

U.S. Department of  
Homeland Security

United States  
Coast Guard

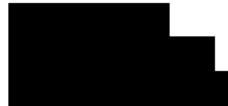


Director  
United States Coast Guard  
National Pollution Funds Center

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 1103

5890/DWHZ  
06 June 2012

Genie Abrams  


RE: Claim Number: N10036-1662

Dear Mr. Abrams:

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 claim number N10036-1662 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. 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 N10036-1662.

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	N10036-1662
Claimant	Genie Abrams
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,000.00

### ***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 01 February 2012, Genie Abrams (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$15,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant works as an independent contractor for various courier jobs around Mobile Alabama.<sup>1</sup> The Claimant uses the name "Rush Delivery Services"<sup>2</sup> and also provided invoices with the name "Hackbarth Delivery Services."<sup>3</sup> The Claimant alleges that he lost business as a result of the Deepwater Horizon oil spill.<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> Letter from Claimant dated 01 December 2011.

<sup>2</sup> Letter from Claimant dated 01 December 2011 under Claimant's name.

<sup>3</sup> Invoices dated 15 April 2010, 13 April 2010, 12 April 2010, and 11 March 2010.

<sup>4</sup> Letter from Claimant dated 01 December 2011 and Optional OSLTF claim form undated.

- (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 his claim, the Claimant submitted:

- Optional OSLTF claim form undated
- Letter of explanation from the Claimant dated 01 December 2011
- January 2008 through December 2010 Profit and Loss Statements for Rush Delivery Service
- City of Mobile application for business license and/or tax account
- Zoning Certification for Rush Delivery Service dated 20 November 2007
- State of Alabama Drivers License copy
- 6 invoices for various companies all dated for 2010
- Choice Logistics Driver Delivery Sheet dated 10 March 2010
- Route 2 Weekly Invoices from 2008 through 2010

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$15,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 16 November 2010 in the amount of \$10,000.00.<sup>5</sup> He was assigned

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<sup>5</sup> Report from the GCCF dated 21 February 2012.

Claimant ID #3403562 and claim #477100 and was denied.<sup>6</sup> Additionally, the Claimant filed a Final claim (FC1) with the GCCF on 07 December 2010 for \$50,000.00.<sup>7</sup> He was assigned claim # 9068292 and was denied.<sup>8</sup> The Claimant filed a Full Review Final claim (FRF) on 04 January 2011 in an undisclosed amount.<sup>9</sup> He was assigned claim #9133035 and was denied.<sup>10</sup> The Claimant further filed an Interim 4 claim (ICQ42011) on 21 October 2011 in the amount of \$25,000.00.<sup>11</sup> He was assigned claim #9496619 and was denied.<sup>12</sup> Lastly the Claimant filed a Final claim (FC2) on 21 October 2011 in the amount of \$50,000.00.<sup>13</sup> He was assigned claim #9498330 and was denied.<sup>14</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings/profits as a result of the Deepwater Horizon oil spill due to impacts upon his delivery service. The NPFC deems each of Claimant's 5 denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1662 considers and addresses the earnings claimed in all of the 5 claims presented to the responsible party, specifically; GCCF Claim #'s 477100 (EAP), 9068292 (FC1), 9133035(FRF), 9496619 (ICQ42011), and 9498330 (FC2).

### **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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

Here, in order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

On 30 March 2012, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim.<sup>15</sup> The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 11 April 2012.<sup>16</sup> The Claimant called the NPFC on 30 April 2012 and asked for an extension to mail in the requested information; NPFC staff granted him the extension. However the Claimant has not sent in the documentation nor returned the NPFC's calls on 14 May 2012 and 29 May 2012, thus the NPFC is proceeding to a determination on the merits.

Regarding the alleged loss of \$15,000.00 submitted to the NPFC, the Claimant provided their January 2008 through December 2011 profit and loss statements. The Claimant's profit and loss

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<sup>6</sup> Report from the GCCF dated 21 February 2012.

<sup>7</sup> Report from the GCCF dated 21 February 2012.

<sup>8</sup> Report from the GCCF dated 21 February 2012.

<sup>9</sup> Report from the GCCF dated 21 February 2012.

<sup>10</sup> Report from the GCCF dated 21 February 2012.

<sup>11</sup> Report from the GCCF dated 21 February 2012.

<sup>12</sup> Report from the GCCF dated 21 February 2012.

<sup>13</sup> Report from the GCCF dated 21 February 2012.

<sup>14</sup> Report from the GCCF dated 21 February 2012.

<sup>15</sup> NPFC request for additional information dated 30 March 2012.

<sup>16</sup> USPS tracking 7011 1570 0001 2446 3084.

statements show he earned negative \$749.00 in 2008, positive \$407.96 in 2009, and negative \$1,817.00 in 2010.<sup>17</sup> The NPFC requested copies of the Claimant's business tax returns via certified letter dated 30 March 2012.<sup>18</sup> However the Claimant did not submit the requested documentation. Based on the profit and loss statement submitted, the Claimant has not established damages in the claimed amount of \$15,000.00.

Regarding causation, the Claimant works for Rush Delivery Services as an independent contractor<sup>19</sup> and asserts that he lost wages and hours due to the Deepwater Horizon oil spill.<sup>20</sup> However, the Claimant has provided no documentation evidencing his alleged loss of profits was caused by the spill. As such, the Claimant has not established by a preponderance of the evidence that his alleged loss of earnings was due to the oil spill.

Accordingly, this claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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: *6/7/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>17</sup> Claimant's profit and loss statements for January 2008 through December 2010.

<sup>18</sup> NPFC's request for additional information dated 30 March 2012.

<sup>19</sup> 2008 through 2010 profit and loss statements for Rush Delivery Services.

<sup>20</sup> Optional OSLTF claim form undated.