

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
22 December 2011

Mr. Larry Dacus
[REDACTED]

Re: Claim Number: N10036-1564

Dear Mr. Dacus:

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 N10036-1564 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 N10036-1564.

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	N10036-1564
Claimant	Mr. Larry Dacus
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$28,248.09

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 16 November 2011, Mr. Larry Dacus, on behalf of his marine construction business (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$28,248.09 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

The Claimant works in “marine construction,” building piers, docks and boathouses in and around Mobile Bay.² The Claimant alleges that he works seasonally, from April – October and that his earnings vary significantly each year based on the contracts that he is awarded.³

The Claimant alleges that due to the oil spill, two contracts for construction projects in Mobile Bay were cancelled, resulting in lost revenue in the amount of \$84,200.00, and lost profits in the amount of \$26,388.09.⁴

The Claimant seeks lost profits of \$26,388.09, as well as \$1,860.00 as reimbursement for the cost of hiring Full Scope Services to prepare the loss assessment report presented to the NPFC.⁵ The Claimant’s has presented total losses of \$28,248.09.⁶

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

¹ Optional OSLTF Claim Form, received 16 November 2011.

² Optional OSLTF Claim Form, received 16 November 2011.

³ Letter from the Claimant to the GCCF, 23 February 2011; PHONECON: Claimant and NPFC Staff, 22 November 2011.

⁴ Exhibit C, Business Loss Calculation

⁵ Exhibit C, GCCF Interim Claim Analysis.

⁶ Full Scope Services, GCCF Interim Claim Analysis.

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.
- (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 undertake, 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 16 November 2011;
- Letter from Greg T deCelle, re: Cancellation of pier and boathouse, 18 July 2010;
- Proposal for work to be performed by the Claimant for Larry Dacus, 15 April 2010;
- 3 page plan Greg deDelle Pier & Boathouse;
- Letter from the GCCF to the Claimant, noting inclusion of GCCF Claim submission, 30 September 2011;
- Proposal for work to be performed by the Claimant for James Meador, 8 June 2010;
- GCCF Interim Payment Claim Form, Claimant ID 3501894;
- Copy of the Claimant's driver's license;
- Full Scope Services, Larry Dacus, 2010 Projected Revenues;
- Full Scope Services, Larry Dacus, "GCCF Interim Claim Analysis";

- Full Scope Services, business loss calculation, showing lost income of \$26,388.09;
- Full Scope Services, Schedule C Operating Income and Expense Worksheet;
- Full Scope Services, Authorization to Release, 27 October 2010;
- Full Scope Services, Certifications;
- Full Scope Services Invoice to the Claimant, 23 February 2011;
- 2010 Business License, state of Alabama;
- Full Scope Services, Documentation Checklist for Lost Profit Claims;
- 2009 Form 1040 showing adjusted gross income of \$8,477.00;
- 2009 Schedule C (Form 1040), showing profit of \$9,122.00;
- 2009 Schedule SE (Form 1040);
- 2010 Carryforward Information;
- 2009 Alabama Form 40;
- 2009 Alabama Form 2210AL;
- 2007 Form 1040, showing adjusted gross income of \$7,479.00;
- 2007 Schedule A Form 1040;
- 2007 Schedule C Form 1040, showing profit of \$8,048.00;
- 2007 Schedule SE (Form 1040);
- 2007 Alabama Form 40;
- 2007 Alabama Schedule A (Form 40);
- 2008 Form 1040, showing total income of \$2,575.00;
- 2008 Schedule C (Form 1040), showing profit of \$2,575.00;
- 2008 Alabama Form 40;
- Letter from the Claimant regarding seasonality of business, 23 February 2011;
- Letter from the Claimant to the GCCF, regarding lack of documentation to show monthly income;
- Notarized letter from the Claimant to the GCCF, regarding lack of work in 2010 and first quarter of 2011;
- 2011 Monthly Profit and Loss Statement;
- 2010 Monthly Profit and Loss Statement;
- 2009 Monthly Profit and Loss Statement;
- 2008 Monthly Profit and Loss Statement;
- Email from the Claimant to the GCCF regarding missing payment check, 8 July 2011;
- GCCF Interim Payment Claim Form;
- GCCF Letter Denying Emergency Advance Payment claim, 17 March 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 9 April 2011;
- 2008 Monthly Profit and Loss Statement;
- Fax Cover Sheet, 19 December 2011;
- Response to NPFC Request for additional information, 15 December 2011;
- Copy of check from Gregory T. DeCelle to the Claimant, 14 October 2010.

Prior to presentment of this claim to the NPFC, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking \$28,248.09 in loss of profits and wages damages.⁷ The Claimant was assigned Claimant ID # 3501894, and the ICQ12011 was assigned claim # 9301172.⁸ The GCCF issued payment on this claim in the amount of \$10,934.86 and offered the Claimant \$25,000.00 as full and final settlement.⁹ As of the date of this

⁷ GCCF Interim Payment Claim Form, at IV.C.

⁸ GCCF Claimant Status, accessed on 20 December 2011.

⁹ GCCF Determination Letter on Interim Payment/Final Payment, 24 June 2011.

determination, the ICQ12011 is under re-review and the Claimant has not accepted the GCCF final payment offer.¹⁰

On 16 November 2011, the Claimant presented this claim to the NPFC, seeking loss of profits and earnings damages in the amount of \$28,248.09.¹¹ Because this is a claim seeking the same damages and regarding the same subject matter as the claim presented to the RP/GCCF in ICQ10211, the NPFC may properly adjudicate the entirety of this claim as currently before the NPFC.¹²

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.

As an initial matter, the NPFC notes that the OSLTF is available to pay claims for *uncompensated* damages resulting from an oil spill incident.¹³ The Claimant has been previously compensated in the amount of \$10,934.86 by the RP/GCCF for the losses that are the subject of this claim.¹⁴ This payment included \$1,860.00 in compensation to the Claimant for costs incurred in preparation of loss assessment reports.¹⁵ The remainder of the claimed damage amount, \$17,313.23, represents allegedly uncompensated damages, which shall be addressed in the following paragraphs of this determination. Because claimed damages have already been paid by the RP/GCCF in the amount of \$10,934.86, these damages are initially denied.

This claim is based on the Claimant's alleged loss of profits due to the cancellation of two construction projects in Mobile Bay, during the spring and summer of 2010. Each project will be discussed in turn below. The remainder of this claim in the amount of \$17,313.23 is denied because (1) payments made by the responsible party have fully compensated the Claimant for any losses the Claimant may have incurred, and (2) the Claimant has failed to demonstrate that any losses incurred were caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

1. Project 1

The first project was for construction of a pier and boathouse on Mobile Bay during the late spring of 2010.¹⁶ The Claimant's proposal, signed by the homeowner, notes a total construction price of \$55,520.00.¹⁷ The Claimant provided a letter written by the homeowner, stating that the homeowner had "cancelled the construction of [the] pier and boathouse on Mobile Bay because of ongoing concerns with possible contaminated water due to the BP oil leak."¹⁸ Upon contacting the homeowner to verify this information, the NPFC learned that the project was not

¹⁰ GCCF Claimant Status, accessed on 22 November 2011.

¹¹ Optional OSLTF Claim Form, received on 16 November 2011.

¹² 33 C.F.R. § 136.103(a).

¹³ 33 C.F.R. § 136.1(a)(1).

¹⁴ GCCF Determination Letter on Interim Payment/Final Payment, 24 June 2011.

¹⁵ GCCF Determination Letter on Interim Payment/Final Payment, 24 June 2011.

¹⁶ Proposal signed by Mr. Greg T. deCelle, 15 April 2010.

¹⁷ Proposal signed by Mr. Greg T. deCelle, 15 April 2010.

¹⁸ Letter from Mr. Greg T deCelle, 18 July 2010.

cancelled, but rather was postponed, and has since been completed.¹⁹ The homeowner indicated that he ultimately decided to build a structure more suitable to withstand high winds and hurricanes, and therefore chose not to move forward with the Claimant's original proposal.²⁰ However, the Claimant did perform certain construction work for the project, for which he was compensated.²¹

Therefore, any income the Claimant lost on this project would have been due to the homeowners' decision to build a different structure than the one proposed by the Claimant, and not due to effects of the Deepwater Horizon oil spill.

Additionally, payments made to the Claimant for construction work on the pier and boathouse compensated the Claimant in excess of what he would have earned had the homeowner decided to pursue the Claimant's originally proposed project. The Claimant provided a copy of a check, indicating that the homeowner paid the Claimant \$6,180.00 for construction work.²²

In a letter dated 3 December 2011, the NPFC requested that the Claimant provide certain additional information, including a "breakdown of construction expenses (supplies and labor)" that the Claimant would have incurred during construction of the originally proposed project.²³ The Claimant responded via fax on 19 December 2011, and stated that he would have incurred costs of "\$50,000.00 for supplies and labor."²⁴ The total price for the project, quoted on the proposal signed by the Claimant and the homeowner was \$55,520.00.²⁵ Therefore, had the homeowner chosen to proceed with the original proposal using the Claimant as the head contractor, the Claimant would have earned profits of approximately \$5,520.00.²⁶ Instead, the Claimant was paid \$6,180.00 for construction work, and incurred no expenses for supplies or temporary labor.²⁷ Based on these numbers, the Claimant did not sustain a loss of profits due to the cancellation of the initial construction plan, but rather, earned greater profits than he would have had the project been constructed as the parties had originally intended.

2. Project 2

The second project was for construction of a pier in Point Clear, Alabama during the summer of 2010. The proposal was signed on 8 June 2010 and indicated a contract price of \$28,680.00.²⁸ The NPFC contacted the homeowner to discuss the homeowner's reason for not pursuing the project. The homeowner stated that the pier was not built during the summer of 2010 due to concerns regarding the potential for hurricane damage.²⁹ Upon further questioning, the homeowner indicated that the oil spill may have also factored into their decision to postpone construction.³⁰ The homeowner further indicated that the project has since been completed, but was unable to confirm whether or not the Claimant was involved in the construction.³¹ Based on

¹⁹ PHONECON: NPFC Staff and Mr. deCelle, 29 November 2011.

²⁰ PHONECON: NPFC Staff and Mr. deCelle, 29 November 2011.

²¹ PHONECON: NPFC Staff and Mr. deCelle, 29 November 2011.

²² Copy of check from Gregory T. DeCelle to the Claimant, 14 October 2010.

²³ NPFC request for additional information, 3 December 2011.

²⁴ Response to NPFC request for additional information, dated 15 December 2011.

²⁵ Proposal signed by Mr. DeCelle, 15 April 2010.

²⁶ \$55,520.00 in revenue minus \$50,000.00 in supply and labor costs.

²⁷ PHONECON: NPFC Staff and the Claimant, 30 November 2011.

²⁸ Proposal signed by Mr. Meador, 8 June 2010.

²⁹ PHONECON: NPFC Staff and Ms. Meador, 28 November 2011.

³⁰ PHONECON: NPFC Staff and Ms. Meador, 28 November 2011.

³¹ PHONECON: NPFC Staff and Ms. Meador, 28 November 2011.

this information, the Claimant has not sufficiently proven that the cancellation of this project was in fact due to effects of the Deepwater Horizon oil spill, and not other factors.

Based on the reasons outlined above, the remainder of this claim in the amount of \$17,313.23 is denied, as the Claimant has not sufficiently demonstrated that he actually lost profits due to effects of the oil spill. Rather, it seems that projects were deferred temporarily, and any loss of income that the Claimant may have sustained on the projects was due to decisions by two homeowners to build piers other than the ones originally proposed by the Claimant. Therefore, the Claimant has failed to meet his burden to demonstrate that the Claimant's 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: *12/22/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: