

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 8382

5890/DWHZ
11 January 2012

Charles E. Truthan
[REDACTED]

Re: Claim Number: N10036-1620

Dear Mr. Truthan:

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 N10036-1620 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 N10036-1620.

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	N10036-1620
Claimant	Charles E. Truthan
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property Damage
Amount Requested	\$2,100.69

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 21 December 2011, Charles E. Truthan, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$2,100.69 for real or personal property damages that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a pilot with the United States Coast Guard Auxiliary and was piloting an aircraft facility patrolling for oil blacks in the Gulf of Mexico at the time of the Deepwater Horizon oil spill.¹ On 17 July 2010, while on patrol, the Claimant's aircraft displayed a drop in oil pressure, causing him to end the patrol and land the aircraft at Destin Air Base.² The Claimant landed the aircraft without incident but a post-landing inspection revealed an oil slick covering the engine cowling, the right side of the fuselage and the right main landing gear.³ An investigation into the cause of the damage revealed that the oil pressure supply line check valve to the turbocharger was damaged.⁴ The Claimant asserts that but for his patrol duties regarding the Deepwater Horizon oil spill, the damage to the supply line check valve, and the resulting damage to the plane, would not have occurred.⁵ As a result of the repair costs for the plane, the Claimant asserts he suffered damages of \$2,100.69 in real or personal property damage.⁶

The Claimant's calculation of \$2,100.69 as his sum certain is reflective of the cost to repair the plane as reflected in an invoice included in the Claimant's submission to the NPFC.⁷

¹ Optional OSLTF Claim Form dated 21 December 2011 and received 21 December 2011.

² Optional OSLTF Claim Form dated 21 December 2011 and received 21 December 2011.

³ Auxiliary Facility Loss or Damage Claim Worksheet dated 04 October 2010.

⁴ Optional OSLTF Claim Form dated 21 December 2011 and received 21 December 2011.

⁵ Optional OSLTF Claim Form dated 21 December 2011 and received 21 December 2011.

⁶ Optional OSLTF Claim Form dated 21 December 2011 and received 21 December 2011.

⁷ Invoice from Miracle Strip Aviation, Inc. dated 27 July 2010.

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. § 136.215, a claimant must establish the following to real or personal property damages:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost of repair or replacement; and
- (d) the value of the property both before and after injury occurred.

Additionally, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish:

- (a) That the property was not available for use and, if it had been, the value of that use;
- (b) Whether or not substitute property was available and, if used, the costs thereof; and
- (c) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

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. § 136.217, the amount of compensation allowable for damaged property is the lesser of:

- (a) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- (b) The difference between value of the property before and after the damage; or
- (c) The replacement value.

Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.

Compensation for a claim for loss of profits or impairment of earning capacity under § 136.213(b) is limited to that allowable under § 136.235.

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 OSLTF Claim Form dated 21 December 2011 and received 21 December 2011;
- Email from the Claimant to the NPFC dated 20 December 2011;
- Invoice from Miracle Strip Aviation, Inc. dated 27 July 2010;
- Memo from LTJG Jason Hennigan to Commander, Seventh Coast Guard District dated 11 December 2010;
- Auxiliary Facility Loss or Damage Claim Worksheet dated 04 October 2010.

Prior to presenting this Claim to the NPFC, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF for real or personal property damages.⁸ The Claimant was assigned Claimant ID # 3513637 and Claim ID # 9358508. The FRF1 Claim was denied on 12 May 2011.⁹ Additionally, the Claimant filed a Full Review Final (FRF2) Claim with the GCCF for real or personal property damages.¹⁰ The Claimant was assigned Claim ID # 9439479. The FRF2 Claim was denied on 30 September 2011.¹¹

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's airplane facility suffered mechanical damage that necessitated repairs. The NPFC deems that the Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1620 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 9358508 (FRF1) and 9439479 (FRF2).

⁸ GCCF Claimant Status page.

⁹ GCCF Denial Letter dated 12 May 2011.

¹⁰ GCCF Claimant Status page.

¹¹ GCCF Denial Letter dated 30 September 2011.

NPFC Determination

The claim is 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 claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$2,100.69 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.

Under 33 CFR § 136.1, the OSLTF is available to pay costs for certain uncompensated damages, including damage to real or personal property “resulting from the discharge, or substantial threat of discharge of oil”. A Claimant is also required under 33 CFR § 136.215(a) to provide evidence to demonstrate (1) an ownership or leasehold interest in the property; (2) that the property was injured or destroyed; (3) the cost of repair or replacement and (4) the value of the property both before and after the injury occurred.

Here, the Claimant asserts that due to the Deepwater Horizon oil spill, his aircraft facility suffered extensive damage and required repairs totaling \$2,100.69.¹² Although the Claimant’s facility suffered damage¹³ while flying in support¹⁴ of the oil spill cleanup efforts, the aircraft was not damaged or destroyed by oil emanating from the Macondo well in Mississippi Canyon Block 252 nor was it damaged as a result of a removal activity. Rather, the aircraft facility was damaged due to a mechanical malfunction of a part contained inside the aircraft.¹⁵ Accordingly, this claim is denied because the Claimant failed to meet his burden to prove that his aircraft was damaged 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: *1/11/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

¹² Optional OSLTF Claim Form dated 21 December 2011 and received 21 December 2011.

¹³ Invoice from Miracle Strip Aviation, Inc. dated 27 July 2010.

¹⁴ Optional OSLTF Claim Form dated 21 December 2011 and received 21 December 2011.

¹⁵ Auxiliary Facility Loss or Damage Claim Worksheet dated 04 October 2010.