

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 800-280-7118  
E-mail: arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5558

5890/DWHZ  
22 November 2011

Mr. Reginald Gaines, Jr.



Re: Claim Number: N10036-1560

Dear Mr. Gaines:

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 N10036-1560 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 N10036-1560.

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	N10036-1560
Claimant	Mr. Reginald Gaines, Jr.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$22,127.49

### ***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 14 November 2011, Mr. Reginald Gaines, Jr. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$22,127.49 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant alleged to have been working as an appliance salesman at Lowe's in Jefferson, Louisiana.<sup>2</sup> The Claimant alleged that "the BP oil spill had an economic domino effect on the Gulf Coast Region. As an appliance salesman, I too was affected."<sup>3</sup> The Claimant further alleged that he moved to Seattle, Washington where he continued to work for Lowe's "in a diminished position."<sup>4</sup>

The Claimant alleged that due to general economic effects of the Deepwater Horizon oil spill, the Claimant lost income in the amount of \$22,127.49.00.

### ***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 § 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.

<sup>1</sup> Optional OSLTF Claim Form, dated 3 November 2011.

<sup>2</sup> Optional OSLTF Claim Form, dated 3 November 2011.

<sup>3</sup> Optional OSLTF Claim Form, dated 3 November 2011.

<sup>4</sup> Optional OSLTF Claim Form, dated 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, 3 November 2011;
- IRS Tax Return Transcript, 2010;
- IRS Tax Return Transcript, 2009;
- IRS Tax Return Transcript, 2008;
- Lowe's Home Centers, Inc., pay roll information, 4/02/2010;
- Lowe's Home Centers, Inc., pay roll information, 12/11/2009;
- Lowe's Home Centers, Inc., pay roll information, 12/12/2008;
- Map showing location of the Claimant's employer;
- View Paycheck printouts, showing check date, 30 July 2010;
- Chase Bank Account statement, 5/07 – 6/01, no year indicated.

Prior to presentment to the NPFC, the Claimant presented a First Quarter Interim Claim (ICQ12011) as well as two Second Quarter Interim Claims (ICQ22011a) (ICQ22011b), and a Third Quarter Interim Claim (ICQ32011) to the RP/GCCF. The Claimant was assigned Claimant ID 3289649; ICQ12011 was assigned claim # 9145124; ICQ22011a was assigned claim # 9145124; ICQ22011b was assigned claim # 9384865; ICQ32011 was assigned claim # 9417481. The Interim claims sought damages incurred due to loss of subsistence use, loss of profits and earnings, and physical injury/death.<sup>5</sup> All Interim Claims were denied by the RP/GCCF.

---

<sup>5</sup> GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 21 July 2011, accessed via GCCF Claimant Status online, 22 November 2011.

The Claimant then filed a Full Review Final (FRF) claim with the RP/GCCF, which was assigned claim # 9055172 and was also denied.

On 14 November 2011, the Claimant presented this claim to the NPFC, seeking loss of profits damages in the amount of \$22,127.49. The NPFC may adjudicate this claim to the extent that these damages were first presented to the RP/GCCF.<sup>6</sup> Any damages now before the NPFC, which were not first presented to the RP/GCCF are denied for improper presentment.

### **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 that he sustained a loss of profits as a result of the Deepwater Horizon oil spill.

The Claimant alleged that effects of the oil spill prompted him to move to Seattle, Washington, where he continued to work for Lowe's, but in a diminished position.<sup>7</sup> The Claimant's bank account statement for the period 7 May 2010 to 1 June 2010, show charges being made in Seattle as early as 10 May 2010.<sup>8</sup> Furthermore, the Claimant stated that he moved to Seattle around 26 April 2010.<sup>9</sup> If the Claimant's hours were down causing him to decide to move to Seattle as early as 26 April, the loss of hours could not have been due to the Deepwater Horizon oil spill, the effects of which were unknown until after the Claimant made his decision to move.<sup>10</sup>

Furthermore, the Claimant has not provided pay stubs to show that his hours were actually reduced following the oil spill. Should the Claimant choose to pursue this claim on reconsideration, the Claimant should present bi-weekly pay stubs, or bank account statements showing that the Claimant's earnings remained consistent in the months of 2010 prior to the oil spill, and only dropped in the months following the oil spill. The Claimant should also present evidence to show exactly when he moved to Seattle and what his earnings were while working at Lowe's in Seattle.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$22,127.49, 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: *11/22/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>6</sup> 33 C.F.R. § 136.103(a).

<sup>7</sup> Optional OSLTF Claim Form, 3 November 2011.

<sup>8</sup> Chase Bank Account statement, 5/07 – 6/01, no year indicated

<sup>9</sup> PHONECON: Claimant and NPFC Staff, 22 November 2011.

<sup>10</sup> Reuters, Timeline Gulf of Mexico Oil Spill, Available at <http://www.reuters.com/article/2010/06/03/oil-spill-events-idUSN0322326220100603>, accessed on 22 November 2011.

