

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
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5890/DWHZ
Claim# N10036-1549
08 November 2011

James Edward Moore II



RE: Claim Number: N10036-1549

Dear Mr. Moore:

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 N10036-1549 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. 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 N10036-1549.

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	N10036-1549
Claimant	James Edward Moore II
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity and Subsistence Use
Amount Requested	\$500,000,000.00

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 04 November 2011, James Edward Moore II (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$50,000,000.00 in lost profits and earning capacity and \$450,000,000.00 for a loss of subsistence use to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill. His total loss for both claims is \$500,000,000.00.

The Claimant alleges he invented a “revised top hat” to “prevent and minimize the oil” spill.¹ He faxed a drawing with four parts (1 door A, 2 door B, 3 door C, and 4 circle door hatch)² to the Environmental Protection Agency which he refers to as a “revised top hat”³ on 08 June 2010.⁴ The Claimant stated “no royalties or monies have been paid for my intellectual property.”⁵ The Claimant provided no documentation to evidence a loss of subsistence use and does not address it in his claim besides designating \$450,000,000.00 as subsistence use on the optional OSLTF claim form.

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.

Loss of Earning Capacity

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.

¹ Optional OSLTF claim form undated.

² Unsolicited four part drawing faxed to the EPA 08 June 2010.

³ Optional OSLTF claim form undated.

⁴ Unsolicited fax cover letter sent to the EPA 08 June 2010.

⁵ Optional OSLTF claim form undated.

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.
- (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.

Loss of Subsistence Use

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for lost subsistence use claims. Specifically, each claim for loss of subsistence use of natural resources must:

- (a) Be for lost subsistence use and submitted by an eligible claimant;
- (b) Identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- (c) Describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) Describe efforts to mitigate the subsistence use loss; and
- (e) Be based on the reasonable cost to replace the lost subsistence use of natural resources.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, the Claimant submitted:

- 1) Optional OSLTF claim form undated
- 2) Two page drawing and itemized four parts of the “revised top hat”⁶
- 3) Fax transmission receipt for two page fax sent to EPA 08 June 2010
- 4) Fax cover letter to Lisa P. Jackson dated 08 June 2010
- 5) Davison New Product Sample Agreement entered into 24 January 2011

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$50,000,000.00 and lost subsistence use in the amount of \$450,000,000.00 for a total claimed amount of \$500,000,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) for Removal/Cleanup with the GCCF in the amount of \$500,000,000.00.⁷ He was assigned Claimant ID #3407152. This claim was denied by the GCCF.⁸ Additionally, Claimant filed an Interim claim with the GCCF with designations for Loss of Earnings and Profits in the amount of \$500,000,000.00, Physical Injury for \$0.00, Removal/Cleanup for 0.00, Real or Personal Property for 0.00, and Loss of Subsistence for 0.00.⁹ The Interim claim was denied by the GCCF.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 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. 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 the documentation submitted by the Claimant.

Loss of Subsistence Use

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an Interim claim; one designation of the claim was in the amount of \$0.00 for loss of subsistence use to the GCCF.¹¹ The Claimant then presented a claim for loss of subsistence use in the amount of \$450,000,000.00 to the NPFC. Any claimed amount of damages exceeding \$0.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore, \$450,000,000.00 is denied.

Loss of Profits and Impairment of Earnings Capacity

The Oil Spill Liability Trust Fund (the Fund) is available to pay claims for uncompensated removal costs approved by the Federal On Scene Coordinator and consistent with the National Contingency Plan (NCP), and damage claims include: (1) damages for injury to, or economic losses resulting from the destruction of real or personal property recoverable by any person owning or leasing that property; (2) damages equal to the loss of profits or impairment of earnings capacity due to the injury, destruction, or loss of real or personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(1) and (2)(B) and (E).

⁶ Optional OSLTF claim form and four part design drawing and itemized list of four parts.

⁷ Correspondence between NPFC staff and the GCCF 08 November 2011.

⁸ Correspondence between NPFC staff and the GCCF 08 November 2011.

⁹ Correspondence between NPFC staff and the GCCF 08 November 2011.

¹⁰ Correspondence between NPFC staff and the GCCF 08 November 2011.

¹¹ Correspondence between NPFC staff and the GCCF 08 November 2011.

Claimant's asserted that he developed a cap for the Deepwater Horizon oil spill.¹² The Claimant asserted that he is owed money for his intellectual property¹³ although the asserted lost earnings associated with this submission are not an OPA compensable damage. Further, even if Claimant's alleged damages were OPA-compensable, he has provided no detailed information on the associated costs or expenses with his designed cap nor the time period, computation of the earnings he should have received, or any financial documentation. Furthermore the Claimant has provided no documentation of a valid contract or evidence of use of his design with the responsible party, EPA, or any other interested parties involved with the Deepwater Horizon oil spill.

For the reasons set forth above, this claim is denied.

Claim Supervisor:

National Pollution Funds Division

Date of Supervisor's Review:

Supervisor's Actions:

Supervisor's Comments:

¹² Optional OSLTF claim form undated.

¹³ Optional OSLTF claim form undated.