

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 2446 4333

5890/DWHZ  
24 April 2012

Joshua D. Wilson, Esq.  
Wiggins, Childs, Quinn & Pantazis  
301 19<sup>th</sup> Street North  
Birmingham, AL 35203

Re: Claim Number: N10036-1650

Dear Mr. Wilson:

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 N10036-1650 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 N10036-1650.

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

Copy: Gaston Hunter  


USPS Certified Receipt: 7011 1570 0001 4802 9556

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1650
Claimant	Gaston Hunter
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$140,000.00

### ***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 25 January 2012, Joshua D Wilson, on behalf of Gaston E. Hunter (the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$140,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant was employed as a boat captain on oil supply vessels in the Gulf of Mexico.<sup>1</sup> At the time of the Deepwater Horizon oil spill, the Claimant worked for Kevin Gros Offshore, where he continued to work until 21 July 2010.<sup>2</sup> The Claimant began work at J. Bray Marine on 22 July 2010 and continued to work there full-time until 15 December 2010.<sup>3</sup> The Claimant asserted that he lost his job and has been unable to work due to the Deepwater Horizon oil spill.<sup>4</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

<sup>1</sup> Optional OSLTF Claim Form, dated 24 January 2012.

<sup>2</sup> Letter from KG Offshore to the USCG, dated 09 September 2010.

<sup>3</sup> Letter from Nat Collins (J. Brady Marine) to "Whom It May Concern," dated 15 December 2010.

<sup>4</sup> Optional OSLTF Claim Form, dated 24 January 2012.

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.

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 his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 24 January 2012;
- Letter from Joshua D. Wilson to the NPFC, dated 24 January 2011 [sic];
- Attorney Retainer Agreement, dated 29 October 2011;
- Letter from Nat Collins (J. Brady Marine) to "Whom It May Concern," dated 15 December 2010;
- Letter from the GCCF to the Claimant, dated 29 January 2011;

- Denial Letter on Interim Payment/Final Payment, dated 24 September 2011;
- Deficiency Letter on Interim Payment/Final Payment Claim, dated 07 May 2011;
- Emergency Advance Payment Claim Denial Letter, dated 13 December 2010;
- Letter from the GCCF indicating receipt of Interim Claim, dated 24 January 2011;
- Deficiency Denial Letter on Interim Payment/Final Payment Claim, dated 23 June 2011;
- Letter from KG Offshore to the USCG, dated 09 September 2010;
- 2010 Form W-2 Wage and Tax Statement from Kevin Gros Offshore LLC;
- Form 1040A U.S. Individual Income Tax Return;
- 2009 Form W-2 Wage and Tax Statement from Kevin Gros Offshore LLC;
- Paystubs from J. Brady Marine, LLC for the period: 16 August 2010 through 30 November 2010;
- Photocopy of J. Brady Marine, LLC Business Card;
- 2007 Form 1040 U.S. Individual Income Tax Return;
- 2007 IRA Report from Whitney National Bank, calculated as of 12/31/2007;
- 2007 Form 1099-G from Alabama Unemployment Compensation Agency;
- 2007 Form 1099-R from Whitney National Bank;
- 2007 Form W-2 Wage and Tax Statement from Kevin Gros Offshore LLC;
- 2007 Form W-2 Wage and Tax Statement from Landrum Prof Employer Svs I; and
- Denial Letter on Interim Payment/Final Payment Claim, dated 07 January 2012.

Prior to presenting this claim to the NPFC, the Claimant filed a one month Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 22 November 2010 in the amount of \$12,600.00.<sup>5</sup> He was assigned Claimant ID # 3434063 and Claim # 515630. This claim was denied by the GCCF on 13 December 2010.<sup>6</sup> Additionally, the Claimant filed an Interim II (ICQ22011) claim with the GCCF on 12 April 2011 for loss of earnings in the amount \$25,200.00.<sup>7</sup> He was assigned Claim # 9352456; this claim was denied by the GCCF on 23 June 2011.<sup>8</sup> Lastly, the Claimant filed an Interim III (ICQ32011) claim with the GCCF for loss of earnings on 19 September 2011 in the amount of \$25,200.00.<sup>9</sup> He was assigned Claim # 9492297; this claim was denied by the GCCF on 07 January 2012.<sup>10</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 the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant lost earnings as a boat captain. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC up to \$25,200.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1650 considers and addresses the earnings claimed in the claims presented to the responsible party up to \$25,200.00, specifically; GCCF Claim #'s 515630 (EAP), 9352456 (ICQ22011) and 9492297 (ICQ32011).

Claimant's Optional OSLTF Claim form indicated that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of

<sup>5</sup> Report from the GCCF dated 17 April 2012.

<sup>6</sup> Denial Letter from the GCCF, dated 13 December 2010.

<sup>7</sup> Report from the GCCF dated 17 April 2012.

<sup>8</sup> Deficiency Denial Letter on Interim Payment/Final Payment Claim, dated 23 June 2011.

<sup>9</sup> Report from the GCCF dated 17 April 2012.

<sup>10</sup> Denial Letter on Interim Payment/Final Payment, dated 07 January 2012.

Mexico, on April 20, 2010) against BP (the “MDL”) on 20 April 2011. Although, under the Oil Pollution Act of 1990, the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

## **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) the Claimant failed to present some of the damages claimed to the responsible party (GCCF) and (2) the Claimant failed to prove that his alleged damages occurred as a result of the Deepwater Horizon oil spill.

### 1. Failure to Present Damages

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an EAP claim to the GCCF for \$12,600.00 in loss of earnings and then two interim claims in the amount of \$25,200.00 each for loss of earnings. The Claimant then presented a claim for loss of earnings in the amount of \$140,000.00 to the NPFC. Any claimed amount of damages exceeding \$25,200.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

### 2. Failure to Prove Causation

The Claimant asserted that he lost wages from both Kevin Gros Offshore and J. Brady Marine due to the Deepwater Horizon oil spill.<sup>11</sup> The letter provided by the Claimant from J. Brady Marine indicated that the Claimant was “relieved of his duties due to the BP oil spill and the Governments Moratorium on Offshore Drilling.”<sup>12</sup> The NPFC contacted J. Brady Marine on 24 February 2012, who confirmed with the NPFC that the cause of the Claimant’s loss was the moratorium on off-shore drilling.<sup>13</sup>

Regarding the Claimant’s employment with Kevin Gros Offshore, the letter provided by the Claimant from Kevin Gros Offshore did not have any reference to the Claimant being laid off or any connection to the Deepwater Horizon oil spill.<sup>14</sup> The NPFC made multiple attempts to contact Kevin Gros Offshore regarding the reason for the Claimant’s departure,<sup>15</sup> but Kevin Gros Offshore has not responded to the NPFC to date. However, regardless of the reason for the Claimant’s departure from Kevin Gros Offshore, the NPFC notes that he immediately started a

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<sup>11</sup> Optional OSLTF Claim Form, dated 24 January 2012.

<sup>12</sup> Letter from Nat Collins (J. Brady Marine) to “Whom It May Concern,” dated 15 December 2010.

<sup>13</sup> PHONECON between the NPFC and J. Brady Marine on 24 February 2012.

<sup>14</sup> Letter from KG Offshore to the USCG, dated 09 September 2010.

<sup>15</sup> PHONCALLS to Kevin Gros Offshore on 24 February 2012 and 27 February 2012.

job at J. Brady Marine working full-time when he left; thus there was no loss of employment following his departure from Kevin Gros.<sup>16</sup>

Consequently, the Claimant failed to prove that his alleged loss was due to 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.

This claim is denied because the Claimant failed to (1) present all damages to the responsible party and (2) 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.

Claims Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/24/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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<sup>16</sup> The employer letters provided by the Claimant indicated that the Claimant stopped work at Kevin Gros Offshore on 21 July 2010 and started work full-time at J. Brady Marine on 22 July 2010.