

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
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5890/DWHZ  
3 November 2011

Sandwich World, Inc.  
ATTN: [REDACTED]  
3412 South Angelle St.  
Paulina, LA 70763

Re: Claim Number: N10036-1462

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 the claim number N10036-1462 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 N10036-1462.

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	N10036-1462
Claimant	Sandwich World, Inc.
Type of Claimant	Corporate
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$84,220.68

### ***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 3 October 2011, Mr. Eric Chauvin, on behalf of Sandwich World, Inc. (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$84,220.68 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is the owner/operator of Sandwich World, Inc., a restaurant in Paulina, Louisiana, which serves a variety of seafood and non-seafood items.<sup>2</sup> The Claimant alleged that the restaurant lost revenue due to the Deepwater Horizon oil spill, which caused “lack of available seafood items and lowered consumer confidence in available products.”<sup>3</sup>

The Claimant asserted that his business consists of two distinct divisions: (1) a restaurant division, and (2) a contract catering division.<sup>4</sup> The Claimant specifically alleged that only the restaurant division of his business was harmed by the effects of the Deepwater Horizon oil spill. Therefore, the Claimant seeks loss of profits in the amount of \$84,220.68 stemming specifically from losses sustained by the restaurant division of his business.<sup>5</sup>

### ***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.

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<sup>1</sup> Optional OSLTF Claim Form, dated 23 September 2011.

<sup>2</sup> Menu provided by the Claimant in an email to the NPFC on 28 October 2011.

<sup>3</sup> Optional OSLTF Claim Form, dated 23 September 2011.

<sup>4</sup> Letter from the Claimant to the GCCF, dated 26 August 2011.

<sup>5</sup> Letter from the Claimant to the GCCF, dated 26 August 2011.

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.
- (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 23 September 2011;
- Letter from the Claimant to the NPFC, dated 23 September 2011;
- Table of Contents;
- Letter from the Claimant to the GCCF, describing separate catering and restaurant business, 26 August 2011;
- Cover letter regarding purchases from CONCO Food Service, 17 May 2011;
- Document titled "reduction in Seafood Items purchased from CONCO Food Service, 2009, 2010;
- Letter from Steven P. Keller, Bread Bizz, Inc., 20 May 2011;
- Sandwich World, Inc., Monthly Profit Statements, 2008, 2009, 2010;
- Sandwich World, Inc., Gross Profit by Moth Post Spill, 2008, 2010;
- Sandwich World, Inc., Monthly Profit and Loss Statements, January 2008 – December 2010;
- Response to Request for Additional Information dated 28 October 2011.

Prior to presentment to the NPFC, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and impairment of earnings capacity. The Claimant was assigned ID 3517895 and the FRF claim was assigned claim # 9374632.<sup>6</sup> This claim was denied by the RP/GCCF on 27 September 2011.<sup>7</sup>

On 3 October 2011, the Claimant presented this claim to the NPFC, seeking \$84,220.68 in loss of profits and impairment of earnings capacity.<sup>8</sup> The NPFC may adjudicate this claim to the extent that it was first presented to the RP/GCCF.<sup>9</sup> Any damages now before the NPFC, which have not first been presented to the RP/GCCF are denied.

### **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 demonstrate (1) that he sustained an actual financial loss, and (2) a causal link between the alleged loss and the Deepwater Horizon oil spill.

This claim is denied because the Claimant has not demonstrated that he sustained an actual financial loss as a result of the Deepwater Horizon oil spill.

The Claimant alleged that his restaurant located in Paulina, Louisiana, lost income due to consumer concern regarding the safety of seafood, as well as a lack of availability of seafood products.<sup>10</sup> However, the Claimant's income tax returns failed to reflect that the Claimant's business actually sustained a loss in 2010 as compared to 2009.<sup>11</sup> The Claimant asserts, however, that the business' total reported income is not indicative of its actual losses, because in May of 2010, the Claimant began working under a contract to provide meals to a local aluminum plant. This additional income resulted in a higher total business income in 2010 than in 2009 because the Claimant was able to supplement the losses sustained by the restaurant division of his business with earnings from the contract.<sup>12</sup>

According to OPA, compensation for loss of profits and impairment of earnings capacity must reflect adjustments for "all income from alternative employment or business undertaken."<sup>13</sup> Therefore, based on total business earnings, the Claimant has not demonstrated that he has sustained an actual financial loss in the months following the Deepwater Horizon oil spill.

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<sup>6</sup> GCCF Claimant Status, accessed on 1 November 2011.

<sup>7</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 27 September 2011.

<sup>8</sup> Optional OSLTF Claim Form, dated 23 September 2011.

<sup>9</sup> 33 C.F.R. § 136.103(a).

<sup>10</sup> Optional OSLTF Claim Form, dated 23 September 2011.

<sup>11</sup> Form 1120S (2009) shows gross sales of \$513,048, profits of \$242,809.00, and business income of -\$40,071.00; Form 1120S(2010) shows gross sales of \$521,826.00, profits of \$223,821.00, and business income of -\$34,668.00.

<sup>12</sup> Letter from the Claimant to the GCCF, dated 26 August 2011; *See also*, Service Contract # SCG63562, showing start date of 05/01/10.

<sup>13</sup> 33 C.F.R. § 136.235

Furthermore, the Claimant's submission to the NPFC does not indicate that any losses that the restaurant division of the Claimant's business may have sustained were actually caused by effects of the Deepwater Horizon oil spill.

The Claimant provided records of food product orders to show that the Claimant ordered fewer seafood products following the Deepwater Horizon oil spill than he did in the previous year. However, many of the records show that the Claimant was ordering fewer seafood products in the months leading up to the oil spill, as compared to those months in the previous year.<sup>14</sup> Furthermore, although the Claimant has asserted that the restaurant division of his business and the catering division of his business are distinct, the Claimant does not distinguish between product orders for each division. Therefore, it is not clear whether the Claimant ordered fewer seafood products due to a decreased customer demand, or because, as noted by the Claimant, there was only one seafood item included on the menu for the Claimant's catering contract, which began in May of 2010.<sup>15</sup>

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$84,220.68, 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: *11/3/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>14</sup> See e.g., CONCO Food Service Descending Dollar History Report, 2009, 2010. The Claimant's order of product # 418713 ( Shrimp, Peeled 110/130 50# ) shows that the Claimant ordered a half as many of this product in January – March 2010, as compared to January – March 2009..

<sup>15</sup> Letter from the Claimant to the GCCF, dated 26 August 2011.