

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2827

5890/DWHZ
11 January 2012

James Magaha
[REDACTED]

RE: Claim Number: N10036-1581

Dear Mr. Magaha:

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 N10036-1581 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 N10036-1581.

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	N10036-1581
Claimant	James W. Magaha
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,550.00

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 29 November 2011, James W. Magaha (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$8,550.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant allegedly owns and rents office space in Pensacola, FL.¹ The Claimant executed a lease on 13 April 2010 in the amount of \$950.00 a month, with the lease commencing on 01 May 2010.² The Claimant alleges that his tenant cancelled the lease due to the oil spill.³ The Claimant asserts he lost nine months rent at \$950.00 a month totaling \$8,550.00.⁴

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.
- (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

¹ Optional OSLTF claim form dated 09 November 2011.

² Lease Agreement dated 13 April 2010.

³ Optional OSLTF claim form dated 09 November 2011.

⁴ Optional OSLTF claim form dated 09 November 2011.

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, Claimant submitted:

- 1) Optional OSLTF claim form dated 09 November 2011.
- 2) Lease Agreement dated 13 April 2010.
- 3) Suntrust Check in the amount of \$1,900.00 dated 14 April 2010 payable to James Magaha from Brown Rodgers Jr. for May Rent/Deposit.
- 4) Classified ad for office space for lease from Claimant dated June 2010.
- 5) Escambia Santa Rosa Bar Association confirmation letter of office space ad for June 2010 to present dated 28 January 2011.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$8,550.00.

On 30 November 2011, the NPFC sent a certified letter to the Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 05 December 2011.⁵

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 13 January 2011 in the amount of \$7,600.00.⁶ He was assigned Claimant ID #1007977 and claim #s 4069198 (removal/clean up), 4069199 (real property), 4069200 (personal property), 4069201 (lost wages and earnings), 4069202 (subsistence), and 4069203 (injury). This claim was denied on 17 October 2011.⁷ Additionally, Claimant filed an Interim claim (ICQ12011)

⁵ USPS tracking # 7011 1570 0001 4802 7750.

⁶ Report from the GCCF dated 19 December 2011.

⁷ GCCF Denial Letter dated 17 October 2011.

with the GCCF in the amount of \$8,550.00 on 06 February 2011, he was assigned claim # 9276295. This claim was denied on 22 April 2011.⁸

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 Claimant lost rental income as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF lost wages and earnings claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036- 1581 considers and addresses the earnings claimed both claims presented to the responsible party, specifically; GCCF Claim #'s 4069201 (EAP) and 9276295 (ICQ12011).

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.

In connection with a review of this claim, the NPFC sent the Claimant a certified letter requesting additional information in order to further evaluate his claim.⁹ The letter requested, among other things, evidence of legal right to rent the property in question (ownership), contact information for his alleged tenant who cancelled the lease due to the oil spill, and taxes documenting rental income for subject property.¹⁰ The NPFC requested contact information for the tenant to verify the alleged causation for terminating the lease¹¹ because, according to the Claimant, his tenant had to cancel "as a result of oil spill damage to real estate market."¹² The request for additional information was sent on 30 November 2011. The Claimant acknowledged receipt of the letter on 06 December 2011.¹³ To date no response has been received by the NPFC.

Accordingly, this claim is denied because the Claimant has failed to meet his burden to demonstrate either (1) that he has an alleged loss in the amount claimed, or (2) that his 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: *1/11/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁸ GCCF Denial Letter dated 22 April 2011.

⁹ NPFC request for additional information dated 30 November 2011.

¹⁰ NPFC request for additional information dated 30 November 2011.

¹¹ NPFC request for additional information dated 30 November 2011.

¹² Optional OSLTF claim form dated 09 November 2011.

¹³ USPS tracking # 7011 1570 0001 4802 7750.