

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  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 9242

5890/DWHZ  
26 March 2012

Scott Shoemake  
[REDACTED]

Re: Claim Number: N10036-1618

Dear Mr. Shoemake:

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 N10036-1618 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 N10036-1618.

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  
(2) Evidence Presented by the Claimant in Support of Claim N10036-1618

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1618
Claimant	Scott Shoemake
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$188,269.73

### ***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 20 December 2011, Scott Shoemake (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$188,269.73 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 as a purchasing manager for Louisiana System Built Homes, Inc. (LSBH), located in Saint Martinville, Louisiana.<sup>1</sup> LSBH is a modular builder that specialized in the manufacturing of residential, commercial, and temporary structures.<sup>2</sup> Prior to the formation of LSBH in 2007, the Claimant worked full-time as a purchasing manager for Offshore Warriors, Inc., located in Lafayette, Louisiana. Offshore Warriors provided personnel for offshore, onshore, and logistics operations, as well as, transportation logistics and software tracking throughout the Gulf Coast.<sup>3</sup>

The Claimant indicated that Offshore Warriors was the main investor at LSBH's inception in 2007 and, due to this business relationship, he was asked to work for LSBH while continuing to also work for Offshore Warriors.<sup>4</sup> He continued to work for both companies in 2008 and 2009 but, in 2010, he was working solely for LSBH. The Claimant asserted that, due to the Deepwater Horizon oil spill, Offshore Warriors experienced a significant reduction in business and revenue.<sup>5</sup> Due to the reduced stream of revenue, the Claimant stated that Offshore Warriors was unable to continue investing in LSBH. Consequently, without investment money from Offshore Warriors, LSBH was not able to pay creditors and obligations, nor purchase materials needed to

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<sup>1</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

<sup>2</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

<sup>3</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

<sup>4</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

<sup>5</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

construct modular buildings.<sup>6</sup> Ultimately, LSBH went into bankruptcy and all employees were laid off, including the Claimant. As well, the Claimant asserted that, because of the losses experienced by Offshore Warriors, he was unable to go back to work there once he was laid off by LSBH.<sup>7</sup>

### ***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 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.

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<sup>6</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

<sup>7</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

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 the claim, the Claimant presented all of the documentation listed in Enclosure 2.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings in the amount of \$32,640.00 on 25 October 2010.<sup>8</sup> The Claimant was assigned Claimant ID # 3285295 and Claim # 341282. The Claimant received payment in the amount of \$24,100.00 on 29 November 2010.<sup>9</sup> Additionally, the Claimant filed an Interim 2 (ICQ22011) claim with the GCCF for loss of earnings in the amount of \$17,015.76 on 15 April 2011.<sup>10</sup> He was assigned Claim # 9356784. The Claimant was initially paid \$37,024.32<sup>11</sup> on 29 November 2011 for the claim and then received an additional \$9,561.99<sup>12</sup> on 29 December 2011 after the GCCF re-reviewed the claim. The Claimant also filed three additional claims with the GCCF: a Full Review Final (FRF) claim on 19 July 2011 in the amount of \$140,987.60 – Claim # 9419994, an Interim IV (ICQ42011) claim on 06 October 2011 in the amount of \$56,886.00 – Claim # 9508119, and an Interim V (ICQ52012) claim on 09 January 2012 in the amount of \$108,444.42 – Claim # 9554416.<sup>13</sup> These three claims are still under review with the GCCF.<sup>14</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill the Claimant lost his job at LSBH. The NPFC deems that the Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC.<sup>15</sup> Accordingly, this Claim Summary Determination for NPFC claim N10036-1618

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<sup>8</sup> Report from the GCCF, dated 16 February 2012.

<sup>9</sup> Notice of Determination for Emergency Advance Payment

<sup>10</sup> Report from the GCCF, dated 16 February 2012.

<sup>11</sup> Determination Letter on Interim Payment/Final payment Claim, dated 29 November 2011. 6

<sup>12</sup> Re-Review Determination Letter on Interim Payment/Final Payment Claim, dated 29 December 2011.

<sup>13</sup> Report from the GCCF, dated 16 February 2012.

<sup>14</sup> Report from the GCCF, dated 16 February 2012.

<sup>15</sup> The Claimant has been fully satisfied for his EAP and Interim 2 claims; he had a total claimed value of \$49,655.76 for the two claims and was paid \$70,686.31. Thus, the NPFC did not consider those two claims. As well, the NPFC did not consider the Claimant's Interim V claim. In order to have presentment before the NPFC, a claim must have either been denied by the RP or not been settled within 90 days; neither of those scenarios has occurred for this claim to date.

considers and addresses the losses claimed in the claims presented to the responsible party, specifically Claim #'s 9419994 (FRF) and Claim # 9508119 (ICQ42011).

### **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.

This claim is denied because (1) some of the Claimant's alleged damages are for future losses and not compensable under OPA, and (2) he failed to prove his alleged loss was due to the Deepwater Horizon oil spill.

### **Non-Compensable Damages**

The Claimant indicated that his claimed damages to the NPFC included the value of his entire 2012 salary from LSBH.<sup>16</sup> However, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*."<sup>17</sup> Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. Consequently, all losses for future earnings in 2012 asserted by the Claimant are non-compensable under OPA and therefore denied.

