

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1442
Claimant	: Williams Concrete
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$342,000.00

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 23 September 2011, Arthur Massey (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$342,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging that his damages resulted from the Deepwater Horizon oil spill.

The Claimant is self-employed as a subcontractor providing concrete services for general contractors.¹ The Claimant lives in Charlotte, North Carolina, but alleged to have performed work around the Gulf of Mexico on various construction jobs.² The Claimant stated that after the oil spill, the general contractor who employed him went out of business and he had to stop work.³

Prior to presenting his claim to the NPFC, Claimant filed an Interim claim (ICQ32011 (a)) with the GCCF; he was assigned Claimant ID #3525588 and Claim ID #9422618.⁴ The ICQ32011 (a) claim was denied on 10 August 2011.⁵ The Claimant filed another Interim Claim (ICQ32011 (b)) for the same third quarter and was assigned GCCF Claim ID #9444907. The ICQ32011 (b) claim was denied on 17 August 2011.⁶ The Claimant filed two Full Review Final claims and was assigned Claim ID #'s 9399681 (FRF1) and #9413814 (FRF2). The FRF1 and FRF2 claims were denied 10 September 2011⁷ and 27 September 2011⁸, respectively. Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims are the same as the subject matter of the claim before the NPFC, i.e., Claimant allegedly lost profits as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amount of the four claims presented to the GCCF as of the date of this determination. The NPFC deems the four GCCF claims to be properly presented to the Responsible Party and to the extent the amount

¹ Claimant's response to NPFC's request for additional information number 1.

² Claimant's response to NPFC's request for additional information number 1.

³ Claimant's response to NPFC's request for additional information number 1.

⁴ GCCF Online Claimant Status.

⁵ GCCF Denial Letter dated 10 August 2011.

⁶ GCCF denial letter dated 17 August 2011.

⁷ GCCF denial letter dated 10 September 2011.

⁸ GCCF denial letter dated 26 September 2011.

of the claims presented to the RP are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1442 considers and addresses the loss of earnings up to the amount of \$342,000.00 for all four claims presented to the Responsible Party; specifically Claim ID #'s 9422618 (ICQ32011 (a)), 9444907 (ICQ32011 (b)), 9399681 (FRF1), 9413814 (FRF2).

CLAIM DENIAL:

The NPFC denied the claim originally on October 7, 2011. As noted above Claimant presented his claim to the NPFC on September 23, 2011. On September 26, 2011 the NPFC sent him a request for additional information via certified mail.⁹ The Claimant did not produce all of the requested information but he did call NPFC staff on 04 October 2011 and stated that he could not provide verification of profits because the work was done under the table for cash.¹⁰ Claimant reported net profits of \$125,675.00 for 2009¹¹ and net profits of \$2,279.00 for 2010,¹² indicating a decline of \$127,954.00 in net profits between 2009 and 2010.¹³

The Claimant provided a monthly revenue statement for 2008 through 2010.¹⁴ The Claimant's revenue statement indicated a downward trend of 29% from 2008 to 2009, suggesting that his business was negatively affected by adverse market or other factors at least one year prior to the oil spill in April of 2010.¹⁵ From January through April of 2009 Claimant's revenues were \$57,971.00.¹⁶ For January through April 2010 revenues were \$5,353.00,¹⁷ a decline of 91% during the months leading up to the oil spill.¹⁸ Again, documents provided by the Claimant evidence that his business was continuing to severely decline prior to the Deepwater Horizon oil spill. The Claimant cannot provide evidence of all his revenues because some of his work was paid in cash. Further, the revenue statements provided do not establish an alleged loss of \$342,000; therefore, he has not established his sum certain in the amount of \$342,000.

In its request for information the NPFC sought verification from Claimant's employer about Claimant's employment in the Gulf of Mexico. The Claimant responded that he could not provide the information requested because the general contractor for whom he worked went out of business.¹⁹ NPFC staff tried to locate the general contractor, Delite Retail Services, Inc., but the number listed was disconnected.²⁰ Additionally, the NPFC requested evidence of specific cancelled contracts.²¹ The Claimant submitted a contract for 2009 from Holiday Inn Express Speedway dated 01 March 2009.²² However, the original date of the contract was written over

⁹ USPS 7011 1150 0000 4636 2663.

¹⁰ Telephone conversation and voice mail message 04 October 2011.

¹¹ 2009 Form 1040 U.S. Individual Income Tax Return.

¹² 2010 Form 1040 U.S. Individual Income Tax Return.

¹³ \$125,675.00 minus (\$2,279.00) equals \$127,954.00.

¹⁴ Letter addressing revenues for 2008 to 2010 and trending.

¹⁵ 2009 revenues of \$176,362.00 divided by 2008 revenues \$248,381.00 equals .71: .71 minus 1 equals negative .29 or 29%.

¹⁶ 2009 Jan \$14,697.00 plus Feb \$13,646.00 plus March \$12,819.00 plus April \$16,809.00 equals \$57,971.00.

¹⁷ 2010 Jan \$3,242.00 plus Feb \$0.00 plus March \$0.00 plus April \$2,111.00 equals \$5,353.00.

¹⁸ 2010 Jan through April \$5,353.00 divided by \$57,971.00 equals .092: .092 minus 1 equals negative .91 or 91%.

¹⁹ Claimant's response to NPFC's request for additional information number 1.

²⁰ NPFC staff tried to contact Delite Retail Services 04 October 2011 at 561-649-3825.

²¹ NPFC request for additional documentation number 6.

²² Canceled contract from Holiday Inn Express Speedway dated 01 March 2009

with “2010” inserted as the year and the amount of labor and materials appears to have been altered from \$3,000 to \$30,000.00.²³

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 \$342,000.00 was denied on the ground that (1) he had not established a loss of profits due to the incident, and (2) the evidence presented in the claim by the Claimant showing a cancelled contract from Holiday Inn Express²⁴ as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order to falsely attempt to obtain funds from the Federal Government.

REQUEST FOR RECONSIDERATION and CLAIMANT’S CLAIM ANALYSIS:

The Claimant called the NPFC on October 24, 2011 twice and spoke with Commander Barton. When the Claimant first called the NPFC, he was upset and expressed disagreement with the NPFC’s initial denial of his claim submission. The Claimant adamantly denied any wrongdoing with respect to the alteration of the Holiday Inn Express contract provided in his original submission, which was cited as grounds for the NPFC’s denial of his claim.

The NPFC recommended to the Claimant that he contact the Holiday Inn Express for information relating to that contract because if the NPFC was wrong with respect to its determination that the document had been altered, the NPFC would correct the record on any corroborating information the Claimant provided. During that call, the Claimant stated that he did not think he would request reconsideration but would rather prefer to litigate the matter. Later the same day, the Claimant contacted Commander Barton a second time to cite his misunderstanding and disagreement with the NPFC’s official request for additional information dated September 26, 2011 requesting tax information. The Claimant explained that he would like to “cancel” his claim with the NPFC. Commander Barton tried to explain the reconsideration process again to the Claimant.

The NPFC further advised the Claimant that he could send in a handwritten request for reconsideration and that the NPFC would consider any information he could submit and the NPFC would also contact any person that he desired the NPFC to call.

On October 25, 2011, the Claimant sent a request for reconsideration via facsimile to the NPFC stating he would like the NPFC to reconsider his claim. He requested that the NPFC disregard the Holiday Inn Express contract he originally submitted to the NPFC asserting that it was sent in error. The Claimant provided a one-page handwritten letter requesting reconsideration that asked the following questions:

- Does he have to live in the Gulf Region? The Claimant wrote that no he did not have to live in the Gulf Region in order to file a claim for costs and damages

²³ Canceled contract from Holiday Inn Express Speedway dated 01 March 2009.

²⁴ Canceled contract from Holiday Inn Express Speedway dated 01 March 2009.

- incurred as a result of the oil spill; however GCCF explained to him that it will only pay for harm or damage that is proximately caused by the oil spill;
- The Claimant asserted he is only filing a claim for lost profits and impairment of earnings capacity;
 - The Claimant states he is asking for reconsideration;
 - The Claimant stated the invoice he originally provided in his claim submission to the NPFC from the Holiday Inn Express was provided by mistake. He asked the NPFC to disregard it;
 - The Claimant asserted that he estimates his saved expenses for 2010 to be \$50,000.00 and when deducting that from his original sum certain of \$342,000.00, he now requests his amount to amended to \$292,000.00 for alleged losses associated with the oil spill;
 - The Claimant stated his GCCF Claimant ID # for the \$292,000.00 is 3525588;
 - The Claimant lists the Claim ID numbers associated with his GCCF Claimant ID # and states that he knows nothing about claim ID # 9444907 which was submitted and also identified by the GCCF as Interim Claim – Q3 2011.

Attached to his letter was a copy of the following document:

News article regarding the Deepwater Horizon Explosion and oil spill.

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.

After reviewing the Claimant's reconsideration letter, the NPFC offers the following:

- The Claimant is correct; he does not in fact have to reside in the Gulf Region in order to file a claim for costs or damages incurred as a result of the Deepwater Horizon oil spill incident. The NPFC notes that its initial denial determination is absent any reference to the contrary. The denial was not based on Claimant's residence in North Carolina but on the grounds that he failed to establish a loss of profits due to the oil spill and he submitted documents misrepresenting the facts.
- The Claimant stated he only filed a claim for loss of profits and impairment of earnings. The NPFC agrees. The initial claim determination has referenced the claim submission accordingly as does this reconsideration determination.
- The Claimant stated he is requesting reconsideration. The NPFC acknowledges the Claimant's request for reconsideration as evidenced by this determination.
- The Claimant asserted on reconsideration that he estimates his saved expenses in 2010 as \$50,000.00. The Claimant has provided no supporting documentation

regarding what those saved expenses may be; therefore, the NPFC cannot confirm whether or not this figure is correct.

- The Claimant indicated that his GCCF claim # associated with his alleged losses to the NPFC is #3525588. The NPFC has confirmed that the Claimant's overall Claimant ID # is correct as referenced. The NPFC did confirm with the GCCF that the Claimant's sum certain for lost profits to the GCCF was \$276,362.00 which was filed on August 26, 2011 and denied. Thus, any amount presented to the NPFC in excess of \$276,362.00 has not been properly presented and denied. See 33 CFR 136.103(a) which states in relevant part... "all claims for removal costs or damages must be presented first to the responsible party (RP)";
- The Claimant lists the Claim ID numbers associated with his GCCF Claimant ID # and states that he knows nothing about claim ID # 9444907 which was submitted and also identified by the GCCF as Interim Claim – Q3 2011. The NPFC has confirmed the following claim submissions by the Claimant to the GCCF as a whole:
 1. Claim ID # 9399681 – lost profits claim – submitted on 6/21/11 in the amount of \$73.00 as a Full Review Final claim – denied by GCCF;
 2. Claim ID # 9399681 – removal/clean up claim – submitted on 6/21/11 in the amount of \$174,000.00 as a Full Review Final claim – denied by GCCF;
 3. Claim ID # 9422618 – lost profits claim – submitted on 7/25/11 in the amount of \$237.00 as an Interim 3 claim – denied by the GCCF;
 4. Claim ID # 9413814 – subsistence loss claim – submitted on 8/25/11 in the amount of \$39.00 as a Full Review Final claim – denied by the GCCF;
 5. Claim ID # 9444907 – lost profits claim – submitted on 8/26/11 in the amount of \$276,362.00 as an Interim 3 claim – denied by the GCCF.

While the Claimant asserted he knows nothing about the lost profits claim identified by the GCCF as Claim ID# 9444907, the NPFC is unable to address this issue because the NPFC only has knowledge about what has been presented directly to the NPFC and then reference what the GCCF stated was presented to the RP/GCCF as required pursuant to 33 CFR 136.103(a).

In consideration of the overall information presented by the Claimant on reconsideration, this request for reconsideration is denied. The NPFC determines that the Claimant has failed to demonstrate a loss in the amount claimed or that the alleged loss was a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

As noted above, Claimant requested that the NPFC ignore the contract the NPFC cited as appearing altered in the initial denial determination. Upon further investigation during the reconsideration analysis, the NPFC determined that the address listed on the Holiday Inn Express Speedway address, 1401 East Beach Blvd., Gulf Shores, AL 36542, does not exist in Gulf Shores, AL. Further, when reading the contents of the contract, it clearly states the estimate costs are broken down as \$2,800.00 for cost of labor and material and \$200.00 for the cost of a dumpster brining the estimate total to \$3,000.00 vice the \$30,000.00 altered figure noted on the bottom.

Additionally, when investigating an unsigned letter allegedly issued by a client, Delite Retail Services, Inc., dated July 7, 2010 to the Claimant, the NPFC was unable to find a business listed in Lake Worth, FL by that name. A cross-checking of the provided phone number on the alleged cancellation letter via the alleged letterhead, the phone number shows listed to a company by the name of "Elite Retail Services, Inc." with a street address of 4010 S. 57th Ave. #104A, Lake Worth, FL 33463 vice the physical address listed on the alleged letter.²⁵ When researching the physical address on the alleged letter, there is no historical data to confirm the information.

Finally, the NPFC performed a search on the Claimant. A business registered as owned by the Claimant has been reported with the business name identified as Arthur Massey, opened some time in 2010 with reported annual sales of \$51,000.00 under DUNS # 03-217-6817. The record was last updated on February 10, 2011. When the Claimant presented his claim to the NPFC, no information or income for this business was divulged as part of the Claimant's annual income. Additionally, there is a business registered at the Claimant's residence address of 3941 McMillan Street in Charlotte, NC 28205 by the name of Auther's Painting and Gutter Cleaning, opened some time in 2010 with a reported annual sales of \$56,000.00 under DUNS # 04-797-3233. This record was last updated on October 26, 2010. This information also has not been divulged to the NPFC in the subject claim as part of the Claimant's annual income.

Based on the foregoing, the NPFC has determined that the Claimant has again failed to demonstrate (1) that he has suffered a loss in the amount claimed, (2) that his alleged loss was 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 continues to misrepresent the facts and documentation in order to attempt to obtain funds from the Federal Government under false pretenses.

This claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *11/2/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

²⁵ See <http://datasource411.com/details.asp?BizTel=561-649-3825&BizState=FL>.

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

5890
11/2/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6173

Williams Concrete
ATTN: [REDACTED]
3941 McMillan Street
Charlotte, NC 28205

RE: Claim Number: N10036-1442

Dear [REDACTED]:

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 N10036-1442 involving the Deepwater Horizon incident. 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