

U.S. Department of
Homeland Security

**United States
Coast Guard**

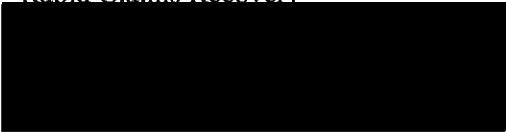


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
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5890
26 July 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7957

Rapid Claims Recovery



RE: Claim Number: N10036-1814

Dear Mr. Jones:

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 N10036-1814 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

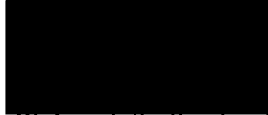
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1814.

Mail reconsideration requests to:

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

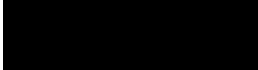
Sincerely,



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

Enclosure: (1) Claim Summary / Determination Form
(2) List of Documentation Provided by the Claimant

Copy to: Paul L. Stern



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Certified Mail Number: 7011 1570 0001 4803 7964

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1814
Claimant	: Paul Stern
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$50,000.00

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.

On 8 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 22 May 2012, Christopher Jones, on behalf of Paul Stern (jointly referred to as 'the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$50,000.00 in loss of profits and impairment of earning capacity damages in 2010 and 2011 allegedly resulting from the Deepwater Horizon oil spill.¹ The Claimant is an individual, located in Brandon, Florida, holding a Class A Commercial Driver's License and employed as a commercial driver in the document shredding, fire protection and uniform areas for Cintas Corporation².

The Claimant stated that he also acted as Cintas' customer service representative in the field. Further, the Claimant also states that Cintas' business was negatively affected as a result of negative impacts on their clients' businesses due to the oil spill.³ The Claimant asserts a loss of income due to being unemployed in 2010 and 2011.⁴

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 8 May 2012/ received 22 May 2012 and GCCF Full Review Final Claim Form (signature and date page missing).

² Claimant Letter of Explanation dated 8 June 2012 and phone call between claimant and NPFC Staff on 9 July 2012.

³ Claimant's Letter of Explanation dated 8 June 2012.

⁴ Optional OSLTF Claim Form signed 8 May 2012 and received 22 May 2012.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

Pursuant to 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant presented a large amount of documentation, which is listed in Enclosure (2).

The Claimant indicates having submitted a claim to the GCCF on 13 May 2012.⁵ The Claimant also indicates that the responsible party has denied his claim.⁶

The NPFC reviewed the FRF Claim presented to the GCCF and conducted independent review of claim presentation. The NPFC confirmed that a sum certain of \$40,000.00 had been presented

⁵ Optional OSLTF Claim Form signed 8 May 2012 and received 22 May 2012.

⁶ Optional OSLTF Claim Form signed 8 May 2012 and received 22 May 2012.

to the GCCF.⁷ The NPFC also confirmed that the Claimant submitted to the GCCF an Interim Payment (IP) Claim, assigned Claim No. 9583545, and a Full Review/Finals Payment (FRF) Claim, assigned Claim No. 9581148.⁸ Claimant Identification No. 1641557 was assigned by the GCCF to the Claimant.⁹ The IP Claim has been denied¹⁰ and the NPFC has no information on the FRF Claim.

OPA requires that a Claimant first present their claim to the Responsible Party. If a claim is either denied or not satisfied within ninety days, the Claimant may then present their claim to the Fund. Here, the NPFC was able to confirm that the Claimant presented their claim to the Responsible Party, but only up to the amount of \$40,000.00. Accordingly, per OPA's presentment requirements, this claim can be adjudicated, but only up to the amount which was first presented to the Responsible Party; \$40,000.00. The amount of damages presented to the Fund in excess of that amount, \$10,000.00, is denied for lack of presentment to the responsible party.

NPFC Determination

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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF.

According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, then he should submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim is also denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits and earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 30 May 2012.¹¹

The Claimant responded to that request on 8 June, 12 June, 18 June, 19 June, 7 July, 9 July and 12 July 2012. He provided Federal Tax Returns for 2009, 2010 and 2011, with supporting W-2s

⁷ GCCF Full Review Final Claim Form (signature and date page missing).

⁸ GCCF Claimant Status, accessed on 22 May 2012.

⁹ Optional OSLTF Claim Form signed 8 May 2012 and received 22 May 2012.

¹⁰ GCCF Denial Letter on Interim Payment/Final /Payment Claim, dated 19 April 2012.

¹¹ NPFC letter dated 30 May 2012.

and 1099s; paycheck information from Cintas Corp. No. 2 for four pay dates in 2010; explanation letters and explanatory emails; employment verification forms for two part-time jobs; a description of Cintas Corp. through web page explanations of services; lists of businesses that were the Claimant's customers; affidavits on impacts of the oil spill from two persons (one of whom was the Claimant's first-line supervisor); and additional claim correspondence from the Transition Coordinator.

The NPFC has considered all documentation and information presented by the Claimant.

Failure to Prove Causation

The Claimant asserts that a loss of income occurred due to the oil spill.¹² The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant. Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill.

The Claimant has not provided probative documentation supporting that his claimed losses were due to the oil spill.

The Claimant provided a large number of customer names in the Tampa Bay area who the Claimant identified as customers who cancelled services with Cintas or who reduces their level of Cintas services. The NPFC spoke with four of those customers, two larger companies and two smaller companies. The large companies that the NPFC spoke with reported that they saw no impacts on their business relationship with Cintas as a result of the oil spill.^{13 14}

One of the smaller companies indicated that it makes no sense to say the oil spill caused a company to change uniform service company. His company changed from Cintas to a cheaper provider because Cintas was too expensive and underperformed. There was no oil spill impact.¹⁵ The manager at the other smaller company, a franchise operation, indicated that they are a freestanding operation and do not have to follow any corporate direction for uniform services. The manager said that he was not at that location during the summer of 2010, but he decides uniform services by pricing and delivery convenience. They do not use Cintas now.¹⁶

The NPFC spoke with the Claimant's first-line supervisor, who is no longer with Cintas. He said that overtime hours and the number of stops on routes were cut before the Claimant's departure. He added that, not only were overtime hours cut, but Cintas also added fuel surcharges on the routes. Together, the reduction in service and increase in the customers' costs caused some customers to 'jump ship' to other competitors. Asked if the oil spill was responsible for the fuel surcharges, he replied that it was not, but overall, he thought the downturn in the economy, increasing fuel costs, and the oil spill each contributed to the situation.¹⁷

Finally, the NPFC spoke with the Cintas Document Center Manager in Tampa, who said that he started there on 1 May 2010, but would definitely know if the business was affected by the Deepwater Horizon oil spill. He said that they definitely had no impacts from the spill. He said

¹² Optional OSLTF Claim Form signed 8 May 2012 and received 22 May 2012.

¹³ Phone conversation with Tampa General Hospital, Risk Management Dept. and NPFC Staff on 6 July 2012.

¹⁴ Phone conversation with Seminole Hard Rock Hotel & Casino, Wardrobe Dept., and NPFC Staff on 3 July 2012.

¹⁵ Phone conversation between Albertson's, Clearwater, and NPFC Staff on 3 July 2012.

¹⁶ Phone conversation between Chik fil-A, Brandon, and NPFC Staff on 3 July 2012.

¹⁷ Phone conversation between Jason Howard and NPFC Staff on 10 July 2012.

that he is the person who would have received the customer calls. The manager said that Cintas has been on a path of steady growth and has never laid off employees.¹⁸

In addition to not finding support for the Claimant's assertion that customers stopped or reduced Cintas services because of the oil spill, the NPFC notes that the Claimant voluntarily left Cintas to find a better paying job. The Claimant said—

“... job advancement opportunities had been limited and I began to feel the uncertainty of job security due to possible layoffs or the company closing altogether. I, along with other employees, decided to resign from the company in order to seek more stable employment with better pay and advancement opportunities.”¹⁹

The Claimant has not proven that his alleged losses were caused by the oil spill, as opposed to other factors including competitive bidding, price, performance, convenience, the downturn in the economy, increasing fuel costs, and most significantly, the Claimant's own decision to resign and look for a better paying position with more opportunity for advancement.

This claim is denied for the following reasons: (1) the Claimant is considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP and (2) the Claimant has failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil (i.e., the Deepwater Horizon oil spill).

Claim Supervisor: NPFC  *Adjudication Division*

Date of Supervisor's Review: 7/26/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁸ Phone conversation between Brenton Thrasher, Cintas' Tampa Document Center Manager, and NPFC Staff on 10 July 2012.

¹⁹ Claimant's letter dated 8 June 2012.

