

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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail:
Donna.M.Hellberg@uscg.mil
Fax: 703-872-6113

5890
10/18/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8770

Sir Larry R. Wetzel



RE: Claim Number: N10036-1869

Dear Mr. Wetzel:

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 claim number N10036-1869 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1869
Claimant	: Larry Wetzel
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$5,000,000.00

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 15 August 2012, Sir Larry Wetzel (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000,000.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant, a resident of Gulf Breeze, Florida,² did not provide evidence to indicate the type of work he was involved in at the time of the oil spill. However, the Claimant has stated that he sought "redress for loss of business and personal loss . . . because of oil spill."³ The Claimant also alleged that the oil spill "ruined livings and enjoyment of water and beaches in Navarre, Florida."⁴ The Claimant did not provide an indication as to how he calculated his losses to arrive at this claimed loss amount.

Furthermore, the Claimant has failed to provide any evidence to prove that this claim was previously submitted to the RP/GCCF in the amount of \$5,000,000.00. The NPFC, however, adjudicated this claim to the extent that presentment requirements may have been met. If any or all of the damages presented to the NPFC were not first presented to the GCCF, then this claim was denied, either in whole, or in part, for improper presentment.

¹ Hardship Sworn Statement, 27 July 2012.

² Copy of the Claimant's Driver License.

³ Hardship Sworn Statement, 27 July 2012.

⁴ Hardship Sworn Statement, 27 July 2012.

Additionally, it appears that the Claimant is likely a member of the Deepwater Horizon economic and property damage class action settlement (E&PD Settlement).

The NPFC denied the claim originally on 23 August, 2012 because as an initial matter, the Claimant failed to demonstrate that the claim presented to the NPFC was first presented to the RP/GCCF in accordance with OPA requirements at 33 C.F.R. § 136.103. Accordingly, this claim was denied, either in whole or in part, to the extent that these damages were not first presented to the RP/GCCF.

Furthermore, this claim was denied on the basis that the Claimant is a member of the economic damages class of the E&PD settlement. This claim was 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.

Additionally, this claim was also denied under OPA's loss of profits damage category, as the Claimant failed to prove that he sustained a financial loss as a result of the Deepwater Horizon oil spill. Rather, the NPFC noted that the Claimant's submission appeared to contain evidence suggesting that the Claimant was seeking to recover losses based on use and enjoyment of "water and beaches in Navarre, Florida."⁵

As such, this claim was denied for the following reasons: (1) the Claimant was considered to have settled his claim by virtue of belonging to the economic damages class associated with the CSSP; (2) the Claimant failed to demonstrate his alleged loss through financial documentation; (3) the Claimant failed to demonstrate that his alleged loss was 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) and; (4) loss of use and enjoyment of non-commercial property is not compensable under OPA.⁶

REQUEST FOR RECONSIDERATION:

On 28 September 2012, the NPFC received the Claimant's mailed reconsideration request. The Claimant provided no arguments or discussion to support a request for reconsideration. Rather, the Claimant simply returned a copy of the NPFC's initial denial of his claim, marked with a handwritten notation, "request for reconsideration of damages to Sir Larry R. Wetzel." As in his previous submission, the Claimant includes various documentation dating back to 2003, which appears to be unrelated to the oil spill.

Specifically, the Claimant's reconsideration submission contains 27 pages of documentation, including, (1) notated copies of the NPFC's initial claim summary determination and other NPFC correspondence, (2) information related to a Qualifying Facilities Electric Service Agreement from June of 2007, (3) an affidavit by the Claimant, and (4) a 2003 Notice of Lien and associated documentation.

⁵ Hardship Sworn Statement, 27 July 2012.

⁶ 33 C.F.R. § 136.217(3)(c).

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Having reviewed all information contained in the Claimant's original submission and reconsideration request, the NPFC has determined that the Claimant has failed to provide any evidence to address the deficiencies listed in his initial determination. In his request for reconsideration, the Claimant references the oil spill in a statement regarding business losses allegedly sustained by, "Vehicle Doctor L.T.D. and "Vehicle Construction L.L.C."⁷ However, the Claimant has provided no financial documentation to substantiate these losses, no proof to link the alleged business losses to the oil spill, or evidence to indicate the nature of the relationship between the Claimant and the named businesses.

Based on the foregoing, the Claimant has again failed to provide evidence to prove (1) that this claim was previously presented to the responsible party prior to its presentment to the NPFC, (2) that the Claimant sustained a financial loss in any amount, (3) that the Claimant's alleged personal or business 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); or (4) that the Claimant is not a member of the E&PD Settlement class.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *10/18/2012*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

⁷ Hardship Sworn Statement, 27 July 2012.