CLAIM SUMMARY / DETERMINATION FORM

Date	: 11/19/2010
Claim Number	: N08057-067
Claimant	: Stanships, Inc. (On behalf of Standard Shipping, Inc., and Eleftheria Shipping Co., Ltd.)
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $18,439.36

I. FACTS

A. Oil Pollution Incident:

In the early morning hours of July 23, 2008, at approximately at 0130[1], 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[2], 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[3] 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 through August 10, 2008.

B. 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).

C. The Claimant and the Claim

Stanships, Inc., agent for Eleftheria Shipping Co. Ltd., owner of the M/V ELEFTHERIA presented a claim to the NPFC on December 28, 2009, in the amount of $27,938.60. Claimant asserts that it suffered a loss of profits and impairment of earning capacity that resulted from the discharge of oil into the Mississippi River. This sum certain included a loss of profit caused by a 21.5-hour delay ($13,462.00) and additional expenses: launch service ($987.50), pilotage fees ($11,131.60), port fees ($78.75) and incident commander fees ($2,278.75). On April 8, 2010, Claimant submitted a letter to the NPFC decreasing its pilotage fees to $4,059.67, decreasing its delay costs to $11,034.00 and amending its sum certain to $18,439.36.

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[1] SITREP-POL ONE dated 23 July 2008.
[2] Complaint for Declaratory Judgment – filed 05/20/2009 - Factual Background (Pg 8) – US District Court – Eastern District of Louisiana – Civil Action No. 09-3657.
[3] House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008

Claimant presented its claim to ACL's agent, Worley Catastrophe Response, LLC on 16 September 2008[4]. The RP received and denied the claim.

At the time of the oil spill incident, the M/V ELEPHTHERIA D (Eleftheria or the vessel) was transporting bauxite from Discovery Bay - Port Rhoades, Jamaica, to Gramercy Alumina LLC (GA)[5] in Gramercy, LA (the Mississippi River at MM 145.3) under the terms of a Contract of Affreightment (COA) between Standard Shipping, Inc. [6] and Gramercy Alumina LLC. This COA was a requirements contract. The parties to the COA agreed that the obligation of the Shipper (Gramercy) to ship and the obligation of the Owner to carry bauxite could fluctuate considerably because of the needs of Shipper's business.[7] The Shipper approximated that it would ship about 3.5 million metric tons per year; however, there was no guarantee as to the quantity of cargo to be shipped or the number of voyages to be performed.

The COA set a fixed contract rate[8] per freight when it was signed on 28 November 2006 and established a 4 year period of performance covering January 1, 2007 through December 31, 2010. Under the terms of the COA the freight rate was $8.05 per metric ton (MT) of cargo. Included in this freight rate is $40,000 per round trip voyage for port costs, which include agency fees, light dues, buoy or harbor dues, pilotage, launch service, dockage, tug service and any other normal port charges. Any port costs exceeding the budgeted $40,000 per round trip shall be for the Shipper's account. Also, the cost of fuel budgeted into the freight rate is US $300/MT for fuel oil and US $600/MT for diesel fuel. The COA also provides that demurrage/dispatch rates are $15,000/$7,500 per day respectively. Under the terms of the COA if the vessel cannot proceed to berth due to congestion at the discharging berth, the vessel may proceed to the nearest anchorage, and upon reaching that location and upon being in all respects ready to load, may tender notice of readiness (NOR). Further, running time from any place the vessel is waiting due to congestion until the vessel reaches the Gramercy berth does not count against laytime.

When ELEFTHERIA entered the Southwest Pass from the Gulf of Mexico on July 30th at 0300[9] and picked up a pilot, the response efforts to contain the oil spill were still active[10] and areas of the Mississippi River were still closed to traffic. The ELEFTHERIA picked up and released several pilots as it moved upriver and made an unscheduled stop at the Belle Chase Anchorage (MM 73.1) because the Coast Guard had closed the river north of the Belle Chasse Anchorage. At 12:30 on July 30th and upon anchoring at Belle Chasse, ELEFTHERIA tendered its notice of readiness (NOR). At 2056 on July 30, 2008, the Coast Guard opened the Algiers Point to all vessel traffic. Since the GA berth was still occupied, the Eleftheria did not heave anchors until July 31st at 0945 and sailed continuously until reaching its destination (GA) at 2035 that evening.

[4] Complaint for Declaratory Judgment (filed 05/20/09) – Pg 54.
[5] Contract of Affreightment between Standard Shipping, Inc. and Gramercy Alumina LLC. dtd 1 November 2006
[6] Standard Shipping Inc. owns Eleftheria Shipping Co., Ltd.
[7] COA dtd 1 Sep 2006 between Standard Shipping Inc. & Gramercy Alumina LLC; pg 1, para A.1
[8] *Ibid.* Pg 2, para D.
[9] Gulf Inland Marine Services, Inc – Port Log / Statement of Facts for Voyage 37; Claimant's Exhibit B-7A
[10] SITREP-POL TEN dtd 30 July 2008.

II. ***APPLICABLE LAW***:

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

Damages include the loss of profits or impairment of earning capacity due to the injury, destruction, 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).

The Oil Spill Liability Trust Fund (OSLTF or 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 be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. §2712(a)(4)

In general, claims for removal costs or damages must first be presented to the RP. 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within ninety days, the claimant may commence an action in court against the RP or present the claim to the Fund. 33 U.S.C. § 2713(c).

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.

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)

Each claim must be in writing for a sum certain for compensation for each category of uncompensated damages or removal costs (as described in Subpart C of this part) resulting from an incident. If at any time during the pendency of a claim against the Fund the claimant receives any compensation for the claimed amounts, the claimant shall immediately amend the claim. 33 CFR § 136.105(b)

Under 33 CFR 136.105(a) and (b), 136.105(e)(6) & 136.105(e)(13), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

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 need not be the owner of the damaged property or resources to recover for lost profits or income.

"In addition, 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)

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

In addition to 33 CFR 136.105, claims for loss of profits and impairment of earning capacity must meet the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231 *et seq.* .

If a claimant is able to establish an entitlement to a loss of 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)

III. DETERMINATION OF LOSS:

Findings of Fact:

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 within three years of the date the injury and its connection with the discharge was discovered.
5. The claimant seeks $18,439.36 in loss of profits, as a consequence of the M/V Eleftheria incurring additional time, fuel, and expenses.
6. Claimant presented its claim to the RP prior to the submission of the claim to the OSLTF. The NPFC notified[11] the RP of claimant's costs. The RP responded and denied responsibility for these costs.

[11] NPFC ltr dtd 4 Nov '09 to ACL and ACL's counsel.

7. 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.

IV. CLAIMANT'S ANALYSIS

A. *Claimant's Vessel Delay Claim:*

In its original submission, Claimant states "Vessel was proceeding northbound when on July 30 she was ordered to the Belle Chasse Anchorage arriving at 1230 hrs the same day. At 1000 hrs July 31 she heaved anchors to continue her voyage to Gramercy." Claimant calculates this delay to a period of 21 hours and 30 minutes valued at $13,462.00. This value is based on the demurrage rate in the COA. In its 8Apr10 letter, the amount of time remained same, but its value was revised down to $11,034.69.

Claimant submitted the port logs to support this assertion. 30 July

0300	Entered Southwest Pass from Jamaica with pilot on board
0535	Passed and changed pilots at Pilot Town.
1024	Passed and changed pilots at Point Celeste
1230	Dropped first anchor at Belle Chase Anchorage and tendered Notice of Readiness (NOR) **(Begin – delay)**
2056	USCG reopened Algiers Point to all vessel traffic.

31 July

0910	Pilot on board
0945	Heaved anchors from Belle Chasse Anchorage and begins transit. **(End – delay) – Delayed Time = 21:15 (21.25 hrs or 0.8854 days)**
1125	M/V Amazonia sails from Gramercy Alumina
1145	Passed and changed pilots at New Orleans
1710	Passed and changed Pilots at Bonnet Carre
2000	Two Tugs alongside
2035	First line ashore
2135	All fast Gramercy Alumina. Pilot/tugs away.

B. *Claimant's Calculation of Pilotage Fees – Crescent River & NOLA/Baton Rouge*

In a letter dated April 8, 2010, Claimant explains[12], that 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); however, because of the unscheduled stop at Belle Chasse ELEFTHERIA incurred additional pilotage services and expenses. To substantiate, that there were additional pilotage expenses that would otherwise not have incurred, Claimant provides pilotage charges from prior voyages[13] (#33, through #36) along with the affected voyage (#37) to evidence the pilotage charges for an uninterrupted trip. Claimant then deducted the average expense for a typical voyage from the additional costs for this voyage. This calculated to be $4,059.67.

[12] [redacted] ltr of 8 April 2010
[13] Claimant's Exhibit E-1

C. *Claimant's Additional Claimed Costs*

Launch Services

0. Claimant states that there was an additional launch service as the vessel went in and out of the Belle Chasse Anchorage between July 30th and July 31st, and the total costs were $987.50.

Plaquemines Port Fees

- The ELEFTHERIA incurred this charge when it entered anchorage at Belle Chasse. This fee, $78.75, was charged by the Plaquemines Port, Harbor & Terminal District covers the period of July 30th at 13:00 thru July 31st at 09:30.

Incident Commander Fees

- In its 8 April 2010 letter, Claimant states that an Incident Commander is required in the event of an oil spill, which would be available around the clock until the oil spill was resolved. In valuing this item, claimant states that its contract[14] with Maritime Bureau, Inc. called out a rate of $750.00 per day plus $28.75 in communication expenses. In its original submission, $2,278.75 was claimed for this item. This figure has remained unchanged.
- In support of this item, claimant presented an invoice found in Exhibit B-6. The invoice shows the following information:
  - Survey Details: M/V Eleftheria D
  - Quantity: 3
  - Description:

    Spill in Mississippi – Review all requirements, and resource assets, personal and equipment needs. Draft plan to boom vessel and arrange with Oil Mop and ACL to have booms deployed. Maintain watch and monitor the situation from July 23 to release on July 28. 3 and 6 hour briefs from USCG, Incident command and monitor changes throughout the night. Brief P&I, and all vessel prior to movement with MTSRU and USCG.

V. NPFC ANALYSIS:

A. DEMURRAGE/LOSS OF PROFIT (VESSEL DELAY TIME):

Claimant argues that the vessel, ELEFTHERIA was delayed at the Belle Chasse Anchorage for 21.50 hours; thus, it suffered lost profits in the amount of $13,260.00. Claimant arrives at this amount, based on the $15,000/day demurrage rate provided in the contract of affreightment. However, Claimant has not evidenced that this 21.5-hour (0.884 day) delay resulted in a loss of profits.

[14] Claimant's Exhibit AA-8

In this case Claimant is the owner of the M/V ELEFTHERIA, a vessel that is chartered to Gramercy on a requirements basis to ship bauxite from Jamaica to Gramercy on the Mississippi River at MM 145.7. Claimant argues that since it was delayed for 21.5 hours (0.884 days), it is entitled to $13,260 in loss of profits. However, Claimant has not evidenced that it has lost profits. Claimant acknowledges that it received its freight rate from the Shipper because the freight was delivered from Jamaica to Gramercy. While quantifying a loss of profits by using the demurrage rate in a COA is an accepted methodology for quantification, a vessel owner must first establish that it did suffer a loss of profits. *Skou v. United States*, 478 F. 2d 343, 345 (5th Cir. 1973) The mere stipulation of a liquidated sum for demurrage in a charter agreement does not obviate the need to show actual damages. *Trans-Asiatic Oil Ltd. S.A. v. Apex Oil Co*, 804 F. 2d 773, 782 (P.R. 1986) Claimant cites *M/V Trahan v. Svendborg*, 10 F. 3e 1190 (5th Cir. 1994) for the proposition that a vessel under a charter agreement need only prove its loss with "reasonable certainty," which usually means that the vessel had been engaged in and was capable of being engaged in profitable commerce.

The COA provides that there is no guarantee for a certain number of voyages and Claimant does not provide any evidence that the 21-hour delay resulted in a loss of a subsequent voyage. Evidence submitted by Claimant reflects that the roundtrip from Jamaica to Gramercy to Jamaica takes approximately 14 days. It is unclear, and Claimant provides no evidence, what the 21-hour loss would be in light of the fact that the roundtrip voyage takes 14 days. Additionally, Claimant's evidence reflects that the net revenue including demurrage/dispatch on this voyage (#37) was substantially higher than the net revenues for voyages # 36, 38 and 39. Thus, there is no evidence before the NPFC evidencing that Claimant actually suffered a loss of profits.

Determined Amount: $0.00

B. PILOTAGE FEES:

As discussed above the vessel made an unscheduled stop at Belle Chasse and as a result it incurred additional pilotage fees. The total fees Eleftheria incurred for this voyage totaled $20,166.25. When this figure is compared to the average fees ($17,217.12) paid during the prior four voyages (#33 - #36) there was an increase of $2,949.13.

Determined Amount: $2,949.13

C. ADDITIONAL COSTS:

- Launch Service
  1. As discussed above, the vessel made an unscheduled stop at Belle Chasse Anchorage. As a result it incurred additional launch services in the amount of $987.50. Claimant provided evidence of this expense and proof of payment.

  - Determined Amount: $987.50

- Plaquemines Port Fees

- The vessel's unscheduled anchorage at Belle Chasse resulted in a tariff in the amount of $78.75. Claimant submitted proof of the expense and proof of payment.

- Determined Amount: $78.75

- Incident Commander Fees
  - Based on claimant provided information[15], Eleftheria entered the Lower Mississippi River at the Southwest Pass on July 30th; approximately two days after the actions described on the invoice had taken place. Though the invoice calls out the deployment of boom and it is mentioned in a transcript of the vessel log (Exhibit 2), it is unclear from the evidence why the provider of the services could have billed for 3 units (days) over a period of time (July 23-28), when the vessel had not even arrived at Southwest Pass. Last, it is unclear, why 6-hour briefs would have been necessary for this vessel, as the river was open when Eleftheria arrived at Southwest Pass and Belle Chasse Anchorages.

  - Determined Amount: $0.00

D. ***Determination:***

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

Item Description	Claimed Amount	Determined Amount	Denied Amount
Loss of Profit (Vessel Delay Time)	$11,034.69	$0.00	$11,034.69
Pilotage Fees	$4,059.67	$2,949.13	$1,110.54
Launch Service	$987.50	$987.50	$0.00
Plaquemines Port Fees	$78.75	$78.75	$0.00
Incident Commander Fees	$2,278.75	$0.00	$2,278.75
Totals	$18,439.36	$4,015.38	$14,423.98

The NPFC hereby determines that the OSLTF will pay $4,015.38 in increased expenses incurred because the vessel made an unscheduled stop at Belle Chasse Anchorage. These increased expenses are compensable and payable by the OSLTF.

<u>DETERMINED AMOUNT: $4,015.38</u>

Claim Supervisor: [redacted]
Date of Supervisor's Review: 11/19/10
Supervisor Action: Offer Approved
Supervisor's Comments:

[15] Claimant's Exhibit B-7A