

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
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Arlington, VA 20598-7100
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3169

5890/DWHZ
06 April 2012

Michael J. McRae


RE: Claim Number: N10036-1682

Dear Mr. McRae:

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 N10036-1682 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 N10036-1682.

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	N10036-1682
Claimant	Michael J McRae
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$102,600.00

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 13 February 2012, Michael J McRae (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$102,600.00 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 worked for Dominion Entertainment (Boat Trader) in Norfolk VA as a recreation vehicles salesman from 2006 through 2008.¹ In March 2010, the Claimant went to work for Sunrise Marine in Mary Esther Florida.² The Claimant alleges he earned significantly more with Dominion Entertainment than Sunrise Marine due to the Deepwater Horizon Oil Spill.³

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.

¹ 2006 through 2008 W-2s from Dominion Entertainment.

² Claimant letter dated 28 October 2011 addressed to BP claims.

³ Claimant letter dated 28 October 2011 addressed to BP claims.

- (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 the following documentation:

- Optional OSLTF claim form dated 02 February 2012, received 13 February 2012
- Employer letter from Sunrise Marine dated 23 June 2011
- Claimant letter explaining claim - undated
- Claimant letter explaining claim dated 28 October 2011
- Affidavit from Claimant stating intentions to purchase a home in Pensacola FL but for the oil spill dated 05 August 2011
- GCCF determination letter on Interim Payment/Final Payment claim dated 13 January 2012
- 2006 W-2 from Dominion Enterprises for \$72,589.03
- 2007 W-2 from Dominion Enterprises for \$74,407.44
- 2008 W-2 from Dominion Enterprises for \$75,817.51
- 2010 W-2 from Destin Sunrise Marine Inc. for \$33,931.31
- 2011 W-2 from Destin Sunrise Marine Inc. for \$30,043.89
- News Article from The Triton titled "Oil can damage yacht systems; insurers may not cover" dated 06 July 2010

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF; he was assigned GCCF Claimant ID #1151504 and GCCF claim

#12879.⁴ This claim was paid \$30,000.00 on 07 October 2010.⁵ Additionally, the Claimant filed two Interim claims with the GCCF, ICQ22011 with GCCF #9406493 and ICQ42011 with Claim #9529594.⁶ These claims were offered a final payment offer of \$5,000.00 on 01 July 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of his GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he had impairment of earnings capacity as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's three GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1682 considers and addresses the earnings claimed in all of the three claims presented to the responsible party, specifically; GCCF Claim #'s 12879 (EAP), 9406493 (ICQ22011), and 9529594(ICQ42011).

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 the 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.

The Claimant started working for Destin Sunrise Marine the first week of March 2010.⁸ The Claimant asserted his damages were evidenced by comparing his earning from 2006 through 2008 at a different company in Norfolk Virginia to his 2010 and 2011 earnings for Sunrise Marine in Mary Esther, Florida.⁹ To support his claim, the Claimant provided a letter from Sunrise Marine's management that asserts his lost earnings and a decline in sales were due to the Deepwater Horizon oil spill.¹⁰ However, while the Claimant's employer appears to agree with the Claimant's contention that the oil spill caused a reduction to the Claimant's income, Sunrise Marine has not provided any specific information which would support either the Claimant's or the employer's assertions.

On 28 February 2012, the NPFC sent a letter to the Claimant requesting additional information in order to further evaluate the claim. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 06 March 2012.¹¹ Among other items, the Claimant was asked to provide the NPFC with relevant earnings of lateral employees at Sunrise Marine. This information was requested since the evidence presented by the Claimant lacked historical earnings and financial documentation from his employer to indicate what effect the Deepwater Horizon oil spill had on company sales. To date, the Claimant has not provided any of the additional information requested by the NPFC.

Accordingly, this claim is denied because the Claimant has failed to meet his burden to demonstrate (1) that he has suffered an alleged loss of \$102,600.00, and (2) that his alleged loss

⁴ GCCF claim status page.

⁵ GCCF notice of determination emergency advance payment form dated 07 October 2010.

⁶ GCCF claim status page.

⁷ GCCF determination letter on Interim Payment/Final Payment claim dated 01 July 2011.

⁸ Claimant letter dated 28 October 2011 addressed to BP claims.

⁹ Claimant letter dated 28 October 2011 addressed to BP claims.

¹⁰ Employer letter from Sunrise Marine dated 23 June 2011.

¹¹ USPS tracking 7011 1570 0001 2446 2933.

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: *4/6/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: