

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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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 6852

5890/DWHZ  
Claim # N10036-1464  
31 October 2011

Lindsey Lee  
[REDACTED]

Dear Mr. Lee:

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 N10036-1464 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 N10036-1464.

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	N10036-1464
Claimant	Lindsey Lee
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$14,000.00

**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 04 October 2011, Lindsey Lee (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$14,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant stated he worked for Berg Pipe Mill at its plant in Mobile, Alabama, from October 2009 to June 2010.<sup>1</sup> Berg Pipe manufactures steel pipes. The Claimant worked in the coating department.<sup>2</sup> The Claimant was paid by Multi Staffing Services (now Elwood Staffing Company<sup>3</sup>), a temporary staffing company.<sup>4</sup> The Claimant stated that the steel pipes were shipped out on barges.<sup>5</sup> The Claimant stated the Coast Guard closed the waterways to shipping due to the Deepwater Horizon oil spill and Berg Pipe could not ship its pipes.<sup>6</sup> The Claimant stated that because of the restrictions to shipping, Berg Pipe’s production declined and it let go of some employees including the Claimant.<sup>7</sup>

After being terminated by Berg Pipe, the Claimant underwent HAZMAT training to work as an oil response worker for the Deepwater Horizon oil spill.<sup>8</sup> However, the Claimant never got a job

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<sup>1</sup> Letter from Claimant dated 01 September 2011 explaining his claim  
<sup>2</sup> Based on telephone conversion between Berg Pipe HR and NPFC Claim Adjuster 25-26 October 2011  
<sup>3</sup> Based on telephone conversion between Multi Staffing Service (now Elwood Staffing Company) and NPFC Claim Adjuster 25-26 October 2011. Elwood Staffing Company acquired Multi Staffing Services January 2011  
<sup>4</sup> Letter from Claimant dated 01 September 2011 explaining his claim  
<sup>5</sup> Letter from Claimant dated 01 September 2011 explaining his claim  
<sup>6</sup> OSLTF Claim Form signed by Claimant 02 July 2011  
<sup>7</sup> Letter from Heath Stevens at Berg Spiral Pipe Corporation dated 20 June 2010 concerning Claimant’s employment  
<sup>8</sup> Letter from the Claimant explaining his claim. The letter is undated.

working on the oil spill response.<sup>9</sup> In July 2010, the Claimant began collecting Alabama unemployment compensation.<sup>10</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.

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.

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<sup>9</sup> Letter from the Claimant explaining his claim. The letter is undated.

<sup>10</sup> Alabama Unemployment Compensation showing activity for Claimant from 20 July 2010 to 29 September 2010. Also telephone conversation between the Claimant and NPFC Claims Adjuster 25 October 2011

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the OSLTF**

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 02 July 2011;
- GCCF Letter dated 18 November 2010 denying Emergency Advance Payment;
- Letter from Claimant dated 01 September 2011 explaining his claim;
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 16 April 2011;
- Form 1040 US Individual Income Tax Return for 2009;
- IRS 1040 US Individual Income Tax Return Transcript for 2008 and 2009;
- Copies of Claimant's Alabama Drivers License and his Social Security Card;
- Claimant's Pay Stubs from Multi Staffing Services in Mobile for 2010;
- Letter from Claimant explaining his claim. The letter is undated;
- Letter from Heath Stevens at Berg Spiral Pipe Corporation dated 20 June 2010 concerning Claimant's employment;
- Alabama Unemployment Compensation showing activity for Claimant from 20 July 2010 to 29 September 2010;
- Claimant's Regions Bank statement for August 2010 and September 2010;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claimed dated 02 April 2011;
- Letter from Claimant dated 18 October 2010 explaining the amount of his claim.

On 04 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. USPS Tracking showed the Claimant received the letter on 12 October 2011.<sup>11</sup> On 25 October 2011, the Claimant responded to the request.<sup>12</sup>

Before presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF. The claim was assigned Claimant ID #3210379 and claim #265936.<sup>13</sup> The EAP claim was denied on 18 November 2010.<sup>14</sup> Additionally, Claimant filed an Interim Payment claim (ICQ12011) with the GCCF on 08 February 2011.<sup>15</sup> The claim was assigned claim #9290329.<sup>16</sup> The Interim Payment claim was denied on 16 April 2011.<sup>17</sup>

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 amount of either the EAP or ICQ12011 claims as of the date of this determination. The NPFC deems the GCCF claims to be properly presented to the Responsible Party. 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.

