

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
Staff Symbol: (CA)
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3022

5890/DWHZ
2 April 2012

Law Offices of Michael Herron
ATTN: Michael Herron, Esq.
1745 W Fletcher Avenue
Tampa FL 33612

RE: Claim Number: N10036-1621

Dear Mr. Herron:

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 N10036-1621 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. 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 N10036-1621.

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

CC: Number: 7011 1570 0001 2446 3039



CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1621
Claimant	Paul G Bhasin
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$224,213.00

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 22 December 2011, Paul G Bhasin (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$224,213.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant started New Wave Health Products, LLC in November 2007 as a retail gift store in Clearwater Florida.¹ The Claimant alleges that a large part of his business was generated from tourists visiting the Clearwater area.² The owner decided after the Deepwater Horizon oil spill that his business was too dependent upon tourism to continue operations.³ The owner dissolved the business in June of 2010.⁴

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 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. § 136.231, a claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant *sustaining* the loss or impairment.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

¹ See narrative regarding New Wave Health Products dba Unique Creations dated 14 March 2011.

² See narrative regarding New Wave Health Products dba Unique Creations dated 14 March 2011.

³ See narrative regarding New Wave Health Products dba Unique Creations dated 14 March 2011.

⁴ See narrative regarding New Wave Health Products dba Unique Creations dated 14 March 2011.

- (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 his claim, the Claimant provided the following:

- 1) Optional OSLTF claim form dated 08 November 2011.
- 2) Law offices of Michael Herron representation letter dated 14 December 2011.
- 3) Narrative of the claim dated 14 March 2011.
- 4) Sales for 2010 showing decline post spill (exhibit A).
- 5) Costs to close business (exhibit B).
- 6) Lost profits calculation for 20 April 2010 through 31 March 2011 (exhibit C).
- 7) Loss of profits calculation from April 2011 through April 2013 (exhibit D).
- 8) Loss of Investment calculation (exhibit E)
- 9) Copies of FL Department of Revenue quarterly tax reports from January 2009 through December 2010.
- 10) 2010 Form 1040 US Individual Income Tax Return.
- 11) 2009 Form 1040 US Individual Income Tax Return.
- 12) 2008 Form 1040 US Individual Income Tax Return.

- 13) 2007 Form 1040 US Individual Income Tax Return.
- 14) Loan Statement (exhibit F)
- 15) Authority to Represent dated (exhibit F)

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$224,213.00.

Prior to presenting his claim to the NPFC, the Claimant filed a Full Review Final claim (FRF) with the GCCF on 17 March 2011 in the amount of \$224,213.00.⁵ He was assigned Claimant ID #1611946 and claim #9326742. The GCCF report dated 16 February 2012 states that the “final payment offer accepted and release mailed.”⁶ The Claimant acknowledged the \$25,000.00 offer from the GCCF on his OSLTF claim form.⁷ Based upon the evidence provided by the Claimant, it appears that the subject matter for his GCCF FRF claim is the same as the subject matter of his claim before the NPFC, i.e., that he had an impairment of earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant’s GCCF FRF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1621 considers and addresses the earnings claimed to the responsible party, specifically; GCCF Claim # 9326742 (FRF).

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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

As an initial matter, the NPFC denies the Claimant in the amount of \$20,795.00 because future damages as presented by the Claimant are not compensable under OPA. Here, the Claimant has claimed 25 months of lost future profits. Pursuant to 33 C.F.R. 136.235, the amount of compensation allowable is “limited to the actual net reduction or loss of earnings or profits *suffered*” (emphasis added).

The remainder of this claim is denied because the Claimant has not proven that he has suffered the remainder of the loss alleged as a result of the Deepwater Horizon incident. The Claimant alleges their retail company had an impairment of earnings capacity as a result of the Deepwater Horizon oil spill.⁸ The Claimant submitted their business’s taxes, profit and loss statements, and Florida quarterly sales taxes.⁹ Based upon our review of the documentation provided, the NPFC makes the following observations:

- According to the Claimant’s 2009 taxes the store had revenues in the amount of \$7,999.00.¹⁰ In 2010, the Claimant increased their revenues 56% to \$12,449.00.¹¹ There is no evidence from the taxes that sales were impacted in 2010 due to the Deepwater Horizon oil spill.

⁵ Report from the GCCF dated 16 February 2012.

⁶ Report from the GCCF dated 16 February 2012.

⁷ Optional OSLTF claim form dated 08 November 2011.

⁸ See narrative regarding New Wave Health Products dba Unique Creations dated 14 March 2011.

⁹ See Claimant’s submission.

¹⁰ 2009 Form 1040 US Individual Income Taxes, schedule C.

¹¹ 2010 Form 1040 US Individual Income Taxes, schedule C.

- According to the Claimant's profit and loss statements for the months of January through April 2009 the company earned \$3,467.00.¹² In 2010, for January through April, the company's earnings were \$901.00¹³ a decline of 74% compared to the same months in 2009. January through April 2010 were unaffected by the oil spill which occurred 20 April 2010, thus the company experienced a precipitous earnings decline of 74% in the months preceding the oil spill.
- According to the Claimant's 2009 Florida Sales Tax forms for the first quarter (January through March) the company had gross sales of \$2,765.32.¹⁴ In 2010 for the first quarter the company had gross earnings of \$717.00;¹⁵ again, a decline of 74% prior to the oil spill.

Based upon the financial documentation submitted to the NPFC as demonstrated by the observations noted above, the evidence shows a significant financial decline prior to the oil spill. The evidence presented does not establish, by a preponderance of the evidence that the company went out of business in May 2010 due to the Deepwater Horizon oil spill as opposed to other economic reasons already affecting the business.

The Claimant also alleges a decrease in tourism to the Clearwater, Florida area was the cause of his financial decline. NPFC staff researched the St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile (the Visitor Profile). The Visitor Profile shows visitors to hotels, motels, condos, and campgrounds increased from 2009 through 2010 year over year by 1.7%.¹⁶ In 2009, total visitors to Pinellas County were 4,991,410 while in 2010 total visitors increased 1% to 5,041,200.¹⁷ Furthermore the total expenditures for 2010 by visitors increased marginally by .1% from 2009.¹⁸ Thus it is evident to the NPFC that neither tourism nor visitor expenditures decreased from 2009 to 2010 in the Clearwater, Florida area. The Claimant has not provided evidence to differentiate how his business was somehow affected by declines which were not experienced throughout the rest of their county.

Accordingly, this claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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: *4/2/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹² 2009 P&L January through April = \$878.00 plus \$1,129.00 plus \$758.00 plus \$702.00 equals \$3,467.00.

¹³ 2010 P&L January through April = \$228.00 plus \$271.00 plus \$219.00 plus \$183.00 equals \$901.00.

¹⁴ State of Florida Department of Revenue tax return dated 09 April 2009.

¹⁵ State of Florida Department of Revenue tax return dated 12 April 2010.

¹⁶ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile 2009 visitors 2,502,810 increase in 2010 to 2,545,900.

¹⁷ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile

¹⁸ St. Petersburg/Clearwater Area Convention and Visitors Bureau Annual 2010 Visitor Profile 2009 expenditures totaled \$3,185,979,900 increase in 2010 to \$3,189,281,900.