

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5619

5890/DWHZ
1 December 2011

[REDACTED]
ATTN: Mr. John J Cranley IV, Esq.
One East Fourth Street
Suite 1400
Cincinnati, OH 45202-3752

Re: Claim Number: N10036-1575

Dear Mr. Cranley,

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 N10036-1575 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 N10036-1575.

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

Copy: [REDACTED]

USPS Certified Receipt: 7011 1570 0001 4802 5626

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|--|
| Claim Number | N10036-1575 |
| Claimant | [REDACTED] |
| Type of Claimant | Corporate (US) |
| Type of Claim | Loss of Profits and Impairment of Earning Capacity |
| Amount Requested | \$24,883.00 |

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 22 November 2011, Mr. John J. Cranley, legal representative of [REDACTED] (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$24,883.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

The Claimant worked at Carrabas Italian Grill, in Naples, Florida from March to December 2010.² The Claimant alleged that “it is clear that the entire restaurant industry suffered after the Spill; accordingly, [REDACTED] suffered economically because of the Spill.”³

The Claimant calculated that he lost \$24,883.00 in earnings by comparing his 2009 and 2010 income.⁴ In 2009, the Claimant worked for two companies in Cincinnati, Ohio as a “Business Concierge” for an office building, and as a client services representative for an insurance agency.⁵ The Claimant alleged that because these jobs are both in the “hospitality/service industry” they are “analogous to the restaurant business” and should provide an indication as to what the Claimant could have earned as a server at Carrabas Italian Grill in Naples, Florida.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 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:

¹ Letter from the Claimant to the NPFC, 15 November 2011.

² Earnings Statements, OS Restaurant Services, 3/17/2010 to 12/22/2010.

³ Letter from the Claimant to the NPFC, 15 November 2011.

⁴ Letter from the Claimant to the NPFC, 15 November 2011.

⁵ Letter from the Claimant to the NPFC, 15 November 2011, indicates that the Claimant worked for 51 Co. and John J. Cranley Co. in 2009.

⁶ Letter from the Claimant to the NPFC, 15 November 2011.

- (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, the Claimant submitted the following documentation:

- Letter authorizing legal representative, John J Cranley IV;
- Claim cover letter, 15 November 2011;
- 2008 Form 1040, showing adjusted gross income of \$35,546.00;
- 2008 Schedule C (Form 1040);
- 2008 Schedule E (Form 1040);
- 2008 Schedule SE (Form 1040);
- 2008 W-2 and Earnings Summary;
- 2008 W-2 and Earnings Summary;
- 2009 Form 1040, showing adjusted gross income of \$36,365.00;
- 2009 Schedule M (Form 1040A or 1040);
- 2009 W-2 Wage and Tax Statement;
- 2009 W-2 Wage and Tax Statement;
- 2010 Form 1040, showing adjusted gross income of \$12,679.00;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Schedule K-1 (form 1065);
- 2010 Form W-2 Wage and Tax Statement;
- Xavier University college transcript, B.A., 1998;
- Earnings Statement, 3/17/2010;
- Earnings Statement, 3/31/2010;

- Earnings Statement, 4/14/2010;
- Earnings Statement, 4/28/2010;
- Earnings Statement, 5/12/2010;
- Earnings Statement, 5/26/2010;
- Earnings Statement, 6/09/2010;
- Earnings Statement, 6/23/2010;
- Earnings Statement, 7/07/2010;
- Earnings Statement, 7/21/2010;
- Earnings Statement, 8/04/2010;
- Earnings Statement, 8/18/2010;
- Earnings Statement, 9/01/2010;
- Earnings Statement, 9/15/2010;
- Earnings Statement, 9/29/2010;
- Earnings Statement, 10/13/2010;
- Earnings Statement, 10/27/2010;
- Earnings Statement, 11/10/2010;
- Earnings Statement, 11/24/2010;
- Earnings Statement, 12/08/2010;
- Earnings Statement, 12/22/2010;
- Electronic Pay Stubs, Collier Public Schools, March – November 2011;
- Unemployment Compensation Records, January – March 2011;
- Letter from the Claimant, requesting Re-Review of Claim ID 3525896;
- Affidavit of John J. Cranley III, 20 July 2011;
- Affidavit of John McLinden, 20 July 2011;
- Article, *Best Jobs for New College Graduates Now*;

Prior to presentment of this claim to the NPFC, the Claimant alleged to have presented this claim for loss of profits to the RP/GCCF. The Claimant was assigned Claimant ID 3525896.⁷ The Claimant alleged that this claim was initially denied, and again denied on re-review by the RP/GCCF.⁸ The NPFC does not have sufficient information to independently verify that this claim has been presented to the RP/GCCF.⁹

On 22 November 2011, the Claimant presented this claim to the NPFC, seeking \$24,883.00 in loss of profits and earnings capacity damages.¹⁰ The NPFC may adjudicate this claim to the extent that this claim was first presented to the RP/GCCF. Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentment.¹¹

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 failed to demonstrate that he sustained an actual financial loss as a result of the Deepwater Horizon oil spill.

⁷ Letter from the Claimant to the NPFC, 15 November 2011.

⁸ Letter from the Claimant to the GCCF, requesting re-review for Claimant ID 3525896

⁹ Claimant's GCCF status is not available online due to attorney representation.

¹⁰ Letter from the Claimant to the NPFC, 15 November 2011.

¹¹ 33 C.F.R. § 136.103(a).

This claim is based on the Claimant's loss of income at Carraba's Italian Grill in Naples, Florida. The Claimant alleged that the restaurant industry in Naples, Florida was generally affected by the oil spill, thereby resulting in the Claimant's loss of income.¹² However, the Claimant has not presented any evidence to show that his income was reduced following the Deepwater Horizon oil spill, nor has he demonstrated that any alleged reduction in income was the result of the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill as opposed to any other potential causes.

The Claimant presents pay stubs from Carrabas Italian Grill, showing that he began working in March of 2010 and left in December of 2010. Throughout that time, the Claimant's working hours fluctuate significantly each pay period. Therefore, the Claimant has not shown that his income was actually reduced for a certain period of time as compared to the Claimant's pre/post-oil spill income levels at Carrabas. Furthermore, according to a Manager at the Carrabas location where the Claimant was employed, business at this location is seasonal, with the season running from approximately November to March.¹³ The Manager indicated that the Claimant's hours were likely lower because he worked only during the restaurant's "off-season."¹⁴

Additionally, the Claimant has not presented evidence to substantiate his claimed loss amount of \$24,883.00. The Claimant's prior earnings from employment for two companies in Cincinnati, Ohio in 2009 does not serve as an indication of what the Claimant could have earned working at this particular restaurant in Naples, Florida. Therefore, the Claimant's loss amount, which he calculated by comparing 2009 and 2010 income, is not a valid reflection of any losses the Claimant alleged to have incurred in his position at Carrabas Italian Grill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$24,883.00, 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: *12/1/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² Letter from the Claimant to the NPFC, 15 November 2011.

¹³ PHONECON: NPFC Staff and manager of Carrabas Italian Grill, Naples, Florida.

¹⁴ PHONECON: NPFC Staff and manager of Carrabas Italian Grill, Naples, Florida.