

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
Claim # N10036-1566
13 December 2011

Mr. Tyrone Lindon, Jr.
NO ADDRESS. SENT BY E-MAIL TO
[REDACTED]@yahoo.com

Dear Mr. Lindon:

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 N10036-1566 involving Deepwater Horizon. 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 N10036-1566.

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	N10036-1566
Claimant	Tyrone Lindon, Jr.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$44,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 16 November 2011, Tyrone Lindon, Jr. (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$44,000.00 for loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

The Claimant worked in marina management at the Legacy Boat Club (Legacy) at the club's locations in Destin, Panama City and Orange Beach, Florida. He worked at Legacy until November 2009. The Claimant states he was expecting to return to Legacy for the 2010 season which began in March. He states that due to the oil spill he could not return to the Legacy Boat Club for the 2010 season and lost earnings.¹ The Claimant has no mailing address. He states he is living aboard a boat and the NPFC should send any correspondence to him by e-mail.²

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

¹ Letter to GCCF from the Claimant dated 08 August 2011 explaining his claim

² Telephone conversation with NPFC Admin 06 December 2011

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.
- (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, Claimant submitted the following documentation:

- Claimant's Optional Claim Form signed by the Claimant 15 November 2011
- Letter to NPFC from the Claimant dated 15 November 2011 explaining his claim
- Letter to GCCF from the Claimant dated 08 August 2011 explaining his claim
- Claimant's 2009 Tax Payments Worksheet

- Letter to GCCF from Chad Knaepple, GM at Legacy Boat Club, explaining the Claimant's employment, undated
- E-Mail from Mr. Fletcher Shackelford, managing partner of Legacy Boat Club, dated 03December 2009 to Baytowne Members
- Form 1040 US Individual Income Tax Return for 2010
- W-2 Wage and Tax Statement for 2009 from Legacy Boat Club
- Form 1040EZ Income Tax Return for Single Filers for 2009
- Worksheet for Ty Lindon Boat Management for 2011 showing income and expenses
- E-Mail from Claimant dated 06 December 2011 in response to NPFC letter dated 17 November 2011 requesting additional information

On 17 November 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 06 December 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed an Interim Payment (ICQ32011) with the GCCF on 08 August 2011 in the amount of \$24,089.67.³ The Interim claim was assigned Claimant ID #3536356 and claim #9432853.⁴ On 31 August 2011 GCCF sent the Claimant a Deficiency Letter on the Interim claim.⁵ The Interim Claim is currently under review.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter of the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the GCCF claims to be properly presented to the Responsible Party. To the extent the amount of the claims presented to the Responsible Party are equal to or greater than the amount currently presented to the NPFC, the subject claim is properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1566 considers and addresses the loss of earnings up to the amount of \$44,000.00 for all claims presented to the Responsible Party, specifically: GCCF Claim #9432853 ICQ32011.

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.

³ Report from the GCCF dated 05 December 2011

⁴ GCCF On-Line Claim Status Report

⁵ GCCF Deficiency Letter on Interim Payment/Final Payment Claim dated 31 August 2011

⁶ GCCF On-Line Claim Status Report

The Claimant has provided no supporting documentation for his alleged loss of earnings. He states he based his loss of earnings on what he made the previous year at the Legacy Boat Club (Legacy). He further states that he does not know what he's owed and that he leaves the amount of the loss for the NPFC to decide.⁷

The Claimant states he has lost earnings because after the oil spill, he could not return to the Legacy Boat Club for the 2010 season. Based on a phone conversation between NPFC and Legacy's managing partner, the managing partner stated Legacy offered the Claimant a seasonal position for the 2010 season.⁸ Legacy's season is from March to October. The Claimant wanted a full-time position and refused the offer for a seasonal position. The reason the Claimant did not return for the 2010 season to Legacy was because he voluntarily refused a seasonal job with Legacy for 2010.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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: *Claims Adjudication Division*

Date of Supervisor's Review: *13 December 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ E-Mail from Claimant dated 06 December 2011 in response to NPFC letter requesting additional information

⁸ Telephone conversation between Fletcher Shackelford, managing partner of Legacy Boat Club, and the NPFC Claims Adjuster 07 December 2011