Enclosure (2)

List of Documentation Provided by the Claimant

Claim Number N10036-1814

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

- Optional OSLTF Claim Form received 8 May 2012.
- Rapid Claims Recovery fax cover sheet dated 16 April 2012.
- GCCF Denial Letter on Interim Payment / Final Payment Claim dated 19 April 2012.
- Representation and Consent Affidavit executed by Paul Stern on 5 May 2012 and by Christopher Jones of Rapid Recovery Services on 8 May 2012.
- Affidavit by Jason James Howard executed and notarized on 16 April 2012.
- Affidavit by Laura Kulas executed and notarized on 14 April 2012.
- Paul Stern Employment History 2008 – 2011.
- General Agreement between Paul Stern and Christopher Jones, representing Rapid Claims Recovery, dated 26 March 2012.
- Invoice dated 26 March 2012 from Rapid Claims Recovery to Paul L. Stern.
- General Agreement between Paul Stern and Rapid Claims Recovery, represented by Christopher Jones, dated 11 May 2012.
- Affidavit by Jason Howard dated and notarized on 11 May 2012.
- Unsigned Rapid Claims Recovery letter to the GCCF dated 15 March 2012.
- 2008 Federal Tax Form 1040A.
- 2009 Federal Tax Form 1040, with Schedule M and Form 8812.
- 2009 Form W-2 from Cintas Corporation No. 2.
- 2009 Form W-2 from NPC International, Inc. [Pizza Hut Brandon]
- 2010 Federal Tax Form 1040A, with Schedules EIC & M and Forms 2441 & 8812.
- 2010 Form W-2 from Cintas Corporation No. 2.
- 2010 Form W-2 from STS Admin Services of Florida, IX.
- 2011 Federal Tax Form 1040A, with Schedule 8863.
- 12 June 2012 Rapid Claims Recovery Fax Submittal.
- Fax cover sheet from Rapid Claims Recovery to NPFC dated 12 June 2012.
- Paul L. Stern paycheck information from Cintas Corp. No. 2 on 8 January 2010.
- Copy of NPFC letter dated 30 May 2012.
- Claimant's Letter of Explanation, "To Whom It May Concern", dated 8 June 2012.
- Employment Verification form for Claimant from Pizza Hut, Brandon, FL,
- Employment Verification form for Claimant from Marco's Pizza, Brandon, FL.
- Cintas web pages on gaming solutions, cruise line solutions, foodservice solutions, and hospitality solutions at <http://www.cintas.com/Industries/>.
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim dated 4 April 2012, from the Transition Coordinator.
- GCCF Re-Review Denial Letter on Interim Payment/Final Payment Claim dated 18 May 2012, from the Transition Coordinator.
- 2008 Federal Tax Form 1040A.
- 2011 Form W-2 from Gregg Appliance, Inc.
- 2011 Form W-2 from STS Admin Services of Florida, IX,
- 2011 Form W-2 from Brandon Motor Company.

- 2010 Federal Tax Form 1040A with Forms 2441 & 8812 and Schedules EIC & M.
- Paul L Stern paycheck information from Cintas Corp. No. 2 on 22 January 2010.
- Paul L Stern paycheck information from Cintas Corp. No. 2 on 22 May 2010.
- Paul L Stern paycheck information from Cintas Corp. No. 2 on 16 July 2010.
- Claimant's list of businesses in Tampa Bay and surrounding area to whom he delivered a variety of Cintas products and Services, dated 8 June 2012.
- Claimant's letter, "To Whom It May Concern", describing his employment with Cintas. (undated)
- 2010 Form W-2 from STS Admin Services of Florida, IX.
- 2010 Form W-2 from Cintas Corporation No. 2.
- 2010 Form W-2 from Brandon Motor Company.
- 2011 Form W-2 from STS Admin Services of Florida, IX. [Marco's Pizza Delivery].
- 2011 Form W-2 from Gregg Appliance, Inc.
- 2010 Form W-2 from NPC International, Inc. [Pizza Hut Brandon, 33511]
- 2010 Form 1099-R from Fifth Third Bank, RP. [Cintas I.R.]
- General Agreement between Paul Stern and Rapid Claims Recovery dated 11 May 2012.
- Affidavit by Jason Howard, dated and sworn to on 11 May 2012.
- 2008 Federal Tax Form 1040A.
- 2010 Federal Tax Form 1040 with Schedules M & EIC and Forms 2441 & 8812.
- 2011 Federal Tax Form 1040A and Form 8863.
- 18 June 2012 Rapid Claims Recovery Fax Submittal.
- GCCF Full Review Final Payment Claim Form (signature & date page missing).
- Email from Rapid Claims Recovery to NPFC Staff on 18 June, with attached list of Cintas clients and contact information.
- List of names of businesses to whom Claimant made deliveries in Tampa Bay and surrounding areas, six with contact addresses & phone numbers and three more with addresses only.
- Email from Rapid Claims Recovery to NPFC Staff dated 11 July 2012 with additional list of eight Cintas clients and their contact information.