

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 8733

5890/DWHZ  
8 February 2012

Mr. Ronald Petitfrere  
[REDACTED]

Re: Claim Number: N10036-1623

Dear Mr. Petitfrere:

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 N10036-1623 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 N10036-1623.

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	N10036-1623
Claimant	Ronald Petitfrere
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$10,000.00

### ***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 19 January 2012, Mr. Ronald Petitfrere (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant alleged that at the time of the oil spill, he was working at “the Key Largo Tavenier” and that he sustained a loss of income due to lack of business following the Deepwater Horizon oil spill.<sup>2</sup> The Claimant alleged that his loss stemmed from (1) public perception that seafood was unsafe, and (2) decreases in tourism.<sup>3</sup>

The Claimant alleged to have sustained a loss of earnings totaling \$10,000.00.<sup>4</sup>

### ***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. § 136.233 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.

<sup>1</sup> Optional OSLTF Claim Form, signed on 13 December 2011.

<sup>2</sup> Optional OSLTF Claim Form, signed on 13 December 2011.

<sup>3</sup> Optional OSLTF Claim Form, signed on 13 December 2011.

<sup>4</sup> Optional OSLTF Claim Form, signed on 13 December 2011.

- (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 13 December 2011;

Prior to presentation to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF seeking loss of profits and earnings damages in the amount of \$1,310.40.<sup>5</sup> The Claimant was assigned GCCF Claimant ID #3269562 and the EAP claim was assigned GCCF Claim # 325486.<sup>6</sup> This claim was denied on 23 October 2010.<sup>7</sup>

The Claimant then presented one Full Review Final Claim (FRF) to the RP/GCCF. In FRF, the Claimant sought loss of profits and wages damages in the amount of \$3,539.40.<sup>8</sup> FRF1 was assigned GCCF Claim # 9160131 and was denied on 5 January 2011.<sup>9</sup>

On 22 December 2011 the Claimant presented this claim to the NPFC, seeking \$10,000.00 in loss of profits and earnings capacity damages.<sup>10</sup> Claims previously presented by the Claimant to the RP/GCCF total \$4,849.80. OPA requires that any claim presented to the NPFC, be first

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<sup>5</sup> GCCF United States Coast Guard Report, 23 January 2012.

<sup>6</sup> GCCF United States Coast Guard Report, 23 January 2012.

<sup>7</sup> GCCF Claimant Status, accessed on 6 February 2012.

<sup>8</sup> GCCF United States Coast Guard Report, 23 January 2012.

<sup>9</sup> GCCF United States Coast Guard Report, 23 January 2012

<sup>10</sup> Optional OSLTF Claim Form, dated 13 December 2011.

presented to the RP. Because the Claimant has presented damages to the NPFC, which exceed the amount of damages presented to the RP by \$5,150.20, this claim is initially denied in this amount.<sup>11</sup>

### **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 loss of profits claim, a claimant must demonstrate (1) that the claimant sustained a loss of profits or reduction in earning capacity following the oil spill, and (2) that the alleged loss was due to the Deepwater Horizon oil spill.

On 4 January 2012, the NPFC sent the Claimant a letter via certified mail, requesting that the Claimant provide certain documentation regarding his earnings prior to and following the oil spill, as well as documentation regarding the nature of the work he was involved in at the time of the oil spill.<sup>12</sup> As of the date of this determination, the Claimant has failed to respond.

Therefore, the NPFC is unable to determine what type of work the Claimant was engaged in and whether or not he may have been affected by the discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$10,000.00, 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: *2/8/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>11</sup> 33 C.F.R. § 136.103(a).

<sup>12</sup> NPFC Request for additional information, 4 January 2012.