

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 1570 0001 4802 6029

5890/DWHZ
Claim # N10036-1408
21 November 2011

Gregory Stewart
[REDACTED]

Re: Claim Number: N10036-1408

Dear Mr. Stewart:

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 N10036-1408 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 N10036-1408.

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
(2) Evidence Provided by the Claimant in Support of Claim N10036-1408

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1408
Claimant	Gregory Stewart
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$23,881.34

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 14 September 2011, Gregory Stewart (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$23,881.34 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 was employed as a truck driver for Surbo Tubular Services, Inc. (Surbo) as well as Justice Transport, LLC.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, the demand for the Claimant's services as a truck driver plummeted, forcing the Claimant to leave Surbo for other employment.² The Claimant asserts he then worked for Justice Transport LLC (Justice) and then worked at Venture³ Transport Logistics.⁴ The Claimant asserts that throughout 2010, his work as a truck driver was inconsistent and resulted in him suffering reduced income.⁵

The Claimant provided the following explanation regarding the calculation of his sum certain of \$23,881.34: Claimant took his earnings from January 2010-May 2010 (\$14,024.30) and took the monthly average of that figure (\$2,804.86) and multiplied it by seven, representing what the Claimant would have earned if he continued to average the same earnings from June 2010-December 2010, for a product of \$19,634.02.⁶ The Claimant then took his actual earnings from June 2010-December 2010 (\$16,555.88) and subtracted that from his projected earnings for a difference of \$3,078.14.⁷ The Claimant labeled this figure as lost earnings.⁸ The Claimant then took his projected monthly earnings (\$2,804.86) and subtracted his June 2010-December 2010 monthly earnings⁹ (\$2,061.89) from it for a difference of \$742.97.¹⁰ The Claimant then took this figure and multiplied it by twenty-eight, representing future losses, for a product of \$20,803.16.¹¹ The Claimant labeled this figure impairment of earnings capacity.¹²

¹ Document with section title 'Eligibility, Impact and Damages'.

² Document with section title 'Eligibility, Impact and Damages'.

³ The company is now known as United Vision Logistics (United Vision).

⁴ Document with section title 'Eligibility, Impact and Damages'.

⁵ Document with section title 'Eligibility, Impact and Damages'.

⁶ Document with section title 'Damages'.

⁷ Document with section title 'Damages'.

⁸ Document with section title 'Damages'.

⁹ The Claimant did not include October 2010 because it "is clearly an outlier and not a fair representation of [the Claimant's] post spill earnings when compared to any other month."

¹⁰ Document with section title 'Damages'.

¹¹ Document with section title 'Damages'.

¹² Document with section title 'Damages'.

The Claimant then added to this figure his lost earnings of \$3,078.18 for a total of \$23,881.34.¹³ The Claimant adopted this figure as his sum certain.¹⁴

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;
- (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

The Claimant's Submission to the OSLTF

¹³ Document with section title 'Damages'.

¹⁴ Optional OSLTF Claim Form received 14 September 2011.

In support of his claim, the Claimant submitted all of the documentation listed in enclosure (2).

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF for loss of profits and impairment of earnings capacity on 02 September 2010 in the amount of \$12,800.00.¹⁵ The Claimant was assigned Claimant ID # 1092943 and Claim ID # 49068. The EAP Claim was denied on 23 October 2010.¹⁶ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 21 January 2011 in the amount of \$23,881.34.¹⁷ The Claimant was assigned Claim ID # 9234245. The FRF Claim is currently in the process of Re-Review and no decision has yet been issued on it.¹⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, demand for the Claimant's services as truck driver plummeted, resulting in reduced income for the Claimant. The NPFC deems the 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 N10036-1408 considers and addresses the earnings claimed in the claim up to \$23,881.34 presented to the responsible party, specifically; GCCF Claim #'s 49068 (EAP) and 9234245 (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.

The Claimant asserts that due to the Deepwater Horizon oil spill, the demand for his services as a truck driver plummeted, forcing the Claimant to leave his employment at Surbo for other employment opportunities.¹⁹ As a result of the Claimant leaving Surbo coupled with the reduced demand for truck driving services, the Claimant asserts he suffered lost income.²⁰ In the effort to verify the Claimant's claim, the NPFC contacted the Claimant's former employers.

The NPFC was informed by Surbo that the Claimant's employment at Surbo was not affected by the oil spill at all.²¹ Rather, the Claimant voluntarily quit his job to work for another trucking company.²² Thus, despite the Claimant's assertion that he was "forced to leave Surbo"²³ is incorrect when in fact he left voluntarily. Further, the Claimant asserts that even after leaving Surbo, "[the Claimant's] work has remained inconsistent since the Oil Spill and the ultimate impact on [the Claimant] has been a steady reduction in earnings with no readily apparent increase on the horizon."²⁴ In the effort to verify the Claimant's assertion regarding his work after leaving Surbo, the NPFC contacted the company that the Claimant left to work for, Justice. The NPFC was informed by Justice that at the time the Claimant left Surbo for Justice in June 2010; the Claimant had full knowledge that the drilling moratorium had negatively impacted approximately 80% of Justice's business with the oil industry.²⁵ Further, the NPFC was informed that Justice advised the Claimant against leaving his position at Surbo, where the Claimant had work available to him, for the less lucrative employment environment at Justice.²⁶ Nevertheless, the Claimant began working at Justice in June 2010.²⁷ Soon after his employment began, the Claimant

¹⁵ Report from the GCCF dated 06 October 2011.

¹⁶ GCCF Denial Letter dated 23 October 2010.

¹⁷ Report from the GCCF dated 02 November 2011.

¹⁸ Report from the GCCF dated 02 November 2011.

¹⁹ Document with section title 'Eligibility, Impact and Damages'.

²⁰ Document with section title 'Eligibility, Impact and Damages'.

²¹ PHONECON between the NPFC and Surbo Tubular Services, Inc. dated 06 October 2011.

²² PHONECON between the NPFC and Surbo Tubular Services, Inc. dated 06 October 2011.

²³ Document with section title 'Eligibility, Impact and Damages'.

²⁴ Document with section title 'Eligibility, Impact and Damages'.

²⁵ PHONECON between the NPFC and Justice Transport LLC dated 16 November 2011.

²⁶ PHONECON between the NPFC and Justice Transport LLC dated 16 November 2011.

²⁷ PHONECON between the NPFC and Justice Transport LLC dated 16 November 2011.

experienced a lack of work due to the drilling moratorium.²⁸ Additionally, the NPFC was informed that when jobs did become available, the Claimant declined to accept them.²⁹ After two weeks of working at Justice, the Claimant voluntarily left that job for work at United Vision (formally Venture).³⁰ Thus, despite the Claimant's assertion that the oil spill resulted in inconsistent work opportunities, the Claimant's own actions, choosing to work for a company despite having knowledge that the drilling moratorium was suffocating business opportunities, precluded him from obtaining steady gainful employment at Justice.

Additionally, the NPFC contacted the company the Claimant left Justice to work for, United Vision, to determine if the Deepwater Horizon oil spill effected the Claimant's employment there. The NPFC was informed by United Vision that although United Vision experienced a slowdown in business due to the combination of the oil spill and the drilling moratorium, the Claimant often turned down trucking assignments made available for him.³¹ Moreover, the NPFC was informed that in general the Claimant did not make himself available to make trucking runs for United Vision."³² Thus, although the Claimant asserts that his work opportunities remained inconsistent due to the oil spill; his own actions of declining work assignments at United Vision prevented him from maintaining gainful employment³³ there.

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.

The Claimant's request for \$23,881.34 is hereby denied because the evidence presented by the Claimant vice the detailed information provided by the Claimant's employers as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order for the Claimant to try to obtain funds from the Federal Government under false pretenses.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *11/21/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

²⁸ PHONECON between the NPFC and Justice Transport LLC dated 16 November 2011.

²⁹ PHONECON between the NPFC and Justice Transport LLC dated 16 November 2011.

³⁰ PHONECON between the NPFC and Justice Transport LLC dated 16 November 2011.

³¹ PHONECON between the NPFC and United Vision Logistics dated 20 October 2011.

³² PHONECON between the NPFC and United Vision Logistics dated 20 October 2011.

³³ The NPFC notes that the Claimant's last day working at United Vision was 12 May 2011.

Enclosure (2)

Evidence Presented by the Claimant in Support of Claim N10036-1408

- Optional OSLTF Claim Form received 14 September 2011;
- 2008 Form 1040 Federal Tax Return;
- 2009 Form 1040 Federal Tax Return;
- 2010 Form 1040 Federal Tax Return;
- Documents titled 'Contractor Settlement' for weeks ending 17 June 2010-24 June 2010, 15 July 2010;
- Document titled 'Venture Transport, Owner Settlement Statement' for dates 13 September 2010;
- Documents titled 'Venture Transport, Owner Settlement Statement' with unreadable dates;
- Pay stubs from Venture Transport for dates 05 August 2010, 12 September 2010;
- Documents titled 'Venture Transport, Owner Settlement Statement' with unreadable dates;
- Document titled 'Contractor Settlement' for week ending 08 July 2010
- Documents titled 'Venture Transport, Owner Settlement Statement' with unreadable dates;
- Document titled 'Contractor Settlement' for week ending 01 July 2010;
- Documents titled 'Venture Transport, Owner Settlement Statement' with unreadable dates;
- Pay stubs from Venture Transport for dates 29 July 2010-12 August 2010;
- Document titled 'Venture Transport Owner Settlement Statement' with dates 16 August 2010-07 13 September 2010;
- Partial photocopy of a pay stub from Surbo Tubular Services Inc.;
- Pay stubs from Surbo Tubular Services Inc. for period 11 January 2010-24 January 2010;
- Partial photocopies of pay stubs from Surbo Tubular Services Inc.;
- Document titled 'Venture Transport Owner Settlement Statement' for date 27 December 2010;
- Partial photocopy of a pay stub from Surbo Tubular Services, Inc.;
- Pay stub from Surbo Tubular Services, Inc. for period 29 March 2010-04 April 2010;
- Partial photocopy from Surbo Tubular Services, Inc. for period 28 December 2009-03 January 2010, 03 May 2010-13 June 2010;
- Document with section title 'Eligibility, Impact and Damages';
- Document with section title 'Damages';
- Hand-written letter from the Claimant dated 10 October 2010;
- Hand-written letter from the Claimant dated 01 October 2010;
- Letter from Justice Transport, LLC;
- GCCF Full Review Final Payment Claim Form;
- Excerpt report titled 'Roadmap to Recovery';
- Additional Optional OSLTF Claim Form received 15 September 2011 containing identical sum certain to Optional OSLTF Claim Form received 14 September 2011;
- 2010 Individual Income Tax Declaration for Electronic Filing for state of Louisiana;
- 2010 Form W-2 Wage and Tax Statement from Surbo Tubular Services;
- 2010 Form W-2 Wage and Tax Statement from Venture Transport Logistic;
- Document from Acme Truck Line, Inc. listing the Claimant's earnings for period 18 June 2008;
- Document from Acme Truck Line, Inc Leased Equipment Settlement for week ending 18 June 2008;
- Invoices from Acme Truck Lines, Inc. dated 17 June 2008;
- Document titled 'Contractor Settlement Week Ending 17 June 2010'.