

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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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8283

5890/DWHZ
14 December 2011

Michael T. Tiblier
[REDACTED]

Re: Claim Number: N10036-1517

Dear Mr. Tiblier:

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 N10036-1517 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 N10036-1517.

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 N10036-1517
Claimant Michael T. Tiblier
Type of Claimant Private (US)
Type of Claim Loss of Profits and Impairment of Earnings Capacity
Amount Requested \$74,916.48

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 21 October 2011, Michael T. Tiblier (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$74,916.48 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works as part of a family owned and operated business, Hardcore Performance & Accessories LLC (Hardcore), which specializes in automotive, RV, all-terrain vehicle and marine accessory retail and installation services in Ocean Springs, Mississippi.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, customer demand for the business was drastically reduced, resulting in lost income for the business.² As a result of the reduced business income, the Claimant asserts he lost wages in 2010 and 2011.³

The Claimant did not provide an explanation regarding the calculation of his sum certain of \$74,916.48.

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:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ Letter from Hardcore Performance & Accessories dated 10 October 2011.

² Optional OSLTF Claim Form dated 09 October 2011 and received 21 October 2011.

³ Optional OSLTF Claim Form dated 09 October 2011 and received 21 October 2011.

- (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 Oil Spill Liability Trust Fund (OSLTF) Claim Form, received 21 October 2011;
- Photocopy of the Claimant's Mississippi Driver License;
- Letter from Hardcore Performance & Accessories dated 12 October 2011;
- Letter from Hardcore Performance & Accessories dated 10 October 2011;
- Earnings Statement for the Claimant regarding Hardcore Performance & Accessories, LLC;
- 2010 Form W-2 Wage and Tax Statement from Hardcore Performance & Accessories, LLC;
- 2010 Form 1040 Federal Tax Return;
- 2009 Form 1040 Federal Tax Return.

Prior to presenting his claim to the NPFC, the Claimant filed a claim with BP on 15 July 2010.⁴ The BP Claim was denied.⁵ Additionally, the Claimant filed an Emergency Advance Payment (EAP1) One Month Claim with the GCCF for real property damages on 04 November 2010 in the amount of \$50,000.00.⁶ The Claimant was assigned Claimant ID # 1118078 and Claim ID # 414626. The EAP1 Claim was denied on 07 December 2010.⁷ Additionally, the Claimant filed an Emergency Advance Payment (EAP2) One Month Claim with the GCCF for personal property damages on 04 November 2010 in the amount of \$50,000.00.⁸ The Claimant was assigned Claim ID # 414627. The EAP2 Claim was

⁴ Report from the GCCF dated 05 December 2011.

⁵ Report from the GCCF dated 05 December 2011.

⁶ Report from the GCCF dated 05 December 2011.

⁷ GCCF Denial Letter dated 07 December 2010.

⁸ Report from the GCCF dated 05 December 2011.

denied on 08 December 2010.⁹ Additionally, the Claimant filed an Emergency Advance Payment (EAP3) Six Months Claim with the GCCF for loss of profits and impairment of earnings capacity on 04 November 2010 in the amount of \$36,000.00.¹⁰ The Claimant was assigned Claim ID # 414650. The EAP3 Claim was denied on 30 November 2010.¹¹ Additionally, the Claimant filed an Emergency Advance Payment (EAP4) Six Months Claim with the GCCF for loss of subsistence use on 04 November 2010 in the amount of \$20,000.00.¹² The Claimant was assigned Claim ID # 414688. The EAP4 Claim was denied on 14 December 2010.¹³ Additionally, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 10 January 2011 in the amount of \$43,499.88.¹⁴ The Claimant was assigned Claim ID # 9188183. The FRF1 Claim is in the re-review process as of this writing and no determination has yet been issued.¹⁵ Additionally, the Claimant filed a Full Review Final (FRF2) Claim with the GCCF for real or personal property damages on 10 January 2011 in the amount of \$110,000.00.¹⁶ The Claimant was assigned Claim ID # 9188183. The FRF2 Claim is in the re-review process as of this writing and no determination has yet been issued.¹⁷ Additionally, the Claimant filed a Full Review Final (FRF3) Claim with the GCCF for loss of subsistence use on 10 January 2011 in the amount of \$6,000.00.¹⁸ The Claimant was assigned Claim ID # 9188183. The FRF3 Claim is in the re-review process as of this writing and no determination has yet been issued.¹⁹

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims regarding loss of profits and impairment of earnings capacity is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant's business suffered reduced customer demand and as a result the Claimant experienced reduced income. The NPFC deems the Claimant's denied GCCF claims regarding loss of profits and impairment of earnings capacity to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1517 considers and addresses the earnings claimed in the Claimant's claim regarding loss of profits and impairment of earnings capacity presented to the responsible party up to \$43,499.88,²⁰ specifically; GCCF Claim #'s 414650 (EAP3) and 9188183 (FRF1).

Regarding GCCF claims filed by the Claimant regarding damages regarding real property, personal property and loss of subsistence use, the NPFC has not received any claims from the Claimant regarding real property, personal property or subsistence damages. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1517 does not consider or address the claims presented to the responsible party involving real property, personal property or subsistence damages, specifically; GCCF Claim #'s 414626 (EAP1), 414627 (EAP2), 414688 (EAP4), 9188183 (FRF2) and 9188183 (FRF3).

NPFC Determination

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.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an EAP3 Claim to the GCCF for loss of profits and impairment of earnings capacity on 04 November 2010 in the amount of \$36,000.00.²¹ Additionally, the

⁹ GCCF Denial Letter dated 08 December 2010.

¹⁰ Report from the GCCF dated 05 December 2011.

¹¹ GCCF Denial Letter dated 30 November 2010.

¹² Report from the GCCF dated 05 December 2011.

¹³ GCCF Denial Letter dated 14 December 2010.

¹⁴ Report from the GCCF dated 05 December 2011.

¹⁵ Report from the GCCF dated 05 December 2011.

¹⁶ Report from the GCCF dated 05 December 2011.

¹⁷ Report from the GCCF dated 05 December 2011.

¹⁸ Report from the GCCF dated 05 December 2011.

¹⁹ Report from the GCCF dated 05 December 2011.

²⁰ See discussion below in NPFC Determination regarding the claimed amount presented to the NPFC.

²¹ Report from the GCCF dated 05 December 2011.

Claimant presented a FRF1 Claim for loss of profits and impairment of earnings capacity on 10 January 2011 in the amount of \$43,499.88.²² The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$74,916.48 to the NPFC.²³ Any claimed amount of damages exceeding \$43,499.88 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

Additionally, the remainder of the claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$74,916.48 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, his automobile and accessory business,²⁴ Hardcore, suffered a drastic reduction in customer demand that resulted in reduced business income.²⁵ As a result of the reduced business income, the Claimant asserts that he suffered reduced income in 2010 and 2011.²⁶ The Claimant, however, failed to prove a connection between the Deepwater Horizon oil spill and a purported loss of income due to reduced sales at his store. Further, the Claimant failed to provide any evidence to prove that his automobile and accessory business suffered reduced income due to the Deepwater Horizon oil spill. The Claimant's submission to the NPFC consisted of personal financial documentation and letters from Hardcore.²⁷

Nevertheless, in the effort to verify the effect of the Deepwater Horizon oil spill on both Hardcore and the Claimant personally, on 08 November 2011 the NPFC sent Claimant a Request for Additional Information.²⁸ The NPFC requested the following items: full and complete personal Federal Tax Returns for 2008-2010 including all Form W-2's, Form 1099's and Schedule C's, all pay stubs from January 2008-June 2011, personal bank statements from January 2008-June 2011, full and complete tax returns from Hardcore, monthly profit and loss statements for Hardcore from January 2008-June 2010; documentation of cancelled purchase orders and/or contracts due to the Deepwater Horizon oil spill, contact information for those who cancelled purchase orders and/or contracts due to the Deepwater Horizon oil spill including names, telephone numbers and addresses, a consumer report for the automobile and accessory industry the Claimant referenced in his submission to the NPFC, a list of all employees that were laid off due to the Deepwater Horizon oil spill and sales ledgers for the business from 2008-2010.²⁹ As of the writing of this determination, no response has been received from the Claimant regarding any of the above listed items. Accordingly, the Claimant has failed to prove that he suffered reduced income due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate 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 or that he suffered a loss in the amount claimed.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *12/14/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

²² Report from the GCCF dated 05 December 2011.

²³ Optional OSLTF Claim Form dated 09 October 2011 and received 21 October 2011.

²⁴ In a phone conversation with Hardcore's financial director dated 01 November 2011, the NPFC was informed that Hardcore is a family business and confirmed the Claimant's familial connection to it.

²⁵ Optional OSLTF Claim form dated 09 October 2011 and received 21 October 2011.

²⁶ Optional OSLTF Claim form dated 09 October 2011 and received 21 October 2011.

²⁷ See list provided above in Claimant's Submission to the OSLTF for the Claimant's documents provided in his submission to the NPFC.

²⁸ NPFC Request For Additional Information dated 08 November 2011.

²⁹ NPFC Request For Additional Information dated 08 November 2011.

