

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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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 7620

5890/DWHZ
Claim # N10036-1448
21 November 2011

Nicholas DeHart
[REDACTED]

Re: Claim Number: N10036-1448

Dear Mr. DeHart:

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 N10036-1448 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 N10036-1448.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1448
Claimant	Nicholas Dehart
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$6,000.00

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 26 September 2011, Nicholas DeHart, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$6,000.00 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 working at a Primerica insurance branch operating in the Houma, Louisiana region.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, residents in the region suffered a loss of income and could no longer afford to utilize the Claimant's business services.² As a result, the Claimant experienced an increase of clients declining to renew their insurance policies as well as a charge back³ for each cancelled policy.⁴ As a result of the lapsed policies and charge back fees, the Claimant asserts he suffered reduced income.⁵

The Claimant did not provide an explanation regarding the calculation of his sum certain of \$6,000.00.

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

¹ Letter from the Claimant describing his claim.

² Letter from the Claimant describing his claim.

³ A charge back is a fee assessed against the Claimant each time a client drops an insurance policy.

⁴ Letter from the Claimant describing his claim.

⁵ Letter from the Claimant describing his claim.

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

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, received 26 September 2011;
- Letter from the Claimant describing his claim;
- Document titled 'Trend Track Report-Last Six Months-Base Shop from May 2010-October 2010;
- GCCF Denial Letter dated 30 November 2010;
- Combined Tax Statement for Forms 1098, 1099, 5498 for Tax Year 2009 from Primerica Life Insurance Co.;
- Combined Tax Statement for Forms 1098, 1099, 5498 for Tax Year 2009 from Primerica Financial Services Home Mortgages, Inc.;

- Combined Tax Statement for Forms 1098, 1099, 5498 for Year 2010 from Primerica Life Insurance Co.;
- Combined Tax Statement for Forms 1098, 1099, 5498 for Year 2010 from Primerica Financial Services Home Mortgages, Inc..

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Months Claim with the GCCF for loss of profits and impairment of earnings capacity on 10 November 2010 in the amount of \$12,000.00.⁶ The Claimant was assigned Claimant ID # 3379520 and Claim ID # 446714. The EAP Claim was denied on 30 November 2010.⁷ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 02 December 2010 in the amount of \$36,000.00.⁸ The Claimant was assigned Claim ID # 3379520. The FRF was deemed deficient and denied on 04 June 2011.⁹

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 his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant lost clients and suffered charge-back fees and by extension suffered reduced income from his insurance business. The NPFC deems the Claimant's denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1448 considers and addresses the earnings claimed in the Claimant's claim presented to the responsible party up to \$6,000.00, specifically; GCCF Claim #'s 3379520 (EAP) and 3379520 (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.

This claim is denied because the Claimant failed to prove that he suffered a loss due to the Deepwater Horizon oil spill. The Claimant asserted that, due to the Deepwater Horizon oil spill, residents could no longer afford to maintain their insurance policies with the Claimant's business.¹⁰ As a result, the Claimant experienced a lapse in insurance policies as well as a rise in the number of charge-backs due to the policy cancellations.¹¹ The Claimant, however, fails to provide sufficient evidence to connect his alleged loss to the Deepwater Horizon oil spill.

The Claimant did not provide documentation to prove that any existing clients cancelled previously purchased insurance plans due to the Deepwater Horizon oil spill. In regards to providing proof of policy cancellations due to the oil spill, the Claimant's letter to the NPFC states that, "[The RP/GCCF] wanted me to provide them with specific client related data that would prove [my] loss occurred.¹² I am prohibited from disclosing sensitive client information therefore [sic] could not satisfy this requirement."¹³ However, any contractual restrictions between the Claimant and its clients has no effect on the evidentiary burden imposed by 33 C.F.R. § 136.105(a) and 136.105(e)(6) on claims against the OSLTF. Consequently, the Claimant has not shown that any alleged losses are due to the Deepwater

⁶ Report from the GCCF dated 02 November 2011.

⁷ GCCF Denial Letter dated 30 November 2010.

⁸ Report from the GCCF dated 02 November 2010.

⁹ GCCF Deficiency Denial Letter dated 04 June 2011.

¹⁰ Letter from the Claimant describing his claim;

¹¹ Letter from the Claimant describing his claim;

¹² Letter from the Claimant describing his claim;

¹³ Letter from the Claimant describing his claim;

Horizon oil spill as opposed to other factors such as cost-cutting decisions by existing or potential clients to reduce expenses or generally declining market conditions.

This claim is denied because the Claimant failed to meet his burden to demonstrate 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 or that he suffered a loss in the amount claimed.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *11/21/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: