

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4728

5890/DWHZ
Claim # N10036-1295
19 September 2011

CJ Restaurant
[REDACTED]

Dear Mr. Joseph:

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 N10036-1295 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 N10036-1295.

Mail reconsideration requests to:

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

Sincerely,
[REDACTED]

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1295
Claimant	CJ Restaurant, Cleveland Joseph, owner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$40,000.00

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 11 August 2011, CJ Restaurant, owned by Cleveland Joseph (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$40,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns a meal delivery business in Hahnville, Louisiana. He delivers plate breakfasts and lunches to plant workers at two local chemical plants, but does not offer dine in services.¹ The Claimant previously owned a dine-in restaurant and bar in New Sarpy, Louisiana.² In January 2010, the restaurant in New Sarpy was destroyed by fire and the Claimant moved to Hahnville. The Claimant stated that he has been serving plant workers for the past 35 years.³

The Claimant stated that "because many of my restaurant customers lost work... they could not patronize our lunches."⁴ The Claimant alleged that many of his dishes contained seafood and after the oil spill, the price of seafood doubled and in some cases tripled. The Claimant further asserted that he could not sell his plates at a price that was competitive with bigger businesses.⁵

¹ Letter from the Claimant to the NPFC dated 31 August 2011

² Letter from the Claimant to the NPFC dated 31 August 2011

³ Letter from the Claimant to the NPFC dated 31 August 2011

⁴ OSLTF Claim Form signed by Claimant

⁵ OSLTF Claim Form signed by Claimant

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.
- (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:

- OSLTF Claim Form signed by Claimant
- Form 1120 US Corporation Income Tax Return for 2009, 2008 and 2010
- Letter from Claimant to the NPFC dated 31 August 2011

On 15 August 2011, NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 31 August 2011, the Claimant responded to the request.

Claimant seeks lost earnings and wages in the amount of \$40,000.00.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 25 October 2010 in the amount of \$40,000.00.⁶ The claim was assigned Claimant ID #3284927 and claim #340628. The EAP claim was denied on 28 January 2011.⁷ Additionally, the Claimant filed an Interim Payment claim (ICQ12011) with the GCCF on 10 January 2011 in the amount of \$40,000.00.⁸ The ICQ12011 claim was assigned claim #9187195. The ICQ12011 claim is currently in the review process and no determination has been issued.⁹

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 deems the GCCF claims to be properly presented to the Responsible Party and to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1295 considers and addresses the loss of earnings in all claims presented to the Responsible Party, specifically: GCCF Claims #340628 EAP and #9187495 ICQ12011.

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.

⁶ Report from the GCCF dated 07 September 2011

⁷ GCCF Denial Letter dated 28 January 2011

⁸ Report from the GCCF dated 07 September 2011

⁹ Report from the GCCF dated 07 September 2011

The Claimant stated that his loss of earnings due to the oil spill was \$40,000.00.¹⁰ The Claimant's tax returns indicated that his revenues decreased from \$39,819 in 2009 to \$29,916 in 2010.¹¹ However, the Claimant's 2009 and 2010 revenues are not readily comparable. The 2009 tax return represented the revenue for the dine-in restaurant in New Sarpy which was destroyed by fire in January 2010.¹² The 2010 revenue represented the Claimant's new food delivery business in Hahnville, Louisiana. The Claimant stated that the price of seafood increased due to the oil spill and that as a result, he was not able to sell his lunches at a price that was competitive to the prices offered by other restaurants.¹³ The Claimant has provided no documentation to support this assertion or his alleged loss.

The Claimant further stated that his loss of earnings was due to the loss of income of workers who worked at local chemical plants as a result of the oil spill.¹⁴ The Claimant has likewise provided no documentation to support his assertion. The NPFC requested information regarding the Claimant's chemical plant clientele in an attempt to corroborate the claim but the Claimant was unable to provide any contacts.¹⁵ Accordingly, the Claimant has failed to meet his burden of proof in order to establish the causation of his alleged losses.

This claim is denied because the Claimant failed to meet the 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.

Claim Supervisor:  *Claims Adjudication Division*

Date of Supervisor's Review: *19 September 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁰ OSLTF Claim Form signed by Claimant

¹¹ Form 1120 US Corporation Income Tax Return for 2009 and 2010

¹² Letter from the Claimant to the NPFC dated 31 August 2011

¹³ Letter from the Claimant to the NPFC dated 31 August 2011

¹⁴ OSLTF Claim Form signed by Claimant

¹⁵ Letter from the Claimant to the NPFC dated 31 August