U.S.
Department of
Homeland
Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

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5890
4/5/2013

VIA Email [redacted]@nordisk.no

Bulkhandling Handymax AS
C/o Nordisk Legal Services
PO Box 3033 Elisenberg
N-0207 OSLO
Norway

Dear Mr. Brautaset:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that $129,603.69 is compensable for OPA claim number N08057-0098. This reconsideration determination is based on an analysis of information submitted. All costs that are not determined as compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to:

Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. If the determination is accepted, your payment will be mailed within 30 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 703-872-6100.

Sincerely,

[redacted]

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Enclosures: Claim Summary / Determination
Acceptance / Release Agreement

ACCEPTANCE / RELEASE AGREEMENT

Claim Number: N08057-0098	Claimant Names: Bulkhandling Handymax AS Fednav International Ltd

I, Lasse Brautaset, the undersigned, as representative for Bulkhandling Handymax AS and Fednav (the Claimants) ACCEPT this settlement offer of $129,603.69 as full and final compensation for damages arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action for the Claimants all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. Claimants, through my representation, hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that they may have against any party, person, firm or corporation that may be liable for the amounts paid for which they have been compensated under this claim. Claimants, through my representation, authorize the United States to sue, compromise or settle in their names and the United States is fully substituted for them and is subrogated to all of their rights arising from and associated with those amounts paid for which they are compensated for with this settlement offer. Through my representation, I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept for the Claimants as final agency action all amounts paid for this claim and amounts denied in the determination for which they received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, the Claimants will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

Title of Person Signing	Date of Signature
Printed Name of Claimant or Authorized Representative	Signature

Title of Witness	Date of Signature
Printed Name of Witness	Signature

DUNS/EIN/SSN	Bank Account Number	Bank Routing Number

- **Required for Payment**

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N08057-0098
Claimant	: Bulkhandling Handymax AS
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: Dawn Unglesbee
Amount Requested	: $288,473.32

Incident

In the early morning hours of July 23, 2008, at approximately 0130, the tank barge DM 932, sank as a result of a collision with M/T TINTOMARA and discharged approximately 282,828 gallons of oil into the Mississippi River, a navigable waterway of the United States. The Federal On-Scene Coordinator/Unified Command (FOSC/UC) initially closed the river to vessel traffic to conduct removal actions and later managed and restricted vessel traffic when the River reopened until cleanup was complete.

Responsible Party

American Commercial Lines LLC (ACL) owned the barge at the time of the incident and is a responsible party (RP) under the Oil Pollution Act.

Claimant and Claim

Claimant's Initial Claim

The claim in the amount of $288,473.32 was presented to the Oil Spill Liability Trust Fund (OSLTF or the Fund) on May 3, 2011 by Mr. Lasse Brautaset of Nordisk Legal Services on behalf of Bulkhandling Handymax AS, Oslo, Norway, and Fednav International Ltd., Montreal, Quebec, Canada (the Claimants). Under the initial claim submittal, Mr. Brautaset sought reimbursement for loss of profits and additional fuel and pilotage fees incurred due to the delay of the M/V ORSULA after the incident and closure of the Mississippi River for both Bulkhandling Handymax AS (Bulkhandling) and Fednav International Ltd. (Fednav).

Mr. Brautaset presented this as a joint claim involving two claimants, two voyages covered by two charter parties, two vessel delays for different time periods, and additional incurred expenses associated with each of the charter parties resulting from the two delays.

The first charter party is between Fednav International Ltd., as disponent owner, and Bulkhandling Handymax AS, as charterer, for the M/V ORSULA. The parties executed a New York Produce Exchange (NYPE) time charter on June 18, 2008, for "about a onetime charter trip" with "duration about 20 days without guarantee." The hire rate was $48,750/day.[1] According to the facts presented by the Claimants, the vessel was delivered to Fednav on July 2, 2008. Discharge operations were completed on July 22, 2008 (prior to the incident) and ORSULA was redelivered to Fednav on July 28, 2008. According to the Statement of Facts for this voyage, which was submitted by Mr. Brautaset, the vessel was detained for 4.8368 days. Mr. Brautaset alleges that the loss of profits for the vessel delay is $235,794.27. Mr. Brautaset also alleges that additional expenses incurred because of the River closure under this time charter is $20,236.17.

[1] New York Produce Exchange Time Charter, page 4.

