

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 4636 2410

5890/DWHZ
25 October 2011

Mr. William Tyler Bralley
[REDACTED]

Re: Claim Number: N10036-1409

Dear Mr. Bralley:

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 N10036-1409 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 N10036-1409.

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	N10036-1409
Claimant	Mr. William Bralley
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$53,536.00

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 24 September 2011, Captain William "Tye" Bralley (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$56,536.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is a boat captain who operates fishing charters and competes in billfish tournaments along the Gulf Coast.² At the time of the oil spill, the Claimant alleged that he,

Signed up with *Royal Flush* to run charters and to fish the same party for eight separate tournaments: the Cajun Classic, Isle of Capri, Emerald Coast, Bay Point, Pensacola, ROC Rockport, Legends and TWAT. Due to the oil spill, all charters have been cancelled and the individual who was going to charter the boat for all the tournaments has also cancelled.³

The Claimant alleged that due to his inability to participate in the above noted tournaments, he sustained losses of \$56,536.00 over and above the 70,936.00 that was previously compensated to the Claimant by BP and the GCCF.⁴

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.

¹ Optional OSLTF Claim Form, dated 3 August 2011.

² Letter from the Claimant, dated 12 September 2011.

³ Letter from the Claimant, dated 12 September 2011.

⁴ The Claimant received payment of \$28,936.00 by BP and \$42,000.00 by RP/GCCF.

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 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 12 September 2011;
- Letter from the Claimant, describing boat captain/sports fishing history, and noting GCCF Claim # 1094929;
- U.S. Merchant Marine Officer License, 8 January 2008;
- GCCF Interim Payment Claim Form, Lost Earnings or Profits Claim for \$31,536.00;
- 2008 Federal Tax Return summary, showing adjusted gross income of \$96,557.00;
- 2008 Form W-2 Wage and Tax Statement;
- 2008 Form 1099-MISC;
- Form, showing payment from Gulf Offshore Logistics, LLC, illegible;
- 2009 Form 1099-MISC, illegible;
- Form, showing payment from Teal Building and Construction, illegible;
- 2009 Form 1099-G, showing unemployment compensation of \$2,502.00;
- 2009 Form W-2 Wage and Tax Statement;
- Letter from Royal Charter Inc, dated 21 June 2010;

- Letter from JNB Operations, dated 23 June 2010;
- Letter from Teal Construction, dated 24 June 2010.

Prior to presentation to the NPFC, the Claimant presented a claim directly to BP and received a total of \$28,963.00 between the months of June and August 2010 as confirmed by the NPFC with the RP/GCCF. The Claimant then filed an Emergency Advance Payment claim (EAP) to the RP/GCCF, seeking \$42,000.00 in loss of profits and impairment of earnings capacity.⁵ The Claimant was assigned ID 1094929 and EAP was assigned Claim # 74675. This claim was paid in full in 2 payments (\$39,100.00 issued 9/23/10 and \$2,900.00 issued 10/2/10)⁶. The GCCF also confirmed that an Interim 1 claim was presented in the amount of \$46,618.00 on January 28, 2011 and an Interim 2 claim was presented in the amount of \$31,536.00 on June 10, 2011. The GCCF also confirmed that a determination letter dated July 20, 2011 from the GCCF offered a \$5,000.00 final payment which has not been accepted by the Claimant as of October 20, 2011.

On 14 September 2011, the Claimant presented this claim to the NPFC, seeking loss of profits and impairment of earnings capacity in the amount of \$56,536.00.⁷ Because the Claimant has previously submitted some losses to the RP/GCCF in Interim Claim 1 and Interim Claim 2 for a total combined amount of \$78,154.00, the NPFC may adjudicate the claim to the extent that these losses were first presented to the RP/GCCF.

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 support of his claim, the Claimant submitted three letters allegedly written by various individuals for whom the Claimant had previously been employed. Two of the three letters were associated with income for years preceding the Deepwater Horizon oil spill incident and one was associated with this claim. Upon seeking to confirm the content of these letters, the NPFC found that the letters contained misrepresentations of fact.

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.

Should the Claimant decide to request reconsideration of this claim, the Claimant would need to provide COMPLETE copies of his IRS Income Tax Returns for 2008 through 2010. In reviewing the W-2s provided by the Claimant, of which there were 7, these W-2s were for 2008 through 2009 and none associated with 2010. With that being said and without a copy of the Claimant's filed income tax returns for 2008 – 2010, it is unclear what the Claimant's actual reported earnings were with the IRS compared to the information asserted by the Claimant. The Claimant's submission does indicate that some wages he allegedly earned in the past were paid in cash therefore the Claimant's income tax returns would document and support wages earned

⁵ GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 June 2011.

⁶ See email from GCCF to NPFC dated October 20, 2011.

⁷ Optional OSLTF Claim Form, dated 12 September 2011.

via W-2 and wages earned in cash as reported to the IRS and required by law. As such, and without full financial comparable information, it is impossible for the NPFC to determine whether in fact the Claimant has a documented loss that resulted from the Deepwater Horizon oil spill incident.

Additionally, the Claimant did not provide an exact accounting on the time associated with each tournament in 2010 that he asserted was canceled due to the oil spill, proof of registration and/or cancellation of each tournament, dates of each tournament, and locations of each tournament. The Claimant asserted that the individual that was going to charter the boat for all of the tournaments canceled but did not provide the specific name and contact number for that individual. Furthermore, the Claimant has not provided documentation to demonstrate any lost charters such as the names and contact numbers of each party that chartered the boat, the amount of each charter, the dates of the canceled charters and the losses associated with this part of his assertions.

Finally, the Claimant has not provided an itemized breakdown for his alleged loss of \$56,536.00 therefore the Claimant will need to itemize this amount clearly identifying the start and stop time period for his alleged loss, identification of what amount was associated with lost tournaments, and what amount was associated with lost charters.

Based on the foregoing, this claim is denied because the Claimant has failed to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) that his 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: