

U.S. Department of  
Homeland Security

United States  
Coast Guard



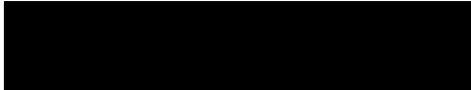
Director  
National Pollution Funds Center  
United States Coast Guard

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 4803 7346

5890/DWHZ  
11 June 2012

Mr. Eric F. Holmes



Re: Claim Number: N10036-1825

Dear Mr. Holmes:

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 N10036-1825 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

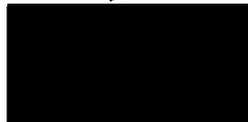
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1825.

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

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1825
Claimant	Mr. Eric F. Holmes
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$30,000.00

### ***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 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 29 May 2012, Mr. Eric F. Holmes (the Claimant) submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$30,000 in loss of profits and earnings capacity resulting from the Deepwater Horizon incident.<sup>1</sup>

The Claimant owned a bail bonds business in Baton Rouge, Louisiana.<sup>2</sup> He alleged that the general economic climate deteriorated as a result of the Deepwater Horizon incident, and that his clients either relocated or were unable to continue making payments.<sup>3</sup> This in turn led Financial Casualty and Surety, Inc. (FC&S) to cancel their contract with the Claimant on 15 May 2010, leaving him unable to solicit and execute new bail bonds.<sup>4</sup>

The Claimant alleged that this economic decline caused him to close his business, thereby suffering \$30,000 in financial losses, allegedly resulting from the oil spill.<sup>5</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 the navigable waters or adjoining shorelines or the exclusive economic zone, as described in §2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. 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;

<sup>1</sup> Optional OSLTF Claim Form, signed 8 May 2012.

<sup>2</sup> Optional OSLTF Claim Form, signed 8 May 2012; Hardship Letter, dated 17 September 2011.

<sup>3</sup> Hardship Letter, dated 17 September 2011.

<sup>4</sup> Correspondence from Michele Renshaw, General Agent, Financial Casualty & Surety, Inc., dated 15 May 2010.

<sup>5</sup> Optional OSLTF Claim Form, signed 8 May 2012.

- (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; and
- (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 following documentation:

- Optional OSLTF Form, signed 8 May 2012;
- GCCF Claim Form Generated Online, initiating Emergency Advance Payment claim, dated 14 October 2010;
- Photocopies of identification documents—Louisiana Personal Driver's License and State of Louisiana Insurance License;
- Correspondence with Michele Renshaw, General Agent, Financial Casualty and Surety, Inc., dated 15 May 2010;
- Business license for Eric's Speedy Bail Bonds, LLC, dated 20 October 2008;
- 2009 U.S. Individual Income Tax Return, including Schedule C, Form 8879, Form 4562, and Schedule E (two copies);
- GCCF Claims Form, initiating Full Review Final claim, dated 8 December 2010;
- 2010 Form W-2, showing \$64,176.39 in wages;
- Correspondence advising GCCF that the Claimant is unrepresented;
- Tax Return Comparison Form for tax years 2006, 2007, and 2008;
- Check Payment & Deposit Register for 2008, 2009, 2010, and 2011;
- Bank statements for 17 June 2009 through 3 June 2011;

- 2010 U.S. Individual Income Tax Return, including Schedule C, Schedule E, Form 4562, and Form 8879;
- Hardship Letter seeking re-review of GCCF claim (two handwritten copies);
- Petition for Garnishment seeking an order to garnish the Claimant's wages, stamped as filed 6 October 2010;
- Individual Producer Detail for Eric Franchot Holmes, date retrieved illegible;
- Financial Casualty & Surety Open Liability Report, dated 3 June 2010; and
- Copies of all correspondence from GCCF.

Prior to presenting this claim to the NPFC, the Claimant presented an Emergency Advance Payment Claim (EAP) and a Full Review Final Claim (FRF) to the GCCF.<sup>6</sup> The GCCF assigned Claimant ID # 3173837 to the Claimant, assigned the EAP claim # 228998, and assigned the FRF claim # 9257123.<sup>7</sup> The GCCF denied payment on these claims.<sup>8</sup>

On 29 May 2012, the Claimant presented this claim to the NPFC, seeking \$30,000 in loss of profits and earning capacity damages.<sup>9</sup> Because the Claimant first presented this claim to the GCCF, the NPFC may adjudicate this claim to the extent the damages now before the NPFC were first presented to the GCCF.<sup>10</sup> In accordance with OPA presentment requirements, any damages now before the NPFC, which were not first presented to the GCCF, are denied for improper presentment.<sup>11</sup>

### **NPFC Determination**

33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136 require that a claimant prove that a 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

In order to prove a claim for loss of profits and earning capacity damages, a Claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

### Failure to Prove Financial Loss

The Claimant has failed to prove that he has sustained a financial loss. On the record before the NPFC, the Claimant's adjusted gross income increased by \$22,544 in 2010 (the year his business closed) over his 2009 adjusted gross income.<sup>12</sup> Furthermore, the Claimant's submissions show that he had sustained substantial business losses for the three years preceding the Deepwater Horizon oil spill.<sup>13</sup> The record shows that the Claimant suffered business losses of \$15,267 in 2007,<sup>14</sup> \$12,411 in 2008,<sup>15</sup> and \$8,311 in 2009.<sup>16</sup> In fact, the Claimant's \$3,911 in 2010 losses—

<sup>6</sup> GCCF Claimant Status, accessed on 29 May 2012.

<sup>7</sup> GCCF Claimant Status, accessed on 29 May 2012.

<sup>8</sup> GCCF Claimant Status, accessed on 29 May 2012.

<sup>9</sup> Optional OSLTF Claim Form, signed 16 May 2012.

<sup>10</sup> 33 C.F.R. § 136.103(a).

<sup>11</sup> 33 C.F.R. § 136.103(a).

<sup>12</sup> \$65,105 [2010 AGI] - \$42,561 [2009 AGI] = \$22,544.

<sup>13</sup> Tax Return Comparison Form for tax years 2006, 2007, and 2008.

<sup>14</sup> Tax Return Comparison Form for tax years 2006, 2007, and 2008. The claim form showed no business income or losses from 2006.

the year of the Deepwater Horizon incident and his business's closure—were lower than they had been in any of the prior three years.<sup>17</sup> The Claimant has failed to provide documentation to prove that his 2010 losses were caused by the oil spill, and not by other factors including those that caused the Claimant to sustain losses in the three years preceding the oil spill.

#### Failure to Prove Alleged Loss Due To the Deepwater Horizon Oil Spill

Additionally, the Claimant has failed to prove that his alleged financial loss was the result of the Deepwater Horizon oil spill. The Claimant received notice from FC&S that the company was terminating his contract “for cause” on 15 May 2010.<sup>18</sup> The record does not illuminate what FC&S referred to when terminating the contract “for cause.” FC&S sent this letter less than one month after the Deepwater Horizon oil spill began.<sup>19</sup> This is effectively when the Claimant's bail bonds business ended. With the contract's termination, the Claimant was unable to solicit or execute any new bail bonds (i.e., generate any new business).<sup>20</sup> The Claimant has not provided sufficient documentation to prove that FC&S cancelled his contract, or that he otherwise lost business, as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$30,000.00, 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 [REDACTED] Adjudication Division*

Date of Supervisor's Review: *6/11/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>15</sup> Tax Return Comparison Form for tax years 2006, 2007, and 2008.

<sup>16</sup> 2009 U.S. Individual Income Tax Return.

<sup>17</sup> 2010 U.S. Individual Income Tax Return.

<sup>18</sup> Correspondence from Michele Renshaw, General Agent, Financial Casualty & Surety, Inc., dated 15 May 2010.

<sup>19</sup> Correspondence from Michele Renshaw, General Agent, Financial Casualty & Surety, Inc., dated 15 May 2010.

<sup>20</sup> Correspondence from Michele Renshaw, General Agent, Financial Casualty & Surety, Inc., dated 15 May 2010.