

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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US COAST GUARD  
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5890/DWHZ  
21 December 2011

Glynn D. Beraud Enterprises, Inc.

██████████  
PO Box 920  
Abbeville, LA 70511-0920

Claim # N10036-1478

Dear ██████████

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 N10036-1478 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 N10036-1478.

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	N10036-1478
Claimant	Glynn D. Beraud Enterprises, Inc
Type of Claimant	Business (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$100,000.00

### ***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 07 October 2011, Gregory Beraud, on behalf of Glynn D. Beraud Enterprises, Inc., (collectively, the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$100,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is an oilfield fabrication company in Abbeville, Louisiana.<sup>1</sup> The company rolls and bends steel plates that are used in the construction of production platforms that surround oil drilling equipment.<sup>2</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, construction in the Gulf of Mexico shut down<sup>3</sup> and income from the business decreased around 75-90%.<sup>4</sup> The Claimant stated that the \$100,000.00 in claimed damages was for past, present, and future losses.<sup>5</sup>

### ***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). 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

<sup>1</sup> Gulf Coast Claims Facility Claim Form 2000-C, dated 07 July 2011.

<sup>2</sup> PHONECON between the NPFC and the Claimant on 13 December 2011.

<sup>3</sup> Letter from the Claimant received on 13 December 2011 in response to the NPFC's letter requesting additional information, question 4.

<sup>4</sup> Letter from Greg Beraud to John Pruett, undated.

<sup>5</sup> Letter from the Claimant received on 13 December 2011 in response to the NPFC's letter requesting additional information, question 1

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***

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

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 27 September 2011;
- Authorization signed by the Claimant allowing the NPFC to obtain the Claimant's submission to the GCCF;
- Letter from the Claimant received on 13 December 2011 in response to the NPFC's letter requesting additional information;
- Form 1120 US Corporation Income Tax Return for 2007, 2008, 2010;
- Glynn D. Beraud Enterprises, Inc. Monthly Income Statements for January 2009 to December 2010;
- Gulf Coast Claims Facility Claim Form 2000-C, dated 07 July 2011;
- Copy of Claimant's Louisiana Driver's License;
- Payroll Journal for Glynn D. Beraud Enterprises, Inc. listing payments to Claimant from 13 March 2010 to 28 June 2010;

- Hand-prepared worksheet showing payroll checks to the Claimant from 20 March 2010 to 05 July 2010;
- General ledger page for Glynn D. Beraud Enterprises, Inc. listing certain payments from for March through June 2010;
- Letter from Greg Beraud to John Pruett, undated;
- Copies of 12 work invoices for Glynn D. Beraud Enterprises, Inc.; and
- GCCF Denial Letter on Interim Payment/Final Payment, dated 02 September 2011.

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 15 July 2011 in the amount of \$10,000.00.<sup>6</sup> The Claimant was assigned Claimant ID # 1022216 and Claim # 9444588. The FRF claim was denied by the GCCF on 02 September 2011.<sup>7</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., that the Claimant experienced reduced income due to decreased construction in the Gulf of Mexico caused by the Deepwater Horizon oil spill. The NPFC deems the Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC up to \$10,000.00. Accordingly, this Claim Summary determination for NPFC Claim N10036-1478 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim #1022216 (FRF).

### **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 Claimant.

This claim is denied because, (1) the Claimant has not presented certain damages to the responsible party, (2) some of the damages claimed by the Claimant are for future losses, (3) the Claimant has not demonstrated it experienced a financial loss due to the Deepwater Horizon oil spill.

#### **1. Improper Presentment**

Under 33 C.F.R. § 136.103(a), all claims<sup>8</sup> for removal costs or damages must be presented first to the responsible party. The Claimant presented to the GCCF a claim in the amount of \$10,000.00 for loss of profits or impairment of earning capacity. The Claimant then presented a claim for loss of profits and impairment of earning capacity in the amount of \$100,000.00 to the NPFC. Any claimed amount of damages exceeding \$10,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

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<sup>6</sup> Report from the GCCF, dated 21 November 2011

<sup>7</sup> GCCF Denial Letter on Interim Payment/Final Payment, dated 02 September 2011.

<sup>8</sup> There are limited exceptions not applicable to the Claimant.

2. Damages for Future Losses

The Claimant asserted that some of the damages claimed to the NPFC are for future losses.<sup>9</sup> However, under 33 CFR § 136.235, “the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*.” Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. As such, the Claimant’s damages are denied to the extent that the claimed damages were for prospective losses not yet incurred by the Claimant.

3. Loss Not Due to the Oil Spill

The Claimant stated that the business lost income because most construction in the Gulf of Mexico shut down after the Deepwater Horizon oil spill.<sup>10</sup> When asked to explain exactly how the Claimant’s loss was connected to the Deepwater Horizon oil spill, the Claimant indicated that platform production was slowed by the moratorium on drilling.<sup>11</sup> Further, the Claimant referenced the negative effect of delayed permitting for drilling in the Gulf of Mexico.<sup>12</sup> Therefore, the Claimant failed to prove that its loss was a result of the Deepwater Horizon oil spill as opposed to other factors, such as permitting delays and the moratorium on drilling, which are intervening causes and thus not a consequence of the oil spill.

This claim is denied because (1) the Claimant failed to make proper presentment of some of the damages claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) some of the damages claimed are for future losses which are not compensable pursuant to 33 CFR § 136.235, and (3) the Claimant failed to demonstrate that the alleged loss is due to the injury, destruction or loss of property or natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor’s Review: *21 December 2011*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

<sup>9</sup> Letter from the Claimant received on 13 December 2011 in response to the NPFC’s letter requesting additional information, question 1.

<sup>10</sup> Letter from the Claimant received on 13 December 2011 in response to the NPFC’s letter requesting additional information, question 4.

<sup>11</sup> PHONECON between the NPFC and the Claimant on 13 December 2011.

<sup>12</sup> PHONECON between the NPFC and the Claimant on 13 December 2011.