

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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5890/DWHZ  
9 March 2012

Mr. Landell Mayho  
[REDACTED]

Re: Claim Number: N10036-1664

Dear Mr. Mayho:

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 N10036-1664 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 N10036-1664.

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	N10036-1664
Claimant	Landell D. Mayho
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$90,000.00

### ***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 19 January 2012, Mr. Landell Mayho (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$90,000.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant alleged to have been working for a promotion and management company in Houston, Texas, which required him to travel extensively throughout the Gulf coast region.<sup>2</sup> The Claimant alleged that effects of the oil spill caused him to become ill and subsequently be laid off from his position.<sup>3</sup> Specifically, the Claimant stated,

“I was exposed to seafood and drinking water from Louisiana, Florida and Galveston Texas around the time of the oil spill. I am dealing with skin infection and broke out numerous of times due to this incident.”<sup>4</sup>

Upon being informed by the NPFC that OPA does not address liability for personal injury damages<sup>5</sup>, the Claimant stated that economic effects of the oil spill, in addition to his illness, resulted in his alleged lay-off.<sup>6</sup>

The Claimant alleged to have sustained a loss of profits totaling \$90,000.00 from the time of the oil spill until the date of this claim submission.

### ***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.

<sup>1</sup> Optional OSLTF Claim Form, signed on 12 January 2012.

<sup>2</sup> PHONECON: NPFC Staff and the Claimant, 7 March 2012.

<sup>3</sup> PHONECON: NPFC Staff and the Claimant, 7 March 2012.

<sup>4</sup> Optional OSLTF Claim Form, signed on 1 January 2012.

<sup>5</sup> PHONECON: NPFC Staff and the Claimant, 7 March 2012.

<sup>6</sup> PHONECON: NPFC Staff and the Claimant, 7 March 2012.

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.
- (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 this claim, the Claimant submitted the following documentation:

- Letter from the Claimant to the NPFC, noting sum certain of \$90,000.00;
- Fax Cover Sheet, 19 January 2012;
- Optional OSLTF Claim Form, signed on 1 January 2012;
- GCCF information, Supporting Documentation for a Claim;
- GCCF Interim Payment Claim Form, seeking loss of profits damages of \$115,000.00;
- GCCF Supplemental Request Form For Emergency Advance Payments for Lost Earnings or Profits;
- Letter from the Claimant describing effects of the oil spill, 8 September 2010;
- Deficiency Letter on Interim Payment/Final Payment Claim, 26 April 2011;

- Letter from the GCCF to the Claimant, 4 September 2010;
- GCCF Follow-Up to Previous Denial Letter, 12 October 2011;
- Chase Bank Account Transaction Details;
- ePass Itinerary and Receipt for Confirmation AOE8NE;
- Hertz car rental confirmation;
- Letter from the Claimant, noting non-inclusion of doctor's letter, 22 December 2010;
- West Asset Management, Notice of Debt, 13 April 2011;
- Patient Check-out Ticket, 8/19/2010;
- Patient Check-out Ticket, 8/2/2010;
- Copies of medical bills, May-June 2010.
- Copies of doctor notes;

Prior to presentment of this claim to the NPFC, the Claimant submitted multiple claims to the RP/GCCF. The Claimant was assigned Claimant ID # 1144857.<sup>7</sup> Claims previously submitted to the RP/GCCF are as follows:

1. Personal Injury, Emergency Advance Payment claim #803, seeking \$12,000.00;
2. Personal Injury, First Quarter Interim claim #9146582, seeking \$25,000.00;
3. Lost Wages/Earnings, First Quarter Interim claim # 9146582, seeking \$115,000.00;
4. Lost Wages/Earnings, Full Review Final claim #9547459, seeking \$410,000.00;
5. Removal/Clean-Up, Full Review Final claim #9547712, seeking \$4,000.00;
6. Real or Personal Property, Full Review Final claim #9547713, seeking \$3,600.00;
7. Subsistence, Full Review Final claim #9547714, seeking \$10,000.00;
8. Personal Injury, Full Review Final claim #9547715, seeking \$20,000.00.<sup>8</sup>

On 1 February 2012, the Claimant submitted this claim to the NPFC, seeking \$90,000.00 in loss of profits and impairment of earning capacity damages.<sup>9</sup> The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>10</sup> Because the Claimant has presented these damages first to the RP/GCCF in an amount that exceeds the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$90,000.00 in loss of profits damages.

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

In order to prove a claim for loss of profits 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.

<sup>7</sup> GCCF United States Coast Guard Report, 21 February 2012.

<sup>8</sup> GCCF United States Coast Guard Report, 21 February 2012.

<sup>9</sup> Letter from the Claimant to the NPFC, noting sum certain of \$90,000.00, 19 January 2012.

<sup>10</sup> 33 C.F.R. § 136.103(a).

In the Claimant's submission to the NPFC, the Claimant alleged to have been employed by a promotional and marketing company in Houston, Texas until he was "laid off due to [the] oil spill."<sup>11</sup> The Claimant's submission contained documentation, including invoices and other medical records, purportedly proving that the Claimant became ill from effects of the oil spill.

On 7 March 2012, the NPFC contacted the Claimant in order to develop a further understanding of the nature of the Claimant's alleged damages. When questioned as to how his losses were caused by the oil spill, the Claimant stated that the oil spill made him ill, and that his illness caused him to lose his job.<sup>12</sup> However, after being informed by the NPFC that OPA does not address liability for personal injury claims, the Claimant noted that economic effects of the oil spill also contributed to his lay-off.<sup>13</sup>

The NPFC considered all evidence and documentation provided by the Claimant, and is unable to confirm that the Claimant was employed at the time of the oil spill, or that the Claimant was laid off from any particular position in the period following the oil spill. Furthermore, attempts by the NPFC to locate the Claimant's alleged employer, "Devon's Management Group, Inc." were unsuccessful.

Should the Claimant wish to pursue this claim on reconsideration, the Claimant must provide a record of earnings, such as pay stubs, tax returns or bank account statements to demonstrate the extent of his alleged financial loss. The Claimant must also provide documentation regarding how and to what extent his employment was affected by the discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$90,000.00, and (2) 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: *3/9/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>11</sup> GCCF Supplemental Request Form for Emergency Advance Payments for Lost Earnings or Profits, pg. 1.

<sup>12</sup> PHONECON: NPFC Staff and the Claimant, 7 March 2012.

<sup>13</sup> PHONECON: NPFC Staff and the Claimant, 7 March 2012.