

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 9878

5890/DWHZ
8 September 2011

Mr. Charles Scott Conner


Re: Claim Number: N10036-1361

Dear Mr. Conner:

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 N10036-1361 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

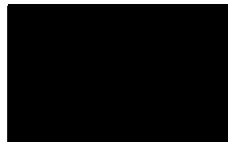
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1361.

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	N10036-1361
Claimant	Mr. Charles Scott Conner
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$27,000.00

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 31 August 2011, Mr. Charles Scott Conner (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$27,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working at Macy's department store in Kenner, Louisiana.² The Claimant alleged that on 28 July 2010, he preemptively quit his position with Macy's after the Deepwater Horizon oil spill allegedly caused a decrease in tourism, which caused Macy's to lose revenue, thereby putting the Claimant's position in jeopardy.³ The Claimant states in his submission, "As the last Manager hired I was directly in line to be laid-off, therefore I resigned before that occurred."⁴

The Claimant is seeking \$27,000.00 in lost wages and impairment of earnings capacity, for the period of August 2010 to April 2011 when the Claimant alleges to have lost income due to the loss of his position with Macy's.⁵

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:

¹ Optional OSLTF Claim Form dated 28 July 2011.

² Letter from the Claimant to the NPFC, 20 August 2011.

³ Optional OSLTF Claim Form dated 28 July 2011.

⁴ Letter from the Claimant to the NPFC, 20 August 2011.

⁵ Letter from the Claimant to the NPFC, 20 August 2011.

- (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 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 Claim Form, dated 28 July 2011;
- Letter from the Claimant to the NPFC, 20 August 2011;
- Letter noting the Claimant's termination date of 28 July 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 April 2011, Claimant ID 34764443;
- Letter from GCCF to the Claimant, noting receipt of Full Review Final Payment Claim Form, 26 January 2011;
- Letter from GCCF to the Claimant, 31 January 2011;
- Pay Stub, 18 February 2011;
- Pay Stub, 4 March 2011;
- Pay Stub 18 March 2011;
- Pay Stub, 29 April 2011;
- Emails documenting the Claimant's job search;
- 2008 Form W-2;
- 2008 Form 1040;
- 2009 Form W-2;

- 209 Form 1040;
- 2010 Form W-2;
- 2010 Form 1040.

Prior to presentment to the NPFC, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF for \$27,000.00⁶ in loss of profits and impairment of earnings capacity. The Claimant was assigned Claimant ID 34764443 and ICQ12011 was assigned claim # 9177563. The Claimant also submitted a Full Review Final (FRF) Claim to the RP/GCCF, which was assigned claim # 9072062. These claims were denied on 22 April 2011.⁷

On 31 August 2011, the Claimant presented this claim for \$27,000.00 in loss of profits and impairment of earnings capacity to the NPFC. Because this claim is for the same amount, and addresses the same loss as presented to the RP/GCCF in ICQ12011 and FRF, this NPFC determination addresses all claims presented to the RP/GCCF alleging lost earnings in the amount of \$27,000.00 as presented to the NPFC. Any amount of damages now claimed before the NPFC, which was not first presented to the RP/GCCF is denied.

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 this claim.

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

This claim is denied because the Claimant has failed to demonstrate that his financial loss was a result of the Deepwater Horizon oil spill.

In his submission to the NPFC, the Claimant states that he preemptively quit his job with Macy's in Kenner, Louisiana, because he was "directly in line to be laid off."⁸ The Claimant alleged that he would soon be let go from his position at Macy's due to low sales, resulting from the Deepwater Horizon oil spill.⁹

However, the Claimant has not provided any documentation that would show that sales at Macy's were negatively affected by the oil spill, nor has he provided evidence to show that he actually would have been let go had he not quit his job. Furthermore, the Claimant has not demonstrated that if he were to be let go, that the Deepwater Horizon oil spill would have been the reason for his dismissal as opposed to other reasons.

Additionally, the NPFC contacted a manager at Macy's in Kenner, Louisiana, who stated that it was highly unlikely that the Claimant would have been fired because of the oil spill.¹⁰

⁶ Letter from the Claimant to the NPFC, 20 August 2011.

⁷ GCCF Denial Letter, 22 April 2011.

⁸ Letter from the Claimant to the NPFC, 20 August 2011.

⁹ Optional OSLTF Claim Form, 28 July 2011.

¹⁰ PHONECON: NPFC Staff and Manager, Macy's, Kenner, La. 7 September 2011.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he suffered a loss in the amount alleged, and (2) that any financial loss the Claimant may have sustained was 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 Claims Adjudication Division*

Date of Supervisor's Review: *9/8/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: