

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7026

5890/DWHZ
31 October 2011

Ramon Oniate


Re: Claim Number: N10036-1365

Dear Mr. Oniate:

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 your claim number N10036-1365 involving the Deepwater Horizon oil spill. Please see the enclosed 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. If, however 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 N10036-1365.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1365
Claimant	Ramon Oniate
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$5,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 September 2011, Ramon Oniate (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$5,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works as a Sales Associate for the Saks Fifth Avenue store in New Orleans, Louisiana.¹ The Claimant asserted that, due to the Deepwater Horizon oil spill, he experienced a reduction in commissions.² The Claimant stated that his main client base comes from the petroleum, tourism, and seafood industries; the three industries hit hardest by the Deepwater Horizon oil spill.³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ Letter from Saks Fifth Avenue to the NPFC, dated 21 October 2011.

² Letter of claim explanation from the Claimant, dated 11 October 2010.

³ Letter of claim explanation from the Claimant, dated 11 October 2010.

- (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 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.

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

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 30 August 2011;
- Letter of claim explanation from the Claimant, dated 11 October 2010;
- 2010 Form W-2 Wage and Tax Statement from Saks Incorporated;
- Paystubs from Saks Incorporated for the period 4 April 2010 through 23 October 2010;

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on 21 October 2010 in the amount of \$6,000.00.⁴ The Claimant was assigned Claimant ID # 3248615 and Claim # 304259. This claim was denied by the GCCF on 14 December 2010.⁵ Additionally, the Claimant filed a Full Review Final Payment (FRF) claim with the GCCF on 24 January 2011 in the amount of \$5,000.00.⁶ The Claimant was assigned Claim # 9240214. The FRF claim was denied by the GCCF on 16 April 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., the Claimant

⁴ Report from the GCCF, dated 06 October 2011.

⁵ Denial letter from the GCCF, dated 14 December 2010.

⁶ Report from the GCCF dated 06 October 2011.

⁷ Denial Letter on Interim Payment/Final Payment Claim, dated 1 July 2011.

experienced reduced commissions at Saks Fifth Avenue due to the Deepwater Horizon oil spill. The NPFC deems Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1365 considers and addresses the damages claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 304259 (EAP) and 9240214 (FRF).

NPFC Determination

The claim is denied. 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. The NPFC considered all documentation presented by the Claimant.

This claim is denied because the Claimant failed to prove that he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that he experienced a loss of commissions at Saks because his main customer base was financially damaged by the Deepwater Horizon oil spill.⁸ The NPFC contacted Saks Fifth Avenue to obtain verification of the Claimant's assertions and his alleged loss due to the Deepwater Horizon oil spill. Saks Fifth Avenue informed the NPFC that "our New Orleans store did not experience a noticeable drop in business during the Spring season of 2010. In fact, our total store business in April 2010 and May 2010 posted double digit increases in business from the previous year."⁹ Consequently, the NPFC is unable to confirm that the Deepwater Horizon oil spill had any effect on the commissions earned by the Claimant.

Additionally, the Claimant did not provide comparable financial information for 2008 and 2009 or three years worth of income tax records filed with the IRS in order for the NPFC to be able to perform a complete analysis of the Claimant's financial status pre and post spill.

This claim is denied because the Claimant failed to meet his 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 since the Claimant's employer's statement is contradictory to the Claimant's assertions.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/29/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁸ Letter of claim explanation from the Claimant, dated 11 October 2010.

⁹ Letter from Saks Fifth Avenue to the NPFC, dated 21 October 2011.