

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1535
Claimant	: Justin M Audibert
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$15,000.00

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 1 November 2011, Mr. Justin M. Audibert (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$15,000.00 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 at Outback Steakhouse in Lafayette, Louisiana.² The Claimant alleged that following the Deepwater Horizon oil spill, his wages and hours were reduced due to lack of customer confidence in seafood, and a general decrease in patronage.³ The Claimant alleged that this resulted in the restaurant's loss in revenue and in a reduction in the Claimant's working hours and wages.⁴

The Claimant stated that he worked forty hours each week prior to the oil spill, and that his hours were reduced to twenty per week as of 1 May 2010.⁵ The Claimant alleged that he continued to work at this reduced hourly rate until 30 April 2011.⁶

The Claimant alleged to have lost approximately \$15,000.00 in income from 1 May 2010 until 30 April 2011, due to the reduction in his working hours, and tips, allegedly as a result of the Deepwater Horizon oil spill.

Prior to presentment to the NPFC, the Claimant presented a First Quarter Interim Claim (ICQ12011) to the RP/GCCF, seeking loss of profits damages. The Claimant was assigned Claimant ID 3486417 and the ICQ12011 was assigned Claim # 9211141. This claim was denied by the RP/GCCF on 15 April 2011.⁷

¹ Optional OSLTF Claim Form, dated 3 August 2011.

² Letter from the Claimant to the GCCF, dated 19 August 2011.

³ Letter from the Claimant to the GCCF, dated 19 August 2011.

⁴ Letter from the Claimant to the GCCF, dated 19 August 2011.

⁵ Letter from the Claimant to the GCCF, dated 19 August 2011.

⁶ Letter from the Claimant to the GCCF, dated 19 August 2011.

⁷ GCCF Denial Letter on Interim Payment/Final Payment Claim, 15 April 2011.

The Claimant also submitted a Full Review Final (FRF) claim to the RP/GCCF, which was assigned Claim # 9364138. The FRF claim was also denied on 15 April 2011.⁸

On 1 November 2011, the Claimant submitted this claim to the NPFC, seeking \$15,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill. The NPFC may adjudicate this claim to the extent that these damages have first been 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.⁹

REQUEST FOR RECONSIDERATION:

On January 2, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on November 14, 2011 because in order to prove a claim for loss of profits and impairment of earnings capacity, a Claimant must demonstrate (1) that he sustained an actual financial loss, and (2) a causal link between the loss and the Deepwater Horizon oil spill.

The Claimant alleged that his working hours at Outback Steakhouse in Lafayette, Louisiana, were reduced following the Deepwater Horizon oil spill due to a lack of business at the restaurant. The Claimant did not, however, provide any documentation to indicate that Outback Steakhouse actually lost business, or to show that the alleged loss of business was in any way related to the Deepwater Horizon oil spill.

The NPFC contacted Outback Steakhouse in Lafayette, Louisiana in order to see how or if the restaurant was actually affected by the Deepwater Horizon oil spill.¹⁰ Two restaurant managers and a restaurant owner would not respond to our requests for information, and as of the date of this letter, an email from the NPFC to the Executive Vice President of Outback Steakhouse has not responded.¹¹

Furthermore, the Claimant has not provided documentation to substantiate his claim that his working hours were reduced following the Deepwater Horizon oil spill. The NPFC advised the Claimant that should he choose to pursue this claim on reconsideration, the Claimant should provide pay stubs or bank account statements showing the Claimant's earnings in the months leading up to, and then following the oil spill. The Claimant's financial documentation should demonstrate that the Claimant was working a certain hourly rate in the months leading up to the oil spill, and that his hours were only reduced in the months following the oil spill.¹² The Claimant was informed also that he should provide evidence to show that the alleged decrease in hours was actually caused by the Deepwater Horizon oil spill as opposed to any other factor.

This claim was denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$15,000.00, 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.

⁸ GCCF Denial Letter on Interim Payment/Final Payment Claim, 15 April 2011.

⁹ 33 C.F.R. §136.103(a).

¹⁰ PHONECONS: NPFC Staff and Outback Steakhouse owner/managers, 2, 4, 9 November 2011.

¹¹ Email from NPFC to Mr. Joseph Kadow, 4 November 2011.

¹² The Claimant indicated in a PHONECON on 9 November 2011 that he is not able to provide pay stubs beyond the two submitted in his application package.

RECONSIDERATION CLAIM ANALYSIS:

The Claimant requested reconsideration which was received by the CRDS mail facility on January 13, 2012. The Claimant provided a three-page letter that requested his claim be reconsidered because the Claimant stated he feels the NPFC's denial of his claim for lack of financial documentation is ludicrous since he states he provided tax returns some pay vouchers and an itemization that he states more than indicated his loss. The Claimant also provided a copy of five pay stubs from various time periods which are for pay period ending 12/31/08, 1/28/09, 12/30/09, 5/5/10, and 7/14/11.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The request for reconsideration was a three-page letter and five various pay stubs from the period of December 2008 through July 2011. The Claimant asserts that he more than provided enough evidence to document a loss. The Claimant also asserts that he has no reason or legal obligation to retain copies of his pay stubs. The Claimant further asserted that the NPFC is unjustly, unfairly and likely illegally penalizing him for his uncooperative employer who is not party to his claim. Finally, the Claimant asserted that the NPFC has put up unreasonable roadblocks in granting his valid claim.

Upon review of all of the Claimant's information, the Claimant did not produce the necessary documentation that would persuade the NPFC to change its original denial determination. While the Claimant produced three pre-spill pay stubs, the information contained is not sufficient for the NPFC to be able to determine why there were hour fluctuations pre-spill vice post-spill.

Additionally, when doing a comparison of the annual wages for years 2008 – 2010 as identified in the Income Tax Returns provided, the Claimant earned \$17,162.28 in 2008, \$19,662.82 in 2009, and \$17,174.84 in 2010. The difference in annual income from 2009 to 2010 is only \$2,487.98. Furthermore, the Claimant has not provided evidence to indicate the causation of his annual reduction in pay in 2010. The Claimant has not proven that the reduced income was a result of the discharge or substantial threat of a discharge of oil as opposed to other economic factors, business decisions made by his employer or any other possible reason such as taking time off.

The NPFC disagrees with the Claimant's assertion that the NPFC is unjustly, unfairly and likely illegally penalizing him for his uncooperative employer who is not party to his claim. The regulations clearly state that under 33 CFR § 136.233, a Claimant must establish loss of profits

or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources therefore without more detailed information on the hours worked for consecutive pay periods preceding the spill and following the spill along with information from the Claimant's employer that would corroborate the assertions made by the Claimant, it is impossible for the NPFC to determine what the cause was for a reduction of annual income of \$2,487.98 between 2009 and 2010. More importantly, the Claimant asserts an alleged loss of \$15,000.00 which is not supported by the Income Tax information provided by the Claimant in this case.

As such, the Claimant has again failed to demonstrate that he has suffered a loss in the amount of \$15,000.00 or that his 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.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *2/13/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
2/13/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6555

Justin M Audibert



RE: Claim Number: N10036-1535

Dear Mr. Audibert:

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 claim number N10036-1535 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard