

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
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5890/DWHZ
14 November 2011

Mr. Steven Newton
[REDACTED]

Re: Claim Number: N10036-1543

Dear Mr. Newton:

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 N10036-1543 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 N10036-1543.

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	N10036-1543
Claimant	Mr. Steven Newton
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$100,000.00

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 3 November 2011, Mr. Steven Newton (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$100,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant, of Theodore, Alabama alleged that at the time of the oil spill, he was working as a commercial fisherman for Omega Protein.² The Claimant was a seasonal worker and alleged to have been scheduled to return to work on 29 April 2010.³ The Claimant alleged that due to the oil spill, he was not called to return to work and seeks loss of profits in the amount of \$100,000.00.⁴

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.

¹ Optional OSLTF Claim Form, received 3 November 2011.

² Optional OSLTF Claim Form, received 3 November 2011.

³ Letter from Captain Carlton Harcum, undated.

⁴ Optional OSLTF Claim Form, received 3 November 2011.

- (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 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

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, received on 3 November 2011;
- National Vessel Documentation Center, Certificate of Documentation, Omega Protein, Inc. vessel, expires 30 June 2010;
- State of Louisiana Official Vessel License, expires 31 December 2010;
- State of Louisiana Commercial Fisherman's License for Harcum Carlton Jr., expires 31 December 2010;
- Document, Omega Proteins, Marine Operations Positions;
- Copy of the Claimant's Omega Protein, Inc. identification card, 2008;
- Letter from Pastor Leo Neilsen regarding the Claimant's losses, 17 March 2011;
- Letter from Captain Carlton Harcum, undated;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 6 March 2011;
- Letter from the Claimant to the GCCF, RE: Deficiency Letter on Interim Payment/Final Payment Claim, 14 March 2011;
- GCCF Receipt of Full Review Final Payment Claim Form, 24 January 2011;
- Instructions for Nuclear Stress Test, 20 January 2011;
- GCCF Denial Letter on Emergency Advance Payment Claim, 6 December 2010;
- Fax Cover Sheet, 4 November 2011;
- Letter from the Claimant to the GCCF, 25 October 2010;
- Letter from the Claimant to the GCCF, 17 November 2010;

- Mississippi Department of Employment Security, unemployment compensation checks, 2009, 2010;
- 2009 Form 1040, showing wages of \$5,802.00;
- 2009 Schedule M, Form 1040A or 1040);
- 2008 Form W-2 Wage and Tax Statement, showing wages of \$14,479.00;
- Bank Account Statement, 1/1/2009 – 1/31/2009;
- Bank Account Statement, 2/1/2010 – 2/28/2010;
- Bank Account Statement, 3/1/2010 – 3/31/2010;
- Bank Account Statement, 4/1/2010 – 4/30/2010;
- Bank Account Statement, 2/1/2009 – 2/28/2009;
- Bank Account Statement, 3/1/2009 – 3/31/2009;
- Bank Account Statement, 4/1/2009 – 4/30/2009;
- Bank Account Statement, 5/1/2009 – 5/31/2009;
- Bank Account Statement, 6/1/2009 – 6/30/2009;
- Bank Account Statement, 11/1/2009 – 11/30/2009;
- Bank Account Statement, 12/1/2009 – 12/31/2009;
- Letter from the Cochran Firm to the Claimant, 8 November 2010;
- ADP Earnings Statement, Omega Protein, 4/11/2008;
- ADP Earnings Statement, Omega Protein, 5/2/2008;
- ADP Earnings Statement, Omega Protein, 5/16/2008;
- ADP Earnings Statement, Omega Protein, 5/30/2008;
- ADP Earnings Statement, Omega Protein, 6/13/2008;
- ADP Earnings Statement, Omega Protein, 6/27/2008;
- ADP Earnings Statement, Omega Protein, 7/11/2008;
- ADP Earnings Statement, Omega Protein, 7/25/2008;
- ADP Earnings Statement, Omega Protein, 8/8/2008;
- ADP Earnings Statement, Omega Protein, 9/5/2008;
- ADP Earnings Statement, Omega Protein, 9/19/2008;
- ADP Earnings Statement, Omega Protein, 10/3/2008;
- ADP Earnings Statement, Omega Protein, 10/17/2008;
- ADP Earnings Statement, Omega Protein, 10/31/2008;
- ADP Earnings Statement, Omega Protein, 10/31/2008;
- ADP Earnings Statement, Omega Protein, 11/14/2008;
- ADP Earnings Statement, Omega Protein, 4/17/2009;
- ADP Earnings Statement, Omega Protein, 5/1/2009;
- ADP Earnings Statement, Omega Protein, 5/15/2009;
- ADP Earnings Statement, Omega Protein, 5/29/2009;
- ADP Earnings Statement, Omega Protein, 6/12/2009.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF seeking lost earnings or profits. The Claimant was assigned ID 3065238 and the EAP claim was assigned claim # 163964.⁵ This claim was denied on 6 December 2010.⁶

The Claimant then submitted a Full Review Final (FRF) claim to the RP/GCCF, which was assigned claim # 9207977. This claim remains under review, and as of the date of this letter no

⁵ GCCF Claimant Status, accessed on 7 November 2011.

⁶ GCCF Claimant Status, accessed on 7 November 2011.

determination has been issued.⁷ Because this claim has been pending determination with the RP/GCCF for more than 90 days,⁸ the NPFC may adjudicate this claim in its entirety, to the extent that these damages were first presented to the RP/GCCF.⁹ Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.¹⁰

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.

In support of his claim to the NPFC, the Claimant provided a letter regarding his loss of employment, allegedly written on Omega Protein Letterhead, and signed by a member of the human resources staff at the company. Upon contacting Omega Protein and seeking to verify the information contained within the letter, the NPFC was informed that the letter contained substantial misrepresentations of fact, that the letterhead was not authentic, and that the letter was not signed by any member of the Omega Protein staff.¹¹ Furthermore, a human resources representative of Omega Protein stated that the Claimant had not worked with the company since 2009.¹²

Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

This claim is denied because the Claimant has materially misrepresented substantial elements of this claim in an attempt to obtain funds from the Federal Government under false pretenses.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/14/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ GCCF Claimant Status, accessed on 7 November 2011.

⁸ GCCF Letter Re: Receipt of Full Review Final Payment Claim Form, 24 January 2011.

⁹ 33 C.F.R. §136.103(a).

¹⁰ 33 C.F.R. §136.103(a).

¹¹ Email from Omega Protein Staff to the NPFC, 9 November 2011.

¹² PHONECON: NPFC Staff and Omega Protein Staff, 8 November 2011.