

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2366

5890/DWHZ
Claim # N10036-1449
3 October 2011

Catherine Gauthier, Esq.
[REDACTED], APLC
P.O. Box 1669
Houma, LA 70361

Dear Ms. Gauthier:

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 N10036-1449 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 N10036-1449.

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
CC:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2922
Bradley J. Landry



CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1449
Claimant	Bradley J. Landry
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$36,000.00

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 28 September 2011, Bradley J. Landry (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$36,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant works as an independent pipeline welder.¹ In 2010, he was employed by Triple C Contractors, Inc. and C&G Welding, Inc. in Houma, Louisiana.² The Claimant is represented by the law firm of Smitko & Ory, APLC.³

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.

¹ Letter from Jane Falgout-Paralegal dated 20 September 2011 with Smitko & Ory, APLC

² Form 1099-Misc from Triple C Contractors, Inc and C&G Welding, Inc. for 2010

³ Letter from Jane Falgout-Paralegal dated 20 September 2011 with Smitko & Ory, APLC

- (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, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant and his attorney 20 September 2011
- Letter from Jane Falgout-Paralegal dated 20 September 2011 with Smitko & Ory, APLC
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 30 April 2011
- Claimant's Louisiana drivers license
- Pages concerning the oil spill from internet sites
- On-Line State of Louisiana corporation registration for Triple C. Contractors, Inc.
- Form 1040 US Individual Income Tax Return for 2008 and 2009
- Form 1099-Misc from Triple C Contractors, Inc and C&G Welding, Inc. for 2009 and 2010

- Form 1099-R from American Federation of Unions for 2008
- Check stubs for 2010 from Triple C Contractors, Inc and C&G Welding, Inc.
- Claimant's Worksheet computing the amount claimed
- Worksheets listing payments for 2010 from Triple C Contractors, Inc and C&G Welding, Inc.

Before presenting the claim to the NPFC, the Claimant filed an Interim Claim with the GCCF. The claim was assigned Claimant ID #3020820.⁴ The Interim claim was denied on 30 April 2011.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC has not been able to confirm the amounts of the claims as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party and, to the extent the amount of the claims presented to the Responsible Party 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 N10036-1449 considers and addresses the loss of earnings up to the amount of \$36,000.00 for all claims presented to the Responsible Party.

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 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.

To compute his loss of earnings, the Claimant subtracted his earnings for 2009 (\$61,622.00) from his earnings for 2010 (\$44,098.28) and multiplied the resulting figure (\$17,523.72) by a factor of 2.⁶ The Claimant multiplied the decline in his wages by a factor of two as a "recovery factor" (i.e. future earnings).⁷ However, future losses of earnings are not compensable under OPA. Losses must be realized and therefore not prospective in nature.

The Claimant's losses must be based upon actual losses as of the date of the claim less any saved overhead expenses not incurred as a result of the lost income.⁸ As such, the Claimant has not met his burden to establish his losses in accordance with OPA.

⁴ The GCCF On-Line Claim Status Site is blocked because the Claimant is represented by an attorney. Therefore, NPFC could not obtain the claim number.

⁵ GCCF Denial Letter dated 30 April 2011

⁶ Claimant's Worksheet computing the amount claimed

⁷ Claimant's Worksheet computing the amount claimed

⁸ 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.

The Claimant's legal representative stated that "[n]o new permits were issued [after the spill]," but that the Claimant's claim "did not fall under the moratorium because he contracted with companies before drilling takes place."⁹ Although the Claimant contracted with the companies before drilling took place, the Claimant has not established that his loss of earnings was a result of the oil spill as opposed to other factors that he cited for his loss of wages, namely the federal oil drilling moratorium after the oil spill and the higher oil drilling standards in force. The Claimant has not provided any other information which would evidence the oil spill as the cause of his damages.

This claim is denied because the Claimant failed to meet the 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.

Claim Supervisor:	<i>Claims Adjudication Division</i>
Date of Supervisor's Review:	<i>3 October 2011</i>
Supervisor's Action:	<i>Denial approved</i>
Supervisor's Comments:	

⁹ Letter from Jane Falgout-Paralegal dated 20 September 2011 with Smitko & Ory, APLC