

U.S. Department of
Homeland Security

**United States
Coast Guard**



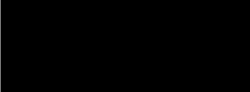
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7032

5890/DWHZ
22 May 2012

Mr. Gerald C. Arukwe



Re: Claim Number: N10036-1804

Dear Mr. Arukwe:

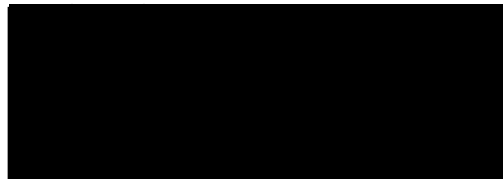
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1804 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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. However, if 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 N10036-1804.

Mail reconsideration requests to:

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



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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1804
Claimant	Mr. Gerald C. Arukwe
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$204,145.06

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 11 May 2012, Mr. Gerald Arukwe (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,145.06 in loss of profits and \$199,000 in real or personal property damages resulting from the Deepwater Horizon oil spill.¹

The Claimant's employer, Hornbeck Offshore Services, LLC, cut his hours, as memorialized in a letter to the Claimant dated 7 January 2011.² The Claimant alleges that this drop in hours resulted in lost wages totaling \$5,145.06 in 2010. These lost wages, coupled with the Claimant's wife losing her job, made him unable to make timely payments on his mortgage. Ultimately, the bank foreclosed on his house.³ He claims \$199,000, roughly the outstanding principal at the time of the foreclosure, as real property damages.⁴

The Claimant has not alleged any physical damage to his property. Instead, he alleges that, due to reduced hours and pay, he was unable to keep current on his mortgage, and the bank foreclosed on his property.⁵ In other words, the Claimant alleges a financial loss. Because real and personal property damage claims encompass only injury and destruction of real or personal property resulting from an oil spill,⁶ the NPFC is reclassifying that \$199,000 claim as loss of profits and earning capacity. Combined with the claim for loss of profits from reduced hours, the Claimant seeks a total of \$204,145.06 in loss of profits and earnings capacity.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

¹ Optional OSLTF Claim Form, signed on 22 April 2012.

² Employer letter, dated 7 January 2011.

³ Optional OSLTF Claim Form, signed 22 April 2012.

⁴ Bank of America Home Loans, Deficiency Notice, dated 22 September 2010.

⁵ Optional OSLTF Claim Form, signed 22 April 2012.

⁶ 33 C.F.R. § 136.215(a).

The OSLTF 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. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 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 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 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

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 22 April 2012;
- A letter from his employer, Hornbeck Offshore Services, LLC, notifying him of his new rotation schedule (i.e., cutting his hours);
- 2009 W-2 and earnings summary, showing wages of \$68,261.26;
- 2010 W-2 and earnings summary, showing wages of \$63,116.20;
- A deficiency notice from Bank of America Home Loans, showing a principal balance of \$199,537.76;

- FHA Short Sale Information Form, outlining “Hardship Information,” and providing a narrative of attempts to modify Claimant’s home loan on account of financial hardship.

Prior to presenting this claim to the NPFC, the Claimant presented a Fourth Quarter Interim Claim (ICQ42011).⁷ The GCCF assigned Claimant ID # 3566928 to the Claimant and assigned the ICQ42011 claim # 9353422.⁸ The RP/GCCF denied payment on this claim.⁹

On 11 May 2012, the Claimant presented this claim to the NPFC, seeking \$5,145.06 in loss of profits damages and \$199,000 in real property damages, which the NPFC has reclassified as lost profits damages.¹⁰ After this reclassification, the Claimant seeks \$204,145.06 in lost profits and earnings capacity. Because the Claimant first presented this claim to the GCCF, who denied the claim, the NPFC may adjudicate this claim to the extent that the damages now before the NPFC were first presented to the GCCF.¹¹ Any damages the Claimant seeks that exceed the amount presented to the GCCF are denied for improper presentment.

NPFC Determination

On 11 May 2012, the Claimant submitted this claim for \$199,000 in damage to real and personal property, resulting from his house being foreclosed upon. Under 32 U.S.C. § 2712(b)(2)(B), a claimant may recover damages for injury to real or personal property, or for economic loss resulting from the destruction of that property. In this case, the Claimant does not allege that his house was physically damaged as a result of the oil spill, but rather that he was unable to keep current on his mortgage due to his employer reducing his hours.¹² As a result the bank foreclosed on his house. Since the property was not damaged or destroyed, a loss of profits and earnings capacity classification is more appropriate. Accordingly, the NPFC is reclassifying the \$199,000 claimed for real property damages as loss of profits and earning capacity.

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

The Claimant is seeking a total of \$204,145.06 in damages. Of that, \$5,145.06 is wages lost due to the Claimant’s employer reducing his hours. The Claimant’s W-2 statements show that his income did indeed fall—i.e., that he had suffered a financial loss in the amount claimed.¹³ The problem, however, comes with causation. The letter from the Claimant’s employer points to the “de-facto drilling moratorium” as the impetus for reducing the Claimant’s hours.¹⁴ Losses incurred as a result of the moratorium and subsequent drilling and permitting restrictions are not

⁷ GCCF Claimant Status, accessed on 18 May 2012.

⁸ GCCF Claimant Status, accessed on 18 May 2012.

⁹ GCCF Claimant Status, accessed on 18 May 2012.

¹⁰ Optional OSLTF Claim Form, signed on 22 April 2012.

¹¹ 33 C.F.R. § 136.103(a).

¹² Optional OSLTF Claim Form, signed on 22 April 2012.

¹³ 2009 W-2 and earnings summary, showing wages of \$68,261.26; 2010 W-2 and earnings summary, showing wages of \$63,116.20

¹⁴ Employer letter, dated 7 January 2011.

losses caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill. Accordingly, the Claimant's request for \$5,145.06 in lost profits and earnings capacity damages due to reduced hours is denied.

The remaining \$199,000 is also denied because the Claimant has failed to prove either his alleged loss or that his alleged loss is the result of the oil spill. Here, the Claimant came to this number by estimating the remaining principal on the home loan at the time of foreclosure. The principal, however, is not the Claimant's money—it is the noteholder's. The Claimant owes that money, and therefore does not have a claim to it.

Further, the Claimant has not proven causation. The Claimant's own statements on the Optional OSLTF Claim Form and FHA Short Sale Information Form show that he fell behind on his mortgage because he had to support the family on his income alone, where previously there were two incomes when he took out the mortgage.¹⁵ Unfortunately, his wife lost her job, and the mortgage payments were too high for his income to cover without his wife's contribution.

This portion of his claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$199,000, and (2) that the alleged loss is due to the injury, destruction, or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Accordingly, based upon the foregoing, the Claimant's claim of \$204,145.06 is denied in its entirety.


Claim Supervisor: *NPPC Claims Adjudication Division*

Date of Supervisor's Review: *5/22/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁵ Optional OSLTF Claim Form, signed 22 April 2012; FHA Short Sale Information Form, page 1.