

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 8467

5890/DWHZ  
12 January 2012

Mr. Wilfred J. Amolie, III



Re: Claim Number: N10036-1594

Dear Mr. Amolie:

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 N10036-1594 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 N10036-1594.

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	N10036-1594
Claimant	Wilfred J. Arnolie, III
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$8,000.00

### ***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 certain individual and business claims on behalf of BP.

### ***CLAIM AND CLAIMANT***

On 5 December 2011, Mr. Wilfred J. Arnolie, (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$8,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was working at Footlocker in the Esplanade Mall.<sup>2</sup> The Claimant alleged that he works on commission and lost sales due to a general lack of business following the Deepwater Horizon oil spill.<sup>3</sup> Specifically, the Claimant stated that “tourists, shrimpers, fisherman, etc. cannot make purchase, so wages were decreased.”<sup>4</sup>

The Claimant alleged that the lack of business resulting from the oil spill caused him to sustain an \$8,000.00 loss of earnings, which the Claimant now seeks from the OSLTF.

### ***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,

<sup>1</sup> Optional OSLTF Claim Form, received on 5 December 2011.

<sup>2</sup> PHONECON: NPFC Staff and the Claimant, 5 December 2011.

<sup>3</sup> Optional OSLTF Claim Form, received on 5 December 2011.

<sup>4</sup> Optional OSLTF Claim Form, received on 5 December 2011.

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:

- Optional OSLTF Claim Form, received on 5 December 2011;
- 2010 Form 1040A, showing adjusted gross income of \$23,827.00;
- 2009 Form 1040A, showing adjusted gross income of \$22,168.00;
- 2008 Form 1040, showing adjusted gross income of \$21,318.00;
- Letter from the Claimant to the GCCF, undated;
- Copy of the Claimant's driver's license.

Prior to presentation to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF seeking \$7,000.00 in loss of profits and earnings.<sup>5</sup> The Claimant was assigned Claimant ID # 3164247 and the EAP claim was assigned claim # 219030.<sup>6</sup> This claim was denied by the RP/GCCF.

The Claimant then submitted a First Quarter Interim Claim (ICQ12011) to the RP/GCCF, seeking \$10,000.00 in loss of profits and earnings.<sup>7</sup> The ICQ12011 was assigned claim # 9274980 and was also denied by the RP/GCCF.<sup>8</sup>

On 5 December 2011, the Claimant submitted this claim to the NPFC, seeking \$8,000.00 in loss of profits and earning capacity damages.<sup>9</sup> Because the Claimant has previously submitted a claim to the RP/GCCF alleging the same damages as currently before the NPFC, in an amount less than or equal to the amount presented in this claim, the NPFC may fully adjudicate this claim for \$8,000.00 in loss

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<sup>5</sup> GCCF United States Coast Guard Report, 23 December 2011.

<sup>6</sup> GCCF Claimant Status, accessed on 11 January 2012.

<sup>7</sup> GCCF United States Coast Guard Report, 23 December 2011.

<sup>8</sup> GCCF Claimant Status, accessed on 11 January 2012.

<sup>9</sup> Optional OSLTF Claim Form, received on 5 December 2011.

of profits and earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>10</sup> Accordingly, this Claim Summary Determination addresses the merits of both of the Claimant's GCCF claims, namely GCCF claim #'s 219030 and 9274980 up to the amount presented to the NPFC.

### **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 loss of profits and earning capacity damage claim, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a financial loss, and (2) that the loss was caused by the discharge or substantial threat of discharge of oil.

This requires that the Claimant provide documentary proof of lost income, including evidence regarding the nature of the Claimant's employment, and how his employment was affected by the Deepwater Horizon oil spill. However, the Claimant's original submission to the NPFC included only copies of income tax returns, an OSLTF Optional Claim Form, and a letter from the Claimant previously written to the GCCF.

The NPFC contacted the Claimant via phone, and through certified letter, requesting that the Claimant provide certain evidence to further develop and explain his claim.<sup>11</sup> The letter, dated 10 December 2011, requested that the Claimant provide a response within 14 days. As of the date of this determination, the Claimant has not responded to the NPFC's request for additional information. Therefore, the NPFC does not have evidence sufficient to indicate that the Claimant's employment was in any way affected by the oil spill.

Based on documentation included in the Claimant's original submission to the NPFC, the Claimant did not sustain a loss of income in 2010. The Claimant's federal tax returns indicate that the Claimant reported adjusted gross income for 2008, 2009 and 2010 of \$21,318.00, \$22,168.00, and \$23,827.00, respectively.<sup>12</sup>

This claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he sustained a financial loss in the amount of \$8,000.00, 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: *1/12/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>10</sup> 33 C.F.R. § 136.103(a).

<sup>11</sup> The NPFC contacted the Claimant via phone on 5 and 8 December 2011. The NPFC mailed a certified letter to the Claimant, requesting additional information on 10 December 2011.

<sup>12</sup> 2010 Form 1040A, 2009 Form 1040A, 2008 Form 1040