

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5237

5890/DWHZ
31 October 2011

Mr. Anthony Ervin
[REDACTED]

Re: Claim Number: N10036-1524

Dear Mr. Ervin:

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 N10036-1524 involving the Deepwater Horizon oil spill. 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 N10036-1524.

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	N10036-1445
Claimant	Mr. Anthony Ervin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$38,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 26 October 2011, Mr. Anthony Ervin (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$38,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a Certified Process Server, handling service regarding foreclosure proceedings for the Circuit and County Courts for the First Judicial Circuit of Florida,² servicing Santa Rosa, Escambia, Okaloosa and Walton counties.³ The Claimant alleged that “after the spill, the government put a freeze on serving papers, and in turn [the Claimant] got laid off.”⁴

The Claimant alleged that due to a foreclosure freeze in the counties he services, the Claimant lost 100% of his income,⁵ and therefore seeks \$38,000.00 in lost earnings as a result of the Deepwater Horizon oil spill.⁶

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:

¹ Optional OSLTF Claim Form, dated 8 September 2011.

² Certified Process Server’s License, expires 19 March 2011.

³ Optional OSLTF Claim Form, dated 8 September 2011.

⁴ Optional OSLTF Claim Form, dated 8 September 2011.

⁵ Letter from the Claimant, describing losses, dated 26 October 2010

⁶ Letter from the Claimant, describing losses, 26 October 2010.

- (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 undertake, 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 8 September 2011;
- Letter from the Claimant describing losses, 26 October 2010;
- License verifying the Claimant's status as a Process Server for the Circuit and County Courts in and for the First Judicial Circuit of Florida, expires 3/19/2011;
- Copy of Certified Process Server badge;
- GCCF Receipt of Full Review Final Payment Claim Form, dated 24 January 2011;
- Letter from the GCCF to the Claimant, requesting financial documentation, 29 January 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 9 April 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 16 June 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 12 July 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 23 August 2011;
- 2010 Form 1099-MISC, showing nonemployee compensation of \$3,928.00;
- 2010 Form 1040, showing adjusted gross income of -\$13,893.00;
- 2010 Schedule C (Form 1040) showing net profit of -\$5,209.00;
- 2010 Form 1045;

- 2010 Miscellaneous Income Summary Attachment;
- 2010 NOL Carryback Statement, unsigned;
- 2010 AMT NOL Carryover to 2011 Worksheet;
- 2010 Standard Deduction Worksheet;
- 2009, 2010, two year comparison;
- 2010 Form 8879;
- Handwritten list of dates with corresponding numbers, January – May 2010;
- 2009 Form W-2 wage and tax statement, showing wages of \$2,604.00;
- 2009 Form 1040, showing adjusted gross income of -\$8,684.00;
- 2009 Schedule C (Form 1040), showing net profit of -\$11,288.00;
- 2009 Form 1045;
- 2009 Schedule M (Form 1040A or 1040);
- 2009 Wages and Salaries Summary Attachment;
- 2009 Federal Tax Withholdings Attachment;
- 2009 NOL Carryback Statement;
- 2009 Standard Deduction Worksheet;
- 2009 Earned Income Worksheet;
- 2009 List of dates with corresponding numbers, June – December 2009.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to RP/GCCF, seeking loss of profits and wages. The Claimant was assigned Claimant ID 3348228 and EAP was assigned Claim # 408173.⁷ This claim was denied on 19 November 2010.⁸

The Claimant also submitted a Full Review Final (FRF) claim to the RP/GCCF which was assigned Claim # 9133087.⁹ This claim was denied on 23 August 2011.¹⁰

On 26 October 2011, the Claimant presented this claim to the NPFC seeking \$38,000.00 in loss of profits and impairment of earnings capacity. The NPFC may adjudicate this claim to the extent that these damages were first presented to the RP/GCCF. Any damages now before the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.¹¹

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, 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 this claim.

This claim is denied because the Claimant has failed to demonstrate (1) that he sustained an actual financial loss or (2) a causal link between his alleged loss and the Deepwater Horizon oil spill.

The Claimant alleged that a freeze on foreclosures was implemented following the oil spill, resulting in the Claimant's inability to continue to work as a Process Server for foreclosure

⁷ GCCF Claimant Status, accessed on 27 October 2011.

⁸ GCCF Claimant Status, accessed on 27 October 2011.

⁹ GCCF Claimant Status, accessed on 27 October 2011.

¹⁰ GCCF Denial Letter on Interim Payment/Final Payment Claim, 23 August 2011.

¹¹ 33 C.F.R. §136.103(a).

proceedings in certain counties in northwest Florida.¹² However, financial documentation provided by the Claimant does not indicate that the Claimant's income dropped during the period following the oil spill. Rather, the Claimant's tax returns show that the Claimant's profits more than doubled in 2010 as compared to 2009; from -\$11,288.00 in 2009 to -\$5,209.00 in 2010.¹³

The handwritten lists provided in the Claimant's submission to the NPFC appear to represent the Claimant's daily earnings in 2009 and 2010. However, the amounts listed in these documents are not supported by the Claimant's tax documentation and could not otherwise be verified. Therefore, the Claimant has not provided sufficient documentation to prove that he actually sustained a financial loss as a result of the Deepwater Horizon oil spill.

Furthermore, the Claimant has not established a causal link between his alleged loss of employment and the Deepwater Horizon oil spill. The Claimant alleged that the oil spill resulted in the implementation of a foreclosure freeze, resulting in the Claimant's complete loss of business. However, the Claimant has not presented evidence that would show that any freeze on foreclosures in the counties serviced by the Claimant, was caused by the Deepwater Horizon oil spill.

Should the Claimant come back on reconsideration, he will need to provide documentary evidence specifically addressing the freeze and then the Claimant will need to explain his assertions when compared to his IRS income tax filings.

This claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he suffered a loss in the amount of \$38,000.00, or (2) that the losses the Claimant alleged to have incurred, were caused by effects of the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² See, Optional OSLTF Claim Form, dated 8 September 2011; Letter from the Claimant, dated 26 October 2011.

¹³ 2009, 2010 Schedule C (Form 1040).