

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 908039-002
Claimant	: Great American Insurance Company
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Amount Requested	: \$33,820.91

### **FACTS:**

- 1. Oil Spill Incident:** On September 14, 2005, the F/V MILKY WAY sank while fishing four miles west of James Island off the coast of the State of Washington in the Pacific Ocean, a navigable waterway of the US. When the vessel sank, it discharged oil into the waterway creating a sheen and posed a continued substantial threat of discharge of the oil that remained on board the vessel. An initial attempt was made to raise the vessel. The initial attempt to raise the vessel failed and Titan Maritime LLC was hired to make the second salvage attempt later in 2007.
- 2. Description of Removal Activities for this Claim:** On August 8, 2007, the F/V PREDATOR, Inc. contracted with Titan Maritime LLC under an International Wreck Removal and Marine Services Agreement (Daily Hire) for the removal of the F/V MILKY WAY from the waters and delivery to its owners afloat or disposed of as directed.
- 3. The Claim:** On June 18, 2009, the law firm Keesal, Young & Logan submitted a claim to the NPFC on behalf of its client, Great American Insurance Co. (Great American). In the claim, designated Claim No. 908039-002 by the NPFC, Great American ("Underwriters") has come to the Fund as subrogee of its insured F/V PREDATOR, Inc. Titan Maritime LLC assigned any and all rights, claims and causes of action arising under the Titan contract to Great American Insurance Company.<sup>1</sup> Underwriters are seeking reimbursement of removal costs in the amount of \$33,820.91, which consist of unpaid amounts associated with Titan invoice # TUS7024-004. The costs which are subject of this claim include interest at a rate of 18% and response costs in the amount of \$33,820.91.

The Claimant submitted the following documents in support of its claim: Titan contract dated August 8, 2007, Titan's satisfied bills, Titan invoice # TUS7024-004, proof of payment for part of Titan invoice # TUS7024-004 which is not part of this claim submission, Letters from the United States Coast Guard (USCG), Email requests to pay the Titan bill, and the Assignment dated November 2, 2007. The NPFC's review of the actual cost invoice and related documents focused on: (1) whether the actions taken were compensable removal actions under OPA and the claims regulations at 33 CFR 136 (e.g. actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken are determined to be consistent with the National Contingency Plan (NCP) or directed by the (Federal On-Site Coordinator) FOSC; and (4) whether the costs were adequately documented and reasonable.

<sup>1</sup> See, Attachment 1 to claim submission: Assignment of Rights

The NPFC originally denied the claim on 29 July 2012 because upon the Claimant receiving an Assignment of Rights from Titan Maritime LLC for its costs, the Claimant implied that it now has Titan's subrogable rights, and therefore may seek reimbursement before the Fund.

The NPFC has determined, although the Claimant received an Assignment of Rights from Titan, they did not incur the costs they are now seeking to recover and therefore did not have uncompensated removal costs. Claimant Counsel, [REDACTED] of Keesal, Young & Logan, sent an email to Ms. [REDACTED] dated July 27, 2010 where he explained the reason why the Claimant submitted the second claim. Mr. [REDACTED] is clear in his email where he states..."Subsequently, our client, Great American, took an assignment of the unpaid Titan invoice and thereafter submitted a second, stand alone claim for work done by a responder that was *never* compensated."<sup>2</sup> Based on this information, the record clearly reflects that the costs were not incurred and since Titan has not been paid, the costs are also not uncompensated.

#### **REQUEST FOR RECONSIDERATION:**

On 24 September 2010, the NPFC received the Claimant's request for reconsideration. In support of their claim, the Claimant provided a five page letter, containing various factual and legal arguments responding to mischaracterization of facts in the NPFC's initial claim summary determination denial.

According to 33 C.F.R. § 136.115(d), requests for reconsideration

must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant, or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

The Claimant requested reconsideration and clarified the record with respect to the costs and how the subject costs have in fact been incurred by Titan and deserve payment. Claimant further explains that as such, the Assignment of Rights from Titan to Great American Insurance Company gives the Claimant the right to receive compensation for the valid removal costs previously coordinated by the Federal On Scene Coordinator (FOSC) as performed by Titan.

#### **NPFC Determination on Reconsideration**

Under 33 CFR § 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 C.F.R § 136.203 and § 136.205 a claimant must establish

<sup>2</sup> See, Email from [REDACTED] to [REDACTED] dated July 27, 2010

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC; and

Under 33 CFR § 136.205 Compensation allowable.

The amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC.

The NPFC considered all the documentation submitted by the Claimant and performed a *de novo* review of the entire claim submission.

Based on the clarification of the Assignment of Rights and the explanation regarding the \$33,820.91 in uncompensated removal costs associated with Titan Invoice # TUS7024-004, the NPFC has determined that \$33,820.91 as claimed is OPA compensable. The NPFC received a fully copy of all Titan invoicing, daily field logs, statement of account for Titan, and itemization of payments made to Titan which substantiates the Titan costs overall.<sup>3</sup>

With respect to the request for interest pursuant to the contract that was executed between Titan Maritime and the F/V Predator, any such costs are not deemed OPA compensable removal costs and as such are not considered or offered in this Claim Summary Determination. The definition of removal in accordance with the Oil Pollution Act (OPA) found at 33 USC 2701 (31) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, \$33,820.91 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 908039-002.

AMOUNT: \$33,820.91

Claim Supervisor:

Date of Supervisor's review: 11/15/12

Supervisor Action: *Reconsideration approved as stated above*

<sup>3</sup> See claim documentation for Great American claim # 908039-001.