

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6891
E-mail: [REDACTED]@uscg.mil
Fax: 703-872-6113

5890
6/21/2012

VIA EMAIL: [REDACTED]@dst-law.com
[REDACTED]@dst-law.com

Tabary & Borne, LLC
Three Courthouse Square
Chalmette, LA 70043-4774

RE: Claim Number: N08057-0107

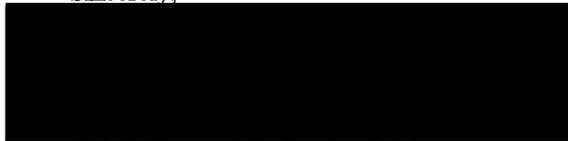
Dear Mr. Patabary:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N08057-0107 involving the DM-932 spill. Compensation is denied because the Claimant failed to evidence a loss of profits or impairment of earnings capacity.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : N08057-0107
Claimant : Murphy Oil USA, Inc.
Type of Claimant : Corporate (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : Robert Rioux
Amount Requested : \$306,921.13

I. Facts

A. Oil Spill Incident:

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States. The barge 932 oil spill disrupted shipping in and out of the Mississippi River. The NPFC reviewed the Coast Guard situation report-pollution (SITREP-POL) reports, which state that vessels transiting the River were delayed from 7/23/2008 until well after 7/28/2008.

B. Claim History: Initial Claim and Determination

On July 20, 2011, Claimant, Murphy Oil USA, Inc., presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund), seeking reimbursement totaling \$316,212.42 for removal costs associated with damages to its property and for alleged loss of profits or impairment of earning capacity resulting from the discharge of oil from the DM 932 that sank in the Mississippi River on July 23, 2008 (the incident).¹ The Coast Guard closed the River from July 23, 2008 through July 31, 2008 to conduct removal activities.²

At the time of the incident Murphy Oil USA, Inc. (Claimant or Murphy Oil) owned a refinery in Meraux, Louisiana that processed medium sour crude and produced significant yields of premium products.³ The plant, located downriver of the incident, had a dock on the Mississippi River that received crude oil by tanker and barge and shipped out refined petroleum products by tanker and barge.⁴ Murphy Oil asserts that oil inundated parts of its facility and some of its chartered vessels and that it incurred removal costs to clean the facility and some vessels⁵ and suffered a loss of profits.⁶ This claim is associated solely with Claimant's alleged loss of profits, \$ 306,921.13. Specifically, Murphy Oil asserts that it suffered a loss of profits due to the delay of five of its chartered tug and barge setups⁷ due to the incident.⁸

¹ Original submission from Tabary & Borne L.L.C. to the NPFC dated 09 August 2011 and Optional OSLTF claim form dated July 20, 2011.

² United States Coast Guard POLREPs, POLREP eight dated September 28, 2008.

³ Company's website <http://www.murphyoilcorp.com/default.aspx>

⁴ Letter of Explanation from Tabary & Borne L.L.C. dated July 20, 2011 at page 1 and 2.

⁵ The removal cost claim, for \$9219.29, was adjudicated in a separate claim and is not at issue in this determination.

⁶ Letter of Explanation from Tabary & Borne L.L.C. dated July 20, 2011.

⁷ Herndon R TTT 320 and TTT330; Annie Jeanne TTT 104 and TTT105; Ovide J. CTCO 355 and 356; NMS 1437 Center Oil Company, and Keystone TX.

⁸ Letter of Explanation from Tabary & Borne L.L.C. dated July 20, 2011.

According to the Claimant the five tug and barges setups were leased by Murphy Oil pursuant to charter parties and contracts of affreightment; however the Claimant only provided the charter parties⁹ for two of the tugs and associated barges, the Herndon R TTT 320 & 330 (Herndon R)¹⁰ and SS Keystone Texas (Keystone Texas).¹¹

The NPFC requested further information prior to adjudicating the claim.¹² Specifically, the NPFC requested copies of the charter parties or contracts for the three other tugs and barges and financial information for comparable time periods, any saved overhead, or an overview of Claimant's business that might evidence a loss of profits.¹³ The NPFC specifically requested comparable profit and loss statements for the tugs and barges for July/August 2007 and July/August 2008.¹⁴

In its response dated October 31, 2011, Murphy Oil provided some additional information but failed to provide the charter party for the Annie Jeanne TTT 104 & 105 (Annie Jeanne) and the lease agreements or contracts for the Ovide J CTCO 355 and 356 (Ovide J) and the NMS 1437 Center Oil Company (NMS 1437).¹⁵ Claimant did not provide financial information for comparable time periods but continued to focus only on alleged loss of profits based on demurrage charges.¹⁶

The NPFC denied the claim on April 20, 2012 on the grounds that Claimant did not provide sufficient documentation to establish that it had suffered a loss of profits.¹⁷

1) Documentation Submitted to the NPFC

a. Original Submission July 20, 2011

1. Optional OSLTF claim form dated July 20, 2011.
2. Letter of explanation from Tabary & Borne L.L.C. dated July 20, 2011.
3. Times Picayune article titled "Mississippi River Closed to Gulf of Mexico" dated July 24, 2008.
4. Herndon R TTT 320 & 330 Demurrage rate and laytime calculation page in the amount of \$84,963.94 dated December 08, 2009.
5. Invoice #M60007039 from Martin Marine to Murphy Oil USA Inc. in the amount of \$348,976.79 dated August 07, 2008.
6. Annie Jeanne TTT 104 & 105 Demurrage rate and laytime calculation page in the amount of \$26,025.00 dated December 08, 2009.
7. Invoice #M60007038 from Martin Marine to Murphy Oil USA Inc. in the amount of \$250,481.65 dated August 07 2008.
8. Ovide J. CTCO 355 & 356 Demurrage rate and laytime calculation page in the amount of \$22,585.94 dated December 08, 2009.

⁹ Charter parties describe the agreements between the vessel owner and the charterer, including the term of the lease or charter, the daily hire rate or freight rate, and whether certain charges such as bunkers, towing and pilotage fees are charged to the owner's or the charterer's account.

¹⁰ Herndon R Charter at Bate Stamp 22 and Keystone TX Charter at Bate Stamp 27.

¹¹ Ibid.

¹² NPFC request for additional information dated August 9, 2011.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Tabary & Borne response dated October 31, 2011 to the NPFC's request for additional information dated August 9, 2011.

¹⁶ Ibid.

¹⁷ NPFC determination for claim N08057-0107 dated January 30, 2012.

9. Invoice #202273 from TEPPCO Marine Services, LLC to Murphy Oil USA Inc. in the amount of \$127,675.43 dated August 11, 2008.
10. Invoice #5316-Demurrage from Murphy Oil USA Inc. to Center Oil Company in the amount of \$5,787.10 dated August 11, 2008.
11. Invoice #1134340 from Center Oil Company to Murphy Oil USA Inc. in the amount of \$3,630.00 dated August 12, 2008.
12. Supplier Ledger Inquiry screenshot for ethanol in the amount of \$3,630.00.
13. Keystone Texas Demurrage rate and laytime calculation page in the amount of \$121,825.00 dated December 08, 2009.
14. Invoice #A-070001T-33530 from Keystates, Inc. to Murphy Oil USA Inc. in the amount of \$1,023,000.00 dated August 01, 2008.
15. Notice of Readiness for SS Keystone Texas for KMI Berth #226 in Tampa FL.
16. Keystone Texas Demurrage rate and laytime calculation page in the amount of \$47,891.25.

b. Tabary & Borne L.L.C. additional information response dated October 31, 2011

1. Funds Transfer Receipt to Martin Operating Partnership from Murphy Oil USA Inc. in the amount of \$599,458.44 dated August 18, 2008 (accompanying rush check request to treasurer dated August 18, 2008) for Herndon R TTT 320 & 330 and Annie Jeanne TTT 104 & 105.
2. Supplier Ledger Inquiry screenshot for Center Oil Co. in the amount of \$3,630.00 dated September 12, 2008.
3. Supplier Ledger Inquiry screenshot for Enterprise Marine Services LLC in the amount of \$127,675.43 dated September 13, 2008.
4. Funds Transfer Receipt to Keystates, Inc. from Murphy Oil USA Inc. in the amount of \$1,023,000.00 dated July 08, 2008 (accompanying rush check request to treasurer dated June 07, 2008).
5. Second Funds Transfer Receipt to Keystates, Inc. from Murphy Oil USA Inc. in the amount of \$1,023,000.00 dated July 30, 2008 (accompanying rush check request to treasurer dated June 30, 2008).
6. Tug Logs for the vessel Ovide J. and Barges CTCO 355 and CTCO 356 for July 28, 2008 through August 09, 2008.
7. Traffic Report for Annie Jeanne and barges TTT 104 and TTT 105 for July 29, 2008 through August 11, 2008.
8. Second Traffic Report for Annie Jeanne and barges TTT 104 and TTT 105 for August 08, 2008 through August 29, 2008.
9. Traffic Report for Herndon R. and barges TTT 320 and TTT 330 for July 18, 2008 through August 16, 2008.
10. Second Traffic Report for Herndon R. and barges TTT 320 and TTT 330 for August 08, 2008 through August 31, 2008.
11. Port Log at Tampa FL for vessel Keystone TX August 01, 2008 through August 05, 2008.
12. Herndon R Time Charter dated November 14, 2007.
13. Keystone TX Time Charter dated January 13, 2008.
14. Murphy Oil USA Inc. 2007 comparison with 2008 cumulative Demurrage expenses.
15. Letter from Dysart & Tabary, LLP to Worley Catastrophe Response dated September 10, 2009.
16. Email from Worley Catastrophe recognizing receipt of requested additional information from Murphy Oil USA Inc. dated March 09, 2010.

C. Claim Reconsideration:

The Claimant did not accept the NPFC's offer and requested reconsideration of their claim, which was received at the NPFC via email on April 20, 2012.¹⁸ Claimant provided information that had been previously submitted with its original claim and some additional information to support the request for reconsideration. Claimant failed to provide the charter party or contract for Annie Jeanne or the NMS 1437 but provided a legal argument and cited three cases to support its argument.

1) New Documentation Submitted April 20, 2012 on Reconsideration

1. Reconsideration request from Tabary & Borne L.L.C. (8 pages)
2. Affidavit, John R. Hunter, Director, Trading & Risk Management, Marketing – Retail Marketing – Retail Fuel Supply
3. Affidavit, William M. Gereighty Jr., witness to cleanup activities
4. Spot Affreightment Contract, Part 1, partially executed between TEPPCO Marine Services, owner of the M/V Ovide/CTCO 355, CTCO 356

APPLICABLE LAW:

Under 33 CFR § 136.115(d) the Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

The Fund shall be available to the President for –

(4) [T]he payment of claims in accordance with section 2713 of this title 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). (Emphasis added.)

With regard to claims for loss 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.

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—

¹⁸ See, Tabary & Borne response dated April 20, 2012.

- (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 that 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) – (d)

The compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident; all income from alternative employment or business undertaken; potential income from alternative employment or business not undertaken, but reasonably available; any saved overhead or normal business expenses not incurred as a result of the incident; and state, local, and Federal tax savings. 33 CFR 136.235 (a) – (e).

II. NPFC RECONSIDERATION ANALYSIS

The NPFC, upon reconsideration, reviews the claim *de novo*. The initial determination dated January 1, 2012, is incorporated into this determination on reconsideration.

Claimant's Argument on Reconsideration

Claimant maintains on reconsideration that the five tug and barge setups were delayed on the Mississippi River, reiterating the specific time delays for each tug and barge setup and stating that demurrage charges, based on the daily hire rate, resulted in its loss of profits.¹⁹ In its legal argument Claimant asserted that its business was closely associated with the Mississippi River; therefore, it was entitled to recover its alleged lost profits. Claimant cited case law²⁰ supporting its position that in order to permit recovery for economic loss a claimant must demonstrate that its business was so intertwined with the damaged resource and thus it sustained immediate and predictable economic loss.

NPFC Analysis

The administrative record reflects that Claimant's tugs and barges were delayed and specifies the delay times for each of them; however, as more clearly discussed below Claimant has not established a loss of profits for the tugs and barges based on demurrage charges or evidence of proof of payment of demurrage.

Claimant based its loss of profits solely on contrived demurrage calculations associated with the daily hire or freight rates in the time charter parties for the Herndon R, the Annie Jeanne and the Keystone Texas. Because time charter parties do not typically provide for demurrage, and in this

¹⁹ Reconsideration request dated April 20, 2012.

²⁰ Matter of Lloyd & #39's Leasing Ltd., 697 F. Supp. 289 (S.D. Tex. 1988); In re Taira Lyn Marine Ltd. No. 5, 444 F. 3d 371 (5th Cir. 2006), and Seaboats, Inc. v. Alex C. Corp., No. 01-CV-12184-DPW, 2003

case the charter parties did not have demurrage provisions, the Claimant cannot establish a loss of profits based on demurrage charges.²¹ Additionally, Claimant has not provided proof of payment of demurrage charges for these tugs and barges.

The Herndon R.

The charter party between Martin Marine and Murphy Oil USA for the Herndon R, dated November 14, 2007, is a time charter.²² Under the terms of this charter party Murphy Oil agreed to charter the Herndon R for a period commencing February 1, 2008 and continuing until January 31, 2009, or as otherwise mutually agreed.²³ Thus, Claimant was responsible for paying the daily rate of \$7,746 per day, every day from February 1, 2008, through January 31, 2009 regardless of whether the tug and barges were hauling petroleum products, were moored for lack of cargo or delayed due to the incident in the Mississippi River.

In an effort to evidence a loss of profits for the Herndon R., Claimant converted the daily hire rate (\$7,746) to an hourly rate (\$322.75/hour).²⁴ The Herndon R was delayed for 263.25 hours; thus, Claimant asserts that it incurred \$84,963.94 in demurrage charges.²⁵ Claimant provided an invoice dated August 8, 2008 reflecting a charge and payment for the monthly hire rate of \$240,126 (31 days x \$7,746/day) plus additional charges for pass throughs, additional fuels and lubricants, harbor towing and fleeting charges and harbor fees.²⁶ The invoice total is \$348,976.79.²⁷ There are no charges on the invoice for demurrage charges. There is no proof that Claimant paid an additional charge of \$84,963.94 because this amount was not owed to the vessel owner under the terms of the charter party. Claimant has not established that it suffered a loss of profits based on demurrage charges.

Keystone Texas.

Claimant also asserts that it lost \$169,716.25 in profits for the delay of the Keystone Texas.²⁸ According to a time charter dated July 27, 2007 and subsequent addenda, Murphy agreed to charter the vessel through November 30, 2012 with a mutual agreeable option to extend the contract until December 10, 2010, at a daily hire rate of \$33,000 per day.²⁹ Again, Murphy Oil contracted to pay \$33,000 per day for the Keystone Texas until November 30, 2012 regardless of whether the vessel was hauling cargo, was moored for lack of cargo or delayed because of the oil spill in the River.

Murphy Oil converted the daily hire rate (\$33,000) to an hourly rate (\$1,375).³⁰ The Keystone Texas was delayed for 123.43 hours; thus, Claimant asserts that its loss of profits was \$169,716.25.³¹ Claimant provided two invoices evidencing that it did in fact pay the monthly hire rate, \$1,023,000 (\$33,000 x 31), for both July and August 2008 as required in the charter

²¹ Claimant provided charter parties for only two of the tug and barges and Part I of a partially executed Spot Affreightment Contract.

²² Herndon R Charter at Bate Stamp 22.

²³ Ibid.

²⁴ Herndon R TTT 320 & 330 at exhibit 6.

²⁵ Ibid.

²⁶ Invoice #M60007039 dated August 7, 2008.

²⁷ Ibid.

²⁸ Letter of Explanation from Tabary & Borne L.L.C. dated July 20, 2011 at page 3.

²⁹ Keystone TX Charter at Bate Stamp 22.

³⁰ Exhibit 15 & 18.

³¹ Letter of Explanation from Tabary & Borne L.L.C. dated July 20, 2011 at page 3.

party.³² There is no evidence in the record that Claimant paid additional charges for demurrage of \$169,716.25 because this amount was not due to the vessel owner under the charter party. Thus, Claimant has not established that it suffered a loss of profits for the delay of the Keystone Texas based on demurrage.

Annie Jeanne.

Claimant asserts a loss of profits for the Annie Jeanne for demurrage charges totaling \$26,025.³³ It based this charge on \$6,450 per day or \$300/hour and delays of 86.75 hours.³⁴ Claimant failed to provide a charter party or agreement for the Annie Jeanne; however, an invoice dated August 7, 2008 reflects that Claimant probably had a time charter with Martin Marine at a freight rate of \$6,450/day.³⁵ Claimant paid freight charges of \$199,950 (31 days x \$6,450/day) plus fuel charges, harbor fees and water way taxes for a total amount due of \$250,481.65.³⁶ There is no evidence in the record that Claimant paid \$26,025 because no demurrage was due to Martin Marine under the terms of the time charter. Claimant has not established that it suffered a loss of profits for the delay of the Annie Jeanne based on demurrage.

Ovide J.

Claimant asserts a loss of profits for the Ovide J totaling \$ 22,585.94 for 73.25 hours of delay.³⁷ This was based on a spot affreightment contract between Murphy Oil and TEPPCO Marine Services, LLC for one voyage to ship 35,000 barrels of petroleum product at the rate of \$7,350/day plus fuel.³⁸ Claimant provided a copy of only Part I of the contract, which was dated July 22, 2008 but not executed by TEPPCO Marine Services, LLC.³⁹ An invoice dated August 20, 2008 reflects that Claimant paid \$7,350/day for 12.24 days;⁴⁰ however, it is not clear if the asserted demurrage charges of \$22,585.94 were appropriate because no complete or fully executed agreement outlining the terms of the contract was submitted with the claim. Therefore, the NPFC cannot determine if the contract allowed demurrage charges or if such charges were appropriate in this case. Thus, Claimant has not established that it suffered a loss of profits based on a demurrage rate for the Ovide J.

NMS 1437.

Claimant did not provide a charter party or contracts of affreightment for the NMS 1437; therefore, it is not possible for the NPFC to determine if the Claimant suffered a loss of profits based on demurrage charges. Claimant provided an invoice to Center Oil Company dated August 11, 2008⁴¹ seeking remittance of \$5,787.10 for delivery of ethanol and an invoice from Center Oil Company⁴² for demurrage charges totaling \$3,630. Claimant also provided a screen shot reflecting a demurrage charge of \$3,630 for ethanol.⁴³ However, without an accompanying

³² Two invoices dated July & August 1, 2008 at Exhibit 16.

³³ Letter of Explanation from Tabary & Borne L.L.C. dated July 20, 2011 at page 2.

³⁴ Ibid.

³⁵ Invoice #M60007038 at Exhibit 9.

³⁶ Claimant provided proof of payment of \$599,458.44 for the Herndon R and the Annie Jeanne invoices but as noted above none of these charges included demurrage expenses.

³⁷ Letter of Explanation from Tabary & Borne L.L.C. dated July 20, 2011 at page 3.

³⁸ Spot Affreightment Contract dated July 22, 2008 at Exhibit F.

³⁹ Ibid.

⁴⁰ Invoice #202273 dated August 20, 2008 at Exhibit 11.

⁴¹ Invoice #5316 dated 11 August 2008 at Exhibit 12.

⁴² Invoice #NMS 1437 D at Exhibit 13.

⁴³ Exhibit 14.

charter party or contract of affreightment the NPFC cannot determine if the demurrage charge is appropriate and it is not clear that these were additional charges incurred due to the incident. Claimant has not established that it suffered a loss of profits based on demurrage.

In summary Claimant focused only on demurrage charges as its theory of reimbursement for a loss of profits and has not established that it suffered a loss of profits based on demurrage charges. Claimant may have been able to establish a loss of profits if it had provided financial information or profit and loss statements for the refinery or the five tug and barges setups. But it did not do so.

Affidavits.

Claimant provided two affidavits in its reconsideration request to support its alleged economic losses.⁴⁴ In the first affidavit, John Hunter, Director, Trading & Risk Management, Marketing - Retail Marketing - Retail Fuel Supply First, acknowledges that he reviewed Murphy Oil's records that were kept in the regular course of business and that Murphy Oil paid demurrage charges totaling \$306,921.13 and that these charges resulted from the July 23, 2008 discharge of oil.⁴⁵ Further, he reviewed Murphy Oil's cumulative general ledger that reflected that in 2006 Murphy incurred a total of \$236,286.98 in demurrage expenses, in 2007 it incurred \$323,311.74 in total demurrage charges and in 2008, the year of the oil spill, and it incurred \$609,916.64 in total demurrage charges.⁴⁶ Thus, he concludes that Murphy Oil's general ledgers for 2006 through 2008 establish that the demurrage charges for 2008, the year in which the incident occurred, were the highest of three years.

While Mr. Hunter provides total demurrage charges for three years the information in the Hunter affidavit is general and does not specify the demurrage charges by vessel or month of each year. It does not include documentation to support the annual demurrage charges; thus, this information does not help to establish that Claimant suffered a loss of profits based on demurrage charges for the five tugs and associated barges for July 2008 due to the incident.

Claimant asserts that it has established that its business was so intertwined with the damaged resource; therefore, it sustained an immediate and predictable economic loss.⁴⁷ In re Taira Lyn Marine Ltd. No. 5, LLC, 444 F. 3d 371, 382 (5th Cir. 2006) (Section 2072(b)(2)(E) allows a plaintiff to recover for economic losses resulting from damage to another's property and the claimant's property need not be the owner of the damaged property or resources to recover for lost profits or income.)

While OPA provides that a claimant may recover for economic losses, that claimant must establish that he did in fact suffer a loss. The OPA claims regulations provide that the amount of loss may be established by income tax returns, financial statements or comparable figures for profits and earnings for the same or similar activities. 33 CFR 136.233(d). The NPFC acknowledges that Mr. Hunter's affidavit compares Murphy Oil's demurrage expenses for three

⁴⁴ Exhibit G & I.

⁴⁵ Affidavit dated April 19, 2012 at Exhibit G.

⁴⁶ Exhibit H.

⁴⁷ Claimant's second affidavit, executed by William Gereighty Jr., states that he coordinated efforts on behalf of Murphy Oil with the U.S. Coast Guard for cleanup of oil at the Murphy Oil refinery at Meraux and its chartered vessels. Claimant may be arguing that this affidavit supports its argument that its business and alleged loss of profits were intertwined with the oil in the Mississippi River; therefore, it suffered an immediate and predictable economic loss.

years – 2006 through 2008 - but notes that the expenses are not supported by actual and specific expenses by vessel or dates.

Claimant cites In re ALEX C Corp. Seaboats, Inc. v. ALEX C Corp. and Bay State Towing Company, Inc., 2003 WL 203078 (D. Mass.) as support for its entitlement to recover lost profits. (While OPA provides that Seaboats Inc. may seek recovery for lost profits resulting from its inability to utilize its contaminated vessels while they were being detained, its meager evidentiary submissions, consisting of a conclusory affidavit of the President of Seaboats, it has not adequately established the existence of the damages claimed.)

In this case the tugs and barges were delayed due to the oil spill; however Claimant has not provided evidence to establish the existence of a loss of profits based on a demurrage theory. Further, Mr. Hunter's affidavit does not support the existence of the damages claimed because the affidavit is conclusory, not supported by specific evidence and does not establish a loss of profits.

III. SUMMARY

Pursuant to the Claims Regulations Claimant has the burden of establishing that it suffered a loss of profits. In this case Claimant attempted to establish a loss of profits based solely on demurrage pursuant to two time charter parties (Herndon R and Keystone Texas) and one contract of affreightment (Ovide J). As noted above these calculations do not establish a loss of profits for the Herndon R or the Keystone Texas. While the Claimant may have suffered a loss of profits for the delay of the Ovide J or the NWS 1437 it did not provide copies of the charter parties or agreements with the owners of those vessels. Thus, the NPFC cannot determine if the agreements were time or voyage charters, whether demurrage charges were appropriate for the delays, or whether the agreements provided for other charges associated with, and paid by, Claimant due to the incident.

For the reasons discussed above the Claimant's request on reconsideration seeking \$306,921.13 in loss of profits is denied.

Amount: \$0.00

Claim Supervisor

Date of Supervisor's Review: 6/21/12

Supervisor Action: Denial Approved.

Supervisor's Comments: