

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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5890/DWHZ  
23 April 2012

[REDACTED]  
4624 Comp Island Rd. Suite 100  
Smyrna, Georgia 30082

RE: Claim Number: N10036-1561

Dear [REDACTED]

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 N10036-1561 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 N10036-1561.

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	N10036-1561
Claimant	Orange Beach Bicycles
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$300,000.00

### ***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 15 November 2011, Orange Beach Bicycles (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$300,000.00 in loss of profits and impairment of earnings capacity damages to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant opened a bicycle rental business located in Orange Beach Alabama from November 2009 through August 2010.<sup>1</sup> The Claimant shut down the business to mitigate their losses in August 2010, alleging the Deepwater Horizon oil spill and accompanying cleanup efforts and stated reduced tourism was the cause of decreased sales.<sup>2</sup>

### ***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.

<sup>1</sup> Letter of explanation to the NPFC from Claimant dated 13 February 2012.

<sup>2</sup> Letter of explanation to the NPFC from Claimant dated 13 February 2012.

- (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 his claim, the Claimant submitted

- 1) Optional OSLTF claim form dated 10 November 2011
- 2) State of Alabama incorporation certificate for Orange beach Bicycles dated 08 September 2009 signed by the Secretary of State
- 3) Letter from National Sales Manager of Advanced Sports, Inc. on behalf of the Claimant dated 07 July 2010
- 4) Letter from Director of Sales for Electra Bicycle Company on behalf of the Claimant
- 5) Excel spreadsheet from Claimant (projected numbers)
- 6) Smyrna's monthly Profit and Loss statements from September 2007 through October 2011
- 7) Letter of explanation to NPFC dated 13 February 2012
- 8) Island Clipper coupon/advertisement for Orange Beach Bicycles
- 9) Lease termination memorandum to The Pilcher Agency
- 10) Payment history for storage for inventory from Orange Beach Bicycles from 31 August 2010 through 01 February 2012
- 11) Orange Beach Bicycles Summary of sales by department for 01 November 2009 through 30 August 2010
- 12) Invoice from Giant dated 27 April 2010
- 13) Invoice from Electra Bicycle Company dated 04 January 2010
- 14) Invoice from The Hawley Company dated 26 October 2009

- 15) Invoice from Bell Sports Inc. dated June 2010
- 16) Invoice from Advanced Sports Inc. dated 08 December 2009
- 17) Invoice from Northwave dated 07 October 2009
- 18) Gross sales by month and classes from 2008 through 2010 for Big Daddy's Bike Shop
- 19) Response to NPFC's request for additional information dated 29 November 2011
- 20) Lease agreement for Orange Beach Bicycles entered into 01 August 2009
- 21) Alabama Department of Revenue for the months of November 2009 through July 2010
- 22) 2009 Form 1065 US Return of Partnership Income
- 23) 2010 Form 1065 US Return of Partnership Income
- 24) Orange Beach Bicycles profit and loss statements from November 2009 through August 2010.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$300,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed with BP on 24 May 2010 and was paid \$11,846.00.<sup>3</sup> Additionally, the Claimant filed a Final claim (FC1) with the GCCF on 06 October 2010 for \$300,000.00; he was assigned GCCF Claimant ID #1090124 and Claim #9025974.<sup>4</sup> The GCCF offered a final payment offer of \$25,000.00 to the Claimant which was not accepted. The Claimant further filed an Interim claim (ICQ042011) with Claim #9532547 for \$300,000.00.<sup>5</sup> The Claimant further filed a Full Review Final claim (FRF1) with Claim #9532877 in the amount of \$300,000.00.<sup>6</sup> The GCCF issued a transition final payment in the amount of \$19,162.49.<sup>7</sup> Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that the company lost sales and was forced to shut down as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1561 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 9025974 (FC1), 9532547 (ICQ42011), and 9532877 (FRF1).

### **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.

The Claimant opened his business in November 2009 in Orange Beach Alabama.<sup>8</sup> The Claimant grew the startup business, reaching pre-spill revenues in April 2010 of \$7,171.00.<sup>9</sup> The Claimant provided historical data of a comparable business in Santa Rosa Beach, Florida named Big Daddy's Bike Shop for 2009 to represent the revenue trends through the tourist season of Orange Beach Alabama.<sup>10</sup> The NPFC applied the trending from the comparable Big Daddy's Bike Shop

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<sup>3</sup> Report from the GCCF dated 17 April 2012.

<sup>4</sup> Report from the GCCF dated 17 April 2012.

<sup>5</sup> Report from the GCCF dated 17 April 2012.

<sup>6</sup> Report from the GCCF dated 17 April 2012.

<sup>7</sup> Report from the GCCF dated 17 April 2012.

<sup>8</sup> Orange Beach Bicycle's monthly profit and loss statements.

<sup>9</sup> Orange Beach Bicycle's monthly profit and loss statements and State of Alabama sales tax data.

<sup>10</sup> Big Daddy's Bike Shop revenue for the months of April through December for 2008 through 2010.

to the baseline of Orange Beach's unaffected April 2010 sales of \$7,171.00 through August when the business shut down.<sup>11</sup> The cost of goods sold percentage of 55% was taken from the Claimant's 2009 tax returns and was applied to the revenue calculation.<sup>12</sup>

The Claimant has been compensated by BP in the amount of \$11,846.00 and the GCCF in the amount of \$19,162.49 totaling \$31,008.49. Based on the submissions of the Claimant's tax returns, Alabama sales tax, profit and loss statements, and comparable submission of Big Daddy's Bike Shop, the NPFC finds that the Claimant has not established his sum certain as presented to the NPFC by a preponderance of the evidence. Additionally the NPFC finds that the Claimant has been fully compensated by the Responsible Party for the alleged damages submitted.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that the alleged loss was not fully compensated by the Responsible Party.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/23/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>11</sup> Profit and loss statements and OSLTF claim form dated 10 November 2011.

<sup>12</sup> Form 1065 US Return of Partnership Income for 2009 at line 2.