

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: 202-493-6839
E-mail:
[REDACTED]@uscg.mil
Fax: 202-493-6937

5890
12/5/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6333

T & HO LLC
[REDACTED]

RE: Claim Number: N10036-1367

Dear Mr. Hamad:

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 N10036-1367 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Per your request, the NPFC is attaching your original photographs that were provided.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,
[REDACTED]

THOMAS D. THOMPSON
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1367
Claimant	: T & HO LLC
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$360,000.00

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 06 September 2011, Mahmoud Hamad, on behalf of T & HO LLC (collectively the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$360,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant operates a gas station with an attached convenience store in New Orleans, Louisiana.¹ The Claimant's convenience store sells assorted items, including seafood and fishing supplies.² The Claimant asserted that, due to the Deepwater Horizon oil spill, customers ceased purchasing seafood and fishing supplies.³ The Claimant indicated that he was eventually able to sell seafood, but only after drastically reducing its price.⁴ The Claimant asserted that by lowering the price of seafood, he reduced his profit margin, resulting in sales with zero or negative profit.⁵ As a result of the reduced demand for seafood and fishing supplies and the reduced profit margins for seafood sales, the Claimant asserts a loss of income⁶ in 2010.⁷

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 06 October 2010 in the amount of \$180,000.00.⁸ The Claimant was assigned Claimant ID # 3112058 and Claim # 166950. This claim was denied by the GCCF on 10 December 2010.⁹ Additionally, the Claimant filed an Interim Payment Quarter I (ICQ12011) claim with the GCCF for loss of earnings on 04 January

¹ PHONECON between the NPFC and the Claimant dated 15 September 2011.

² PHONECON between the NPFC and the Claimant dated 15 September 2011.

³ PHONECON between the NPFC and the Claimant dated 15 September 2011.

⁴ PHONECON between the NPFC and the Claimant dated 15 September 2011.

⁵ PHONECON between the NPFC and the Claimant dated 15 September 2011 and Optional OSLTF Claim Form received 06 September 2011.

⁶ In a phone conversation with the NPFC on 15 September 2011, the Claimant stated that non-gas sales make up the entirety of his loss.

⁷ PHOENCON between the NPFC and the Claimant dated 15 September 2011.

⁸ Report from the GCCF dated 06 October 2011.

⁹ GCCF Denial Letter dated 10 December 2010.

2011 in the amount of \$180,000.00.¹⁰ The Claimant was assigned Claim # 9144811. The ICQ12011 claim was denied by the GCCF on 29 July 2011.¹¹

REQUEST FOR RECONSIDERATION and CLAIMANT'S CLAIM ANALYSIS:

The Claimant requested reconsideration, which was received by the NPFC on November 29, 2011 via facsimile. The Claimant only provided a one-page letter requesting reconsideration. Claimant provided no new information with his request for reconsideration nor has the Claimant provided any arguments in support of his request.

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 Claimant failed to submit any new information in support of his request for reconsideration.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. As noted in the initial denial dated November 3, 2011, the NPFC cannot consider any sum certain that has not been first presented to the responsible party. 33 C.F.R. § 136.103(a). The Claimant presented an EAP claim in the amount of \$180,000.00 to the GCCF.¹² The Claimant also presented an ICQ12011 claim in the amount of \$180,000.00 to the GCCF.¹³ The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$360,000.00 to the NPFC.¹⁴ Any claimed amount of damages exceeding \$180,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore cannot be considered by the NPFC.

With respect to the remaining amount of the claim, the Claimant first failed to prove that he suffered a financial loss during 2010. The Claimant asserted that the Deepwater Horizon oil spill resulted in reduced demand for seafood and fishing supplies sold in the Claimant's convenience store in New Orleans, Louisiana.¹⁵ Additionally, the Claimant asserted that the seafood sales that were made were done so at a reduced profit margin, resulting in sales with zero or negative profit.¹⁶

The Claimant's initial submission to the NPFC consisted solely of a 2010 tax return, chart of gross earnings from 2009, and a monthly profit and loss spreadsheet from January through October of 2010. On 19 September 2011, the NPFC requested additional information from the Claimant to further evaluate the claim and to determine any effect of the Deepwater Horizon oil

¹⁰ Report from the GCCF dated 06 October 2011.

¹¹ GCCF Denial Letter dated 29 July 2011.

¹² Report from the GCCF dated 06 October 2011.

¹³ Report from the GCCF dated 06 October 2011.

¹⁴ Optional OSLTF Claim Form received 06 September 2011.

¹⁵ PHONECON between the NPFC and the Claimant dated 15 September 2011.

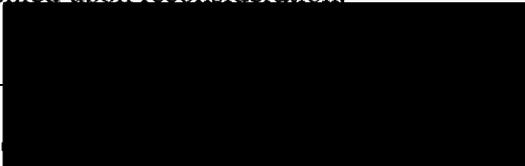
¹⁶ PHONECON between the NPFC and the Claimant dated 15 September 2011 and Optional OSLTF Claim Form received 06 September 2011.

spill on the Claimant's business.¹⁷ The NPFC requested that the Claimant provide, among other things, tax returns for 2008 and 2009, complete profit and loss statements for 2008-2010, sales ledgers for goods sold from 2008-2010, receipts for seafood sold from 2008-2010 and invoices for seafood purchased from 2008-2010.¹⁸ The NPFC requested that the information be provided within 14 days of 19 September 2011, which was October 3, 2011. The Claimant did not respond to that request initially or on reconsideration. Nor did he seek an extension of time to provide additional information.

Furthermore, although the Claimant asserted that his business experienced reduced sales due to the Deepwater Horizon oil spill, an analysis of the Claimant's provided financial data fails to show that the Claimant experienced a decrease in sales. From January 2010-April 2010, the Claimant's business was averaging \$326,103.00¹⁹ in sales revenue compared to \$359,070.00²⁰ in monthly sales revenue from May 2010-October²¹ 2010. Thus, the Claimant's business generated greater sales revenue during the period purportedly affected by the Deepwater Horizon oil spill compared to the period preceding the oil spill. As well, in 2009 the Claimant's business had a total of \$3,366,541.00²² in total sales revenue, while the business had gross sales of \$4,123,038.00²³ in 2010. Accordingly, the Claimant failed to prove a reduction in sales and did not prove that he suffered lost profits due to the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied on reconsideration. Due to the Claimant's failure to produce additional information on reconsideration, the Claimant again failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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.

This claim is denied upon reconsideration.

Claim Supervisor 

Date of Supervisor's review: *12/5/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

¹⁷ Letter from the NPFC to the Claimant Requesting Additional Information dated 19 September 2011.

¹⁸ Letter from the NPFC to the Claimant Requesting Additional Information dated 19 September 2011.

¹⁹ Spreadsheet containing profit and loss statements for January-October 2010.

²⁰ Spreadsheet containing profit and loss statements for January-October 2010.

²¹ The financial data provided by the Claimant for 2010 only included data from January-October. Accordingly, the NPFC utilizes the data only from the period submitted by the Claimant.

²² Chart with monthly revenue for January 2009-December 2009.

²³ 2010 Form 1065 U.S. Return of Partnership Income.