

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7011 1150 0000 3212 3988

5890/DWHZ  
Claim # N10036-1291  
18 August 2011

James Lee Faye  


Re: Claim Number: N10036-1291

Dear Mr. Faye:

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 N10036-1291 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

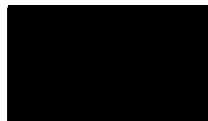
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1291.

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	N10036-1291
Claimant	Mr. James Lee Fay
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$21,849.96

### ***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 11 August 2011, Mr. James Lee Faye (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$21,849.96 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

Claimant works as a casing supervisor/oilfield technician for Frank's Casing in Lafayette, Louisiana. Following the oil spill, the Claimant alleged that his hours were reduced, resulting in a loss of earnings.<sup>2</sup> The Claimant also alleged that this loss is due to the Deepwater Horizon oil spill and seeks \$21,849.96 in loss of profits and earning capacity.

### ***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

<sup>1</sup> Optional OSLTF Claim Form dated 9 August 2011.

<sup>2</sup> GCCF Claim Form, claiming lost profits and earnings of \$21,849.96 for lost wages from mid September 2010 to mid December 2010.

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 undertake, 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:

- Optional OSLTF Claim Form, dated 9 August 2011;
- GCCF Claim Form, claiming lost profits and earnings of \$150,000.00, submitted 10 October 2010, Claimant ID 3137275;
- GCCF Claim Form, claiming lost profits and earnings of \$21,849.96 for lost wages from mid September 2010 to mid December 2010;
- Letter from GCCF to Claimant, denying payment on Emergency Advance Payment claim, 29 October 2010;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 17 June 2011;
- Letter from Claimant's employer, noting effects of the oil spill on Claimant's working hours and income, 8 October 2010;
- 2010 Form 1040, showing wages of \$137,658.00;
- 2010 Pay Stubs.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) claim as well as a Full Review Final (FRF) claim to the RP/GCCF and was assigned ID 3137275. EAP was assigned claim # 192163 and FRF was assigned claim # 9399534. Claimant sought 21,849.96 in EAP claim for lost profits<sup>3</sup>; FRF was for lost profits and earnings in the amount of \$150,000.00.<sup>4</sup> EAP was denied on 29 October 2010 and FRF was denied on 17 June 2011.

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<sup>3</sup> GCCF Claim Form, claiming lost profits and earnings of \$21,849.96 for lost wages from mid September 2010 to mid December 2010.

<sup>4</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 17 June 2011

On 11 August 2011, the Claimant presented this claim for \$21,849.96.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Because this is the amount presented in the Claimant's EAP, and because it addresses the same injury, this NPFC determination shall address the subject matter presented in Claimant's EAP in the amount of \$21,849.96, as presented to the NPFC.

### **NPFC Determination**

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

In order to prove a claim for loss of profits and earning capacity, the Claimant must demonstrate (1) that he sustained a financial loss, and (2) that the loss was a result of the Deepwater Horizon oil spill, and not the result of other factors.

The NPFC contacted the Claimant's employer, Frank's Casing, to verify the Claimant's loss of hours and income. A human resources representative confirmed that many employees at Frank's Casing sustained a reduction in hours and wages when work significantly slowed due to offshore drilling and permitting restrictions.<sup>5</sup>

In order to pursue this claim on reconsideration, the Claimant would have to demonstrate (1) that his losses were a result of the Deepwater Horizon oil spill, and not the result of offshore drilling and permitting restrictions, and (2) that he sustained a financial loss, evidenced by comparable financial records which indicate lower earnings from September to December, 2010 compared to earnings in those months during earlier or later years.

This claim is denied because (1) the Claimant to demonstrate a loss in the amount claimed, and (2) that his loss was the result of 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 Claims Adjudication Division*

Date of Supervisor's Review: *8/18/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>5</sup> PHONECON: NPFC Staff and Human Resources Representative, Frank's Casing, 16 August 2011.