

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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Arlington, VA 20598-7100  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7606

5890/DWHZ  
Claim # N10036-1527  
21 November 2011

Steve L. Young  
[REDACTED]

Re: Claim Number: N10036-1527

Dear Mr. Young:

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 N10036-1527 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 N10036-1527.

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	N10036-1527
Claimant	Steve L. Young
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$63,459.12

### ***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 27 October 2011, Steve L. Young, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$63,459.12 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 operating as an independent contractor truck driver for Acme Truck Line, Inc. (Acme).<sup>1</sup> The Claimant's contract with Acme required him to exclusively utilize Acme trucking for hauling equipment to be used on oil rigs and barges.<sup>2</sup> Specifically, the Claimant's trucking hauls involved transporting equipment to the rig and barge job sites as well as transporting the replaced equipment away from the job sites.<sup>3</sup> The Claimant asserts that due to the Deepwater Horizon oil spill, the work activity in the oil rig and barge job sites decreased, which in turn decreased both the inbound and outbound truck hauling jobs for the Claimant.<sup>4</sup> Furthermore, the Claimant asserts that the trucking jobs he does receive are majority inbound-only hauls that are significantly less profitable than jobs including an outbound as well as inbound haul.<sup>5</sup> As a result of the decreased work for inbound and outbound trucking jobs, the Claimant asserts he suffered reduced income in 2010.<sup>6</sup>

The Claimant provided the following explanation regarding the calculation of his sum certain of \$63,459.12: the Claimant listed his gross revenue and gross profit for the months of February 2010-July 2011.<sup>7</sup> The Claimant then used the gross profit he earned in April 2010 (\$8,426.95) as a baseline, and subtracted the gross profit from each month from May 2010-March 2011 from the April 2010 baseline to determine each month's loss due to the oil spill.<sup>8</sup> This amount totaled \$35,721.44.<sup>9</sup> The Claimant then altered<sup>10</sup> his calculation for the months of April 2011-July 2011 and utilized the gross revenue he earned

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<sup>1</sup> Document from the Claimant explaining his claim.

<sup>2</sup> Document from the Claimant explaining his claim.

<sup>3</sup> Document from the Claimant explaining his claim.

<sup>4</sup> Document from the Claimant explaining his claim.

<sup>5</sup> Document from the Claimant explaining his claim.

<sup>6</sup> Document from the Claimant explaining his claim.

<sup>7</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011.

<sup>8</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011.

<sup>9</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011.

<sup>10</sup> The Claimant did not provide an explanation for the use of gross profit in the determination of a loss from May 2010-March 2011 nor the utilization of gross revenue for the determination of a loss from April 2011-July 2011.

in May 2010 (\$11,785.62) as a baseline.<sup>11</sup> The Claimant then subtracted the gross revenue earned from April 2011-July 2011 from the May 2010 amount to determine each month's loss due to the oil spill.<sup>12</sup> This amount totaled \$28,237.68.<sup>13</sup> The sum of the amounts compiled from the Claimant's two calculation methods totaled \$63,959.12<sup>14</sup>.<sup>15</sup> The Claimant adopted \$63,459.12<sup>16</sup> as his sum certain.<sup>17</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:

- (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),

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Additionally, the Claimant did not provide an explanation for the shift from gross profits to gross revenue in the determination of his loss.

<sup>11</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011.

<sup>12</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011.

<sup>13</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011.

<sup>14</sup> In the NPFC's own review of the Claimant's submitted financial documentation showed a calculated loss of \$63,889.52, or \$89.60 less than what the Claimant's calculation showed. As discussed below, the NPFC will utilize the Claimant's presented sum certain in the determination of the Claimant's claim.

<sup>15</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011.

<sup>16</sup> The NPFC notes that the totals for the loss period as presented by the Claimant's submission is \$500.00 greater than what the Claimant ultimately adopted as his sum certain. Because the Claimant presented a sum certain of \$63,459.12 on his Optional OSLTF Claim Form, the NPFC will utilize that amount in the determination of the Claimant's Claim.

<sup>17</sup> Optional OSLTF Claim Form received 27 October 2011.

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 received 27 October 2011;
- Document from the Claimant explaining his claim;
- Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011;
- GCCF Denial Letter dated 02 November 2010;
- 1099 Summary Statement for Tax Year 2010;
- 2010 Form 1040 Schedule C Federal Tax Return;
- Lease Agreement between the Claimant and Acme Truck Line dated 02 February 2010;
- Lease Addendum-Exhibit 'A' Rental Compensation between the Claimant and Acme Truck Line, Inc. dated 28 January 2010;
- Leased Equipment Settlement for period 10 February 2010-27 July 2010.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Months Claim with the GCCF.<sup>18</sup> The Claimant was assigned Claimant ID # 3012026. The EAP Claim was denied on 02 November 2010.<sup>19</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for Claimant's GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, demand for the Claimant's trucking services declined and as a result he suffered reduced income. The NPFC deems that Claimant's GCCF claim as properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1527 considers and addresses the claim presented to the responsible party, specifically the Claimant's EAP claim.

#### **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 claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$63,459.12 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.

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<sup>18</sup> Report from the GCCF dated 02 November 2011.

<sup>19</sup> Report from the GCCF dated 02 November 2011.

The Claimant fails to prove that he suffered a financial loss due to the Deepwater Horizon oil spill at all. The Claimant provided a summary spreadsheet of his gross revenue and profit from February 2010-July 2011 as well as weekly earnings statements corresponding to the same period.<sup>20</sup> Examining the Claimant's earnings in 2010 and 2011, the Claimant earned average gross revenue of \$1,927.00<sup>21</sup> per month in the purportedly oil spill affected 2010 compared to a monthly average of \$1,441.00<sup>22</sup> in the non-oil spill affected 2011. Thus, the Claimant averaged \$486.00 more per month in the oil spill affected 2010 than in compared to the non-oil spill affected 2011. Furthermore, comparing the year over year period from February 2010, the start of the Claimant's employment, to July 2011, the last month of submitted financial documentation, shows average gross revenue of \$2,007.00<sup>23</sup> per month from February 2010-July 2010 compared to an average of \$1,383.00<sup>24</sup> per month from February 2011-July 2011. Thus, the Claimant averaged \$624.00 more per month during the period in 2010 purportedly affected by the oil spill compared to the period in 2011 that was not affected by the oil spill. Accordingly, the Claimant fails to prove that he suffered a financial loss due to the Deepwater Horizon oil spill at all.

Additionally, even if the Claimant could prove that he suffered a financial loss due to the Deepwater Horizon oil spill, the Claimant fails to provide a connection between his purported loss and the oil spill. As discussed above, the Claimant's submission to the NPFC included financial documentation as well as weekly earnings statements regarding the Claimant's employment at Acme.<sup>25</sup> In an effort to determine the effect of the Deepwater Horizon oil spill on the Claimant's employment with Acme, the NPFC contacted Acme. In a subsequent phone conversation, the NPFC was informed that there is no way for Acme to connect any losses that a contract driver such as the Claimant may assert to the Deepwater Horizon oil spill or the resulting drilling moratorium in the Gulf of Mexico.<sup>26</sup> Additionally, the NPFC was informed that Acme as a whole has no way of connecting the oil spill or moratorium to a loss suffered by the company as a whole.<sup>27</sup> Furthermore, Acme has not and will not provide documentation supporting the Claimant's submission that he experienced losses due to the Deepwater Horizon oil spill.<sup>28</sup> Thus, the Claimant fails to prove his alleged loss was a direct result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/21/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>20</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011, Leased Equipment Settlement for period 10 February 2010-27 July 2010.

<sup>21</sup> Leased Equipment Settlement for period 10 February 2010-27 July 2010.

<sup>22</sup> Leased Equipment Settlement for period 10 February 2010-27 July 2010.

<sup>23</sup> Leased Equipment Settlement for period 10 February 2010-27 July 2010.

<sup>24</sup> Leased Equipment Settlement for period 10 February 2010-27 July 2010.

<sup>25</sup> Profit and Loss Statement for the Claimant d/b/a S & J's Faith Trucking, LLC for the period February 2010-July 2011, 1099 Summary Statement for Tax Year 2010, 2010 Form 1040 Schedule C Federal Tax Return, Leased Equipment Settlement for period 10 February 2010-27 July 2010.

<sup>26</sup> PHONECON between the NPFC and Acme dated 15 November 2011.

<sup>27</sup> PHONECON between the NPFC and Acme dated 15 November 2011.

<sup>28</sup> PHONECON between the NPFC and Acme dated 15 November 2011.