

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

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5890/DWHZ
8 March 2012

Cobb Masonry
[REDACTED]
31 Washington Ave.
Eatonville, FL 32810

Re: Claim Number: N10036-1616

Dear [REDACTED]:

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 N10036-1616 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 N10036-1616.

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	N10036-1616
Claimant	Cobb Masonry
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$100,000.00

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 16 November 2011, Mr. Lee Cobb, on behalf of Cobb Masonry (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$100,000.00 in loss of profits and impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

Prior to the oil spill, the Claimant was working as a subcontractor for various construction companies in Mobile, Alabama.² The Claimant alleged that the oil spill resulted in a reduction in the availability of construction work, causing the Claimant to sustain losses of approximately \$10,000.00 per week.³ The Claimant also specifically alleged to have sustained a financial loss due to the cancellation of a construction contract which would have required the Claimant to lay bricks for a home to be built in Gulf Shores, Alabama.⁴ The Claimant alleged that the contract was cancelled due to the effects of the Deepwater Horizon oil spill, and states that he would have earned revenue of \$17,500.00 had the contract been completed.⁵

In total, the Claimant alleged to have sustained total losses of \$100,000.00 as a result of the Deepwater Horizon oil spill.

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

¹ Optional OSLTF Claim Form, signed on 19 July 2011.

² Letter from the Claimant, describing losses, undated. The Claimant stated that he was working for “benchmark Homes, Mitchell Homes, Infinity Homes and Privage Home Builders.”

³ Optional OSLTF Claim Form, signed on 19 July 2011.

⁴ PHONECON: NPFC Staff and Hayes Remodeling representative, 4 January 2012.

⁵ Contract signed by Lee Cobb and Tim Hayes, 30 April 2011.

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, 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, signed on 19 July 2011;
- Letter from the Claimant, describing losses, undated;
- Letter from the Claimant, describing losses, undated;
- Letter from the Claimant to the GCCF, 3 January 2010;
- Contract, signed by Tim Hayes and Lee Cobb, 30 April 2010;
- Form 1099-MISC, showing payment from BES Construction to the Claimant;
- 2009 Form W-2 Wage and Tax Statement;
- Copy of the Claimant's social security card;
- 2005 Alabama Form 40;
- 2005 Alabama Form 8453;
- 2005 Alabama Form 40V;

- 2005 Form 8879;
- 2005 US Form 1040 Main Information Sheet;
- 2005 Form 1040;
- 2005 Schedule EIC (Form 1040A or 1040);
- 2006 Form 1040-ES;
- 2006 Alabama Form 40ES;
- 2006 US Form 1040ES, Estimated Tax Worksheet and Vouchers;
- Cover Sheet, 2006 TTNS;
- 2006 Form 8879;
- 2006 US Form 1040 Main Information Sheet;
- 2006 Form 1040;
- 2006 Schedule C (Form 1040) showing net profit of \$9,512.00;
- 2006 Schedule EIC (Form 1040A or 1040);
- 2006 Form 8913;
- 2006 Alabama Form 40;

Prior to presentment of this claim to the NPFC, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking loss of profits and wages damages in the amount of \$17,500.00.⁶ The Claimant was assigned Claimant ID 3480180 and the ICQ12011 was assigned claim # 9127068. This claim was denied by the RP/GCCF on 22 April 2011.⁷

On 16 November 2011, the Claimant submitted this claim to the NPFC, seeking \$100,000.00 in loss of profits damages.⁸ OPA requires that all claims submitted to the NPFC be first presented to the RP/GCCF.⁹ Any damage amount presented now to the NPFC, which was not first presented to the RP/GCCF, is denied for improper presentment. The NPFC therefore initially denies this claim in the amount of \$82,500.00, as this amount was not first presented to the RP/GCCF. The remainder of this determination shall consider this claim for loss of profits damages in the amount of \$17,500.00 as properly first presented to the RP/GCCF.

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 claim for loss of profits and impairment of earning capacity damages, a claimant must prove (1) that the claimant sustained a financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In his original submission to the NPFC, the Claimant alleged that a contract for which he would have earned revenue of \$17,500.00, was cancelled as a result of the Deepwater Horizon oil spill.¹⁰ He further alleged that the oil spill caused general harm to the construction industry in Mobile, Alabama, preventing him from finding other work.¹¹ According to the Claimant, the

⁶ GCCF United States Coast Guard Report, 23 January 2012.

⁷ GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 April 2011.

⁸ Optional OSLTF Claim Form, signed on 19 July 2011.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ Contract signed by Lee Cobb and Tim Hayes, 30 April 2010.

¹¹ Letter from the Claimant to the NPFC describing losses, undated.

lack of available work caused his business to sustain losses of \$10,000.00 per week for an unspecified period.¹² However, the Claimant failed to provide financial documentation to substantiate his claimed loss amount. He also failed to provide evidence to prove that a construction contract was cancelled as a result of the Deepwater Horizon oil spill.

The NPFC sent the Claimant a letter dated 4 January 2012, via certified mail, requesting certain additional documentation necessary to evaluate this claim.¹³ Among other items, the NPFC requested that the Claimant provide copies of 2008, 2009 and 2010 Federal income tax returns in order to document the Claimant's prior earnings, and to substantiate the claimed loss amount.¹⁴ The NPFC also requested that the Claimant provide information to support his allegation that a certain construction contract was cancelled, and that the cancellation was a result of the oil spill.¹⁵ As of the date of this determination, the Claimant has failed to respond.

This claim is therefore denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained financial loss in the amount of \$100,000.00, 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: *3/8/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² Letter from the Claimant to the NPFC describing losses, undated.

¹³ NPFC Request for additional information, 4 January 2012.

¹⁴ Optional OLSTF Claim Form, signed on 19 July 2011.

¹⁵ NPFC Request for additional information, 4 January 2012.