### **Failure to Prove Causation**

The remainder of this claim is denied because the Claimant failed to prove he experienced a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that he was laid off from LSBH because of Deepwater Horizon related losses experienced by Offshore Warriors, LSBH's main investor.<sup>18</sup> However, when explaining how the Deepwater Horizon oil spill caused Offshore Warriors' loss, the Claimant indicated that "when the oil spill happened and the moratorium was put into place, none of oil companies were drilling new wells in the Gulf that needed contract personnel."<sup>19</sup> Consequently, the Claimant failed to prove his alleged loss was a result of the Deepwater Horizon oil spill as opposed to other factors such as permitting delays and the drilling moratorium, which are considered intervening causes and thus not a consequence of the oil spill.

Furthermore, information acquired by the NPFC indicated that there were other factors involved in LSBH's bankruptcy. The CEO of LSBH, Aubrey Shoemake, indicated that the company's failure occurred due to payments owed to the company by FEMA for over 2 million in construction costs regarding "Katrina cottages" being built at St. Martinville's International Trace Center.<sup>20</sup> When asked by the NPFC to comment on this information, the Claimant

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<sup>16</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

<sup>17</sup> Emphasis added.

<sup>18</sup> Letter of claim explanation and damage calculation from the Claimant to "whom it may concern," undated.

<sup>19</sup> Claimant's written responses to the NPFC's request for additional information, answer to Question 8.

<sup>20</sup> "LASBH falls into Chapter 7: Unreliable revenue from FEMA blamed on subcontractors," The Teche News, retrieved on 22 March 2012 from: [http://www.techetoday.com/pages/full\\_story/push?article-LASBH+falls+into+Chapter+7+Unreliable+revenue+from+FEMA+blamed+on+subcontractors%20&id=8902963&instance=secondary\\_news\\_left\\_column](http://www.techetoday.com/pages/full_story/push?article-LASBH+falls+into+Chapter+7+Unreliable+revenue+from+FEMA+blamed+on+subcontractors%20&id=8902963&instance=secondary_news_left_column)

admitted that LSBH was already in financial hardship prior to the Deepwater Horizon oil spill, but stated his belief was that LSBH would have continued to stay in business with the aid of investment from Offshore Warriors.<sup>21</sup> Regardless of how much fault is attributed to the delayed FEMA payments versus Offshore Warriors lack of investment ability, considering the relation of Offshore Warriors' loss to the moratorium, the Claimant failed to prove that he was laid off due to the Deepwater Horizon oil spill.

This claim is denied because (1) some of the damages presented by the Claimant are not OPA compensable and (2) the Claimant failed to meet his burden to demonstrate 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 Review: *3/26/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>21</sup> Claimant's written responses to the NPFC's request for additional information, answer to Question 7+6-6++5692+62.

**Enclosure (2)**  
**Evidence Presented by the Claimant in Support of**  
**Claim N10036-1618**

- Optional Oil Spill Liability Trust Fund Claim Form, dated 08 December 2011;
- 2008 Form 1040 Federal Income Tax Return;
- 2008 Louisiana Nonresident Individual Income Tax Return;
- 2008 Form W-2 Wage and Tax Statement from Premier Staffing, Inc. (1);
- 2008 Form W-2 Wage and Tax Statement from Premier Staffing, Inc. (2);
- 2009 Form 1040 Federal Income Tax Return;
- 2009 Louisiana Individual Income Tax Declaration for Electronic Filing;
- 2009 Form W-2 Wage and Tax Statement from Premier Staffing, Inc. (1);
- 2009 Form W-2 Wage and Tax Statement from Premier Staffing, Inc. (2);
- 2010 Form 1040-V Payment Voucher;
- 2010 Form 1040 Federal Income Tax Return;
- 2010 Louisiana Department of Revenue Individual Income Tax Declaration for Electronic Filing;
- 2010 Form W-2 Wage and Tax Statement from Premier Staffing, Inc.;
- 2010 Form 1099-MISC from Deepwater Horizon Oil Spill Trust;
- 2010 Louisiana Workforce Commission Form 1099-G;
- Pay stub summary for Louisiana System Built Homes, Inc. for period 15 January 2008-31 December 2008;
- Pay stub summary for Louisiana System Built Homes, Inc. for period 15 January 2009-30 December 2009;
- Pay stub summary for Louisiana System Built Homes, Inc. for period 08 January 2010-06 August 2010;
- Letter of claim explanation and damage calculation from the Claimant to “whom it may concern,” undated;
- Letter from Louisiana System Built Homes, Inc. to the Claimant dated 16 August 2010;
- Louisiana Workforce Commission Unemployment Benefit Operations Monetary Determination for Benefit Year 12 September 2010 to 10 September 2011;
- Louisiana Workforce Commission Unemployment Benefit Operations Monetary Determination for Benefit Year 27 November 2011 to 24 November 2012;
- Louisiana Workforce Commission Separation Notice Alleging Disqualification;
- Payroll spreadsheet data regarding calculation of the Claimant’s claimed damages;
- Photocopy of the Claimant’s Louisiana Driver License;
- Document titled ‘Details on Financial Calculations for Lost Earnings for 2010 and January-December 2011’;
- GCCF Notice of Determination Emergency Advance Payment dated 29 November 2010;
- GCCF Determination Letter dated 29 November 2011;
- Claimant’s written responses to the NPFC’s request for additional information;
- Photograph of the Claimant’s odometer;
- Odometer Disclosure Statement, dated 20 July 2009;
- Google Maps printout of travel directions;
- Letter from the GCCF indicating Guidepost Review; and
- 2011 Form 1099-G from the Louisiana Workforce Commission.