reimbursement from the OSLTF if the invoices are not determined to be 100% OPA compensable. Furthermore, the blanket statement that the contract scientists were performing SCAT surveys is not sufficient for the NPFC to determine whether the claimed costs are compensable. The Claimant has failed to itemize by hour and by person where the work was being performed exactly so the NPFC can determine if the locations being worked were in fact ordered by the Federal On Scene Coordinator (FOSC) and were not located in zones already signed off on or that SCAT

[4] It is unclear exactly how many Native American corporations the costs were divided among. The claimant states that the costs were split in thirds, but in its response states that the contractor was "retained in cooperation with the St. George Tanaq, TDX and two other Alaska Native corporations". Regardless of how the costs are divided, it is insufficient to apportion costs merely by dividing them without providing an itemized breakdown of the costs incurred. See, correspondence dated 14 February 2014 from Keesal, Young & Logan (KYL) to the NPFC, page 2.

had been previously performed by another contractor noted in the Unified Command (UC).

Based on the foregoing, the NPFC denies this claim on the basis that the Claimant has failed to outline in detail exact locations, dates and times by person for SCAT survey work being performed. Additionally, all costs claimed for the General Manager of St. George Tanaq Corporation, Mr. RJ Pawlowski, is denied because his time entries are generic in nature and do provide the specific details associated with his reported actions therefore the NPFC is unable to determine exactly what his time was associated with. Finally, because all invoicing is denied, any and all ancillary charges are also denied since they are in association with other denied costs.

Should the Claimant request reconsideration, it will need to provide detailed specifics for each person and time slot billed, locations of work being performed and evidence that the work was ordered by the FOSC specifically by this Claimant. With respect to Mr. Pawlowski where he has billed time for reports to board and staus reports, those reports will need to be produced to the NPFC for review.

DETERMINATION OF LOSS:

The NPFC hereby determines that all costs associated with this claim are denied. The Claimant failed to provide evidence sufficient to support its claim for removal costs.

AMOUNT: $0.00

Claim Supervisor: [redacted]

Date of Supervisor's review: ***3/12/14***

Supervisor Action: ***Denial approved***

Supervisor's Comments: