

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 9861

5890/DWHZ  
14 September 2011

Hubert A Grissom, Esq.  


Re: Claim Number: N10036-1351

Dear Mr. Grissom:


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 N10036-1351 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 N10036-1351.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination Form  
CC: Douglas J. LaMountain  
65230 Sunset Drive  
Panama City Beach, FL 32408

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4666 9953

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1351
Claimant	Douglas J. LaMountain
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,138.68

### ***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 29 August 2011, Mr. Hubert A. Grissom, on behalf of Mr. Douglas James LaMountain (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,138.68 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant alleged that he was to begin seasonal employment as a finance manager with Jimmy Buffett's Margaritaville restaurant in Panama City Beach, Florida, on 3 May 2010.<sup>2</sup> The Claimant further alleged that on 26 April 2010, he was informed that all seasonal positions, including the Claimant's, were suspended due to the Deepwater Horizon oil spill.<sup>3</sup> The Claimant attempted to find other employment but was unable to do so, and is currently enrolled in nursing school.<sup>4</sup>

Claimant seeks \$5,138.68 in lost wages from May – December 2010 due to the cancellation of his seasonal employment opportunity at Jimmy Buffett's Margaritaville in Panama City Beach, Florida.<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 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.

<sup>1</sup> Optional OSLTF Claim Form dated 19 August 2011.

<sup>2</sup> Letter from Margaritaville Management Group to Claimant, 26 April 2010.

<sup>3</sup> Letter from Margaritaville Management Group to Claimant, 26 April 2010.

<sup>4</sup> Optional OSLTF Claim Form dated 19 August 2011.

<sup>5</sup> GCCF 2000-AF Form.

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, the Claimant submitted the following documentation:

- Letter from the Claimant to NPFC, 19 August 2011;
- Letter from the Claimant to "Panel of Appeals Judges," GCCF, 10 June 2011;
- GCCF 2000-AF form;
- Letters from Maragaritaville Management Group, noting the cancellation of the Claimant's position with the restaurant, 26 April 2010 & 3 June 2011.
- Explanation of Interim Claim calculation;
- Letter from Olympic Law Group, stating status of representation, 17 February 2011;
- Hardship Letter from the Claimant to GCCF, 7 February 2011;
- The Claimant's resume;
- Document titled, "Professional Accomplishments;"
- Haney Technical Center, Practical Nursing Estimate Cost Sheet;
- Invoice, HaneyTeach, 15 June 2010;
- 2008 Form 1040A;
- 2009 Form 1040;

- Wage Transcript and Determination;
- Invoice from accountant, 19 January 2011;
- Document titled Job Submission Summary;
- Map showing cities where the Claimant sought employment;
- Lists of employment opportunities pursued by the Claimant, 2009 –2010;
- Payroll Register for Margaritaville of Panama City, LLC, 2009;
- Haas Study, “An Analysis on the Financial Impact of the Deep Horizon Incident on the State of Florida;”
- “The Economic Impact to Northwest Florida of the Deepwater Horizon Oil Spill;”

Prior to presentment to the NPFC, the Claimant presented an Interim Claim to the RP/GCCF, seeking \$5,138.68 in lost wages.<sup>6</sup> The Claimant also submitted a First Quarter Interim Claim (ICQ12011) for \$8,950.14. Claimant was assigned ID # 3305337.

On 29 August 2011, the Claimant presented this claim for \$5,138.65 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>7</sup> This NPFC determination addresses the Claimant’s losses, as presented in the Claimant’s Initial Interim claim, for lost earnings from May – December 2010, in the amount of \$5,138.65.<sup>8</sup>

### **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, 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 the claim.

In order to prove a claim alleging loss of profits and impairment of earnings capacity, a Claimant must prove (1) that he sustained an actual financial loss, and (2) that the loss was a direct result of the Deepwater Horizon oil spill.

The Claimant alleged that he was scheduled to begin a seasonal position as “finance manager” with Margaritaville restaurant in Panama City Beach on 3 May 2010.<sup>9</sup> The Claimant alleged that on 26 April 2010, he was informed that “due to the Deepwater Horizon oil spill” all seasonal employment had been suspended.<sup>10</sup> To support this claim, the Claimant submitted two letters, allegedly written by the Human Resources Manager of Margaritaville, noting the suspension of seasonal employment at the company’s Panama City Beach location.<sup>11</sup> The NPFC contacted a human resources representative at Margaritaville Management Group, and was informed that the Claimant was a year-round employee, who was terminated in September of 2009 for reasons

<sup>6</sup> Optional OSLTF Claim Form, dated 19 August 2011.

<sup>7</sup> Optional OSLTF Claim Form, dated 19 August 2011.

<sup>8</sup> Optional OSLTF Claim Form, dated 19 August 2011.

<sup>9</sup> Letters from Margaritaville Management Group, dated 26 April 2010 and 3 June 2011.

<sup>10</sup> Letters from Margaritaville Management Group, dated 26 April 2010 and 3 June 2011.

<sup>11</sup> Letters from Margaritaville Management Group, dated 26 April 2010 and 3 June 2011.

unrelated to the oil spill.<sup>12</sup> Furthermore, a Human Resources Manager informed the NPFC that the letter presented to the NPFC had been "falsified."<sup>13</sup>

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant has materially misrepresented substantial elements of this claim in order to obtain funds from the Federal Government.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/14/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>12</sup> PHONECON: NPFC Staff and Margaritaville Management Group, 6 September 2010; See also, Fax from Margaritaville Management Corps to NPFC, 6 September 2011.

<sup>13</sup> PHONECON: NPFC Staff and Margaritaville Management Group, 6 September 2010; See also, Fax from Margaritaville Management Corps to NPFC, 6 September 2011, stating in part, "[t]he letter he has provided has been falsified, and it appears that he has taken portions of his original offer letter from us to present to you."