

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1672
Claimant	: Donald Durkin
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$80,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 3 February 2012, Donald Durkin d/b/a Designer Spas & Baths (referred to as “the Claimant”) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$80,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ This loss is associated with the alleged loss of profits at his business, Designer Spas & Baths, because of impacts alleged resulting from the Deepwater Horizon oil spill.

The Claimant’s business is retail planning and remodeling spas, baths, saunas and steam rooms and it is located in Harvey, Louisiana.²

Prior to presenting this claim to the NPFC, the Claimant first presented his claim to the GCCF on 2 September 2011,³ for 40,000.00 to 80,000.00.⁴ On 25 January 2012, the Claimant clarified the damage amount as \$80,000.00.⁵ The Claimant was assigned Claimant Identification No. 3538341 and GCCF Claim No. 9485534 was assigned to his GCCF Full Review Final Payment (FRF) Claim.⁶ On 3 February 2012, the FRF claim was denied.⁷

The NPFC denied the claim originally on May 1, 2012 because the handwritten sales information provided to the NPFC was the same as was provided to the GCCF and did not evidence a loss of profits. A large amount of sales information for Designer Spas and Baths, Inc. for years 1993 and 1994 was provided; however, those records have no bearing on this claim due to its age.⁸ No tax information and no recent financial records that demonstrate loss of profits have been provided; therefore the Claimant has failed to prove a verifiable loss of profits in 2010 and no

¹ Optional OSLTF Claim Form signed 25 January 2012 and received 3 February 2012.

² www.yellowpagesgoesgreen.org and www.myNewOleams.com listings for Designer Spas & Baths, accessed 30 April 2012.

³ Claimant’s GCCF Full Review Final Payment Claim Form signed 28 September 2011 and GCCF – U.S. Coast Guard Report as of 9 April 2012.

⁴ Page 8 of Claimant’s GCCF Full Review Final Payment Claim Form signed 28 September 2011

⁵ Claimant’s undated statement of \$80,000.00 damages to the GCCF, faxed on 25 January 2012.

⁶ GCCF – U.S. Coast Guard Report as of 9 April 2012.

⁷ GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim dated 3 February 2012.

⁸ This is a different company than the Claimant’s presently incorporated company, Sea Lion Industries, Inc.

evidence or documentation that would indicate that the damages alleged were caused by the Deepwater Horizon oil spill. the Claimant has asserted that his loss of sales and profits was due to severe damage to the local economy by destroying fishing, the oyster seafood economy, and the oil drilling economy, all caused by the effects of BP's Macondo oil well [spill].⁹

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. The NPFC informed the Claimant that if he was to submit a Request for Reconsideration to the NPFC, evidence linking his loss and the loss of his employer to the Deepwater Horizon oil spill must be submitted in order for his claim to be payable from the Fund. Additionally, the NPFC informed the Claimant that he would need to provide appropriate financial records vice records from 1993 or 1994.

Accordingly, this claim was denied because: (1) Claimant has failed to demonstrate a loss in the amount claimed through financial documentation and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

REQUEST FOR RECONSIDERATION:

On June 14, 2012, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant stated in his request for reconsideration that no one called him to discuss his claim or identify what information was available. As such, the Claimant states he would like an extension to obtain supporting data once the NPFC informs him what is needed.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

Upon review of all of the Claimant's information, the Claimant has failed to provide any new information on reconsideration. The Claimant states he will provide whatever the NPFC identifies is needed although the NPFC's initial denial determination clearly stated what was deficient in the Claimant's original submission and what information the Claimant would need to provide should he request reconsideration.

Based on the foregoing, the Claimant has again failed to demonstrate a loss in the amount claimed through financial documentation and (2) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

⁹ Optional OSLTF Claim Form signed 25 January 2012 and received 3 February 2012

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *8/14/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
8/14/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 00014803 7605

Donald Durkin
[REDACTED]

RE: Claim Number: N10036-1672

Dear Mr. Durkin:

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 N10036-1672 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form