

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
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8986

5890/DWHZ
25 January 2012

Larry Duncan
[REDACTED]

Re: Claim Number: N10036-1599

Dear Mr. Duncan:

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 your claim number N10036-1599 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. If, however 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 N10036-1599.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1599
Claimant	Larry Duncan
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$14,000.00

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 08 December 2011, Larry Duncan, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$14,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant worked at Tops'1 Beach and Racquet Resort (Tops'1) as a contract employee for Uni-Star Management.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, the tourism industry in the Destin, Florida region collapsed.² As a result of the collapse of Destin's tourism industry, the Claimant asserts he was laid-off from his job and subsequently suffered reduced income.³

The Claimant provided the following explanation regarding the calculation of his sum certain of \$14,000.00: he noted next to his sum certain that \$14,000.00 reflected one year of wages.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury,

¹ Optional OSLTF Claim Form signed 29 November 2011 and received 08 December 2011, Letter from Tops'1 Beach and Racquet Resort [undated].

² Optional OSLTF Claim Form signed 29 November 2011 and received 08 December 2011.

³ Optional OSLTF Claim Form signed 29 November 2011 and received 08 December 2011.

⁴ Optional OSLTF Claim Form signed 29 November 2011 and received 08 December 2011.

destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 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

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form dated 29 November 2011 and received 08 December 2011;
- Letter from Tops'l Beach and Racquet Resort [undated];
- Letter from Uni-Star Management, Inc. [undated];
- 2010 Form 1099-MISC from Elite Building Maintenance;
- 2010 Form 1099-MISC from Land of Promise USA, Inc.;
- 2010 Form 1099-MISC from Eastern Hospitality Management, LLC.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Months Claim with the GCCF for loss of profits and impairment of earnings capacity on 23 September 2010 in the amount of \$13,536.00.⁵ The Claimant was assigned Claimant ID # 3032496 and Claim ID # 86417. The EAP was denied on 07 December 2010.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter for Claimant's GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the tourism industry in the Destin, Florida region collapsed. As a result of the drop in tourism, the Claimant was laid-off from his job at Tops'l. The NPFC deems that Claimant's GCCF claim as properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1599 considers and addresses the claim presented to the responsible party; specifically, GCCF Claim ID #'s 86417 (EAP).

NPFC Determination

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 an EAP Six Month Claim for loss of profits and impairment of earnings capacity in the amount of \$13,536.00 to the GCCF.⁷ The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$14,000.00 to the NPFC.⁸ Any claimed amount of damages exceeding \$13,536.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

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 documentation presented by the Claimant.

The remainder of the Claim is denied because the Claimant fails to prove that his alleged loss in the amount of \$13,536.00 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.

⁵ Report from the GCCF dated 23 January 2012.

⁶ GCCF Denial Letter dated 07 December 2010.

⁷ Report from the GCCF dated 23 January 2012.

⁸ Optional OSLTF Claim Form signed 29 November 2011 and received 08 December 2011.

The Claimant asserts that due to the Deepwater Horizon oil spill, the tourism industry in the Destin, Florida region collapsed.⁹ As a result of the collapse of the tourism industry, the Claimant asserts he was laid-off from his job at Tops'l and subsequently suffered reduced income.¹⁰ The Claimant, however, fails to provide a connection between the Deepwater Horizon oil spill and a reduction in income from being laid-off at Tops'l. The Claimant included in his submission to the NPFC financial information from 2010 as well as letters from Tops'l and Uni-Star Management.¹¹

In an effort to verify the effect of the Deepwater Horizon oil spill on the Claimant's income, the NPFC made a formal request for additional information.¹² The NPFC requested the following items: full and complete Federal Tax Returns, all Form W-2's and Form 1099's from 2008-2010 and a record of all unemployment benefits received from 2010 to the present.¹³ This letter was delivered to the Claimant's address on 19 December 2011.¹⁴ As of the writing of this determination, however, no response has been received from the Claimant regarding any of the above listed items. Accordingly, the claimant fails to provide a complete accounting of his income from 2008-2010. Thus, based upon the information provided to the NPFC, the Claimant fails to prove that he suffered a loss due to the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to meet his burden to demonstrate either his alleged loss or that his alleged loss was due to the injury, destruction, or loss of real property, personal 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 Review: *1/25/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ Optional OSLTF Claim Form signed 29 November 2011 and received 08 December 2011.

¹⁰ Optional OSLTF Claim Form signed 29 November 2011 and received 08 December 2011, Letter from Tops'l Beach and Racquet Resort [undated].

¹¹ For a complete listing of the documentation provided by the Claimant, see The Claimant's Submission to the OSLTF above.

¹² NPFC Request for Additional Information dated 14 December 2011.

¹³ NPFC Request for Additional Information dated 14 December 2011.

¹⁴ United States Postal Service, Tracking # 70111570000148028306, delivered 3:18pm on 19 December 2011.