

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2243

5890
3 October 2011

Holland, Groves, Schneller & Stolze


RE: Claim Number: N10036-1358

Dear Mr. Schneller:

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 N10036-1358 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 N10036-1358.

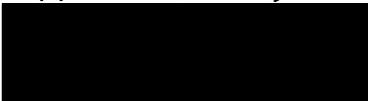
Mail reconsideration requests to:

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

Copy to:


CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2250

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1358
Claimant	: Jose Boza
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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 1 September 2011, Mr. Jose Bosa (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$50,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant was a sales executive with Lando Realty, Inc. and marketed condominium timeshares.² Lando Realty, Inc. is a Florida Domestic for Profit Corporation with principal office in Fort Lauderdale, Florida,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 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.

¹ Optional OSLTF Claim Form signed 28 August 2011 and received 1 September 2011.

² Optional OSLTF Claim Form signed 28 August 2011 and received 1 September 2011.

³ Florida Department of State, Division of Corporations, Detail by Entity Name, accessed 29 September 2011.

- (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.

With limited exceptions, 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

Prior to presentment to the NPFC, Claimant represents having filed a claim with BP/GCCF on 22 November 2011 and that the claim was denied.⁴ Based on independent research by the NPFC, the Claimant presented an Emergency Advance Payment Claim in the amount of \$50,000.00 to the GCCF on 6 December 2011 and an Interim Payment Claim in the amount of \$58,750.00 on 11 January 2011. Both of these claims were assigned Claimant ID Number 1179104 and have been denied.⁵

On 1 September 2011, the Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF).⁶ The amount claimed of \$50,000.00 is for loss of profits and earning capacity due to being laid off/terminated as a result of the oil spill and expected drop in tourism.⁷

In support of this claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form signed 28 August 2011 and received 1 September 2011.
- Letter from Holland, Groves, Schneller & Stolze dated 30 August 2011.
- Florida Driver License issued 14 June 2010.
- Social Security Administration letter "Your Social Security Statement" dated 15 April 2010 with attached Statement.
- Payroll advice from Lando Realty Inc. dated 6 May 2010 with handwritten note.
- Wage Transcript and Determination, Agency for Workforce Innovation, Tallahassee, FL, effective date of 15 August 2010.
- Wage Transcript and Determination, Agency for Workforce Innovation, Tallahassee, FL, effective date of 14 November 2010.

⁴ Optional OSLTF Claim Form signed 28 August 2011 and received 1 September 2011.

⁵ GCCF – U.S. Coast Guard Report as of 9-21-2011.

⁶ Optional OSLTF Claim Form signed 28 August 2011 and received 1 September 2011.

⁷ Optional OSLTF Claim Form signed 28 August 2011 and received 1 September 2011.

- Certificate of Excellence from The Related Group of Florida.
- 2010 Federal Income Tax Return, Form 1040A, with Schedules EIC and M, Form 8812, and two worksheets.
- 2010 Form W-2 from Lando Realty Inc.
- 2009 Federal Income Tax Return, Form 1040.
- 2008 Federal Income Tax Return, Form 1040A, with Schedules A and B.
- 2008 Form W-2 from Nationwide Home Relief LLC.
- 2008 Form W-2 from Schumacher Buick-Oldsmobile Inc.
- 2007 Federal Income Tax Return, Form 1040, with Schedules A and Form 2106-EZ.
- 2007 Illustrated Properties Form 1099-Misc.
- 2007 Illustrated Properties Real Estate, Inc., Form 1099-Misc.
- 2007 United American Properties, Inc., Form 1099-Misc.
- 2007 CitiMortgage, Inc. Form 1098, report 1.
- 2007 CitiMortgage, Inc. Form 1098, report 2.
- Email from Tanya Heepke dated 15 July 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 profits or impairment of earning capacity 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.

The NPFC considered all documentation presented by the Claimant.

According to his W-2 statement, the Claimant's 2010 pay was \$4,579.60⁸ and Claimant had no reportable income in 2009.⁹ See the table below for Claimant's income over the last four years, as reported on Federal Tax forms provided:

Year	Income
2010	\$4,479.60 ¹⁰
2009	\$0.00
2008	\$11,006.61
2007	\$29,452.91

The Claimant did not explain how he calculated the \$50,000.00 sum certain figure before the NPFC.¹¹ The NPFC is unable to independently determine how the Claimant arrived at his sum certain in light of the evidence presented. As such, the Claimant has not met his burden of proof to establish his losses under OPA. Furthermore, the Claimant indicated that he was laid off/terminated "due to the oil spill and expected drop in tourism", but provided no documentation indicating when he was released by Lando Realty, Inc. or the reason for his

⁸ 2010 Form W-2 from Lando Realty Inc.

⁹ 2009 Federal Income Tax Return, Form 1040.

¹⁰ This amount is reported on the Form W-2 provided; the 2010 Form 1040A rounded that off to \$4,480.

¹¹ The NPFC notes that the sum certain of the claim before the NPFC is the same as the amount claimed to the GCCF in the EAP Claim (\$50,000.00) and is less than the amount claimed in the 4th quarter of 2010 IP Claim (\$58,750.00).

release. Accordingly, the Claimant has not established the oil spill as the cause of any loss that he may have suffered.

This claim is denied because the Claimant has failed to 1) prove the amount of his alleged loss and 2) 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/2/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: