

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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5890
12 October 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4988

Michael Fusi
[REDACTED]

RE: Claim Number: N10036-1425

Dear Mr. Fusi:

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 N10036-1425 involving Deepwater Horizon. 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 N10036-1425.

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: (1) Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1425
Claimant	: Michael Fusi
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$15,000.00

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 14 September 2011, Mr. Michael Fusi (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant worked as a trucking dispatcher for RCM Transportation, Inc., and asserted that he lost wages, and ultimately his job, because of impacts of the oil spill.²

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.

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.

¹ Claim presentation letter received 14 September 2011.

² Claim presentation letter received 14 September 2011.

- (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.

With limited exceptions, 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

The Claimant represents having filed claim with the Gulf Coast Claims Facility prior to presentment to the NPFC. The Claimant did not indicate the date of presentment or the amount of his claim to the responsible party, but did provide claim number 3533289.³ Based on independent research by the NPFC, the Claimant presented an Interim Payment Claim in the amount of \$10,000.00 to the RP/GCCF on 25 July 2011 and revised the amount of that claim to \$23,000.00 on 20 September 2011. GCCF Claimant ID Number 3533289 was assigned to both of these claims by the RP/GCCF and both have been denied.⁴

On 14 September 2011, the Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF).⁵ The claimed amount of \$15,000.00 is for loss of income for reduced hours, then for losing his job as a trucking dispatcher.⁶ The location of the Claimant's job was in North Port, Florida.⁷

The Claimant asserted that after the oil spill his pay was cut, his company phone was taken away, and that he was forced to work weekends without compensation.⁸ The Claimant also asserted that gas prices and lower demand for seafood slowed his employer's business. The Claimant further stated that, having worked on a Friday night, the office was empty when he came back on the next Monday morning as his boss had moved the business up North.⁹

In support of this claim, the Claimant presented the following documentation:

- Claim presentation letter received 14 September 2011;

³ Claim presentation letter received 14 September 2011.

⁴ GCCF – U.S. Coast Guard Report as of 6 October 2011.

⁵ Claim presentation letter received 14 September 2011.

⁶ Claim presentation letter received 14 September 2011.

⁷ 2009 and 2010 W-2 Forms from RCM Transportation, Inc.

⁸ Claim presentation letter received 14 September 2011.

⁹ Claim presentation letter received 14 September 2011.

- 2009 W-2 Form from FLUB-34, Inc.;
- 2009 Form W-2 from RSM Transportation, Inc.;
- 2010 Form W-2 from RSM Transportation, Inc.

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 profits or impairment of earning capacity was due to injury or destruction or loss of real or personal property or 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.

The NPFC considered all documentation presented by the Claimant.

In support of his alleged financial losses, the Claimant provided W-2 Forms from his previous employer, RSM Transportation, Inc. for the years 2009 and 2010. The Claimant provided no documentation that would support lost hours, out-of-pocket costs, the date or nature of his departure from his previous employer, or the method of how his alleged losses claimed were determined.

Regarding the causation of his alleged losses, the Claimant indicated that that gasoline prices and the increased costs of seafood affected his hours and his job. The Claimant did not provide documentation from his employer stating the reason for the Claimant's job loss or other documentation linking the oil spill to his employer. The NPFC conducted an independent investigation into the Claimant's departure from RSM Transportation and found that the company offices did relocate to Binghamton, New York, but neither the relocation nor the Claimant's termination had anything to do with the BP oil spill or any other oil spill.

This claim is denied for the following reasons: (1) Claimant has failed to provide financial documentation that shows the alleged loss was incurred, and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/12/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: