

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 03/23/2010
Claim Number	: N08057-066
Claimant	: Standard Shipping, Inc. and A.T. Shipping Co. (collectively referred to as "Standard Shipping")
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$59,630.02

**I. FACTS****A. Oil Pollution Incident:**

In the early morning hours of July 23, 2008, at approximately at 0130<sup>1</sup>, the tank barge DM 932, an unmanned, non-self propelled, double hull, steel tank barge, bearing official number 546058, measuring 195 feet in length and 35 feet in breadth<sup>2</sup>, sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States. Approximately 282,828 gallons of oil<sup>3</sup> were released into the Mississippi River and the resulting spill response, coordinated by the FOSC Unified Command (FOSC/UC), initially closed the river to vessel traffic and later, when reopened, managed traffic for the duration of the response.

**II. RESPONSIBLE PARTY**

American Commercial Lines LLC (ACL) owned the DM 932 barge at the time of the incident and is a responsible party (RP) under the Oil Pollution Act. On 24 July 2008 the NPFC designated ACL as responsible party (RP), which it denied on 28 July.

**III. The Claimant and the Claim**

This claim is presented by two parties, A.T. Shipping, Inc. (owner) and Standard Shipping, Inc. (operator) of the M/V Amazonia, collectively known as Standard Shipping and represented by Wagner & Bagot, LLP. In its claim, Standard Shipping, states that its vessel the M/V AMAZONIA sustained lost profits, impairment of earnings capacity and additional expenses when the vessel was unable to operate as a result of the river being closed to navigation<sup>4</sup>. Claimant presented its claim to ACL's agent, Worley Catastrophe Response, LLC on 16 September 2008<sup>5</sup>. The RP received and denied the claim.

At the time of the oil spill incident, the M/V Amazonia (Amazonia) was transporting bauxite and crushed limestone from Discovery Bay - Port Rhoades, Jamaica to Gramercy Alumina

<sup>1</sup> SITREP-POL ONE dtd 23 July 2008.

<sup>2</sup> Complaint for Declaratory Judgment – filed 05/20/2009 - Factual Background (Pg 8) – US District Court – Eastern District of Louisiana – Civil Action No. 09-3657.

<sup>3</sup> House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008

<sup>4</sup> Standard Shipping Inc. – Claim submission dtd October 13, 2009 by Wagner & Bagot, LLP

<sup>5</sup> Complaint for Declaratory Judgment (filed 05/20/09) – Pg 54.

LLC (GA)<sup>6</sup> in Gramercy, LA (MM 145.3<sup>7</sup>) through a Contract of Affreightment<sup>8</sup> (COA). This COA was a requirements contract, which specifically stated that “No guarantee of a level of shipments is made by Charterer to Owner...”<sup>9</sup>, which is interpreted to mean that Standard Shipping was to provide its services to GA when the latter required them, rather than on a fixed schedule. The COA set a fixed contract rate<sup>10</sup> per freight when it was signed on 1 September 2006 and established a 4 year period of performance covering January 1<sup>st</sup> 2007 through December 31<sup>st</sup>, 2010.

When Amazonia entered the Southwest Pass from the Gulf of Mexico on July 23<sup>rd</sup> at 0730<sup>11</sup> the incident had already taken place and the response efforts to contain the oil spill were fully deployed and active<sup>12</sup>. At this point, Amazonia picked up a pilot in Pilot Town, LA (MM 1.5) and proceeded to the Boothville Anchorage (MM12.2-18.6) due to the river closure caused by ACL’s DM-932 oil spill. Amazonia remained there until July 26<sup>th</sup> when it was allowed to move up to the NOLA General Anchorage (MM89.5), where it dropped anchor at 0030 (27 July)<sup>13</sup>. A restriction that was later lifted allowed Amazonia to travel further to a “Decon” area at MM100.3<sup>14</sup>. At 1130<sup>15</sup> on 27 July it heaved anchors and proceeded to its destination at Gramercy Alumina (Gramercy, LA – MM145.3) where it arrived at 1945<sup>16</sup>.

As previously stated, Amazonia was being chartered on a requirements basis by GA through a Contract of Affreightment<sup>17</sup> (COA). The COA established the following rates<sup>18</sup>: \$40,000.00 per round voyage (includes port costs); demurrage/dispatch rates @ \$15,000/\$7,500 respectively; Fuel Oil = \$300.00/MT and Diesel Oil = \$600.00.

Due to the delays Amazonia experienced, Standard Shipping claims a loss of profits totaling \$59,630.02<sup>19</sup> for charges and expenses it incurred that were above what a normal voyage would have entailed. The components are as follows: Pilotage fees, Launch Service fees, Incident Commander Fees, Fuel (IFO/MDO), and demurrage/loss profit; the later claimed to have taken place over a period of approximately 3 days and 14.5 hours<sup>20</sup>.

### **APPLICABLE LAW:**

In general, claims for the removal costs or damages must first be presented to the RP per 33 USC 2713(a). If the RP denies the claim or does not settle the claim within ninety days, the claimant

<sup>6</sup> Contract of Affreightment between Standard Shipping, Inc. and Gramercy Alumina LLC. dtd 1 Sep 2006

<sup>7</sup> NOAA’s US Coast Pilot – Mississippi River, Chapter 8, pg 373

<sup>8</sup> Contract of Affreightment is defined a “An agreement for carriage of goods by water. This type of contract usually takes the form of a bill of lading or charterparty.” – Black’s Law Dictionary

<sup>9</sup> COA dtd 1 Sep 2006 btwn Standard Shipping Inc. & Gramercy Alumina LLC; pg 1, para A.1

<sup>10</sup> *Ibid.* Pg 2, para D.

<sup>11</sup> Email from [GULFINLAND@AOL.COM](mailto:GULFINLAND@AOL.COM) to [Stanships.NY@verizon.com](mailto:Stanships.NY@verizon.com) dtd 31Jul08 @ 08:46AM – Subject: M/V Amazonia – V.169 – Discharge at Gramercy; Claimant’s Exhibit A-9B

<sup>12</sup> SITREP-POL ONE dtd 23 July 2008.

<sup>13</sup> Claimant’s Exhibit A-9B

<sup>14</sup> *Ibid.* See entry for 0635 on Jul/27/08

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Contract of Affreightment is defined a “An agreement for carriage of goods by water. This type of contract usually takes the form of a bill of lading or charterparty.” – Black’s Law Dictionary

<sup>18</sup> COA dtd 28 Nov 2006

<sup>19</sup> [REDACTED]’s ltr to [REDACTED] of 5 Mar 2010; provided additional info and a revised sum certain.

<sup>20</sup> *Ibid.*

may commence an action in court against the RP or present the claim to the Fund. 33 USC 2713(c)

The uses of the OSTLF are described at 33 USC 2712(a). It provides in relevant part that:

“The Fund shall be available to the President for the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to consistent with the National Contingency Plan or uncompensated damages.”

Damages include damages for loss of profits or earnings capacity as a result of loss or destruction or real or personal property or natural resources. 33 USC 2702(b)(E). Damages are further defined to include the costs of assessing the damages. 33 USC 2701(5).

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 USC 2717 (h)(2)

In any case in which the president has paid an amount from the Fund for any removal costs or damages specified under subsection (a), no other claim may be paid from the Fund for the same removal costs or damages. 33 USC 2712 (i)

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

Under 33 CFR 136.105(a) & 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:

“the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney’s fees or other administrative costs associated with the preparation of the claim.” 33 CFR 136.105(e)(8).”

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.*

Pursuant to the provisions of 33 CFR 136.231, claims for the 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 a claimant sustaining the loss or impairment. The claimant may not be the owner of the damaged property or resources to recover for lost profits or income.

“In addition to the requirements of subparts A & 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 or 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)

If a third party claimant or RP is able to establish an entitlement to lost profits, then compensation may be provided from the OSLTF, but the compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for the 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, and 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 OF LOSS:**

#### Overview:

1. The incident involved the discharge and continuing substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
2. Real or personal property or natural resources have been injured, destroyed, or lost; specifically oil was released into and injured the Mississippi River, a natural resource of the United States.
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated damages.
4. The claim was submitted on time.
5. The claimant seeks \$59,630.02 in loss of profits, as a consequence of the M/V Amazonia incurring additional time, fuel, and expenses.
6. The claimant asserts that if not for the oil spill the voyage would not have resulted in the claimed additional time, fuel and expenses.
7. Presentment of costs to the RP was made prior to the submission of the claim. The NPFC also made presentment<sup>21</sup> of costs to the RP for which the RP responded denying responsibility for these costs.
8. In the process of adjudicating this claim, the NPFC Claims Manager collected additional information from the claimant and other sources to document what took place at the time of the incident.

#### Causation:

The Barge DM 932 oil spill did in fact release significant amounts of oil into and causing damage and injury to the Mississippi River, a natural resource of the United States. The

<sup>21</sup> NPFC ltr dtd 4 Nov '09 to ACL and ACL's counsel.

resulting damage, injury and removal response disrupted shipping in and out of the Mississippi River.<sup>22</sup> At the time of the spill, there were many large vessels in the area that were oiled due to the DM 932 oil spill. The Amazonia had to go into anchorage down river from the dirty zone while awaiting USCG clearance to move up the lower Mississippi River. Its progress upriver was constrained and was granted in a piecemeal fashion with arrival at its destination on July 27, 2008.<sup>23</sup>

The Claimant provided a record of the incident by submitting voyage documents which clearly demonstrate that the Mississippi River was closed and vessel traffic was redirected during the oil spill response and removal actions. Additionally, the USCG issued POLREPS (1-20) substantiate that the Mississippi River was either closed to vessel traffic or open to restricted traffic during the response period.

#### **A. Vessel Delay Time:**

Standard Shipping's original claim regarding the oil spill effects comprised a period of 3 days and 23 hours (Start: 7/23/2008 @ 12:25 – End: 7/27/2008 @ 11:30 hours). On its 26Feb10 letter, this was revised to subtract the vessel's transit time (8.5 hours), yielding a total of 3 days and 14.50 hours (86.5 hrs), which are valued by claimant at \$37,508.56.

Per the terms of the COA between Standard Shipping and GA, Standard Shipping is entitled to demurrage "...for all additional time over the allowable laytime for loading and discharging." Further, the COA states that "Dispatch will be earned for any time saved from the allowable laytime. Demurrage/ Dispatch shall be reversible."

Based on the documentation provided and summarized below by claim manager, two periods of delay were in fact experienced, with these adding up to 3.56 days or 85.58 hrs.

#### **23 July**

0730 Entered Southwest Pass with pilot on board  
1225 Anchor at Boothville Anchorage (MM 13.0-18.5)  
**(Begin – 1st delay)**

#### **26 July**

1335 Pilot on board  
1500 Heaved anchors and proceed upriver  
**(End – 1<sup>st</sup> delay) – Delayed Time = 74.58 Hrs.**

#### **27 July**

0030 Dropped first anchor at New Orleans General Anchorage (MM 90.1-90.9)  
**(Begin – 2<sup>nd</sup> delay)**  
0120 Pilot Off  
0840 Pilot on board  
1015 Complete hull inspection  
1130 Heaved anchors and proceeded to destination  
**(End – 2<sup>nd</sup> delay) – Delay Time = 11.0 Hrs**  
1525 Passed and changed pilots at AMA Anchorage (MM 115.5 – 117.3)  
1945 First line ashore – Gramercy Alumina (MM145.3)

<sup>22</sup> SITREP-POLs 1-20; documenting river closures and traffic management through 10 August 2008.

<sup>23</sup> See Agent's Discharge at Gramercy email of 31 July 08.

### **B. Pilotage Fees – Crescent River & NOLA/Baton Rouge**

As claimant explains, and the NPFC accepts, customarily, a Crescent River pilot takes the vessel from Pilot Town to Mile 90.5. Then, a NOLA/Baton Rouge pilot takes the vessel from Mile 90.5 to Mile 145.3, where the vessel discharges at GA (Gramercy, LA).

Because of the oil spill, and detailed above in A (Vessel Delay Time), Amazonia's transit up the Lower Mississippi River to Gramercy, LA was affected. For this item and to prove the damage, claimant provided Exhibit AA-3 with the pilotage charges (invoices) from four prior voyages (#165, through #168) along with the affected voyage (#169) to prove and demonstrate the uninterrupted and seamless transition of pilots, as Amazonia steamed upriver to Gramercy, LA.

Voyage #	Date of Service	Crescent River Pilots Assoc.	New Orleans – Baton Rouge Pilots Assoc.	Total Pilotage Fees
165	05/03/08	\$8,409.30	\$8,308.39	\$16,717.69
166	05/18/08	\$7,686.26	\$8,182.95	\$15,869.21
167	06/04/08	\$6,606.87	\$8,333.79	\$14,940.66
168	06/19/08	\$5,939.39	\$6,186.42	\$12,125.81
AVERAGE COSTS		\$7,160.45	\$7,752.88	\$14,913.33
169	07/23/08	\$1,422.39 <sup>24</sup>		\$21,195.80
	07/26/08	\$6,756.75 <sup>25</sup>		
	07/27/08		\$4,488.79 <sup>26</sup>	
	07/27/10		\$8,527.87 <sup>27</sup>	

Initially, claimant requested \$12,667.93 for this item. In its 26 Feb 2010 letter, this figure was amended and revised to \$6,283.71. During Voyage #169, the one affected by the oil spill, claimant incurred four (4) charges that total \$21,195.80. Normally, as seen by the table above, there are only two pilotage charges incurred, as the vessel steams from the Gulf of Mexico to its destination at Gramercy, LA. But for the oil spill, Amazonia had to follow orders that required anchoring and going to decontamination sites, prior to being allowed uninterrupted steaming up the Mississippi River.

### **C. Increased Bunkers**

Claimant's assertion that it suffered an increase in bunker expenses and the documented delay does give credence to the notion that it did experience an increase in the consumption of bunkers over what it would normally have consumed. After addressing various requests for additional information, the amount stated for this portion of the claim is as follows:

<sup>24</sup> Claimant's Original Claim Submission; Exhibit A-2

<sup>25</sup> *Ibid.* Exhibit A-3

<sup>26</sup> *Ibid.* Exhibit A-6

<sup>27</sup> Claimant's Supplemental Information Submission of 26 Feb 10; Exhibit AA-4, pg 3

	Original Claim Submission	Revised Claimed Amount	Difference
IMO Fuel	\$4,251.28	\$0.00	<\$4,251.28>
MDO Fuel	\$6,859.10	\$3,373.68 <sup>28</sup>	<3,485.42>
Total	\$11,110.38	\$3,373.68	<\$7,736.70>

Ideally, records showing the beginning/end of the delay periods and their respective remaining fuel soundings would have been provided by claimant, thereby allowing for a straight calculation of the bunkers Amazonia consumed. Since the information isn't available, claimant provided a reasonable substitute for this lack of detail in correspondence dated 15 March 2010. In said correspondence it made two assertions in support of its calculation of the bunkers consumed and claimed.

First, claimant asserts that during the periods where extra bunkers were consumed and are the basis of the claim, the extra bunkers consumed were while it was anchored and not making way toward its destination. Further, it asserts that during these periods, Amazonia would only consume diesel fuel to power generators and the auxiliary boiler. This assertion is deemed reasonable and in keeping with accepted ship operations/practices by the claim manager.

In its second assertion, claimant provides and points to a personal log kept by Mr. Paul Sa, Managing Director of Standard Shipping, that captures fuel readings for Amazonia. Based on this log, claimant asserts that the diesel fuel consumption rate for Amazonia is about 0.07 metric tons per hour while at dock or anchor. In support of this assertion, claimant points to two different sets of entries in the log, which per claimant's description, are summarized below:

DATE	TIME	Elapsed TIME	FUEL Oil (Oil)	Oil Consumed	DIESEL Fuel (Diesel)	Diesel Consumed
02/08/07	15:70	83.00 Hrs	235.5 MT	0.0 MT	87.9 MT	5.4 MT
02/12/07	02:20		235.5 MT		82.5 MT	
For this period, claimant calculates and states a consumption rate of 0.65 MT /HR of Diesel Fuel						
05/27/07	04:30	64.00 Hrs	235.5 MT	0.0 MT	81.9 MT	4.5 MT
05/29/07	20:35				76.4 MT	
For this period, claimant calculates and states a consumption rate of 0.07 MT /HR of Diesel Fuel						

Though the cites to the log kept by Mr. Sa were verified, there was a discrepancy/mistake in the log; the time annotated for 02/08/07 though written as 15:70, was assumed to be 15:20, for the time noted not being correct as recorded. Also, claimant made the following mathematical errors in the calculations provided:

- May 27-29, 2007 Period:
  - i. Time elapsed for the period of is 64.08 hrs, rather than 64.00 hrs.
  - ii. The total diesel consumed is 5.5 MT rather than 4.5 MT

<sup>28</sup> NOTE: Claimant made errors in calculating the consumption rate. See "Analysis Section" for correct figures.

With the noted mistakes and stated corrections, the corrected table along with the claim manager's calculations is found below:

DATE	TIME	Elapsed TIME	FUEL Oil (Oil)	Oil Consumed	DIESEL Fuel (Diesel)	Diesel Consumed
02/08/07	15:20	83.00 Hrs	235.5 MT	0.0 MT	87.9 MT	5.4 MT
02/12/07	02:20		235.5 MT		82.5 MT	
05/27/07	04:30	64.08 Hrs	235.5 MT	0.0 MT	81.9 MT	5.5 MT
05/29/07	20:35		235.5 MT		76.4 MT	
Total Hours*		147.08				
Total Consumption*				0.0 MT		10.9 MT
Average Consumption (MT/HR)*				0.0 MT/HR		0.0741 MT/HR

\* Note: These calculations are the claim manager's, as claimant made a couple of mathematical errors when summarizing information.

Based on the information above, the actual consumption rate of diesel fuel is 0.0741 MT per hour. This is the factor that will be referred to later in the final analysis of the claim.

#### D. Additional Costs

- Launch Service: \$889.75<sup>29</sup>
  - This launch service was required to deliver or remove pilots from the vessel. The first portion was incurred when the Belle Chasse Marine Transportation picked up the pilot at the Boothville Anchorage<sup>30</sup> (\$396.00) and the second item was for a redelivery of a pilot to the Boothville Anchorage (\$493.75). This anchorage was the designated point where Amazonia was to go for decontamination.
- Command Center Activation & Staffing Fee \$5,537.50
  - As claimant states, and claim manager accepts, this is a fee resulting from the vessel having to appoint an Incident Commander in the event of an oil spill. The incident commander has to be available around the clock until the oil spill is resolved. Standard Shipping's contract was with Maritime Bureau, Inc (MBI). The "Ratesheetallservices"<sup>31</sup> provided shows a rate of \$750.00 per day and it is exclusive of other costs, as they are additional. The \$28.75 communication expense charge is deemed by claim manager as such.
  - As justification for the expense, claimant provided a report<sup>32</sup> prepared by MBI (dtd 31Jul08) and an invoice<sup>33</sup> which describes the services rendered as that of: reviewing all requirements, resource assets, personnel and equipment needs;

<sup>29</sup> Claimant's Exhibit AA-5; initially claimed as \$1,591.75, but revised to \$889.75, per claimant's 26 Feb 2010 ltr. This figure is the result of two charges, \$396.00 + \$493.75, for a pilot pickup and then a pilot redelivery.

<sup>30</sup> Located between mile markers (MM) 13.0 through 18.5.

<sup>31</sup> See claimant's Exhibit AA-8

<sup>32</sup> See claimant's Exhibit AA-7

<sup>33</sup> See claimant's Exhibit AA-6.



drafting plan to boom vessel and arrange to have booms deployed; maintaining watch and monitoring the situation from July 23 to release on July 28<sup>th</sup>. Also attending USCG Incident Command briefs, briefing claimants, arranging for removal of booms and the vessel's decontamination prior to movement.

- The amount claimed breaks out as follows:
 

▪ Spill Management Services (\$750 x 7)	\$5,250.00
▪ Communication Expenses (\$28.75 x 10)	287.50

#### E. *Analysis:*

##### DEMURRAGE/LOSS OF PROFIT (VESSEL DELAY TIME):

Standard Shipping submitted a claim which, with additional follow-up information and responses to NPFC requests, documented the circumstances that led to this claim. With this information, claimant demonstrated that Gramercy Alumina's (GA) chartered vessel was negatively impacted and delayed by the DM 932 oil spill. However, simply because a vessel is delayed, it does not always translate into a loss of profit claim under OPA, as is the case here.

In accordance with the Contract of Affreightment<sup>34</sup> (COA), Standard Shipping, per voyage, receives \$8.05 per metric ton of contract freight and a fixed fee per round voyage of \$40,000<sup>35</sup> which is inclusive of port costs. The COA also stipulates for GA to cover the freight's fuel costs (oil and diesel) and for GA to pay demurrage for all additional time over the allowable laytime for loading and discharging<sup>36</sup>. In its 26 Feb 2010 letter, claimant amplifies on this point by stating that "*demurrage is ...for delays caused to the vessel through the fault of the charterer, shipper, or receiver.*" Claimant then continues and concludes with "*...as the charterer did not cause the vessel's delay...there was no payment made by or to anyone. Demurrage is merely an accepted method for calculating the loss of revenue to the vessel owner caused by lost ship time. The negotiated demurrage rate in the negotiated contract of affreightment is \$15,000.00 per day.*"

The claim presented by Standard Shipping, specifically the portion for the vessel delays – lost time – were not presented to GA, as charterer did not cause the vessel's delay. Claimant states for that reason, there was no payment made by or to anyone and that it is entitled to the lost revenue for the time lost (extra days or delays) during the voyage at a rate of \$15,000.00 per day. This, claimant explains, is the contract rate for demurrage/dispatch<sup>37</sup>.

The additional information claimant provided demonstrated that GA regularly receives payment for those charges. However, in the case of the oil spill incident that is the subject of this claim, the fact that Standard Shipping did not receive demurrage payments from GA for the delayed period does not translate into lost profits under OPA.

Though Standard Shipping may have had an agreement with GA calling for a demurrage rate of \$15,000.00 per day and therefore it may appear that Standard Shipping lost income; it did not. Actually, had there been no oil spill, the opportunity to bill or increase revenue through

<sup>34</sup> Contract of Affreightment is defined as "An agreement for carriage of goods by water. This type of contract usually takes the form of a bill of lading or charterparty." – Black's Law Dictionary

<sup>35</sup> COA's "Agreement In Principle"

<sup>36</sup> COA; pg 7, para #8.a

<sup>37</sup> *Ibid.*

demurrage would not have occurred. In fact, had AG paid the demurrage, Standard Shipping would have made this profit *because of* the spill, not in spite of it. This is not to say that, in this case, the delayed days did not result in a loss of profit. The fact that the charterer did not reimburse or provide any compensation, in mitigation of the oil delay, results in increased charter expenses and this in turn translates into a direct loss of profit for the impacted period for the increased expenses that it incurred, though not for the claimed demurrage.

Claimant has demonstrated that it did receive the monies it was due; a \$40,000 voyage fee and the per ton freight fee for cargo transported between Discovery Bay, Jamaica and Gramercy, L.A. Using the formula "Profit = Revenues – Expenses", we can see that the Revenue was in fact received as per the COA. What changed was the variable expenses that claimant incurred, consequently reducing profits. It is those increased variable expenses that are in fact compensable. For this reason, this portion of the claim attributed to demurrage is denied.

Determined Amount: \$0.00

#### PILOTAGE FEES:

As discussed above in B, the delays in transit resulted in additional pilotage fees that it would otherwise not have incurred, but for the oil spill. The total fees Amazonia incurred for this voyage totaled \$21,195.80. When this figure is compared to the average fees (\$14,913.33) paid during the prior four voyages (#165 - #168) it is readily discernible that but for the oil spill there wouldn't have been an increase in the total average pilotage fees incurred during this voyage (#169). Given this, we can conclude that the oil spill caused Amazonia an increase in pilotage fees of \$6,282.47 over the average fees.

Determined Amount: \$6,282.47

#### INCREASED BUNKERS:

As discussed above in B, the bunkers consumed are only for diesel fuel at a rate of 0.0741 MT/HR. To calculate the total number of bunkers consumed, we multiply this consumption rate by the total delayed time that was determined above in A; 85.58 hours to arrive at a total of 6.3415 MT of diesel fuel. This figure is then multiplied by the fuel cost rate (\$600.00) to arrive at \$3,804.90. Even though the determined amount is above that claimed for this specific item, the full amount being offered for the claim will not exceed the overall amount claimed.

Determined Amount: \$3,804.89

#### ADDITIONAL COSTS:

- Launch Service
  - As discussed above in D, the disruptions in vessel traffic, caused Amazonia to incur two additional launch service fees totaling \$889.75 that it wouldn't have otherwise incurred, but for the oil spill. In the process of adjudicating this portion of the claim, the claim manager reviewed these charges against all the individual pilotage invoices and ascertained that these were not double counted/claimed with pilotage charges.

- Determined Amount: \$889.75.
- Command Center Activation & Staffing Fee
  - As discussed above in D, the oil spill caused Amazonia to require the services of an incident commander/QI. This individual would advise and guide Amazonia's actions while it transited the river during the ongoing oil spill response. Claimant indicated so, in its correspondence<sup>38</sup> and proved it by providing MBI's invoice<sup>39</sup> and the electronic payment<sup>40</sup> it issued. In addition, a rate sheet<sup>41</sup> was provided to confirm the prevailing rates for the billed items and charges.
    - Incident Commander/QI Fees \$5,250.00.
    - Communication Expenses \$ 287.50
  - Determined Amount: \$5,537.50

#### F. Determination:

Based on the above items in D, a summary of the determined items is found below:

Item	Item Description	Claimed Amount	Determined Amount	Denied Amount
A	Demurrage/Loss of Profit (Vessel Delay Time)	\$37,508.56 <sup>42</sup>	\$0.00	\$46,562.50
B	Pilotage Fees	\$6,283.71 <sup>43</sup>	\$6,282.47	\$1.24
C	Increased Bunkers	\$3,373.68 <sup>44</sup>	\$3,804.90	(\$431.22)
D	Launch Service	\$889.75 <sup>45</sup>	\$889.75	\$0.00
E	Command Center Activation/Staffing Fees	\$5,537.50	\$5,537.50	\$0.00
Totals		\$53,593.20	\$16,514.62	\$37,078.50

Note: The total amount claimed is claim manager's summation of the individual items claimed, which was incorrectly claimed to total \$59,630.02<sup>46</sup>.

The NPFC hereby determines that the OSLTF will pay \$16,514.60 in increased expenses that were not offset or mitigated by the fixed revenue claimant received from its customer, GA. These increased expenses paid by claimant are in fact lost profits for OPA defined damages which were submitted to the NPFC under claim # N08057-066 and are compensable and payable by the OSLTF.

**AMOUNT: \$16,514.60**

<sup>38</sup> 26 Feb 10 Letter from [REDACTED] to [REDACTED]

<sup>39</sup> Claimant's Exhibit AA-6

<sup>40</sup> Claimant's Exhibit A-7A

<sup>41</sup> Claimant's Exhibit AA-8

<sup>42</sup> 26 February 10 Letter from G.Starling to A.Rios; pg 7

<sup>43</sup> 5 March 10 Letter from [REDACTED] to [REDACTED]; pg 2

<sup>44</sup> 15 March 10 Letter from [REDACTED] to [REDACTED]

<sup>45</sup> 26 February 10 Letter from [REDACTED] to [REDACTED]; \$396.00 + \$493.75=\$889.75

<sup>46</sup> 5 March 10 Letter from [REDACTED] to [REDACTED] pg 1

Claim Supervisor:

Date of Supervisor's Review:

Supervisor Action:

Supervisor's Comments:

13/23/2010  
OFFER APPROVED

CLAIM N08057-066