

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5206

5890/DWHZ  
31 October 2011

Randy J. Dardar  
[REDACTED]

Re: Claim Number: N10036-1520

Dear Mr. Dardar:

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 N10036-1520 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 N10036-1520.

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

Encl: (1) Claim Summary / Determination Form  
(2) Documentation Provided by Claimant, N10036-1520

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1520
Claimant	: Randy J. Dardar
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$19,590.65

### ***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 20 October 2011, Mr. Randy J. Dardar ('Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF),<sup>1</sup> and then on 24 October 2011, revised the claim's sum certain amount to \$19,590.65 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>2</sup> The Claimant is a fisherman (shrimp, crabs and fish) in the waters of Bayou Lafourche who owns his own boat and has one deckhand.<sup>3</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.

<sup>1</sup> Optional OSLTF Claim Form signed 4 October 2011 and received 20 October 2011.

<sup>2</sup> Claimant letter of 24 October 2011.

<sup>3</sup> Optional OSLTF Claim Form signed 4 October 2011 and received 20 October 2011.

- (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.

With limited exceptions, 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**

The Claimant represents having filed a claim with the responsible party in March [2011], prior to presentment to the NPFC. The Claimant did not indicate the amount of the claim to the responsible party, but did indicate having been paid \$30,000.00 as a final payment.<sup>4</sup>

On 20 October 2011, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) in the amount of 2,800.00,<sup>5</sup> and then revised the sum certain to \$19,590.65 on 24 October 2011.<sup>6</sup> The claimed amount of \$19,590.65 is for loss of wages from the oil spill in the Gulf.<sup>7</sup>

The NPFC has been independently confirmed with the BP/GCCF that the Claimant's assertions that a claim had been presented to BP/GCCF and that payments totaling \$39,181.30 have been made to the Claimant.<sup>8</sup>

In support of this claim, the Claimant presented a large amount of documentation, which is listed in Enclosure (2).

### **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 profits or impairment of earning capacity 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.

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<sup>4</sup> Optional OSLTF Claim Form signed 4 October 2011 and received 20 October 2011.

<sup>5</sup> Optional OSLTF Claim Form signed 4 October 2011 and received 20 October 2011.

<sup>6</sup> Claimant letter of 24 October 2011.

<sup>7</sup> Claimant letter of 24 October 2011

<sup>8</sup> GCCF – NPFC Staff phone conversation on 26 October 2011.

The NPFC considered all documentation presented by the Claimant.

With respect to the losses asserted by the Claimant, a large number of receipts from 2011 were provided in grouped categories named: Repair Receipts, Gas for Boat Receipts, and Catfish & Pogy Receipts. The receipts were the only documents presented by the Claimant. Although the receipts may show what the Claimant would consider business-related expenses in 2011, no documentation was presented that shows the Claimant's net profits for 2011. Likewise, the Claimant did not provide documentation of business profits for 2009 or 2010 in order to enable the NPFC to make a proper determination. A claim for loss of profits and impairment of earnings capacity requires financial documentation to support the losses claimed although no records of income for any year have been for this submission.

With respect to causation, the Claimant must provide sufficient proof that the alleged damages were caused the Deepwater Horizon oil spill and not other factors. The Claimant has provided no evidence, such as notices of closures in 2010 that affected his normal fishing, crabbing or shrimping grounds. Proving such a relationship to the Deepwater Horizon oil spill is required in order to support the losses claimed. Additionally, other factors, such as the introduction of fresh water from the Mississippi River, may have affected the claimant's shrimping, crabbing or fishing and must be excluded as a potential cause for the Claimant's alleged losses.

Regarding the Claimant's release of rights, information available to the NPFC indicates that the Claimant executed a Release and Covenant Not to Sue in return for a Quick Pay final payment.<sup>9</sup> Because the Claimant has accepted a Quick Pay final payment and signed a Release and Covenant Not to Sue, the Claimant has released all rights to additional recovery regarding this injury to the RP/GCCF.<sup>10</sup>

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in his request for reconsideration.<sup>11</sup> The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has 1) failed to prove the amount of his alleged loss, 2) failed to demonstrate that his alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil, and 3) released his rights regarding losses related to the Deepwater Horizon oil spill to the RP/GCCF and is ineligible to receive payment from the OSLTF.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/29/11*

Supervisor's Action: *Denial approved*

<sup>9</sup> GCCF – NPFC Staff phone conversation on 26 October 2011.

<sup>10</sup> Standard GCCF Notice of Quick Payment Final Claim Determination.

<sup>11</sup> 33 C.F.R. § 136.115.

Repair Receipts

- (3) Ashland Metals, LLC, sales receipts dated 9 February 2011 to 18 April 2011.
- (2) Jimmy's Service Center, Inc. repair receipts dated 7 April [no year] and 27 April 2011.
- (1) Express Oil service receipt dated 13 April 2011.
- (6) Kief Hardware receipts dated 1/9/11 to 3/30/2011.
- (9) O'Reilly Auto Parts receipts dated from 5 April 2011 to 25 June 2011...
- (10) Golden Meadow True Value receipts dated from 9 January 2011 to 17 August 2011.
- (1) Advance Auto Parts receipt dated 18 April 2011.
- (2) Allied Building Supplies receipts dated 8 January 2011 and 10 February 2011.
- (1) Top Dollar Pawn receipt dated 27 August 2011.
- (1) Herbert's Marine & Hardware receipt dated 9 December 2010.
- (4) Renovations, Inc. receipts 8 January 2011 to 9 April 2011.
- (4) The Tool House receipts, all undated.
- (1) Walmart receipt dated 29 May 2011.
- (1) Gobear Food Mart receipt dated 9 April 2011.
- (1) Lockport Discount receipt, undated.
- (1) Dagate's Marine, Inc. receipt, undated.
- (1) Terrebonne Lawn Service receipt dated 9 May 2011.
- (2) Quality Paint & Marine Supply receipts, dated 15 February 2011 and 31 August 2011.
- (2) Lowes Home Centers, Inc. receipts, both dated 30 March 2011.
- (1) Auto Zone sales receipt dated 16 April 2011.

Gas for Boat Receipts

- (4) Galliano Truck Plaza & Casino receipts dated 12 June 2011 to 30 April 2011.
- (17) T'Pops, Inc. Shell receipts dated 2 January 2011 to 18 August 2011.
- (6) Galliano Fuel receipts dated 17 January 2011 to 3 July 2011.
- (1) Cajun Truck Plaza #2 receipt, undated.
- (6) Jubilee Chevron receipts dated, 7 January 2011 to 1 July 2011.
- (25) Tobacco Plus receipts dated 6 February 2011 to 4 September 2011.
- (1) Shop Rite receipt dated 14 April 2011.
- (1) Convenience Store dated 4 January 2011.
- (1) IAC Louisiana receipt dated 27 August 2011.
- (1) Valero receipt dated 24 September 2011.
- (1) Gobears receipt dated 28 January 2011.

Catfish & Pogies

- (13) Griffin's Station & Marina, Inc. receipts dated 29 March 2011 to 8 July 2011.
- (1) The Seafood Shed receipt date 29 September 2011.