

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 9075

5890/DWHZ
07 February 2012

Henry Lee
[REDACTED]

Re: Claim Number: N10036-1606

Dear Mr. Lee:

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 N10036-1606 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 N10036-1606.

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	N10036-1606
Claimant	Henry Lee
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$36,972.00

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 13 December 2011, Henry Lee, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$36,972.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant did not provide a description of the nature, extent or cause of damages claimed.¹

The Claimant did not provide an explanation regarding the calculation of their sum certain of \$36,972.00.

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, 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

¹ Optional OSLTF Claim Form received 13 December 2011

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:

- OSLTF Claim Form signed 02 December 2011 and received 13 December 2011;
- 2010 Form 1099-MISC from Acme Truck Line, Inc.;
- 2010 Form 1099-G from Louisiana Workforce Commission;
- 2010 Form 1099-MISC from Blood Out Productions;
- 2010 Profit and Loss Statement;
- 2010 Form 1040 Individual Tax Return;
- 2010 Form W-2 Wage and Tax Statement from Triple F. Oilfield Service, LLC;
- 2010 Form W-2 Wage and Tax Statement from Henry Howard Services, LLC;
- 2010 Form W-2 Wage and Tax Statement from Acme Truck Line, Inc., LLC;
- 2010 Form 1099-R from Southern Farm Bureau Life Insurance Company.

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final (FRF) Claim with the GCCF for loss of profits and impairment of earnings capacity on 12 September 2011 in the amount of \$36,972.00.² The Claimant was assigned Claimant ID # 1631200 and Claim ID # 9487805. The FRF Claim was denied on 21 September 2011.³

Based upon the evidence provided by the Claimant, it appears that the Claimant's GCCF claim is the same as the claim before the NPFC, in that the Claimant is seeking \$36,972.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill. The NPFC deems that the Claimant's GCCF claim was properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1606 considers and addresses the claim presented to the responsible party; specifically, GCCF Claim ID # 9487805 (FRF).

² Report from the GCCF dated 01 February 2012.

³ GCCF Denial Letter dated 21 September 2011.

NPFC Determination

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 claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$36,972.00 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.

The Claimant failed to provide any information that would provide a connection between the Deepwater Horizon oil spill and his alleged loss of profits and impairment of earnings capacity. The Claimant included in his submission to the NPFC, financial information from 2010, but did not include a description of the nature and extent of damages claimed, how the incident caused the damage, or actions taken by the Claimant to avoid or minimize damages.

Nevertheless, 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.⁴ The NPFC requested the following items: a letter of explanation by the Claimant's employer indicating how damages were a direct result of the Deepwater Horizon oil spill, signed copies of tax returns for 2008-2009 including all schedules, all 1099s for 2008-2009, W-2 forms for 2008-2009 from all employers and the most recent pay stub for all employers in 2011. This letter was delivered to the Claimant's address on 20 December 2011.⁵ As of the writing of this determination; no response has been received from the Claimant regarding any of the above listed items. Accordingly, the Claimant failed to provide a description of the nature, extent and cause of damages claimed, or a complete accounting of income from 2008-2009 that would prove a loss occurred due to the oil spill. Further, the Claimant has provided no evidence to describe the causal relationship between his alleged loss and the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate that there was an alleged loss in the amount claimed and that the alleged loss was a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *2/7/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ NPFC Request for Additional Information dated 13 December 2011.

⁵ United States Postal Service, Tracking # 70111570000148028108, delivered 8:45am on 20 December 2011.