The Claimants disagreed as to whether the 4.8368-day delay was off-hire or on-hire. Mr. Brautaset asserts that Bulkhandling Handymax AS considered the vessel off hire during the delay and sought to deduct the daily hire rate for the days delayed. Fednav International Ltd., on the other hand, believes the vessel was not off hire and it is owed the daily hire rate for the delays in the River. Mr. Brautaset requested that the NPFC resolve this dispute, guaranteeing that the Claimants will each accept 50% of the reimbursement from the Oil Spill Liability Trust Fund (OSLTF or the Fund).[2]

Fednav, as disponent owner of the M/V ORSULA, executed a second charter party with Alcoa to load at Copper/Consolidated and deliver it to Point Comfort, Texas. Under the terms of this charter party the freight rate was to be calculated under a time charter equivalent[3] (TCE) and that the net time-charter equivalent will be at least $32,000/day. According to the Statement of Facts for this voyage the ORSULA loaded on July 29, 2008 and began its voyage to Point Comfort at 0850 on July 30. The vessel was delayed at Grandview Anchorage for decontamination for 12.9167 hours or approximately 0.538 days. Mr. Brautaset calculated the loss of profits for the delay to be $23,238.76.[4] This was based on the TCE of $43,179 per day. Additional expenses associated with this charter are $9,204.12.[5]

On July 18, 2012, the NPFC issued its initial determination for this claim. The NPFC denied the alleged lost profits resulting from the 4.8368 delay ($235,794.27) under the NYPE time charter on the grounds that the NPFC would not interpret the terms of the charter party and the dispute between the parties should be resolved pursuant to the arbitration clause in the charter party. The NPFC also denied the alleged lost profits resulting from the 12.9167-hour delay under the Fednav/Alcoa contract of affreightment on the grounds that utilizing the expected $43,179 daily net revenue from the impacted voyage did not establish in fact a loss of profits. As to the additional expenses the NPFC found the pilotage expenses under the NYPE time charter in the amount of $974.65 compensable and due to Bulkhandling. The additional tug charges incurred under the second charter party in the amount of $9,204.12 are compensable and due to Fednav as well. The NPFC found the total costs compensable under the initial determination was $10,178.77.

Claimant's Request for Reconsideration

Claimant requested reconsideration on September 17, 2012 of the NPFC's initial determination via letter.[6] Claimant explains initially, the dispute between Bulkhandling and Fednav began as a tentative arrangement pending the outcome of their claim before the Fund; however, on November 25, 2008 the claimants came to a final settlement whereby they split the off-hire dispute on a 50/50 basis (Fednav deducted $117,897.24 from its hire statement and Bulkhandling paid Fednav $116,365.37 as its 50% share.) and that this change had not been reflected in the previous claim submission.[7] Mr. Brautaset argues that if not for the off hire clause in the charter party Fednav would have received full hire from Bulkhandling and would not have a claim against the NPFC. He continues to argue that using the time charter equivalent methodology to calculate a loss of profits for the Fednav/Alcoa COA is reliable and is the best evidence of what a vessel earns on a given voyage.

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[2] Email from Mr. Brautaset to NPFC, dated September 15, 2011.

[3] A time charter equivalent (TCE) is a shipping industry measure of revenue after deducting direct expenses of operating a vessel and usually includes port, canal and fuel costs unique to a particular voyage that would otherwise be paid by the charterer under a time charter contract, along with commissions. Mr. Brautaset calculated the TCE as first deducting the overhead costs (bunkers and port expenses) from the total freight received. Second, he determined the daily earnings by dividing the total freight received minus the overhead costs by the number of days in the voyage. In this case he calculated the TCE for the voyage was $43,179.00/day.

[4] Claimant's attachment I, Voyage Result.

[5] Claimant's attachment J, Crescent Towing & Salvage Co. Inc Invoice. 197560.

[6] See Reconsideration Request from Nordisk Legal Services, Mr. Lasse Brautaset, to NPFC, dated September 14, 2012.

[7] Claimant's Reconsideration letter dated, September 14, 2012, attachment 6 and 7. Emails concerning the 50/50 split, dated November 25, 2008 from Mr. Li, Dong.

NPFC Analysis on Reconsideration:

The NPFC reviewed the claim ***de novo,*** including the documentation submitted by the claimant in its original submission and the information submitted to support its request for reconsideration. The initial denial was on the grounds that the claimant had not established its actual loss of profits. Claimant bears the burden of proving all elements of its claim.[8]

Fednav and Bulkhandling Loss of Earnings:

On reconsideration, Mr. Brautaset explains that Fednav and Bulkhandling came to a final settlement whereby they split the off-hire dispute on a 50/50 basis.[9] The Hire Statement provided by Claimant provides that Fednav deducted 2.4184 days of hire which equates to 117,897.24 (50% of the original request of $235,794.00) (Fednav's 50% share) and Bulkhandling paid $116,365.37 to Fednav (Bulkhandling's 50% share). This $116,365.37 appears to be the 50% hire rate settlement ($117,897.24) with a deduction of $1,531.87.[10] Mr. Brautaset argues that Fednav did not receive its 50% share of the hire rate, $117,897.24; therefore Fednav is entitled to reimbursement for this amount from the NPFC.

The record is clear that Bulkhandling was ready to redeliver ORSULA back to Fednav on July 23, 2008 but could not do so until July 28, 2008. Fednav and Bulkhandling settled their on-hire/off-hire dispute by agreeing to split the 4.4.84-day delay 50/50. Since Bulkhandling paid its 50% share to Fednav and Fednav agreed to deduct 50% of the 4.484-days of hire, Fednav has been compensated and is not due 2.4194 days of hire, or $117.897.24 from the Fund. Based on this information and because Mr. Brautaset cannot explain the $1,531.87 on the Hire Statement, the NPFC finds that **$116,365.37** is payable by the OSLTF to Bulkhandling.

Extra Expenses while under NYPE Time Charter:

Under the terms of the time charter, pilot's expenses, agent's fees, and bunkers are the responsibility of the Charterer; therefore, any reimbursement for these expenses are reimbursable to Bulkhandling.

Extra Pilotage - $4,068.67

Based on the information presented in the original claim, NPFC and claimant agree that **$974.65** in pilotage expenses are payable to Bulkhandling.[11]

Extra Agents Invoice -$225.00

Claimant initially submitted an NSA Agencies Inc. invoice for the amount of $225.00 asserting that this charge was incurred for the hiring of an Agent due to the oil spill. The NPFC found that the claimant did not provide sufficient evidence to support the fact that the extra agent's fee was incurred due to the oil spill incident or that it was not part of their normal agent fees therefore, the alleged extra agent charges in the amount of $225.00 were denied. In Claimant's reconsideration request, Claimant states they accept the NPFC's determination to deny the extra agent fee.[12]

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[8] 33 CFR 136.105(a)

[9] Claimant's request for Reconsideration, dated September 14, 2012.

[10] The NPFC inquired with the Claimant regarding the remaining difference of $1,531.87. In Claimant's reply back to the NPFC, he concurs that a payment of $116,365.37 was paid on November 25, 2008; however, Claimant did not clearly explain the $1,531.87 unpaid amount remaining. His email points to the $1,865.50 that was remitted on June 18, 2011 and said that this amount was paid to balance the account.

[11] See Original Claim Determination and Claimants Reconsideration Request, dated September 14, 2012, page 5.

[12] Claimants Request for Reconsideration, dated September 14, 2012, page 5.

Under Reconsideration status of this claim, the extra agent fees in the amount of $225.00 remain denied.

Bunkers - $15,942.50

Claimant asserts that it incurred bunker costs totaling $15,942.50. Initially, NPFC denied these costs as Claimant had not provided supporting documentation that evidenced the bunker burn rate for the M/V ORSULA when transiting, when idle, or what the vessel actually burned during the delay period. Also, the claimant did not provide receipts or invoices that detailed the total price per metric ton of IFO/MDO purchased during the delay.

Under Reconsideration, Claimant provided their original calculations[13] as well as the invoice supporting that the claimant paid $784.50 per MT of IFO bunkers.[14] However, Claimant was not able to support the MDO bunker price of $1200.00 because the MDO had been purchased by the Croatian Head-Owners.

Based on the Statement of facts provided by the claimant, below are the IFO bunker soundings the NPFC was able to verify with the documentation submitted by the Claimant:

Date	Time	Location	Fuel Onboard
July 27, 2008	1305	9 Mile Anchorage	636.50
July 27, 2008	1455	General Anchorage	636.10
July 28, 2008	1229	Decon Completed	632.6
Total IFO Consumed			**3.90**

The M/V ORSULA departed 9 mile Anchorage with a pilot onboard to move the vessel to the decontamination site at General Anchorage. The vessel consumed 0.40 mt of fuel moving between 9 Mile Anchorage and General Anchorage. While at General Anchorage, being decontaminated, the vessel burned 3.5 mt of IFO fuel. Total IFO bunkers consumed during this period of time equals 3.90.

Based on the evidence in support of the bunker burn rate July 27, 2008 through July 28, 2008, NPFC determined that the M/V ORSULA burned 3.90 mts of FO while transiting to the decontamination site. 3.90 mts X $784.50 = **$3,059.55**

Claimant's bunker calculations consisted of using the quantities given by the Master when anchored on July 22, 2008 at 1410 (before the spill) and when the vessel departed the decontamination site on July 28, 2008 at 1305.[15] The NPFC can only compensate for fuel consumed during the oil spill incident, in addition to bunker use supported by documentation provided in the claim. The documentation provided by Claimant results in a much higher calculation.

The NPFC finds that **$3,059.55** in extra bunker expenses are payable to Bulkhandling due to the oil spill, based on the Statement of Facts as well as the invoices provided by Claimant.

The Claimant failed to provide documentation to support the claimed MDO bunkers in the amount of $1,200.00. Therefore, these costs remain denied on Reconsideration.

The remaining $11,682.95 ($15,942.50 claimed - $1,200.00 MDO denied - $3,059.55) in combined MDO/IFO bunker costs claimed is denied because the Claimant failed to provide documentation to support the cost per metric ton or amount of fuel consumed during the oil spill delay.

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[13] See Claimants attachment # 10.

[14] John W. Stone Oil Distributor, LLC invoice # BK53174 – IN, dated 7/21/08 (attachment # 11) and a Marine Bunker receipt (attachment #12).

[15] See Claimants attachments 13 -14.

Charter Party between Fednav and Alcoa

Loss of Earnings -- $23,238.76

Claimant continues to allege on reconsideration that the Fednav and Alcoa voyage was affected by 12.9167 hours or a 0.538 day delay at Grandview Anchorage on July 30-31, 2008 and Fednav suffered a loss of profits.[16] Revenues for this voyage were calculated under a Time Charter Equivalent (TCE) methodology. Claimant subtracted the overhead costs, bunkers and port expenses from the freight revenue received and then divided that number by the actual duration of the impacted voyage. This calculated to be $43,179 per day. Based on a 0.538-day delay Claimant alleged that the lost profits are $23,238.76.

In the initial Determination, the NPFC denied this portion of the claim because Claimant had not established a loss of earnings based on the TCE for the impacted voyage. In order to establish a loss under this theory Claimant would have to provide comparables for the vessel, such as similar voyages, tax returns or other profit and loss documentation to establish that the 12.9167-hour delay resulted in a loss of profits. Mr. Brautaset does not agree that looking at other voyages for the vessel is helpful because each voyage is different and therefore is not a comparable to an impacted voyage. He argues that the more reliable profit and loss methodology is a TCE for the impacted voyage only.

A review of the three comparables for voyages 07-08, 08-08 and 09-08 reflect uncertainties that question the reliability of utilizing a TCE methodology. First, Mr. Brautaset asserts that the TCE calculation for the impacted voyage (08-08) is $43, 179 per day. Yet looking at the ORSULA 08-08 sheet submitted on reconsideration, the TCR per day is $50,509.86. He has provided no explanation for this discrepancy. Further, the comparables calculate both a profit per day (calculated by dividing the profit by the voyage duration) and a TCR per day (calculated by taking the profit plus the hire costs and dividing that by the voyage duration). There is no explanation as to why he uses the TCE per day rather than the profit per day except that the TCE is always substantially higher than the profit per day. It appears that these daily profit rates and TCR rates may be used for different purposes by a shipping company to determine how the vessel is operating and how its operation affects its revenues; however, as presented a TCE methodology does not establish a loss of profit in fact.

Based on the evidence, Claimant failed to meet their burden of proof to show a loss of profits or earnings in fact as a direct result of the oil spill therefore $23,238.76 in alleged lost profits remain denied on Reconsideration.

Expenses at Grandview – Extra Tug Hire -- $9,204.12

Under the terms of the charter party Fednav is responsible for expenses such as tug hire.

The NPFC finds both invoices totaling **$9,204.12** compensable and payable to Fednav. See initial determination.

[16] Claimant's original submission G and H.

Summary

Total claimed costs the NPFC finds compensable are $116,365.37 for loss of earnings, $974.65 for extra pilotage, $3,059.55 for bunkers, and $9,204.12 for extra tug hire. The total compensable amount is **$129,603.69.**

Amount Offered: $129,603.69

Claim Supervisor: Thomas S. Morriso[redacted]

Date of Supervisor's review: 4/5/2013

Supervisor Action: Offer Approved.

Supervisor's Comments: