

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 9273

5890/DWHZ
2 April 2012

Jorge Luis Martinez
[REDACTED]

Re: Claim Number: N10036-1651

Dear Mr. Martinez:

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 N10036-1651 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 N10036-1651.

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	N10036-1651
Claimant	Jorge Martinez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$25,000.00

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 24 January 2012, Jorge Luis Martinez (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC), seeking \$25,000.00 in loss of profits and impairment earning capacity.

The Claimant worked for Tampa Ship, LLC, located in Tampa, FL.¹ Tampa Ship, LLC is a commercial shipyard, owned by Edison Chouest Offshore that specializes in conversions, general repair and overhaul of a wide range of vessels.² The Claimant asserted that he was laid off in May of 2010 due to the Deepwater Horizon oil spill; as well, after being hired back five months later, the Claimant stated that he was laid off again in August of 2011.³

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).

¹ Letter from the Claimant to the GCCF, dated 9 November 2011.

² Tampa Ship LLC website, retrieved 29 March 2012 from: <http://www.tampabayship.com/>

³ Letter from the Claimant to the GCCF, dated 9 November 2011.

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 17 January 2012;
- Letter from the Claimant to the GCCF, dated 9 November 2011;
- Federal Tax Returns from 2009 and 2010;
- Form W-2 from Tampa Ship, LLC for 2009 and 2010;
- 2010 Form 1099-G from the State of Florida Agency for Workforce Innovation;
- Bank statements from Regions Bank for the period: 6 December 2008 through 5 January 2011;
- Denial Letter on Interim/Final Payment Claim, dated 22 December 2011; and
- Copy of the Claimant's driver's license, Permanent Resident card, and Social Security card.

Prior to presenting this claim to the NPFC, the Claimant filed an Interim IV (ICQ42011) claim with the GCCF on 14 November 2011 for loss of earnings in the amount of \$20,000.00.⁴ He was assigned Claimant ID # 3565989 and Claim # 9534384. This claim was denied by the GCCF on 22 December 2011.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that the Claimant was laid off from Tampa Ship due to the Deepwater Horizon oil spill. The NPFC deems that the Claimant's GCCF claim was both properly presented to the RP and properly presented to the NPFC up to \$20,000.00. Accordingly, this Claim Summary Determination for NPFC claim N10036-1651 considers and addresses the damages claimed to the responsible party; specifically, GCCF Claim # 9534384 (ICQ42011).

Information obtained by the NPFC 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 Mexico, on April 20, 2010) against BP (the "MDL") on 20 April 2011. Although under the statute, 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

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.

Under 33 C.F.R. § 136.103(a), except for limited exceptions not applicable to the Claimant, all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an Interim IV claim to the GCCF in the amount of \$20,000.00 for loss of earnings. Claimant then presented a loss of profits and impairment of earnings capacity claim to the NPFC seeking damages in the amount of \$25,000.00. Any claimed amount of damages exceeding \$20,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant failed to prove he experienced a financial loss due to the Deepwater Horizon oil spill. The Claimant stated that he was laid off from Tampa Ship LLC, in both May of 2010 and August of 2011, due to the Deepwater Horizon oil spill.⁶ The NPFC contacted Tampa Ship, LLC to verify the Claimant's assertions. The NPFC was informed that there have been no employee reductions at Tampa Ship due to the Deepwater Horizon oil spill.⁷ Tampa Ship conceded that there were layoffs that occurred during

⁴ Report from the GCCF, dated 21 February 2012.

⁵ Denial Letter on Interim/Final Payment Claim, dated 22 December 2011.

⁶ Letter from the Claimant to the GCCF, dated 9 November 2011.

⁷ PHONECON between the NPFC and Tampa Ship on 22 March 2012.

the same time frame as the Deepwater Horizon oil spill, however the timing was coincidental and there was no actual connection between the layoffs and the oil spill.⁸

This claim is denied because the Claimant failed to meet its burden to: (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/2/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁸ PHONECON between the NPFC and Tampa Ship on 22 March 2012.