U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center

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5890
November 15, 2013

[redacted]

IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd

[redacted]

Claim No. J05003-0028

Dear Mr. Davis:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number J05003-0028 seeking reimbursement of costs paid to Environmental Economics Services LLC.

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 J05003-0028.

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

[redacted]

Claims Manager
U.S. Coast Guard
By direction

Encl: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION

Claim Number:	J05003-0028
Claimant:	IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd
Type of Claimant:	Corporate RP
Type of Claim:	Claim for Amount Paid to Consultant, Environmental Economics Services
Claim Manager:	Eric Bunin
Amount Requested:	$13,000.00

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.

CLAIMANT AND 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) and their insurers. 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 statutory 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 statutory 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 their claims for which they seek reimbursement for third-party damage claims. Attached to this letter were exhibits, including a summary of claimed costs.[1] By letter dated March 21, 2012, Claimants

[1] Initial submission, tab 2.

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.

This claim seeks reimbursement of amounts Claimants paid for consulting services allegedly related to third party claims. Claimants seek reimbursement of $13,000.00 paid to Environmental Economics Services (EES), consultants for landowner claims.[2]

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)

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 Oil Spill Liability Trust Fund is available to pay claims for uncompensated removal cost determined by the President to be consistent with the National Contingency Plan and uncompensated damages. 33 U.S.C. § 2712(a)(4). Covered damages under U.S.C. §2702 (b)(2) are natural resources, real or personal property, subsistence use, government revenues, profits and earning capacity and public services.

DETERMINATION

The Claimants seek reimbursement of $13,000.00 they claim to have paid to Environmental Economics Services (EES) for services provided to Keesal Young & Logan (KYL) from 1 January 2006 through 1 November 2006, and 1 February 2008. It is unclear what these services are because they were initially submitted to the Fund as response costs, but were later re-submitted as third party landowner claims consultant fees.[3] According to the invoices the consulting services were for providing IMC Shipping, KYL and the Swedish Club "economic support" for the Selendang Ayu spill.[4] The invoices are vague as to what services were being provided.

The claim seeks costs that the RP appears to have incurred for retaining consulting services related to third party claims presented to the responsible parties and may be fees associated with KYL's legal representation of the RP in dealing with third party claimants.[5] Claimants have

[2] See TPC detail attached to KYL letter dated March 21, 2012.
[3] See December 6, 2007 submission and TPC detail attached to KYL letter dated March 21, 2012.
[4] See Project Name and Client listed on invoices.
[5] Some invoices were addressed to the responsible parties;others were addressed to KYL.

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: Robert Riou[redacted]

Date of Supervisor's review: 11/15/2013

Supervisor Action: ***Approved***

Supervisor's Comments: