

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/4/2011
Claim Number	: N08057-036
Claimant	: Meridian Bulk Carriers
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$558,956.71

Facts

In the early morning hours of July 23, 2008, at approximately 0130, the tank barge DM 932, an unmanned, non-self propelled, double hull, steel tank barge, bearing official number 546058, 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 FOSC 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

The Claimant, Meridian Bulk Carriers, Ltd. (Meridian) presented this claim to the National Pollution Funds Center (NPFC) seeking reimbursement of loss of profits suffered when a vessel it was chartering, *M/V Jaco Triumph*, was delayed due to the closure of the Mississippi River subsequent to the discharge of oil from the DM 932. In this case, a New York Produce Exchange Time Charter agreement was executed between Jaco Triumph Shipping Ltd, Marshall Island, owners of the vessel, and Meridian Bulk Carriers Ltd, Marshall Island on October 4, 2007 to transport corn and wheat along the Mississippi River.

Claim Description

The claim was presented to the Oil Spill Liability Trust Fund (OSLTF or the Fund) on June 23, 2009, by Meridian's attorney, [REDACTED] for the *M/V Jaco Triumph*. Meridian seeks alleged lost profits totaling \$558,956.71.

Meridian's claim is broken down into the following sub categories:

- Daily Charter Hire - \$522,050.00
- Cable/Telex and Victualling ("C/V/E") - \$971.51
- Extra Bunkers - \$35,935.20
- Launch Services - \$816.00
- Pilotage Expenses - \$5,158.48

Meridian presented this claim to the RP in accordance with 33 U.S.C 2713(a). The RP acknowledged presentation of this claim by issuing its determination to deny the claim to the claimant by letter dated May 28, 2009.¹

Applicable Law

The Oil Pollution Act of 1990 provides that each responsible party for a vessel or facility from which oil is discharged, or which poses a threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive zone is liable for removal costs and damages. 33 U.S.C. § 2702(a).

Damage include damages equal to the loss of profits or impairment of earning capacity, due to the injury, destruction of, or loss of real property, personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

Congress directed the President to promulgate regulations “for the presentation, filing, processing settlement, and adjudication of claims...” 33 U.S.C. § 2713(e). Those regulations are found at 33 CFR Part 136.

The Fund shall be available to the President for the payment of uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. U.S.C. § 2712(a)(4).

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title. 33 U.S.C. §2713(a).

If a claim is presented in accordance with subsection (a) of this section and

- (1) each person to whom the claim is presented denies all liability for the claim, or
- (2) the claim is not settled by any person by payment within 90 days after the date upon which the claim was presented, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 U.S.C. §2713(c).

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. §2712(h)(2).

With regard to claims for loss of 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.

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a claim presented to the Fund should include, as applicable:

¹ Nicoletti Hornig & Sweeney denial letter to claimant dated May 28, 2009.

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—

- (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)

But 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).

Determination

Daily Charter Hire - \$522,050.00

When the oil spill occurred on July 23, 2008, the *M/V Jaco Triumph* was anchored at Nine Mile Anchorage waiting orders. As a result of the oil spill and subsequent river closure, the claimant alleges that it incurred an increase on extra paid charter hire of \$26,500.00 a day for 19.7 days from July 23, 2008 through August 11, 2008. Claimant calculates the delay time to be \$522,050.00 (19.7 days x \$26,500.00/day).

At the time of the spill the vessel was under a New York Produce Exchange Time Charter agreement that was executed between the owners of the vessel, and Meridian Bulk Carriers Ltd, Marshall Island. The time charter, executed on October 4, 2007 is for a “period of about 11 to about 13 months. ‘The exact period in Charterers option.’ ‘About means 15 days more or less.’”²

To be able to adjudicate the daily charter hire portion of the claim, the NPFC requested that the claimant send the vessel’s Voyage Logs, Statement of Facts, Bill of Laden, and Vessel Orders.³ Several extensions of time were given to the claimant to provide evidence to support their claim.⁴

² Time Charter, Claimant’s Exhibit 3.

³ Letter to claimant from NPFC, dated May 12, 2011

⁴ Email traffic between NPFC and Ms [REDACTED]

Meridian did not provide the necessary evidence to establish they incurred and paid for extra charter hire. In an email to the NPFC, dated August 18, 2011 Meridian Bulk Carriers informed the NPFC that they no longer want to pursue the lost charter hire component of Meridian's claim; however, Meridian asserts in the same email that they want to move forward with the extra bunker, extra pilotage and launch services components of the claim.⁵

Pursuant to the time charter provisions Meridian was obligated to pay the daily rate for each day during the charter; thus Claimant has failed to show increased charter hire costs and damages are a direct result of the oil spill. Specifically, the claimant asserts that the 19.7 days of delay time is equivalent to \$522,050.00. The evidence does not support and failed to prove that this oil spill delay solely caused extra charter hire costs. Therefore, the alleged increase of costs for the Lost Charter Hire component of the claim in the amount of \$522,050.00 is denied.

Cable/Telex and Victualling ("C/V/E") - \$971.51

Meridian alleges they incurred loss of profits for cable/telex and victualling/ ("C/V/E") totaling \$971.51 due to the 19.7-day delay.

Pursuant to the time charter provisions, Clause 63, Reporting/Representation/Victualling, charterers are to pay a lump sum rate of \$1,500.00 per month or pro rata for cables/telex and victualling/representation to Owners. Further additional costs above this amount if any are to be paid by Charterers.⁶

There is no information in the file to prove that Meridian had to pay additional costs for C/V/E. The NPFC requested that the claimant send supporting documentation to show the claimant's loss. Claimant did not submit evidence to support that additional costs were incurred; therefore, the claim for C/V/E in the amount of \$971.51 is denied.

Additional Bunkers - \$35,935.20

The claimant asserts that it consumed an additional 42.780 metric tons (mt) of MDO fuel at a cost of \$840.00/mt. Under the terms of the Time Charter party, the Charterers (Meridian) are to supply and pay for bunkers. The claimant provided evidence that the vessel had to move to the decontamination area on the River at Kenner Bend. This was evident by the support documentation Claimant provided associated with the extra launch services and pilotage expenses.⁷ Therefore, it is important to note that a vessel burns additional MDO when entering and leaving ports, when crossing rivers, narrow waters, and when maneuvering in confined waters, and etc.

The claimant provided the NPFC with Lauritzen Bulkers A/S invoices which provides bunker costs per metric ton (pmt) as well as L&L Oil and Gas Services receipt that shows payment was made.⁸ This information detailed the total MDO purchased during the delay. The additional bunker costs were paid for and confirmed by Sono Shipping LLC. Sono Shipping represents the claimant as their port agent.

⁵ Email dated August 18, 2011 from Claimant to the NPFC.

⁶ Time charter, clause 63, Reporting/Representation/Victualling

⁷ New Orleans-Baton Rouge Steamship Pilots Association

⁸ Lauritzen Bulkers A/S Debit Note No. 159089. Dated September 2, 2008, Lauritzen Bulkers A/S Debit Note No. 1592389, dated September 8, 2008 L&L Oil and Gas Services, LLC Invoice # 561003803, Meter Ticket # 1318109, dated August 10, 2008,

The documented delay resulted in an increase in the consumption of bunkers. In their claim submission, Meridian shows the breakdown of the amount of bunkers consumed during the idle and shifting periods.⁹ The table below shows the additional bunker consumption as per the claimant's support documentation:

Times and Dates:	MDO
7/15/2008 @ 2012LT – EOSP	73.18 mt
7/16/2008 @ 0600LT – Anchor aweigh	71.56 mt
7/16/2008 @ 1820LT – Arrived 9Mile Anchorage	69.05 mt
7/20/2008 @ 1350LT – USCG Restriction cleared	58.84 mt
7/23/2008 @ 0100LT – 9Mile Anchorage	52.79 mt
7/28/2008 @ 0720LT – Shifting from 9Mile Anchorage to Decon Zone	
ROB (SBE)	41.46 mt
ROB (FWE)	39.34 mt
8/10/2008 @ 0540LT – Bunkering	50.00 mt

It is evident that but for the DM 932 oil spill incident the vessel would not have been contaminated with oil causing the vessel to have to slowly maneuver along the River to Kenner Bend to be decontaminated.

The NPFC finds the total extra bunkers consumed due to the delay were 42.780 metric tons of MDO. Total MDO metric ton consumption cost was \$35,935.20. The \$35,935.20 in additional bunker costs is payable from the OSLTF. The increased consumption was clearly caused by oil spill incident.

Launch Services - \$816.00

Meridian asserts that it incurred \$816.00 in additional Belle Chasse Marine Transportation launch expenses due to movement of the vessel to the Nashville Avenue decontamination station for cleaning of her hull and then subsequent movement to Kenner Bend Anchorage. Claimant provided the Belle Chasse Marine Transportation, Inc. invoice totaling \$816.00. This invoice provides total costs incurred for two separate launches on July 28, 2008 and a fuel surcharge. Each launch service was \$340.00 each and the fuel surcharge was \$136.00. The launch services were booked by the ship's agent, Sono Shipping LLC.¹⁰

The NPFC finds that the charges paid by the claimant that it would not have paid if the oil spill had not occurred are extra expenses caused by the spill which reduced the claimant's profit. The NPFC finds all launch costs incurred from Nashville Avenue Station to Kenner Bend Anchorage, which total \$816.00, are compensable.

⁹ M/V JACO TRIUMPH V4 – Bunkers Emails dated; July 16, 2008, July 25, 2008, July 28, 2008, July 31, 2008, August 10, 2008, August 22, 2008,

¹⁰ Belle Chasse Marine Transportation, Inc. Invoice # E94005

The \$816.00 in launch services is payable from the OSLTF.

Additional Pilotage Expenses - \$5,158.48

Lastly, Claimant states there were additional New Orleans-Baton Rouge Steamship Pilots Association charges because of the additional movement of the vessel from Nashville Avenue decontamination station for cleaning of her hull and then subsequent movement to Kenner Bend Anchorage. Total extra pilotage costs due to the oil spill incident are claimed at \$5,158.48.

Claimant provided two New Orleans-Baton Rouge Steamship Pilots Association invoices for pilotage services rendered on July 28, 2008. Invoice # 0098977 is for \$2,555.83 and reflects the draft charges for 22ft.00in or 6.7056m in the amount of \$1,474.88, tonnage for 23,245 tonnes in the amount of \$204.66, and for mileage from 98.50 (CG Decon) to 114.40 (Kenner Bend) in the amount of \$293.67. The invoice also reflects a communication charge as well as surcharges. This invoice was paid in full on August 8, 2008.¹¹

New Orleans-Baton Rouge Steamship Pilots Association invoice #0098979 reflects the draft charges for 30ft.00in or 9.1440m in the amount of \$2011.20 and for tonnage for 23,245 tonnes in the amount of \$204.66. The invoice also reflects a communication charge as well as surcharges as well as surcharges. This invoice was paid in full on August 8, 2008.

The NPFC finds that the charges paid by the claimant that it would not have paid if the oil spill had not occurred are extra expenses caused by the spill which reduced the claimant's profit. The NPFC finds all additional pilotage expenses incurred Nashville Avenue Station to Kenner Bend Anchorage, which total \$5158.48, are compensable.

The \$5,158.48 in pilotage expenses is payable from the OSLTF.

Summary

Claimant submitted a claim in which they were able to demonstrate that the vessel they chartered was indeed negatively impacted and delayed by the DM 932 oil spill incident. However, the claimant was unable to confirm how long the actual delay was.

The time-charter between Jaco Triumph Shipping Ltd, Marshall Island and Meridian Bulk Carriers Ltd, Marshall Island states that Meridian will pay a daily rate of hire of \$26,500.00 per day.

On August 18, 2011, Claimant notified the NPFC via email that they no longer wanted to pursue the lost charter hire component of their claim but wanted to continue with the extra bunkers and extra pilotage and launch services. Each of these components was addressed separately in the determination.

Meridian does prove through documentation provided to the NPFC that they incurred additional bunkers, launch, and pilotage expenses as a direct result of the oil spill. These costs (as explained in each sub-point above) did detract from Meridian's profits and therefore are valid and compensable for that voyage.

¹¹ New Orleans-Baton Rouge Steamship Pilots Association invoice # 0098977, dated July 28, 2008.

The NPFC hereby determines that the OSLTF will pay **\$41,909.68** as full compensation for the damage costs incurred by the claimant and submitted to the NPFC under claim #N08057-036. All costs claimed are for charges paid for by the claimant for damages as that term is defined in OPA and are compensable damages, payable, by the OSLTF as presented by the claimant.

AMOUNT: \$41,909.68

Claim Supervisor

Date of Supervisor's review: 10/4/11

Supervisor Action: offer made

Supervisor's Comments: