

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 7514

5890/DWHZ
Claim # N10036-1453
18 November 2011

Mark Schelter
[REDACTED]

Re: Claim Number: N10036-1453

Dear Mr. Schelter:

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 N10036-1453 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 N10036-1453.

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	N10036-1453
Claimant	Mark Schelter
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$10,000.00

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 29 September 2011, Mark Schelter, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$10,000.00 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 by Semco in Lafitte, Louisiana.¹ Specifically, the Claimant is a first class fitter working on liftboats that are utilized in the oil and gas industry.² The Claimant asserts that due to the Deepwater Horizon oil spill, the demand for his services decreased and his working hours were reduced from forty hours to thirty-two hours a week.³ As a result of the reduction in working hours, the Claimant asserts he suffered reduced income in 2010.⁴

The Claimant did not provide an explanation for the calculation of his sum certain of \$10,000.00.

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).

¹ Optional OSLTF Claim Form received 29 September 2011 and Letter from Semco dated 11 July 2011.

² Letter from Semco dated 11 July 2011.

³ Optional OSLTF Claim Form received 29 September 2011.

⁴ Optional OSLTF Claim Form received 29 September 2011.

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 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 OSLTF Claim Form received 29 September 2011;
- GCCF Denial Letter dated 02 August 2011;
- Letter from Semco dated 11 July 2011;
- Semco notice to employees dated 25 October 2010;
- 2009 Form W-2 Wage and Tax Statement from Semco, LLC;
- 2010 Form W-2 Wage and Tax Statement from Semco, LLC;
- Semco Payroll Check Register for period 08 January 2010-08 October 2010, 02 December 2010-30 December 2010, 06 January 2011-05 August 2011.

Prior to presenting this 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 21 October 2010 in the amount of \$20,000.00.⁵ The Claimant was assigned Claimant ID # 3255842 and Claim ID # 311750. The EAP Claim was denied on 15 November 2010.⁶ Additionally the Claimant filed an Interim Payment Claim Quarter I 2011 (ICQ12011) with the GCCF for loss of profits and impairment of earnings capacity on 04 January 2011 in the amount of \$15,000.00.⁷ The Claimant was assigned Claim ID # 9140309. The ICQ12011 was denied on 02 August 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for Claimant's GCCF claims regarding loss of profits and impairment of earnings capacity are the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant's working hours were reduced and as a result he suffered reduced income. The NPFC deems that Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1453 considers and addresses the earnings claimed in the claims presented to the responsible party up to \$10,000.00, specifically; GCCF Claim #'s 311750 (EAP) and 9140309 (ICQ12011).

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.

⁵ Report from the GCCF dated 02 November 2011.

⁶ GCCF Denial Letter dated 15 November 2010.

⁷ Report from the GCCF dated 02 November 2011.

⁸ GCCF Denial Letter dated 02 August 2011.

The Claim is denied because the Claimant has failed to prove that his alleged loss is due to the Deepwater Horizon oil spill. The Claimant included in his submission to the NPFC a letter from Semco discussing the possible effect of the Deepwater Horizon oil spill and drilling moratorium on the demand for Semco's services.⁹ This letter also discussed the possible effects of the oil spill and moratorium on the Claimant's employment with Semco.¹⁰

In an effort to verify the Claimant's submission, the NPFC contacted Semco to verify the authenticity of the submitted letter as well as to determine the effect of the Deepwater Horizon oil spill on the Claimant's employment. The NPFC was informed that it is not possible to determine that the reduction in available work at Semco occurred as a result of the Deepwater Horizon oil spill as opposed to other factors affecting the oil and gas industry.¹¹ Further, the NPFC was informed that the poor economic outlook was the main cause of any work slowdown.¹²

Accordingly, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he suffered a 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ Letter from Semco dated 11 July 2011.

¹⁰ Letter from Semco dated 11 July 2011.

¹¹ PHONECON between the NPFC and Semco dated 16 November 2011.

¹² PHONECON between the NPFC and Semco dated 16 November 2011.