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<sup>11</sup> USPS Tracking Receipt 7011 1150 0000 4636 2991

<sup>12</sup> Telephone conversation between Claimant and NPFC Claims Adjuster 25 October 2011

<sup>13</sup> GCCF On-Line Claim Status dated 27 October 2011

<sup>14</sup> GCCF Denial Letter dated 18 November 2010

<sup>15</sup> GCCF On-Line Claim Status dated 27 October 2011. Filing date based OSLTF Claim Form signed by Claimant 02 July 2011

<sup>16</sup> GCCF On-Line Claim Status dated 27 October 2011

<sup>17</sup> GCCF Denial Letter dated 16 April 2011

Accordingly, this Claim Summary Determination for NPFC Claim N10036-1464 considers and addresses the loss of earnings up to the amount of \$14,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #265936 EAP and #9290329 ICQ12011.

### **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.

There are discrepancies between the documentation the Claimant provided and the statements he made and statements made by Berg Pipe and Multi Staffing Services (now Elwood Staffing Company). These discrepancies are as follows:

1. The Claimant stated that shipments of steel pipe were disrupted and production declined. Berg Pipe had to let some employees go.<sup>18</sup> Berg Pipe stated that its business was not affected by the oil spill. It shut down no production.<sup>19</sup>
2. Claimant stated that Berg Pipe ships its steel pipes on barges.<sup>20</sup> Berg Pipe stated it ships its pipes by rail, not on barges. The railroad track is 20 feet away, along the front of the plant building.<sup>21</sup>
3. The Claimant provided a letter signed by a Heath Stevens.<sup>22</sup> Mr. Stevens stated he was the outbound and shift supervisor at Berg Pipe and the Claimant worked under him. The letter concerned the Claimant's employment at Berg Pipe. Berg Pipe stated that no one named Heath Stevens has ever worked for Berg Pipe.<sup>23</sup> Elwood Staffing Company stated Heath Stevens did not work for them either.<sup>24</sup>
4. Berg Pipe stated that the letterhead on the Heath Stevens letter is not its official letterhead. For one, the Berg Pipe icon of four interlocking circles appears on the top left side of Berg Pipe's official letterhead.<sup>25</sup> The icon on the Heath Stevens letter appears on the right side of the letter.<sup>26</sup>
5. Berg Pipe stated the street address shown on the Heath Stevens letter, 2324 Paper Mill Road, is not its street address.<sup>27</sup> Also, the telephone number shown on the letter, (251) 343-3259, is the telephone number of Elwood Staffing Company and not Berg Pipe's number.<sup>28</sup>

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<sup>18</sup> Letter from Claimant dated 01 September 2011 explaining his claim and telephone conversation between the Claimant and NPFC Claims Adjuster 25 October 2011

<sup>19</sup> Based on telephone conversion between Berg Pipe HR and NPFC Claim Adjuster 25-26 October 2011

<sup>20</sup> Letter from Claimant dated 01 September 2011 explaining his claim and telephone conversation between the Claimant and NPFC Claims Adjuster 25 October 2011

<sup>21</sup> Based on telephone conversion between Berg Pipe HR and NPFC Claim Adjuster 25-26 October 2011

<sup>22</sup> Letter from Heath Stevens at Berg Spiral Pipe Corporation dated 20 June 2010 concerning Claimant's employment

<sup>23</sup> Based on telephone conversion between Berg Pipe HR and NPFC Claim Adjuster 25-26 October 2011

<sup>24</sup> Based on telephone conversion between Multi Staffing Service (now Elwood Staff) and NPFC Claim Adjuster 25-26 October 2011

<sup>25</sup> Based on telephone conversion between Berg Pipe HR and NPFC Claim Adjuster 25-26 October 2011

<sup>26</sup> Based on telephone conversion between Berg Pipe HR and NPFC Claim Adjuster 25-26 October 2011

<sup>27</sup> Based on telephone conversion between Berg Pipe HR and NPFC Claim Adjuster 25-26 October 2011

<sup>28</sup> Based on telephone conversion between Multi Staffing Service (now Elwood Staff) and NPFC Claim Adjuster 25-26 October 2011

6. The Claimant stated that he worked for Berg Pipe from October 2009 through June 2010 through Multi Staffing Services.<sup>29</sup> Elwood Staffing Company stated the Claimant worked for Ershigs, Inc. from October 2009 through early April 2010. Ershigs manufactures smoke stacks used at chemical plants.<sup>30</sup>

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

Claimant's request for \$14,000.00 is hereby denied because the evidence presented in the submission by the Claimant versus the detailed information provided by the employers as outlined above clearly demonstrates evidence of material misrepresentations of fact in order for the Claimant to falsely obtain funds from the Federal Government under false pretenses.

Claim Supervisor:	<i>Claims Adjudication Division</i>
Date of Supervisor's Review:	<i>31 October 2011</i>
Supervisor's Action:	<i>Denial approved</i>
Supervisor's Comments:	

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<sup>29</sup> Letter from Claimant dated 01 September 2011 explaining his claim and telephone conversation between the Claimant and NPFC Claims Adjuster 25 October 2011

<sup>30</sup> Based on telephone conversion between Multi Staffing Service (now Elwood Staff) and NPFC Claim Adjuster 25-26 October 2011