

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
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4746

5890/DWHZ
14 May 2012

Mr. Ralph E. Spears Jr.



Re: Claim Number: N10036-1709

Dear Mr. Spears:

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 N10036-1709 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 N10036-1709.

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

Enclosures: (1) Claim Summary/Determination Form
(2) Claimant's Submission to the OSLTF

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1709
Claimant	Mr. Ralph Spears
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$61,050.00

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 6 March 2012, Mr. Ralph Spears (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$61,050.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, the Claimant was operating a janitorial service, primarily providing cleaning services for two car dealerships in Biloxi and Pascagoula, Mississippi.² The Claimant alleged that each dealership faced financial difficulties following the Deepwater Horizon oil spill, thereby causing them to discontinue the use of his services.

The Claimant alleged that this loss of business caused him to incur losses of \$5,550.00 per month, for a total loss of \$61,050.00 from April 2011 to February 2012.³

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.

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.

¹ Optional OSLTF Claim Form, signed on 27 February 2012.

² The Claimant provided payment records from Preston Hood Chevrolet, LLC, and Estabrook Ford.

³ Letter from the Claimant explaining claimed loss amount, undated.

- (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 documentation listed in enclosure (2).

On 20 October 2010, the Claimant submitted a six-month Emergency Advance Payment (EAP) claim with the RP/GCCF, seeking loss of wages and earnings damages in the amount of \$35,000.00.⁴ The GCCF issued payment on this claim in the amount of \$20,600.00.⁵

On 28 December 2010, the Claimant submitted a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF, seeking loss of wages and earning damages totaling \$17,270.00.⁶ The GCCF issued payment on this claim in the amount of \$19,703.64 and offered the Claimant final payment, which he has not accepted.⁷

On 27 April 2011, the Claimant submitted a Second Quarter Interim Payment Claim (ICQ2011) to the RP/GCCF, seeking loss of wages and earnings damages totaling \$18,618.00.⁸ The GCCF also made payments on this claim totaling \$14,182.72.⁹

⁴ GCCF United States Coast Guard Report, 14 April 2012.

⁵ GCCF United States Coast Guard Report, 14 April 2012.

⁶ GCCF United States Coast Guard Report, 14 April 2012.

⁷ GCCF United States Coast Guard Report, 14 April 2012.

⁸ GCCF United States Coast Guard Report, 14 April 2012.

⁹ GCCF United States Coast Guard Report, 14 April 2012.

On 3 August 2011, the Claimant submitted a Third Quarter Interim Payment Claim (ICQ32011) to the RP/GCCF, seeking loss of wages and earning damages totaling \$26,269.00. The GCCF issued payment on this claim totaling \$15,672.55.¹⁰

In sum, information available to the NPFC indicates that the Claimant has submitted claims to the RP/GCCF seeking compensation of \$97,157.00 and has received payments totaling \$70,158.91. The RP/GCCF has denied payment on \$26,998.09 of the damage claims presented by the Claimant.

On 6 March 2012, the Claimant submitted this claim to the NPFC, seeking \$61,050.00 in loss of profits and impairment of earning capacity damages.¹¹ According to OPA and associated regulations, a claimant may present a claim to the NPFC if the claim is “not settled by any person by payment within 90 days after the date upon which [the claim was presented].”¹² Because payments made by the RP to the Claimant have compensated the Claimant at least \$70,158.91 of the \$97,157.00 presented to the RP/GCCF, only \$26,998.09 of this claim remains unsettled by payment. Therefore, the NPFC initially denies payment on \$34,051.91 of this claim, which has already been compensated by the RP/GCCF and has therefore been improperly presented to the NPFC.¹³

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

As previously stated, the RP/GCCF has issued payments to the Claimant of at least \$70,158.91 regarding damages allegedly sustained as a result of the Deepwater Horizon oil spill. The RP/GCCF has denied payment on only \$26,998.09 of the Claimant’s alleged damages. Therefore, the NPFC initially denies payment on \$34,051.91 of this claim, as these alleged damages have already been paid by the RP/GCCF. The remainder of this determination shall address this claim for loss of profits and impairment of earning capacity damages totaling \$26,998.09.

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

The Claimant alleged that he lost income when two car dealerships chose to discontinue the use of his janitorial services as a result of their undergoing financial hardships allegedly caused by effects of the Deepwater Horizon oil spill. The NPFC contacted each of these companies, seeking to confirm that the Claimant was indeed let go under such circumstances. Each company independently stated that effects of the oil spill did not contribute to their decisions to discontinue the use of the Claimant’s services.¹⁴

¹⁰ GCCF United States Coast Guard Report, 14 April 2012.

¹¹ Optional OSLTF Claim Form, signed on 27 February 2012.

¹² 33 C.F.R. § 136.103(c)(2).

¹³ 33 C.F.R. § 136.103(a).

¹⁴ PHONECON: NPFC Staff and representative, Preston Hood Chevrolet, 17 April 2012.

The Claimant failed to independently present evidence indicating that the loss of either janitorial job was in any way related to the discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is therefore denied in its entirety because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$61,050.00, 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

RCR

Date of Supervisor's Review: *5/14/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

Enclosure (2)
Evidence Presented in Support of
NPFC Claim N10036-1709

- Optional OSLTF Claim Form, signed on 27 February 2012;
- Email from the NPFC to the Claimant, regarding receipt of three attached documents, 7 March 2012;
- Cover sheet, "A. The Amount Claimed";
- Letter to the NPFC describing losses, undated;
- Cover sheet, "B. Hardship Letters";
- Hardship Letter, December 11, 2010;
- Hardship Letter, November 8, 2011;
- Hardship Letter(2), November 8, 2011;
- Hardship Letter, February 1, 2012;
- Cover sheet, "C. Profit & Loss Statements & New Business";
- Cover sheet, "C-a New Businesses Judy Guice";
- Invoice #1 to Judy M. Guice from the Claimant;
- Invoice #2 to Judy M. Guice from the Claimant;
- Invoice #3 to Judy M. Guice from the Claimant;
- Invoice #4 to Judy M. Guice from the Claimant;
- C-b Profit & Loss Statements;
- Letter from Ronald G. Boatner to the Claimant, 4 March 2011;
- Spears Janitorial, LLC, "Loss & Calculation";
- 2010 Profit and Loss Statement;
- 2011 Profit and Loss Statement;
- 2012 Profit and Loss Statement;
- Cover sheet, "D. Invoices & Vender Detailed Reports";
- Cover sheet, "D-a Preston Hood VDR"
- Preston Hood Chevrolet, Check Payment History Report, 4/26/2010 through 3/21/2011;
- Preston Hood Chevrolet, Check Payment History Report, 8/4/2009 through 4/26/2010;
- Preston Hood Chevrolet, Check Payment History Report, 4/30/2007 through 7/20/2009;
- Preston Hood Chevrolet, Check Payment History Report, 1/09/2007 through 4/16/2007;
- Cover sheet, "D-b Estabrook Ford, Nissan VDR";
- Record of payment from Estabrook Ford to the Claimant on the following dates:
 - a. 10/24/08;
 - b. 11/11/08;
 - c. 3/2/09;
 - d. 3/16/09;
 - e. 3/30/09;
 - f. 8/3/09;
 - g. 8/17/09;
 - h. 8/31/09;
 - i. 1/4/210;
 - j. 1/19/10;
 - k. 3/1/10;
 - l. 3/15/10;
 - m. 3/29/10;
 - n. 4/12/10;
 - o. 4/26/10;

- Cover sheet, "E. 2008, 09, 10 and 11 Income Tax Files";
- Cover sheet, "E-a 2008 Income Tax Files";
- 2008 Form 1040, showing business income of \$63,059.00
- 2008 Form 1040-V;
- 2008 Schedules A&B (Form 1040);
- 2008 Schedule C (Form 1040) showing gross sales of \$85,260.00;
- 2008 Schedule SE (Form 1040);
- 2008 Form 1099-MISC, showing payment to Spears Janitorial, totaling \$54,600.00;
- 2008 Form 1099-MISC, showing payment to Spears Janitorial, totaling \$2,430.00;
- 2008 Forms 1099-R;
- Cover sheet, "E-b 2009 Income Tax Files";
- 2009 Form 1040, showing business income of \$52,401.00;
- 2009 Schedule C (Form 1040) showing gross sales of \$90,262.00;
- 2009 Form 2210;
- 2009 Schedule A (Form 1040);
- 2009 Schedule SE (Form 1040);
- 2009 Form 8812;
- 2009 Schedule M (Form 1040A or 1040);
- Supporting Schedules, Schedule C;
- Rev. January 2010, Form 1040X;
- 2009 Schedule A (Form 1040);
- Rev. 01-2010 Form 1040X;
- Cover sheet, "E-c 2010 Income Tax Files";
- 2010 Form 1040, showing business income of \$47,632.00;
- 2010 Schedule C (Form 1040), showing gross sales of \$57,794.00;
- 2010 Form 2210;
- 2010 Schedule A (Form 1040);
- 2010 Schedule SE (Form 1040);
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Schedule A, Supporting Schedules;
- Cover sheet, "E-d 2011 Income Tax Files";
- 2011 Form 1040, showing business income of \$31,702.00;
- 2011 Form 1040-V;
- 2011 Schedule C (Form 1040), showing gross sales of \$37,836.00;
- 2011 Schedule SE (Form 1040);
- 2011 Form 2106;
- 2011 Form 8879;