

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  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7583

5890/DWHZ  
17 November 2011

James Merrell  
[REDACTED]

Re: Claim Number: N10036-1492

Dear Mr. Merrell:

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 N10036-1492 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 N10036-1492.

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     | N10036-1492   |
| Claimant         | James Merrell                                       |
| Type of Claimant | Private (US)  |
| Type of Claim    | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$40,274.58   |

### ***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 13 October 2011, James Merrell, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$40,274.58 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 as a store manager for Baker Distributing Company in Panama City, Florida.<sup>1</sup> Baker Distributing Co. is engaged in the marketing and distribution of air conditioning, refrigeration and heating equipment, parts and supplies.<sup>2</sup> The Claimant asserted that, due to the Deepwater Horizon oil spill, Baker Distributing suffered a reduction in revenue that ultimately led to him being laid off from his job.<sup>3</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 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:

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<sup>1</sup> Letter from Baker Distributing Company dated 14 October 2010 (provided by the Claimant).

<sup>2</sup> <http://www.bakerdist.com>

<sup>3</sup> Optional OSLTF Claim Form, dated 05 October 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 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, dated 05 October 2011;
- Photocopy of the Claimant's Florida Driver License;
- Letter from the Social Security Administration to the Claimant;
- Social Security Administration Social Security Number Printout, dated October 12, 2010;
- 2008 Form W-2 Wage and Tax Statement from Florida Cooling Supply;
- 2009 Form W-2 Wage and Tax Statement from Baker Distributing Company;
- Pay stub from Baker Distributing Company for dates 08 January 2010-01 October 2010;
- 2010 Form W-2 Wage and Tax Statement from Baker Distributing Company;
- Email from the Claimant, dated 20 April 2011;
- Letter from Baker Distributing Company, dated 14 October 2010
- GCCF Claim Form Generated Online;
- GCCF Denial Letter, dated 07 December 2010;
- GCCF Denial Letter, dated 16 April 2011;
- GCCF Denial Letter, dated 23 July 2011;
- GCCF Denial Letter, dated 02 August 2011;
- GCCF Letter, dated 09 September 2011; and
- GCCF Letter, dated 29 January 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of profits.<sup>4</sup> The Claimant was assigned Claimant ID # 3182140 and Claim # 237527. The EAP claim was denied by the GCCF on 07 December 2010.<sup>5</sup> Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF.<sup>6</sup> The Claimant was assigned Claim # 9048281. The FRF claim was denied on 23 July 2011.<sup>7</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, Baker Distributing Company suffered a reduction in revenue that led to the Claimant being laid-off. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1492 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim #'s 237527 (EAP) and 9048281 (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 the Claimant.

The Claimant included in his submission to the NPFC a letter from Baker Distributing Company that stated the Claimant was laid-off due to the effects of the Deepwater Horizon oil spill.<sup>8</sup> The NPFC contacted Baker Distributing Company for verification of the Claimant's work history and the submitted letter. The NPFC was informed that Baker Distributing Company did not eliminate the job of any employee due to the Deepwater Horizon oil spill.<sup>9</sup> Moreover, the NPFC was informed that the letter the Claimant submitted with the letterhead of Baker Distributing Company was a doctored letter<sup>10</sup> and provided the NPFC with the original, authentic copy of the letter.<sup>11</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 \$40,274.58 is hereby denied because the evidence presented by the Claimant vice the detailed information provided by the Claimant's employer as outlined above clearly demonstrates evidence of a material misrepresentation of fact in order for the Claimant to try to obtain funds from the Federal Government under false pretenses.

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<sup>4</sup> GCCF Claimant Status page.

<sup>5</sup> GCCF Denial Letter dated 07 December 2010.

<sup>6</sup> GCCF Claimant Status page.

<sup>7</sup> GCCF Denial Letter dated 23 July 2011.

<sup>8</sup> Letter from Baker Distributing Company dated 14 October 2010 (provided by the Claimant).

<sup>9</sup> PHONECON between the NPFC and the Claimant dated 01 November 2011.

<sup>10</sup> PHONECON between the NPFC and the Claimant dated 01 November 2011.

<sup>11</sup> Letter from Baker Distributing Company dated 14 October 2010 (provided by Baker Distributing Company on 2 November 2011).

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/17/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: