

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4562

5890
2 May 2012

Joel Arroyo
[REDACTED]

RE: Claim Number: N10036-1679

Dear Mr. Arroyo:

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 N10036-1679 involving Deepwater Horizon. 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 N10036-1679.

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: (1) Claim Summary / Determination Form
(2) Documentation Provided by the Claimant

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1679
Claimant	: Joel Arroyo
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning 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 8 February 2012, Joel Arroyo, (referred to as “the Claimant”) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant has a computer installation and support business in Sarasota, Florida.² Claimant asserts that because his clients were affected by the Deepwater Horizon oil spill, he in turn was affected because his clients could no longer afford his services.

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.
- (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

¹ Optional OSLTF Claim Form signed on 18 January 2012 and received on 8 February 2012.

² Optional OSLTF Claim Form signed on 18 January 2012 and received on 8 February 2012 and Claimant’s letter to the GCCF dated 2 February 2012.

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 presented a large amount of documentation, which is listed in Enclosure (2).

On 8 February 2012, the Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. This loss is associated with the Claimant's lost profits while operating a computer installation and support service in Sarasota, Florida. The Claimant indicated that he submitted a claim to the GCCF in August 2011 and that it has been denied.³

The NPFC conducted an independent investigation of claim presentation and payments. The NPFC confirmed the Claimant's presentment of two Interim Payment Claims (IC) to the GCCF. The first, an interim 3 claim, (ICQ32011) was submitted on 2 August 2011 in the amount of \$15,000.00 and the second, an interim 4 claim (ICQ42011) was presented on 4 November 2011 in the amount of \$25,000.00. The NPFC also confirmed that the GCCF assigned Claimant Identification No. 3534987 to both claims. Claim ID No. 9429062 was assigned to ICQ32011 and Claim ID No. 9527571 was applied to ICQ42011: both claims have been denied.⁴

Based upon the information provided, this claim can be adjudicated in the full amount of damages presented to the NPFC, \$25,000.00. Further, because the subject matter of both of the Claimant's GCCF claims and his claim before the NPFC appear to be based upon the same subject matter, i.e. that the Claimant lost income as a result of the Deepwater Horizon oil spill's

³ Optional OSLTF Claim Form signed on 18 January 2012 and received on 8 February 2012.

⁴ GCCF – U.S. Coast Guard Report as of 17 April 2012.

effects on his IT/Computer business, the NPFC deems this Claim Summary Determination as being outcome determinative for both of the Claimant's GCCF claim.

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.

This claim is denied because the Claimant has failed to prove either (1) that he has lost profits or income in the amount of \$25,000 related to his computer business or (2) that his alleged loss is the result of the Deepwater Horizon oil spill.

(1) Failure to Prove Alleged Lost Profits or Earnings

The Claimant provided, among other things, a letter to the GCCF; income tax information for 2008, 2009, & 2010; monthly profit & loss statement projections for 2008, 2009, & 2010; and four customer letters. Following an initial review of the claim, the NPFC requested additional information from the Claimant. The letter requested, among other things, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses.

On 16 April 2012, the Claimant responded by providing clarifications and explanations on a number of issues (such as that the monthly profit & loss statements were actual, not projected), 2010 news articles about oil from the spill possibly hitting Sarasota, and additional correspondence with the GCCF. The Claimant did not provide, however, evidence to corroborate his monthly profit & loss statements. For example, no Schedule C was provided for 2008. Further, Claimant's 2009 and 2010 Schedule C's are filed on two different forms and do not track the Profit & Loss statements provided by the Claimant. Accordingly, if the Claimant decides to return to the NPFC on reconsideration, he must submit detailed financial documentation to support/corroborate his alleged loss as detailed in his profit & loss statements.

(2) Failure to Prove Causation

No evidence or documentation has been provided that would indicate that the damages alleged were caused by the Deepwater Horizon oil spill has been presented. The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven by the Claimant. Here, the Claimant has asserted that his loss of sales and profits were due to the decrease in tourism in the Sarasota Bay area and a loss of clients for his restaurant customers who had to close.⁵

The Claimant provided a list of 11 previous restaurant clients whose reasons for terminating services were variously, "low sales", "no sales", "insufficient sales" and "Closed September/October/November 2010" or "Closed in early 2011", but none mentioned the oil spill.

⁵ Optional OSLTF Claim Form signed on 18 January 2012 and received on 8 February 2012.

The Claimant also provided letters from four businesses with whom he had worked, but those letters do not mention the oil spill as a cause for their cancelling services with the Claimant.⁶

Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill. The Claimant asserted that his loss in income was due to a reduction in business in 2010, caused by the Deepwater Horizon oil spill.⁷ If the Claimant submits a request for Reconsideration to the NPFC, evidence linking the loss of profits and the loss of customers due to the Deepwater Horizon oil spill must be submitted in order for his claim to be successful.

Accordingly, this claim is denied because the Claimant has failed to prove either (1) that he sustained a loss in the amount alleged or (2) that his alleged loss was due to the injury, destruction of, or loss of real or personal property or natural resources, i.e., the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/2/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ Letter from Doris & Douglas Godman of the Coco Grill Restaurant dated July 2011; letter from Tom Palomino of Palomino Motors, Inc. dated 15 September; letter from Sergio Razo of Peruvian Grill I & II dated 15 November 2011; and letter from John Zakarian of Zak's Steakhouse dated August 2010.

⁷ Optional OSLTF Claim Form signed on 18 January 2012 and received on 8 February 2012.

Enclosure 2
Documentation Provided by the Claimant
N10036-1679

- Optional OSLTF Claim Form signed 18 January 2012 and received 8 February 2012.
- 2010 Form 1099-Misc from Palomino Motors, Inc.
- Letter from IRS dated 21 May 2009.
- 2008 Federal Tax Form 1040A with Schedule 2 and Form 2441.
- 2009 Federal Tax Form 1040 with Schedule C-EZ, and Schedule SE...
- Undated statement regarding Cash Contributions for Haiti Relief on 2009 Tax Return.
- 2010 Federal Tax Form 1040 with Schedule C, Form 8812, Form 4562, Form 8829 and various worksheets.
- H&R Block Advantage letter dated 16 February 2011 with 2010 Tax Summary, Quick Reference document, Signature/Consent form, Filing Instructions
- Signed letter from Tom Palomino, Bradenton, FL, dated 15 September 2010. (Original in Spanish)
- Signed letter from Sergio Raso, Peruvian Grill I & II. (Original in Spanish)
- Unsigned letter from Doris & Douglas Godman, Coco Grill Restaurant, Sarasota, FL, dated July 2011.
- Unsigned, undated letter from John Zakarian, Zak's Steak House, Sarasota, FL.
- Claimant's unsigned letter to GCCF dated 2 February 2012 with list of affected clients. (Original in Spanish)
- Claimant's unsigned letter to GCCF dated 17 October 2011. (Original in Spanish)
- Claimant's unsigned letter to GCCF dated 17 October 2011 regarding W-2s and 1099s. (Original in Spanish)
- IRS letter dated 5-10-2005 on ITIN. (Original in Spanish)
- Monthly Profit & Loss Projections for 2008, 2009 and 2010.
- Claimant's email to NPFC dated 16 April 2012 with attachments.
- Claimant's letter dated 15 April 2012 responding to NPFC letter with links to three newspaper articles and with a brief summary of each—
 - 'Sarasota County declares emergency', Herald Tribune.com, 5 May 2010.
 - 'Oil Spill: Sarasota prepares for possible oil spill to reach shoreline ...' dated 4 May 2010, Tampa-St. Petersburg Times.
 - <http://sarasotainjuryboard.com> (NPFC was unable to access this article.)
 - 'Tourism industry will feel effects of oil spill for years' (Steve Huettel), 07Jan2011 (updated 10Jan2010).
- 'BP pays \$40 million locally over Gulf oil spill', www.yourfloridahome.org, 20 August 2011.
- 'Sarasota Bracing for Economic Fallout from BP Oil Spill' from InjuryBoard.com, dated 29 May 2010.
- H&R Block Advantage 2011 (summary documents, 4 pages).
- 2011 Federal Tax Form 1040 with Schedule C, Form 8812, Form 8829, Form 4562, and various worksheets.
- Claimant's letter to NPFC dated 15 April 2012 regarding his list of contacts.

- GCCF Deficiency Letter on Interim Payment/Final Payment Claim dated 15 August 2011.
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim dated 29 September 2011.
- GCCF letter, Confirmation of Social Security Number, dated 3 October 2011.
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 10 November 2011.
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 13 January 2012.