

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 1949

5890/DWHZ
15 September 2011

Mark Richardson


Re: Claim Number: N10036-1386

Dear Mr. Richardson:

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 N10036-1386 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 N10036-1386.

Mail reconsideration requests to:

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

Sincerely,


National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1386
Claimant	Mark Richardson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,000.00

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 08 September 2011, Mark Richardson, (the Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$12,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked as a full-time Currency Supervisor at the Palm Beach Kennel Club in Palm Beach County, Florida.¹ The Claimant stated that, due to the Deepwater Horizon oil spill, the tourism industry in the Palm Beach, Florida region collapsed thereby reducing the patronage of the Palm Beach Kennel Club during the lucrative triple-crown horse racing season.² As a result of the lack of patronage, the Claimant stated he was laid-off in November 2010 and subsequently suffered reduced earnings.³

The Claimant provided the following explanation for the calculation of his sum certain of \$12,000.00: the Claimant took his average weekly wage from the Palm Beach Kennel Club of \$287.00⁴ a week and multiplied that amount by twenty weeks for a total amount of \$5,740.00.⁵ The Claimant then took his mortgage payment of \$769.00 and multiplied it by three, which he represented was the amount his mortgage was in arrears, for a total amount of \$2,307.00.⁶ The Claimant also requested the loss of his home owners insurance coverage in the amount of \$1,600.00,⁷ and finally, the Claimant also requested

¹ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of how the incident caused the damage'.

² Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of how the incident caused the damage'.

³ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of how the incident caused the damage'.

⁴ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed'.

⁵ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed'.

⁶ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed'.

⁷ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed'.

the loss of his wife's deferred compensation emergency payment of \$2,000.00.⁸ The amounts requested by the Claimant total \$11,647.00⁹ which the Claimant has then rounded to his sum certain of \$12,000.00.¹⁰

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.
- (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;

⁸ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed'.

⁹ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed'.

¹⁰ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed'.

- (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 the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form received 08 September 2011;
- Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of the nature and extent of the damages claimed';
- Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of how the incident caused the damage'.

Prior to presenting this claim to the NPFC, the Claimant filed a claim with the GCCF.¹¹ The claim was denied by the GCCF.¹² The NPFC has not been able to independently verify presentment to the RP or the GCCF as of the date of this determination. This Claim Summary Determination for NPFC Claim N10036-1386 addresses the amount of damages claimed to the extent these damages were first presented to the responsible party.

NPFC Determination

Under 33 U.S.C § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that its 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 his claim submission to the NPFC, the Claimant stated that, "due to the impact of Deepwater Horizon oil spill on tourism in Palm Beach County the club's earnings continued to drop on previous years... In 2010, official statistics¹³ show that throughout Florida tourism decreased by approximately 15% and during the same period earnings at the Palm Beach Kennel Club dropped approximately 12%.¹⁴ Due to these loss of earnings in the greyhound and simulcast areas management made two further rounds of redundancy cuts in August and November accordingly.¹⁵ On November 15th 2010 my employment was terminated for these reasons."¹⁶

The NPFC contacted the Claimant to verify the accuracy of his documentation that was presented to the NPFC.¹⁷ During a conversation with the NPFC, the Claimant confirmed that he was laid-off due to the drop in tourism in the West Palm Beach, Florida region caused by the Deepwater Horizon oil spill.¹⁸

¹¹ Optional OSLTF Claim Form received 08 September 2011.

¹² Optional OSLTF Claim Form received 08 September 2011.

¹³ The Claimant did not provide a citation or source for these statistics.

¹⁴ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of how the incident caused the damage'.

¹⁵ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of how the incident caused the damage'.

¹⁶ Attachment to the Claimant's Optional OSLTF Claim Form titled, 'Description of how the incident caused the damage'.

¹⁷ PHONECON between the NPFC and the Claimant 12 September 2011.

The NPFC contacted the Palm Beach Kennel Club in order to verify the Claimant's assertions. Palm Beach Kennel Club stated that, "[a]t no time was the Palm Beach Kennel Club effected [sic] by the Deepwater Horizon Oil Spill.¹⁹ This is an obvious attempt to get monies through fraud.²⁰ The Palm Beach Kennel Club did not lay-off [the Claimant], he was terminated."²¹ Additionally, the Palm Beach Kennel Club provided information concerning the nature of the Claimant's termination from Palm Beach Kennel Club.²² Contrary to the Claimant's submission to the NPFC whereby he stated that his employment was terminated for redundancy reasons, he was terminated due to alleged instances of violence by the Claimant in the workplace.²³ The memorandum provided by the former employer indicated that the Claimant was terminated on 15 November 2010.²⁴

Further, Palm Beach Kennel Club provided the NPFC with documentation related to the Claimant's appeal for unemployment compensation stemming from his dismissal from Palm Beach Kennel Club.²⁵ This documentation clearly documents that the Claimant was aware that his dismissal was based upon his personal conduct and not for reasons associated with a decrease in tourism or the Deepwater Horizon oil spill as alleged in his claim to the NPFC. Even if Claimant disagreed with Palm Beach Kennel Club's decision to fire him, the Claimant knew that his dismissal had absolutely nothing to do with a decrease in tourism and/or the Deepwater Horizon oil spill.

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 or omits a material fact may be subject to a civil penalty for each claim.

Claimant's request for \$12,000.00 is hereby denied because the evidence presented by the Claimant, as opposed to the detailed information provided by his former employer as outlined above, demonstrates evidence of a material misrepresentation of fact(s) in order to falsely obtain funds from the federal government and as such, this claim is denied.

Claim Supervisor

Date of Supervisor's Review: 9/15/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁸ PHONECON between the NPFC and the Claimant 12 September 2011.

¹⁹ Email from the Palm Beach Kennel Club to the NPFC dated 13 September 2011.

²⁰ Email from the Palm Beach Kennel Club to the NPFC dated 13 September 2011.

²¹ Email from the Palm Beach Kennel Club to the NPFC dated 13 September 2011.

²² Palm Beach Kennel Club Personnel Change of Status form dated 18 November 2010.

²³ Palm Beach Kennel Club Personnel Change of Status form dated 18 November 2010.

²⁴ Palm Beach Kennel Club Memo dated 06 December 2010.

²⁵ Agency for Workforce Innovation, Unemployment Compensation Appeals, Docket No. 2010-170361U