

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6814

5890/DWHZ
Claim # N10036-1494
25 October 2011

George E. Chavez
[REDACTED]

Dear Mr. Chavez:

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 N10036-1494 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 N10036-1494.

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 | N10036-1494 |
| Claimant | George E. Chavez |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 12 October 2011, George E. Chavez (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,000.00 for Loss of Profits and Impairment of Earnings Capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant stated he developed a design to cap the Deepwater Horizon oil spill.¹ He responded to Broad Agency Announcement (BAA) HSCG-10-R-R-00019.² The Coast Guard's Research Development Center (RDC) issued the BAA 04 June 2010 calling for the submission of white papers on vendor-proposed technology solutions to the oil spill.³ June 2010, the Claimant e-mailed his idea for capping the oil spill to RDC.⁴ The Claimant stated the claim is for the time he spent to develop his idea. The Claimant stated that BP did not use his idea.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

¹ OSLTF Claim Form signed by Claimant 12 October 2011

² Letter from Claimant dated 21 October 2011 in response to NPFC's requested for additional information

³ See Website www.uscg.mil/acquisition/rdc/newsroom.asp

⁴ Copy of Claimant's e-mail addressed to RDC-BAA-DHR dated 09 June 2010

⁵ Based on telephone conversation between Claimant and NPFC staff person 24 October 2011

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant 12 October 2011;
- Fax to PO Hardin, USCG, dated 01 August 2011 in response to sum certain of claim;

- Letter from PO Hardin, USCG, dated 11 July 2011 concerning sum certain of claim;
- Letter from Claimant to NPFC advising of Claimant's wish to be included in MDL-2179;
- Letter from Claimant dated 21 October 2011 in response to NPFC's requested for additional information;
- Copy of Claimant's e-mail to RDC-BAA-DHR dated 09 June 2010.

Claimant's Optional OSLTF Claim form indicated that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL") on 20 April 2011. Although under the Statute the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

On 19 October 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 21 October 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF.⁶ The claim was assigned Claimant ID #1152100 and claim #3005919. The EAP claim was denied on 12 November 2010.⁷ Additionally, Claimant filed Full Review Final (FRF) Claims Final with the GCCF.⁸ The claims were assigned claims #9020945 and #9211223. The FRF claims were denied on 06 May 2011 and 27 August 2011.⁹

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 FRF 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. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1494 considers and addresses the loss of real or personal property up to the amount of \$20,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #3005919 EAP and #9020945 and #9211223 for FRFs.

⁶ GCCF On-Line Claim Status 21 October 2011

⁷ GCCF Denial Letter dated 12 November 2010

⁸ GCCF On-Line Claim Status 21 October 2011

⁹ GCCF Denial Letters dated 06 May 2011 and 27 August 2011

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.

The Claimant stated he estimated he spent a week's time researching, drawing and proving his ideas.¹⁰ The NPFC requested he provide support of the time he spent.¹¹ The Claimant's response to the request provided no explanation or supporting documentation for his loss computation. Subsequently, the NPFC claims staff spoke with the Claimant. The Claimant stated that he did not keep track of his time. The amount of the claim was an estimate.¹²

NPFC requested that the Claimant describe exactly the work he did and explain how the Deepwater Horizon oil spill caused his loss.¹³ The Claimant's response did not describe his work or explain how the oil spill caused his alleged loss. The Claimant stated that his design to cap the oil spill was not used.¹⁴

The Oil Spill Liability Trust Fund (the Fund) is available to pay claims for uncompensated removal costs approved by the Federal On Scene Coordinator and consistent with the National Contingency Plan (NCP), and damage claims include: (1) damages for injury to, or economic losses resulting from the destruction of real or personal property recoverable by any person owning or leasing that property; (2) damages equal to the loss of profits or impairment of earnings capacity due to the injury, destruction, or loss of real or personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(1) and (2)(B) and (E).

Claimant's asserted that he developed a cap for the Deepwater Horizon incident that was not used. The Claimant asserted that he incurred costs to research and develop his idea although the cost associated with this submission is not an OPA compensable damage. Further, even if Claimant's alleged damages were OPA-compensable, he has provided no detailed information on the associated costs or expenses with his cap.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, (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, and (3) the amount claimed is not an OPA compensable damage.

¹⁰ Letter from Claimant dated 21 October 2011 in response to NPFC's requested for additional information

¹¹ See NPFC's letter to Claimant dated 19 October 2011 requesting additional information on his claim.

¹² Based on telephone conversation between Claimant and NPFC staff person 24 October 2011

¹³ See NPFC's letter to Claimant dated 19 October 2011 requesting additional information on his claim.

¹⁴ Based on telephone conversation between Claimant and NPFC staff person 24 October 2011

Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *25 October 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments: