

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

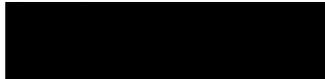


Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 2052

5890/DWHZ  
Claim # N10036-1344  
22 September 2011

Eric Hirsch  


Dear Mr. Hirsch:

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 N10036-1344 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 N10036-1344.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1344
Claimant	Eric Hirsch
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$87,500.00

### ***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 claims for certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 29 August 2011, Eric Hirsch (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$87,500.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked for Saturation Services, LLC (Saturation) in Berwick, Louisiana.<sup>1</sup> He worked for Saturation from 20 January 2009 through 23 April 2010. The Claimant alleged that he was let go because Saturation “had no work available due to the oil spill.”<sup>2</sup> He worked as an independent contractor as a saturation dive technician.<sup>3</sup> The Claimant operated and maintained diving bells on boats working with oil rigs in the Gulf.<sup>4</sup> The Claimant stated that at the time of the oil spill, he was told that “all work was to stop.”<sup>5</sup> He also worked for Ranger Offshore in November 2010 “which only lasted a couple of weeks.”<sup>6</sup>

### ***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

<sup>1</sup> Letter from Saturation Services LLC dated 22 November 2010

<sup>2</sup> Letter from Saturation Services LLC dated 22 November 2010

<sup>3</sup> Letter from Claimant to the NPFC dated 17 August 2011 explaining the claim

<sup>4</sup> PHONECON between Claimant and NPFC Staff dated 31 August 2011

<sup>5</sup> E-Mail from Claimant dated 20 September 2011 in response to NPFC’s requested for additional information dated 02 September 2011

<sup>6</sup> E-Mail from Claimant dated 20 September 2011 in response to NPFC’s requested for additional information dated 02 September 2011

the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 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.
- (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, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant
- Letter from Saturation Services LLC dated 22 November 2010
- Saturation Services 1099 Vendor Report for 2009 for Claimant
- Copies of Saturation Services check stubs for March and April 2010
- Form 1040 US Individual Tax Returns for 2008, 2009 and 2010
- W-2s from Saturation Services for 2009 and 2010
- W-2 from Ranger Offshore for 2010
- GCCF Denial Letter on Interim/Final Payment Claim dated 22 April 2011
- Letter from Claimant to NPFC dated 17 August 2011 explaining the claim
- E-Mail from Claimant dated 20 September 2011 in response to NPFC's requested for additional information dated 02 September 2011

On 03 September 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 20 September 2011, the Claimant responded to the request by e-mail.

Claimant seeks lost profits and earnings in the amount of \$87,500.00.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The claim was assigned Claimant ID #3436561 and claim #518768.<sup>7</sup> The EAP claim was denied on 06 December 2010.<sup>8</sup> Additionally, Claimant filed an Interim Payment (ICQ12011) claim with the GCCF. The claim was assigned claim #9139744.<sup>9</sup> The ICQ12011 claim was denied on 22 April 2011.<sup>10</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of either the EAP or ICQ12011 claims as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and to the extent the amount of the claims presented to the RP are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1344 considers and addresses the loss of earnings up to the amount of \$87,500.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #518768 EAP and #9139744 ICQ12011.

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<sup>7</sup> GCCF On-Line Claim Status site

<sup>8</sup> GCCF Denial Letter dated 06 December 2010

<sup>9</sup> GCCF On-Line Claim Status site

<sup>10</sup> GCCF Denial Letter dated 22 April 2011

## **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 or destruction or loss of real or personal property or 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 the claim.

This NPFC determination addresses this claim in the amount of \$87,500.00 to the extent that this amount has been first presented to the RP/GCCF. Any amount now before the NPFC, which was not presented to the GCCF in the Claimant's EAP or ICQ12011 claims, is hereby denied.

The Claimant worked for Saturation as an independent contractor from 20 January 2009 through 23 April 2010.<sup>11</sup> He also worked for Ranger Offshore in November 2010 for "a couple of weeks."<sup>12</sup> The Claimant stated he was let go and could not work due to the oil spill.<sup>13</sup> Based on the Claimant's tax returns, his income decreased in 2010 as compared to 2009.<sup>14</sup> While the Claimant's income decreased in 2010, the Claimant has not provided documentation showing that his layoff and resulting decrease in income was caused by the Deepwater Horizon oil spill. Furthermore, the Claimant's loss of earnings is a result of an intervening cause due to the federal oil drilling moratorium after the oil spill and the higher oil drilling standards in force after the moratorium and not the discharge or threat of discharge of oil.<sup>15</sup>

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<sup>11</sup> Letter from Saturation Services LLC dated 22 November 2010 stating no work available

<sup>12</sup> E-Mail from Claimant dated 20 September 2011 in response to NPFC's requested for additional information dated 02 September 2011

<sup>13</sup> Letter from Saturation Services LLC dated 22 November 2010 stating no work available

<sup>14</sup> Form 1040 US Individual Tax Returns show Business Income of \$110,638.00 for 2009 and \$17,113.00 for 2010

<sup>15</sup> E-Mail from Claimant dated 20 September 2011 in response to NPFC's requested for additional information dated 02 September 2011

This claim is denied because the Claimant failed to meet his burden under OPA to demonstrate 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 as opposed to other factors such as the moratorium.



Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *22 September 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: