

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2445 2996

5890/DWHZ
10 January 2013

[REDACTED]
c/o Johnson Law Office
P.O. Box 2222
Hickory, NC 28603

Re: Claim Number: N10036-1632

Dear Mr. Johnson:

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 N10036-1632 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 N10036-1632.

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

CC: Mr. Greg Rohr
[REDACTED]

By Certified Mail: 7011 1570 0001 2445 3009

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1632
Claimant	Rohr Services, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$33,320.00

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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 28 December 2011, Mr. Larry Johnson, on behalf of Mr. Greg Rohr, principal of Rohr Services, LLC (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$33,320.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

Claimant is a North Carolina corporation which provides diving worksite representatives for various offshore projects. At the time of the oil spill, the Claimant was in the process of fulfilling a contract to provide services to a certain rig located in the Gulf of Mexico. The location of the rig was such that the Claimant would have been required to travel through an area of the Gulf which was closed as a result of the oil spill, in order to fulfill duties under his contract. As a result, the project was cancelled on April 30, 2010 and was not rescheduled.²

The Claimant seeks to recover \$33,320.00, which he alleged he would have earned had the project not been cancelled.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF 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. 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:

¹ Original submission documents, received on 28 December 2011.

² Original submission documents, received on 28 December 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; and
- (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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

The Claimant submitted the following documentation in support of this claim:

- Original Submission, consisting of 145 pages of supporting documentation;
- Responses to NPFC requests for additional information.
- BP Claims Process, Full and Final Release, Settlement and Covenant Not To Sue, signed on 4 January 2013.

On 14 October 2010, the Claimant submitted a Final Payment claim to the GCCF, in which the Claimant sought to recover \$33,320.00 in loss of profits damages. The Claimant was assigned Claimant ID 2172703 and the Final claim was assigned claim # 9043527. The GCCF denied payment on this claim, prompting the Claimant to resubmit the claim as a Full Review Final (FRF) claim on 4 June 2011. The FRF claim was assigned claim # 9394277 and was also denied by the GCCF.³

On 28 December 2011, the Claimant submitted this claim to the NPFC seeking \$33,320.00 in loss of profits or impairment of earning capacity damages. It appears then, that all damages now presented to the NPFC, have been first presented to and denied by the RP or its representative. As such, OPA presentment requirements have been met.⁴

³ Deepwater Horizon Claims Center USCG Report, 13 August 2012.

⁴ 33 C.F.R. § 136.103(a).

Furthermore, evidence in this claim submission indicates that the Claimant has opted out of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).

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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

According to 33 U.S.C. § 2712(f),

[p]ayment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Information presented by the Claimant indicates that the Responsible Party has compensated the Claimant a total of \$33,320.00 as full and final payment.⁵ The Claimant executed a Release and Covenant Not to Sue in return for final payment on 4 January 2013.⁶ By signing this document, the Claimant has fully settled his claim for damages resulting from the Deepwater Horizon oil spill. In doing so, he has waived any rights to recovery from the NPFC for alleged injuries resulting from effects of the Deepwater Horizon oil spill.

Based on the foregoing, this claim is denied because the Claimant has signed a Full and Final Release in exchange for Final Payment from the Responsible Party, thereby precluding any further payments from the NPFC and OSLTF.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *1/10/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ Full and Final Release, Settlement, and Covenant Not To Sue, signed on 4 January 2013.

⁶ Full and Final Release, Settlement, and Covenant Not To Sue, signed on 4 January 2013.