

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 9693

5890/DWHZ
11 May 2012

Larry Powell
[REDACTED]

Re: Claim Number: N10036-1652

Dear Mr. Powell:

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 N10036-1652 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 N10036-1652.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1652
Claimant	Larry Powell
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$138,774.00

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, Larry Powell (the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$138,774.00 in loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a travelling seafood vendor for S & L Seafood in Lafayette, Louisiana.¹ The Claimant asserted that, due to the Deepwater Horizon oil spill, he was unable to obtain seafood of good quality at an affordable price.² The Claimant asserted that he would have made \$54,500.00 in 2010 had it not been for the Deepwater Horizon oil spill.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

¹ GCCF Full Review Final Payment Claim Form, dated 14 June 2011.

² Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 26 January 2012.

³ GCCF Full Review Final Payment Claim Form, dated 14 June 2011.

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:

- Fax clarifying the Claimant's sum certain, dated 25 January 2012;
- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 26 January 2012;
- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, received 17 January 2012;
- GCCF Full Review Final Payment Claim Form, dated 14 June 2011;
- 2009 Federal Tax Return Transcript, (without Schedule C information);
- Printout from The New York Times online entitled "Tracking the Oil Spill in the Gulf";

- NPFC Incident Report and Transmittal;
- Retail Food Permit Renewal Notice from Louisiana Department of Health, dated 4 May 2011;
- Scale License from Louisiana Department of Agriculture, dated 16 January 2009;
- Copy of application for the USDA Supplemental Nutrition Assistance Program;
- Receipts for Food Stamp Purchases from Michaels Seafood;
- Copy of Application for Permit to Louisiana Department of Health and Hospitals, dated 21 July 2009;
- Blank Trip Ticket from S & L Seafood, dated 21 January 2011;
- Retail Food Inspection Report, dated 08 July 2010;
- Offline Food Benefit Vouchers;
- Various Receipts from Gulf South Inc.;
- Flyer with shrimp prices entitled "Fresh Louisiana Shrimp";
- Receipt from Unlimited Shrimp #1;
- Letter from S & L Seafood to the GCCF, dated 31 October 2010;
- Blank Louisiana Dealer's tickets;
- Printout of online article entitled "Troubled Waters";
- Letter from S & L Seafood, A & P Seafood, and Unlimited Shrimp#1 to "Seafood Vendors and Creditors, et al," dated 18 August 2011; and
- Letter from S & L Seafood to GCCF, dated 27 June 2011.

Prior to presenting his claim to the NPFC, and before the formation of the GCCF, the Claimant received \$15,500.00 from BP in damages.⁴ After the formation of the GCCF, the Claimant filed three claims for loss of profits and earnings to the GCCF, all under Claimant ID # 1058518. Claim # 116079 was an Emergency Advance Payment (EAP) claim filed on 01 October 2010 in the amount of \$18,000.00, Claim # 9394154 was an Interim II (ICQ22011) filed on 02 June 2011 in the amount of \$120,000.00, and Claim # 9399659 was a Full Review Final (FRF) claim filed on 14 June 2011 in the amount of \$109,000.00.⁵ These claims were all denied by the GCCF.⁶

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's lost earnings as a seafood salesman. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC up to \$120,000.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1652 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 116079 (EAP), 9394154 (ICQ22011) and 9399659 (FRF).

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.

⁴ Report from the BP Settlement Transition Program, dated 01 May 2012.

⁵ Report from the BP Settlement Transition Program, dated 01 May 2012.

⁶ Report from the BP Settlement Transition Program, dated 01 May 2012.

This claim is denied because (1) the Claimant failed to make proper presentment of some of the damages claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) the Claimant failed to prove the alleged loss was due to the Deepwater Horizon oil spill; and (3) the Claimant failed to provide

Failure to Make Proper Presentment

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 for \$18,000.00, an Interim 2 claim for \$120,000.00, and a Full Review Final claim for \$109,000.000.⁷ The Claimant then presented a loss of profits and impairment of earnings capacity claim to the NPFC for \$138,774.00. Any claimed amount of damages exceeding \$120,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

Failure to Prove Causation

The Claimant asserted that he lost earnings as a travelling seafood vendor.⁸ However, despite the large amount of information submitted, including assorted tax information, the Claimant failed to provide any paystubs or other financial documentation evidencing any earnings from the sale of seafood. On 23 March 2012, the NPFC requested that the Claimant provide additional information to document his alleged loss and establish a connection between his alleged loss and the Deepwater Horizon oil spill. The NPFC requested that the Claimant provide, among other things, full and complete tax returns from 2008 through 2010, paystubs from S & L Seafood for 2008 through 2010, and sales records for seafood sales from S & L Seafood.⁹ To date, the NPFC has not received any additional information from the Claimant. Consequently, the Claimant failed to prove he experienced a financial loss due to the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant failed to make proper presentment of some of the damages were not properly presented to the responsible party and (2) the Claimant failed to meet his burden to 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, and (3) the Claimant failed to provide the NPFC with all evidence, information and documentation deemed necessary under 33 C.F.R. § 136.105(a) and 136.105(e)(6).

Claims Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *May 11, 2012*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Report from the BP Settlement Transition Program, dated 01 May 2012.

⁸ GCCF Full Review Final Payment Claim Form, dated 14 June 2011.

⁹ Letter from the NPFC to the Claimant, dated 23 March 2012.