

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 8221

5890/DWHZ  
Claim # N10036-1584  
05 January 2012

Randy L. Marin  
[REDACTED]

Dear Mr. Marin:

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 N10036-1584 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 N10036-1584.

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	N10036-1584
Claimant	Randy L. Marin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$82,000.00

**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 18 November 2011, Randy L. Marin (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$82,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns and operates Louisiana Pottery & Wrought Iron in St. Martinville, Louisiana.<sup>1</sup> The Claimant supplies pottery to retailers like garden nurseries. One of its customers was Rouses Supermarket with a chain of stores in Louisiana and Mississippi.<sup>2</sup> The Claimant obtains pottery from Mexico.<sup>3</sup> The Claimant asserted that 90% of sales are retail sales to the public.<sup>4</sup> The Claimant states that after the oil spill “tourist sales dropped.”<sup>5</sup>

**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

<sup>1</sup> Letter from Claimant to the NPFC explaining the claim, undated

<sup>2</sup> Handwritten letter received 14 December 2011 from Claimant in response to the NPFC letter requesting additional information

<sup>3</sup> Based on telephone conversation between the Claimant and the NPFC Claims Adjuster 18 December 2011

<sup>4</sup> Handwritten letter received 14 December 2011 from Claimant in response to the NPFC letter requesting additional information

<sup>5</sup> Handwritten letter received 14 December 2011 from Claimant in response to the NPFC letter requesting additional information

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:

- OSLTF Claim Form signed by Claimant dated 01 November 2011
- Letter from Claimant to the NPFC explaining the claim, undated
- Copies of Louisiana Chauffeur's License and Social Security Card
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim dated 14 July 2011
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 11 August 2011
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 02 September 2011

- Louisiana Resident Income Tax Return for 2007
- IRS Tax Return Transcript Form 1040 for 2008, 2009 and 2010
- Picture post-card for Louisiana Pottery & Wrought Iron
- Handwritten letter received 14 December 2011 from Claimant in response to the NPFC letter requesting additional information
- Worksheet prepared by claimant listing monthly revenues for 2009

On 02 December 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 14 December 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 05 July 2011 in the amount of \$40,000.00.<sup>6</sup> The claim was assigned Claimant ID # 3528890 and claim # 9410201.<sup>7</sup> The EAP claim was denied on 11 August 2011.<sup>8</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied FRF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1584 considers and addresses the earnings claimed in his claim presented to the responsible party, specifically; GCCF Claim # 9410201 FRF.

### **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.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented a Final Claim in the amount of \$40,000.00 for loss of profits or impairment of earning capacity to the GCCF. The Claimant then presented a claim for loss of profits and impairment of earning capacity in the amount of \$82,000.00 to the NPFC. Any claimed amount of damages exceeding \$40,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore, \$42,000.00 is denied.

The Claimant provided insufficient documentation to support his claim of \$82,000.00. The Claimant stated that a BP Adjuster came up with the amount, "a fair figure."<sup>9</sup> The Claimant did not provide details of his loss computation or any documentation to support his loss

<sup>6</sup> Report from the GCCF dated 19 December 2011

<sup>7</sup> GCCF On-Line Status Report

<sup>8</sup> GCCF Denial Letter dated 11 August 2011

<sup>9</sup> Letter from Claimant to the NPFC explaining the claim, undated

computation. Also, his claim includes future losses. OPA does not allow the NPFC to compensate for any future losses.

The NPFC compared monthly revenues for 2008, 2009 and 2010 based on the income tax returns and data provided by the Claimant.<sup>10</sup> The comparison showed the Claimant's revenues for each year peak in the spring. It also showed that revenues for 2008, 2009 and 2010 from May through December (post spill months) remained consistent from year to year.

The Claimant stated that after the oil spill, "tourist sales dropped" and he lost earnings.<sup>11</sup> However, the Claimant provided insufficient documentation to support this statement. The NPFC attempted to contact customers the Claimant supplied.<sup>12</sup> One client stated that his business was down due to the general economy, not necessarily due to the oil spill.<sup>13</sup> The Claimant also stated that his business had begun to compete with foreign suppliers whose products were cheaper.<sup>14</sup>

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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/5/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>10</sup> IRS Tax Return Transcript Form 1040 for 2008, 2009 and 2010 and Worksheet prepared by claimant listing monthly revenues for 2009

<sup>11</sup> Handwritten letter received 14 December 2011 from Claimant in response to the NPFC letter requesting additional information

<sup>12</sup> Clients contacted were the Cracked Pot Garden, Rouses Supermarket and Bantings Nursery. These clients were provided by the Claimant.

<sup>13</sup> Susan Sistrunk, corporate floral director, Rouses Supermarket 18 December 2011

<sup>14</sup> Based on telephone conversation between the Claimant and the NPFC Claims Adjuster 18 December 2011