

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 8252

5890/DWHZ  
13 December 2011

Tim McEvoy, Esq.  
Southeast Louisiana Legal Services  
1010 Common Street, Suite 1400A  
New Orleans, Louisiana 70112

Re: Claim Number: N10036-1587

Dear Mr. McEvoy:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-1587 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

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. If, however 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 N10036-1587.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100

Sincerely,

Claims Adjudication Division  
National Pollution Funds Center  
U.S. Coast Guard

Copy:



USPS Certified Receipt: 7011 1570 0001 4802 8269

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1587
Claimant	Richard J. Stikeleather
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$89,000.00

### ***FACTS***

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 18 November 2011, Richard J. Stikeleather, (the Claimant)<sup>1</sup> presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$89,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed as an Able-Bodied Seaman<sup>2</sup> by GulfMark Americas, Inc (GulfMark) in St. Rose, Louisiana.<sup>3</sup> The Claimant stated that GulfMark transports supplies to oil rigs in the Gulf of Mexico.<sup>4</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, drilling in the Gulf of Mexico stopped and GulfMark lost its work contracts.<sup>5</sup> As a result of GulfMark's decline in business, the Claimant indicated that he was laid off from GulfMark in June of 2010.<sup>6</sup>

The Claimant provided the following explanation regarding the calculation of his sum certain of \$89,000.00: the Claimant identified his daily work rate at Gulfmark as \$250.00 per day, and multiplied this figure by the amount of work days he missed<sup>7</sup> beginning from June 2010 to the present for a product of \$89,000.00.<sup>8</sup>

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) 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). Damages include the loss of profits

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<sup>1</sup> The NPFC notes that the Claimant is represented by attorney Tim McEvoy, Esq. at Southeast Louisiana Legal Services.

<sup>2</sup> Letter from GulfMark Americas, Inc., dated 29 June 2011.

<sup>3</sup> GCCF Interim Payment Claim Form, dated 26 July 2011.

<sup>4</sup> GCCF Interim Payment Claim Form, dated 26 July 2011.

<sup>5</sup> GCCF Interim Payment Claim Form, dated 26 July 2011.

<sup>6</sup> GCCF Interim Payment Claim Form, dated 26 July 2011.

<sup>7</sup> The Claimant did not provide an exact number of missed work days he used in his calculation.

<sup>8</sup> GCCF Interim Payment Claim Form, dated 26 July 2011.

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 OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 received 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.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 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. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for:

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

### ***DETERMINATION OF LOSS***

#### **The Claimant's Submission to the OSLTF**

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 05 November 2011;
- Letter from the Claimant authorizing the NPFC to obtain the Claimant's records from the GCCF, dated 30 November 2011;
- Email from Tim McEvoy, Esq. to the NPFC dated 09 December 2011;

- Letter from the GCCF, dated 14 November 2011;
- GCCF Interim Payment Claim Form, dated 26 July 2011;
- Letter from the GCCF, dated 18 July 2011;
- Denial Letter on Interim Payment/Final Payment, dated 29 July 2011;
- 2010 Form W-2 Wage and Tax Statement from GulfMark Americas Inc.;
- Partial 2009 Form 1040 Federal Income Tax Return;
- Claimant pay check history for dates 07 August 2010-11 June 2011;
- Partial 2010 Form 1040 Federal Income Tax Return;
- Letter from GulfMark Americas, Inc. dated 29 June 2011;
- Partial 2008 Form 1040 Federal Income Tax Return;
- 2008 Form W-2 Wage and Tax Statement from Rigdon Marine Corporation;
- 2009 Form W-2 Wage and Tax Statement from GulfMark Americas Inc.;
- Email from Tim McEvoy, Esq. to the GCCF, dated 03 October 2011;
- Email from the GCCF to Tim McEvoy, Esq., dated 04 October 2011;
- Southeast Louisiana Legal Services Client Retainer Agreement, dated 27 September 2011;
- Email from the GCCF to Tim McEvoy, Esq., dated 12 October 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed a claim with the GCCF for loss of profits and impairment of earnings capacity. The Claimant was assigned Claimant ID # 3529502 and Claim # 9412221.<sup>9</sup> This claim was denied by the GCCF on 29 July 2011.<sup>10</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, GulfMark experienced a reduction in business that led to the Claimant's layoff. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1587 considers and addresses the earnings claimed to the extent these damages were presented to the responsible party.

### **NPFC Determination**

The claim is denied. Under 33 C.F.R. § 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. The NPFC considered all documentation presented by the Claimant.

The Claimant asserted that he lost his job at GulfMark due to the Deepwater Horizon oil spill and the moratorium on drilling that followed. He submitted a letter from GulfMark that provided the Claimant's dates of employment with GulfMark; the letter indicated his employment ended at Gulfmark on 8 June 2010.<sup>11</sup> The NPFC contacted GulfMark on 12 December 2011 to confirm the Claimant's employment at Gulfmark and gather additional information regarding the end of his employment.

The NPFC was informed that, although the letter accurately describes the dates that the Claimant was employed by GulfMark, the Claimant was not laid-off due to the Deepwater Horizon oil spill.<sup>12</sup> In fact, GulfMark indicated that it did not lay off a single employee due to the Deepwater Horizon oil or moratorium on drilling.<sup>13</sup> Instead, GulfMark stated that the Claimant made a request for leave on 02 March 2010 due to short-term disability and his last day of actual work was 25 February 2010. Once the

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<sup>9</sup> Denial Letter on Interim Payment/Final Payment, dated 29 July 2011.

<sup>10</sup> Denial Letter on Interim Payment/Final Payment, dated 29 July 2011.

<sup>11</sup> Letter from GulfMark Americas, Inc. dated 29 June 2011.

<sup>12</sup> PHONECON between the NPFC and GulfMark on 12 December 2011.

<sup>13</sup> PHONECON between the NPFC and GulfMark on 12 December 2011.

Claimant left for short-term disability, he was never seen or heard from again by GulfMark.<sup>14</sup> After the Claimant's disability coverage ended on 08 June 2010, GulfMark tried to contact the Claimant.<sup>15</sup> Because they were unsuccessful in contacting the Claimant, and they had not heard from him since 02 March 2011, GulfMark terminated his employment.<sup>16</sup> The NPFC was informed that the letter provided by the Claimant listed 08 June 2010 as his last day because that was the day that the Claimant's Family Medical Leave Act<sup>17</sup> coverage ran out.<sup>18</sup>

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

The Claimant's request for \$89,000.00 is hereby denied because the evidence presented by the Claimant vice the detailed information provided by the Claimant's employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order for the Claimant to try to obtain funds from the Federal Government under false pretenses.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *12/13/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>14</sup> PHONECON between the NPFC and GulfMark on 12 December 2011.

<sup>15</sup> PHONECON between the NPFC and GulfMark on 12 December 2011.

<sup>16</sup> PHONECON between the NPFC and GulfMark on 12 December 2011.

<sup>17</sup> <http://www.dol.gov/whd/fmla/> (last accessed 12 December 2011).

<sup>18</sup> PHONECON between the NPFC and GulfMark on 12 December 2011.