

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1411
Claimant	: Murphy Washington
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$25,000.00

### **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 01 September 2011, Murphy Washington (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) that lacked a sum certain. On 03 September 2011, the Claimant submitted a sum certain seeking \$25,000.00 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 was employed as an Offshore Technician for Offshore Cleaning Systems in the Abbeville, Louisiana region.<sup>1</sup> The Claimant asserted that due to the Deepwater Horizon oil spill, he lost his job at Offshore Cleaning Systems and as a result suffered reduced income.<sup>2</sup>

The Claimant explained his calculation of his sum certain of \$25,000.00 as being his losses over the six month period that he was out of work.<sup>3</sup>

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Month Claim with the GCCF for loss of profits and impairment of earnings capacity on 14 September 2010 in the amount of \$25,000.00.<sup>4</sup> The Claimant was assigned Claimant ID # 1084332 and Claim ID # 3006096. The EAP claim was denied on 23 October 2010.<sup>5</sup> Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 20 April 2011 in the amount of \$35,000.00.<sup>6</sup> The Claimant was assigned Claim ID # 9365114. The FRF claim was denied on 09 September 2011.<sup>7</sup>

<sup>1</sup> Optional OSLTF claim form received 01 September 2011.

<sup>2</sup> Optional OSLTF Claim form received 01 September 2011.

<sup>3</sup> Letter from the Claimant asserting a sum certain of \$25,000.00 dated 03 September 2011.

<sup>4</sup> Report from the GCCF Dated 06 October 2011.

<sup>5</sup> GCCF Denial Letter dated 23 October 2010.

<sup>6</sup> Report from the GCCF Dated 06 October 2011.

<sup>7</sup> GCCF Denial Letter dated 09 September 2011.

### **REQUEST FOR RECONSIDERATION:**

On December 4, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on October 13, 2011 because the alleged loss in the amount of \$25,000.00 was not 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.

The Claimant asserted that due to the Deepwater Horizon oil spill, he lost his job<sup>8</sup> at Offshore Cleaning Systems and as a result suffered reduced income.<sup>9</sup> In the effort to verify the Claimant's assertion, the NPFC contacted the Claimant's employer, Offshore Cleaning Systems. In a subsequent conversation with Offshore Cleaning Systems, the NPFC was informed that the Claimant was not laid-off and that the Claimant did not otherwise lose his job due to the Deepwater Horizon oil spill.<sup>10</sup> Further, Offshore Cleaning Systems stated that the "work force may have been reduced due to many economic factors or customer demands, this is common during any year."<sup>11</sup> If [the Claimant] suffered a loss of income what is it compared to, [sic] due to this being a cyclical industry."<sup>12</sup> Accordingly, the Claimant has failed to prove a connection between his purported loss of income and the Deepwater Horizon oil spill.

Furthermore, the Claimant has not proven that he suffered a financial loss due to the Deepwater Horizon oil spill. Examining the Claimant's earnings of \$32,798.49<sup>13</sup> from Offshore Cleaning Systems in 2009 compared to the \$33,305.23<sup>14</sup> that he earned from Offshore Cleaning Systems in 2010, the Claimant grossed higher earnings in 2010 than in 2009. Thus, the Claimant has failed to prove that he suffered a financial loss in 2010 due to the Deepwater Horizon oil spill.

This claim was 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.

### **RECONSIDERATION CLAIM ANALYSIS:**

The claimant requested reconsideration which was received by the NPFC on December 12, 2011. The Claimant provided a one-page letter that requested his claim be reconsidered along with a copy of a past due utility bill along with a copy of a check paying the past due bill by the Emergency Food and Shelter Program and a letter dated November 28, 2011 from Assist Agency that indicated they assisted the Claimant with two house payments. The Claimant provided no new information pertinent to his alleged losses in support of his request for reconsideration.

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<sup>8</sup> Included in the Claimant's Optional OSLTF Claim Form is language stating that the Claimant is engaged in an on-going job search. However, during the NPFC's subsequent conversation with Offshore Cleaning Systems, the NPFC was informed that the Claimant is currently employed by Offshore Cleaning Systems.

<sup>9</sup> Optional OSLTF Claim form received 01 September 2011.

<sup>10</sup> PHONECON between the NPFC and Offshore Cleaning Systems dated 11 October 2011.

<sup>11</sup> Email from Offshore Cleaning Systems to the NPFC dated 11 October 2011.

<sup>12</sup> Email from Offshore Cleaning Systems to the NPFC dated 11 October 2011.

<sup>13</sup> 2009 Form W-2 Wage and Tax Statement from Offshore Cleaning Systems, LLC.

<sup>14</sup> 2010 Form W-2 Wage and Tax Statement from Offshore Cleaning Systems, LLC.

**NPFC Determination on Reconsideration**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration was a one-page letter with a copy of a past due utility bill and proof of payment for that bill from the Emergency Food and Shelter Program as well as a letter from Assist Agency that indicates they made two of the Claimant's housing payments.

Based on the evidence presented to the NPFC, the Claimant provided no new evidence or information relevant to the reasons identified by the NPFC in its original denial determination (i.e., statement by employer that he was not laid off due the oil spill or that he made more in 2010 than the previous year therefore not demonstrating a loss as claimed).

As such, the Claimant has again failed to demonstrate that he has suffered a loss 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.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *12/15/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]@uscg.mil  
Fax: 202-493-6937

5890  
12/15/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 6395

Murphy Washington  
[REDACTED]

RE: Claim Number: N10036-1411

Dear Mr. Washington:

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 claim number N10036-1411 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

Thomas S. Morrison  
Chief, Claims Adjudication Division  
U.S. Coast Guard

ENCL: Claim Summary / Determination Form