

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4803 8893

5890/DWHZ

10 December 2012

Mr. James Christopher Hammac



Re: Claim Number: N10036-1878

Dear Mr. Hammac,

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 N10036-1878 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 N10036-1878.

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: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1878
Claimant	James Christopher Hammac
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$4,341.59

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 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 08 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 the 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 19 November 2012, Mr. James Christopher Hammac ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$4,341.59 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as an independent sales associate, selling identity theft insurance from his home office in Gulf Shores, Alabama.² The Claimant alleged that general economic effects of the oil spill on his customer base caused him to be unable to maintain his sales rate in the months following the spill. Specifically, the Claimant stated, "[m]y client base was among local teacher, restaurant owners/workers, and local people in general who were greatly affected by [the Deepwater Horizon oil spill]."³ As a result, the Claimant alleged to have lost \$500.00 to \$600.00 per month from May through November 2010, prompting him to move from his Gulf Shores home.

The Claimant seeks to recover (1) \$800.00 in moving expenses, (2) \$603.00 for three sales allegedly lost in May of 2010, and (3) \$2,938.59 "for lost or unearned income from sales commissions between June 2010 & November 2011,"⁴ for a total loss of \$4,341.59.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

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

¹ Optional OSLTF Claim Form, received on 24 October 2012.

² Optional OSLTF Claim Form, received on 24 October 2012.

³ Claim Statement, undated.

⁴ Claim Statement, undated.

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; and
- (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.

Under 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 NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 24 October 2012;
- Optional OSLTF Claim Form – Instructions, pgs. 20 – 21;
- Claim Statement, undated;
- Email from “marketing services” listing prepaid monthly commissions from August 2009 through November 2010;
- Letter from Regions confirming change of address, 2 November 2012;
- Email from Jeremy Marr, LegalShield, confirming the Claimant's change of address, 14 September 2012;
- Campbell Robertson and Leslie Kaufman, *Size of Spill in Gulf of Mexico is Larger Than Thought*, NYT.com, 28 April 2010;
- Statement from the Claimant regarding home office address;
- Letter from LegalShield representative regarding the Claimant's status as a an independent contractor, 2 November 2011;

- Statement signed by Dominic Specchio regarding decisions not to enter into business with the Claimant;
- Statement signed by Carlton Martin regarding decision not to enter into business with the Claimant;
- Statement signed by Chris & Tracy Litton regarding decision not to enter into business with the Claimant;
- GCCF Interim Payment Claim Form, signed on 28 October 2011;
- Letter from the GCCF to the Claimant, Re: Follow-Up to Previous Denial Letter, 12 October 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 14 January 2012;
- GCCF Interim Payment Claim Form, signed on 28 October 2011;

On 19 November 2012, the Claimant submitted this claim to the NPFC seeking \$4,341.59 in loss of profits or impairment of earning capacity damages. The Claimant first presented this claim to the GCCF in March and October 2011.⁵ The Claimant stated that he was assigned Claimant ID 1611167 and that the GCCF denied both claims. Because these damages have first been presented to and denied by the GCCF, the NPFC may properly issue an adjudication of all damages now presented.⁶

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

NPFC Determination

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.

As an initial matter, it appears that the Claimant is a member of the E&PD 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 the NPFC to those rights.

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 E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

Furthermore, this claim is also denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

Here, the Claimant alleged that general economic effects of the oil spill on his customer base caused him to be unable to sell identity theft insurance which he otherwise would have sold had the oil spill not occurred. However, the Claimant has failed to provide financial documentation sufficient to support his

⁵ Optional OSLTF Claim Form, signed on 24 October 2012; See also GCCF Interim Payment Claim Form, signed on 28 October 2011.

⁶ 33 C.F.R. § 136.103(a).

alleged losses, such as pay stubs, tax returns, bank account statements or other verifiable proof of his actual earnings.

Additionally, OPA requires that claimants provide evidence of “[a]ll income from alternative employment or business undertaken.”⁷ In this case, Claimant stated that he “found other sources of income to fill the void left by missing the \$500 - \$600”⁸ he allegedly lost each month as a result of the oil spill. However, he has failed to provide evidence to document those earnings.

Therefore, the NPFC cannot determine whether or not the Claimant’s income in the period following the Deepwater Horizon oil spill actually decreased as compared to a similar period in which the Claimant was not affected by the oil spill.

Furthermore, the Claimant has failed to establish the requisite causal link between his alleged loss and the oil spill. To do so, OPA requires that a claimant prove that his loss was “due to the injury to, destruction of, or loss of real or personal property or natural resources” caused by the Deepwater Horizon oil spill.⁹ Here, the Claimant alleged that general economic effects of the oil spill caused his customer base to be unable to purchase his products. However, he has failed to prove that any particular customers’ losses were actually caused by damages to real property or natural resources resulting from the discharge of oil during the Deepwater Horizon oil spill. Furthermore, he has failed to prove that certain customers sustained losses to such an extent that they were unable to purchase the Claimant’s products.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$4,341.59, or (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 discharge of oil. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *12/10/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁷ 33 C.F.R. § 136.235(b).

⁸ Claim Statement, undated.

⁹ 33 C.F.R. § 136.231(a).