

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4896

5890/DWHZ
07 October 2011

Mr. John R. Summerhill
[REDACTED]

Re: Claim Number: N10036-1461

Dear Mr. Summerhill:

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 N10036-1461 involving the Deepwater Horizon oil spill. 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 N10036-1461.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1461
Claimant	Mr. John Summerhill
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$20,000.00

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, Mr. John R. Summerhill (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a night auditor at a Days Inn hotel in Clearwater Beach, Florida.² The Claimant alleged that “business was down due to [the] oil spill, and [the Claimant’s] hours were cut in half.”³ Furthermore, the Claimant alleged that he was promised to be paid according to a certain pay scale, but that his pay was reduced due to the hotel’s loss of revenue.⁴

The Claimant seeks \$20,000.00 in earnings allegedly lost due to the effects of the Deepwater Horizon oil spill.⁵

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:

¹ Optional OSLTF Claim Form, dated 29 June 2011.

² Letter from the Claimant to the NPFC, undated.

³ Optional OSLTF Claim Form, dated 29 June 2011.

⁴ Letter from the Claimant to the NPFC, undated.

⁵ Optional OSLTF Claim Form, dated 29 June 2011.

- (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 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, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 29 June 2011;
- Letter from the Claimant, describing loss of income, undated.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim seeking loss of earnings or profits damages to the RP/GCCF. The Claimant was assigned ID 3371746 and the EAP claim was assigned Claim # 436915.⁶ This claim was denied on 8 December 2010.⁷

On 29 September 2011, the Claimant presented this claim to the NPFC, seeking \$20,000.00 in loss of profits and impairment of earnings capacity. The NPFC may adjudicate this claim to the extent that it was presented first in the EAP claim to the RP/GCCF. Any damage amounts now before the NPFC, which were not first presented to the RP/GCCF in the EAP claim, are denied.⁸

⁶ GCCF Claimant Status, accessed on 5 October 2011.

⁷ GCCF Claimant Status, accessed on 5 October 2011.

⁸ 33 C.F.R. 136.103(a).

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, 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 this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, a claimant must sufficiently demonstrate (1) that he sustained an actual financial loss, and (2) that the loss was caused by the discharge or substantial threat of discharge of oil, resulting from the Deepwater Horizon oil spill.

The Claimant has not provided documentation to support his claim that his hours and pay were reduced as a result of the oil spill. The Claimant stated that he was not paid at a certain agreed upon pay rate, due to the effects of the oil spill.⁹ However, the Claimant has not provided any evidence or documentation to support this contention, or to indicate how or if his salary fluctuated following the oil spill.

Furthermore, the Claimant has not provided documentation to indicate that the Days Inn in particular, or tourism in Clearwater generally was affected by the Deepwater Horizon oil spill. In fact, statistics provided by the St. Petersburg/Clearwater Area Convention and Visitors Bureau indicate that more tourists visited the Clearwater area in the months following the oil spill in 2010, compared those months in the previous year (May-December).¹⁰

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a financial loss in the amount of \$20,000.00, 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: *10/7/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ Letter from the Claimant, undated.

¹⁰ St. Petersburg/Clearwater Area – 2010 Visitors Report, available at, <http://www.pinellascvb.com/statistics/Pinellas2010AnnualReport.pdf>.