

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
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5890/DWHZ
19 January 2012

Mr. Andrew Chenot
[REDACTED]

Re: Claim Number: N10036-1583

Dear Mr. Chenot:

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 N10036-1583 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 N10036-1583.

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
Documentation List/Claimant's Submission to the OSLTF

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1583
Claimant	Mr. Andrew Chenot
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$85,822.00

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, Mr. Andrew Chenot, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$218,065.65 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, the Claimant was working for Gulf Shores Builders Supply, Inc.² The Claimant had begun working with the company in February of 2010, and was laid off in May of 2010, allegedly due to “lack of business caused from the 2010 BP Oil Spill.”³

The Claimant moved from Arizona to Gulf Shores, Alabama in December of 2009.⁴ In the Claimant’s original submission to the NPFC, the Claimant sought various expenses associated with moving to the Gulf Coast in 2009, including losses incurred due to the 2009 sale of his Arizona home, moving expenses for various moves from 2009 to 2011, and other costs allegedly resulting from effects of the Deepwater Horizon oil spill.⁵

Specifically, the Claimant sought (1) \$27,931.62 in losses associated with the 2009 sale of his Arizona home, (2) \$13,598.90 in moving expenses, (3) \$12,100.00 in order to allow the Claimant to furnish a two-bedroom, two-bathroom home, (4) \$20,000.00 to purchase new transportation, (5) \$3,000.00 to replace the guns and wedding bands the Claimant sold due to the loss of his employment, (6) \$85,822.00 in lost income, (7) \$12,000.00 to repay relatives and the Claimant’s church community for their assistance, and “25% for taxes; equaling \$218,065.65.”⁶

On 16 December 2011, the NPFC sent the Claimant a letter via certified mail, requesting additional information and clarifying that certain expenses presented in this claim, such as moving expenses incurred in 2009, are not compensable under OPA’s Loss of Profits damage category.⁷ In a letter to the NPFC, dated 2 January 2012, the Claimant amended his sum certain to \$85,822.00, specifically “asking for two years of lost profit and earnings and interest.”⁸

¹ Optional OSLTF Claim Form, dated 3 August 2011.

² Letter from Gulf Shores Builders Supply, Inc., regarding the Claimant’s loss of his position, 24 March 2011.

³ Letter from Gulf Shores Builders Supply, Inc., regarding the Claimant’s loss of his position, 24 March 2011.

⁴ Cover Letter from the Claimant, describing losses, 20 November 2011.

⁵ Cover Letter from the Claimant, describing losses, 20 November 2011.

⁶ Cover Letter from the Claimant, describing losses, 20 November 2011.

⁷ NPFC request for additional information, 16 January 2012.

⁸ Response to NPFC request for additional information, 2 January 2012.

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 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

The Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

See Enclosure.

Prior to presentment of this claim to the NPFC, the Claimant presented a First Quarter Interim Claim (ICQ12011) to the RP/GCCF seeking loss of profits and earnings damages in the amount of

\$14,562.02.⁹ The Claimant was assigned Claimant ID 1148766 and the ICQ12011 was assigned claim # 5266806.¹⁰ This claim was denied on 8 September 2011.¹¹

The Claimant then presented a Full Review Final (FRF) claim to the RP/GCCF seeking loss of profits and earning damages in the amount of \$27,931.62.¹² The FRF claim was assigned claim # 9032741 and was denied on 30 April 2011.¹³

Information available to the NPFC indicates that prior to presentation of this claim to the GCCF, the Claimant was compensated a total of \$5,092.05 by BP.¹⁴

On 29 November, 2011, the Claimant presented this claim to the NPFC seeking loss of profits and impairment of earning capacity damages in the amount of \$218,065.65.¹⁵ The Claimant later amended his sum certain to \$85,822.00.¹⁶ The NPFC may adjudicate this claim to the extent that these damages were first presented to, and denied by the RP/GCCF.¹⁷ Any damages now presented to the NPFC, which were not first presented to the RP/GCCF, are denied for improper presentation.¹⁸ The FRF and ICQ12011 claims submitted by the Claimant to the RP/GCCF, presented damages totaling \$42,493.64.¹⁹ Therefore, \$43,328.36 of the damages now presented to the NPFC, were not first presented to the RP/GCCF, and this claim is initially denied in this amount. The remainder of this determination shall address the damages previously presented to the RP/GCCF, and now before the NPFC, in the amount of \$42,293.64.

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.

In order to prove a claim for loss of profits damages, a Claimant must provide evidence to prove (1) that the Claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the effects of the Deepwater Horizon oil spill. Furthermore, for claims alleging loss of profits and impairment of earning capacity damages, “compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered.”²⁰ Any damages presented by the Claimant, which represent prospective, future losses, are denied.

The Claimant computes his 2010 loss of income by comparing 2009 profits earned from the sale of his home, as well as income the Claimant earned in 2007 and 2008, while working as a truck driver in Arizona.²¹ However, the Claimant’s income resulting from the sale of his residence, and from employment other than the employment in which the Claimant was engaged in at the time of the oil

⁹ GCCF United States Coast Guard Report, 11 January 2012.

¹⁰ GCCF Claimant Status, accessed on 15 December 2011.

¹¹ GCCF Denial Letter on Interim Payment/Final Payment Claim, 8 September 2011.

¹² GCCF United States Coast Guard Report, 11 January 2012.

¹³ GCCF Denial Letter on Interim Payment/Final Payment Claim, 30 April 2011.

¹⁴ GCCF United States Coast Guard Report, 11 January 2012.

¹⁵ Cover Letter describing losses, 20 November 2011.

¹⁶ Response to NPFC request for additional information, 2 January 2012.

¹⁷ 33 C.F.R. § 136.103(a).

¹⁸ 33 C.F.R. § 136.103(a).

¹⁹ GCCF United States Coast Guard Report, 11 January 2012.

²⁰ 33 C.F.R. § 136.235.

²¹ The Claimant’s tax returns indicate that in 2009, the Claimant was unemployed; Claimant presents W-2’s from 2007, 2008 and 2009, showing employment with 4-Horsemen Transportation, Inc.

spill, does not serve to indicate what the Claimant would have earned as an hourly employee at Gulf Shores Builders Supply, had he continued working throughout 2010.

The Claimant worked for Gulf Shores Builders Supply from February to May 2010, earning a total of \$4,527.30.²² The Claimant alleged that he “was laid off from Gulf Shores Builders Supply in May 2010 due to lack of business caused from the 2010 BP Oil Spill.”²³ In a letter from the NPFC to the Claimant, dated 16 December 2011, the NPFC requested that the Claimant provide certain additional information in support of this claim, including information regarding losses allegedly sustained by Gulf Shores Builders Supply.²⁴ The Claimant was unable to comply with this request, stating that, “[the Claimant] is not privy to nor authorized access to 2008 – 2010 revenue records for Gulf Shores Builders Supply, Inc.”²⁵

The Claimant has not provided information sufficient to prove (1) that the Claimant’s employer sustained actual financial losses, or (2) that losses allegedly sustained by the Claimant’s employer were caused by the discharge of oil resulting from the Deepwater Horizon oil spill, and not by other economic factors. Therefore, the Claimant has failed to provide information sufficient to prove that he sustained a financial loss as a result of the Deepwater Horizon oil spill.

Furthermore, the NPFC does not have sufficient information regarding the nature of the Claimant’s employment in order to determine whether or not payments made by BP to the Claimant, have fully compensated the Claimant for any losses the Claimant incurred due to the loss of his employment in May of 2010. The NPFC requested that the Claimant provide either an employment agreement or other record of communication describing the expected nature of the Claimant’s employment.²⁶ The Claimant was also unable to comply with this request, stating that all discussions regarding his employment were verbal.²⁷ Therefore, the NPFC does not have sufficient information regarding the expected length and possible seasonality of the Claimant’s employment in order to determine whether or not payments made by BP to the Claimant, totaling \$5,092.05 have fully compensated the Claimant for the loss of his employment, allegedly resulting from effects of the Deepwater Horizon oil spill.

This claim is denied because the Claimant (1) has failed to present this claim in the amount of \$43,328.36 to RP/GCCF, prior to presentment to the NPFC, (2) has failed to meet his burden to prove that he sustained a financial loss in the amount of \$42,493.64 and (3) has failed to prove 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: *1/19/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

²² Pay Stub, showing final payment check dated 6/4/2010, and YTD payment total of \$4,527.30.

²³ Letter from Mark Kittrell regarding loss of the Claimant’s employment, 24 March 2011.

²⁴ NPFC Request for additional information, 16 December 2011.

²⁵ Response to NPFC request for additional information, 2 January 2012.

²⁶ NPFC request for additional information, 16 December 2011.

²⁷ Response to NPFC request for additional information, 2 January 2012.

**Claimant's Submission to the OSLTF
N10036-1583**

To support this claim, the Claimant submitted the following documentation:

- Cover Letter explaining losses, 20 November 2011;
- “Statement on How Oil Spill Caused a Loss In Income”;
- Letter from BP to the Claimant, regarding the GCCF, 5 August 2010;
- Letter from Mark Kittrell, Gulf Shores Builders Supply, Inc, 24 March 2011;
- Email from office manager, Gulf Shores Builders Supply, Inc., stating that the Claimant worked with the company from February – May 2010;
- Pay Stub, showing final payment check dated 6/4/2010, and YTD payment total of \$4,527.30;
- Pay Stubs, February – May 2010;
- First American Title Insurance Company Final Statement, showing contract sale price of Arizona home, \$114,900.00;
- Schedule A, First American Title Insurance Company;
- Schedule B, First American Title Insurance Company;
- Purchase and Sale Agreement, AZ Deed of Trust Full Buyout;
- Letter from Lagares & Lagares to the Claimant, 10 May 2011, with attached property agreement;
- “Description of Efforts to Reduce Your Loss, Including Job Search,” noting the Claimant’s moves to Baton Rouge, Louisiana and Austin, Texas, seeking employment;
- List of sources in which the Claimant searched for jobs;
- Handwritten list of employment opportunities, 5/28 – 1/11;
- JB James Construction, L.L.C. employment agreement, 27 April 2011;
- “Copies of Job-Hunting Expenses (travel costs)” with attached receipts;
- Closing History, Safeguard Self Storage, Baton Rouge LA, 21 June 2011;
- Safeguard Self Storage, LLC, Rental Agreement;
- Public Storage Lease/Rental Agreement,, 22 August 2011;
- Credit Card Sales Receipts, Motel 6, Baton Rouge, LA;
- Days Inn Folio;
- LaQuinta Inns & Suites, Receipt;
- Credit Card Sales Receipts, Motel 6, Austin, TX;
- Z-Best Tires & Accessories, Sales Receipt;
- Andre’s Transmission & Auto Repair Invoice;
- Various Receipts showing costs incurred in Louisiana and Texas;
- List of moving expenses;
- Order For Moving Services, Selfmoves USA;
- Penske Truck Leasing Invoice;
- U-Haul Self Storage Rental Agreement and associated invoices;
- RMI Vacations “Guest Statement”;
- Motel 6, Pensacola Invoice;
- Receipts showing meal expenses, 2009;
- Apartment Lease, Gulf Shores Alabama, 2 December 2009;
- Chase Bank Account Statements;
- RMI Vacations Invoices;
- Fuel, P.O. Box and meal receipts;

- 2009 Form 1040, showing wages of \$2,897.00 and occupation “unemployed”;
- 2009 Schedule M, (Form 1040A or 1040);
- Rev. 2-2009, Form 1040X;
- 2008 Schedule A (Form 1040);
- 2008 Arizona Form 140X;
- 2008 Form 1040X (Rev. 11-2007);
- 2007 Schedule A (Form 1040);
- Email from the Claimant containing 37 documents in response to NPFC request for additional information, sent on 6 January 2012;
- Item by item response to NPFC request for information, 2 January 2012;
- (Rev. 11-2007) Form 1040X;
- 2007 Form 1040;
- 2007 Form W-2 Wage and Tax Statement;
- (Rev. February 2009) Form 1040X;
- 2008 Tax Return Transcript;
- 2009 Form W-2 Wage and Tax Statement;
- 2010 Form 1040, showing adjusted gross income of \$26,177.00;
- 2010 Schedule M (Form 1040A or 1040);
- Consent to Use Personal Tax Return Information;
- 2010 Form W-2 Wage and Tax Statement;
- Letter from BP to the Claimant regarding EAP and Interim Payments;
- 2010 Form 1099-MISC;
- Letter from Mark Kitrell, regarding the Claimant’s lay-off, 24 March 2011;
- Email from Office Manager, Gulf Shores Builders Supply Inc, regarding the Claimant’s employment, 9 May 2011;
- ESIS Statement.