

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1610
Claimant	: Alvin Kinler
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$118,800.00

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 15 December 2011, Steven F. Griffith Sr., attorney for Alvin J. Kinler, (collectively, the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$118,800.00 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 was employed by Houma Industries as a salesman in the southeast Louisiana region.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, his customers in the oil and gas industries have cancelled and reduced projects.²

As a result of the reduced number of customers, he suffered reduced salary and reduced commission and these reductions affected his overall income.³ Claimant asserted that his former place of employment, Houma Industries, made reductions in salary and commission due to the Deepwater Horizon oil spill.⁴ Claimant was dismissed from his employment with Houma Industries in November 2010.

The Claimant provided the following explanation regarding the calculation of his sum certain of \$118,800.00: the Claimant listed his previous job's monthly earnings of \$9,550.00 and subtracted his new job's earnings of \$6,250.00 for a difference of \$3,300.00.⁵ He then multiplied this by twelve representing one full year's lost compensation of \$39,600.00.⁶ He then multiplied this number by three, representing three years of lost wages for a total of \$118,800.00.⁷ The Claimant then adopted this number as his sum certain.⁸

¹ GCCF Interim Payment Claim Form dated 15 February 2011.

² GCCF Interim Payment Claim Form dated 15 February 2011.

³ GCCF Interim Payment Claim Form dated 15 February 2011.

⁴ GCCF Interim Payment Claim Form dated 15 February 2011.

⁵ Document titled 'Recap of Losses for the Claimant'.

⁶ Document titled 'Recap of Losses for the Claimant'.

⁷ Document titled 'Recap of Losses for the Claimant'.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment Six Months Claim (EAP) with the GCCF for loss of profits and impairment of earnings capacity on 29 September 2010 in the amount of \$19,461.76.⁹ The Claimant was assigned Claimant ID # 3049862 and Claim ID # 103940. The EAP was denied.¹⁰ Additionally, the Claimant filed an Interim Payment Claim Quarter II 2011 (ICQ22011) with the GCCCF for loss of profits and impairment of earnings capacity on 20 April 2011 in the amount of \$118,800.00.¹¹ The Claimant was assigned Claim ID # 9363254. The ICQ22011 was denied on 20 September 2011.¹²

The NPFC contacted Houma Industries to verify the Claimant's assertions. Houma Industries informed the NPFC that the moratorium involving offshore drilling put in place after the Deepwater Horizon oil spill directly impacted the company.¹³ Further, "in November 2010 the owners of Houma Industries, Inc. made the decision to cease all operations and began the process of permanent closure. While the BP Oil Spill in April 2010 did have a significant impact on the business operations of the company and contributed to the decision to close the business, the decision was not entirely based on or directly related to the oil spill."¹⁴

Based on this information the NPFC determined that the Claimant's alleged loss of profits was not 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 NPFC denied the claim on March 8, 2012.

REQUEST FOR RECONSIDERATION:

The Claimant requested reconsideration via his legal representative, Mr. Steven Griffith, which was received by the NPFC on April 4, 2012 via certified mail. The Claimant provided a one-page letter requesting reconsideration. The Claimant provided a copy of an email trail between Mr. Manix, CFO of Houma Industries, LLC and the NPFC dated February 13, 2012.¹⁵ The email from Mr. Manix to the NPFC was in response to a summary email Mr. Manix had originally received from the NPFC dated February 10, 2012 recapping a phone conversation LCDR Fisher had with Mr. Manix originally on February 10, 2012 regarding the Deepwater Horizon oil spill and effects upon Houma Industries, LLC.

The Claimant asserts on reconsideration that "the email makes it unequivocally clear that BP played a major part in the termination of Mr. Kinler's position with his company."¹⁶ Additionally, the Claimant asserts that other people who were similarly situated with Mr. Kinler have been paid by BP large compensation figures for not being able to work after the BP explosion.

NPFC Determination on Reconsideration

⁸ Document titled 'Recap of Losses for the Claimant'; Optional OSLTF Claim Form signed 06 December 2011 and received 15 December 2011.

⁹ Report from the GCCF dated 16 February 2012.

¹⁰ Report from the GCCF dated 16 February 2012.

¹¹ Report from the GCCF dated 16 February 2012.

¹² GCCF Denial Letter dated 20 September 2011.

¹³ PHONECON between the NPFC and Houma Industries dated 10 February 2012.

¹⁴ Email between the Claimant and Houma Industries dated 13 February 2012.

¹⁵ This February 13, 2012 e-mail is discussed above.

¹⁶ March 22, 2012 letter from Mr. Griffith, Sr. requesting reconsideration of the claim.

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The Claimant based his request for reconsideration on the February 13, 2012 e-mail between Houma Industries and the NPFC. This e-mail was in the administrative record and considered by the NPFC when it determined to deny the claim on March 8, 2012; therefore, Claimant provided no new information on reconsideration.

Additionally, the February 13, 2012 e-mail notes that Houma Industries took a certain position in 2011 in responding to claims by employees for compensation related to the BP Oil Spill. "Any employee claims were totally independent of the company and the company took no position on the propriety of the claims." Therefore, the February 13, 2012 e-mail does not provide support for Claimant's assertion that other people similarly situated with the Claimant received large compensation figures for not being able to work after the oil spill because Houma Industries remained independent as to its employees' claims to BP and/or GCCF.

Further, even if Claimant would be entitled to reimbursement (and he is not), he asserts that he lost \$118,800 in lost profits. He calculated the difference between his salary and commissions in 2009 (at Houma Industries) and his lost salary for November and December 2010 to his prospective salary and commissions at his new employment. He then multiplied the difference by three, calculating a three-year projected loss. Claimant was unemployed from November 2011 to January 2012, or approximately two months; his three-year alleged loss is projected into the future. OPA provides that the Fund is available to *reimburse* claimants for *uncompensated* removal costs and damages; it is not available to pay future alleged damages.

Based on the above the claim is denied on reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *4/17/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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US COAST GUARD
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Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
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5890
4/17/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6654

A Professional Law Corporation
ATTN: Steven Griffith
13358 River Road
P.O. Box 999
Destrehan, LA 70047

RE: Claim Number: N10036-1610

Dear Mr. Griffith:

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 claim number N10036-1610 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Copy: Alvin J. Kinler
[REDACTED]

USPS Certified Receipt: 7011 1570 0001 4802 6661

Encl: Claim Summary / Determination Form