

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 4802 9716

5890/DWHZ  
15 May 2012

Sarah Ney, Esq.  
4008 Royal Street  
New Orleans, LA 70117

Re: Claim Number: N10036-1689

Dear Ms. Ney:

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 your claim number N10036-1689 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. If, however 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 N10036-1689.

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

Copy: Marty Rawlins  
[REDACTED]

USPS Certified Receipt: 7011 1570 0001 2446 3756

Enclosures: (1) Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1689
Claimant	Marty Rawlins
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$40,000.00

### ***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 22 February 2012, Sarah Ney, Esq., on behalf of Marty Rawlins (collectively, the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$40,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed by Sodexo Remote Sites Partnership (Sodexo) as a chef on an operating diving vessel in the Gulf of Mexico.<sup>1</sup> The Claimant asserted that he has to resign from his position at Sodexo because of declining health caused by the close proximity of his job to oil that leaked from the Deepwater Horizon.<sup>2</sup> Further, the Claimant stated that he was unable to find other work due to the moratorium on drilling and was forced to accept a job that paid significantly less than his job at Sodexo.<sup>3</sup>

### ***APPLICABLE LAW***

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the

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<sup>1</sup> GCCF Full Review Final Payment Claim Form, dated 18 August 2011.

<sup>2</sup> GCCF Full Review Final Payment Claim Form, dated 18 August 2011.

<sup>3</sup> Letter from the Claimant to the NPFC, dated 24 January 2012.

responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 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***

### **The Claimant's Submission to the OSLTF**

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, received by the NPFC on 21 February 2012;
- Letter from the Claimant to the NPFC, dated 14 February 2012;
- Limited Power of Attorney, signed by the Claimant on 14 February 2012;
- Letter from the Claimant to the NPFC, dated 24 January 2012;
- Letter from the Claimant to the GCCF, dated 09 November 2011;

- GCCF Full Review Final Payment Claim Form, dated 18 August 2011;
- Letter from the GCCF to the Claimant, dated 12 April 2011;
- Denial Letter from the GCCF, dated 08 December 2010;
- Denial Letter on Interim Payment/Final Payment Claim, dated 02 September 2011;
- Paystubs from Gott Gourmet Café, LLC for the period: 13 September 2010 through 20 July 2011;
- Paystubs for the period: 04 January 2010 through 25 August 2010;
- 2010 Form W-2 from Sodexo Remote Sites Partnership;
- 2010 Form W-2 from CAPS, Inc.;
- 2009 Form W-2 from Sodexo Remote Sites Partnership;
- 2010 Form W-2 from Delta Administrative Services 03;
- Various internet articles regarding the Deepwater Horizon oil spill.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings in the amount of \$18,000.00 on 20 October 2010.<sup>4</sup> The Claimant was assigned Claimant ID # 3234858 and Claim # 290256. The Claimant also filed a Full Review Final Claim (FRF) claim with the GCCF for loss of earnings in the amount of \$40,000.00 on 27 August 2011; he was assigned Claim # 9446728.<sup>5</sup> Both of these claims were denied by the GCCF.<sup>6</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant was forced to quit his job due to health issues caused by spilt oil. The NPFC deems that the Claimant's GCCF claims were properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1689 considers and addresses the earnings claimed in the claims presented to the responsible, specifically; GCCF Claim #'s 290256 (EAP) and 9446728 (FRF).

### **NPFC Determination**

The claim is denied. Under 33 U.S.C. § 2712 (b), private OSLTF claimants may only recover for damages to real or personal property, subsistence use and profits or earning capacity due to the injury, destruction or loss of natural resources. Personal injury damages are not recoverable under OPA and the associated regulations at 33 C.F.R. 136.

Based on the information provided by the Claimant to the NPFC, the Claimant's alleged loss in the amount of \$40,000 stems entirely from personal injuries caused by his alleged exposure to oil released from the Deepwater Horizon. Although the Claimant's claimed damages are for loss of earnings instead of medical damages, because the Claimant's asserted loss stems entirely from his alleged personal injuries, and because damages from these types of injuries do not fall within the purview of OPA, the Claimant's loss is not compensable under the OSLTF.

Alternately, the Claimant also asserts a connection between his alleged loss and the moratorium on drilling. However, factors such as permitting delays and the drilling moratorium are considered

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<sup>4</sup> Report from the Transition Program, dated 01 May 2012.

<sup>5</sup> Report from the Transition Program, dated 01 May 2012.

<sup>6</sup> Report from the Transition Program, dated 01 May 2012.

intervening factors and thus not a consequence of the oil spill. Therefore, even if the Claimant's damages were not ultimately based on personal injuries, the Claimant would have still failed to prove that his alleged loss was a result of the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant's asserted damages are for a personal injury and thus non OPA compensable, and (2) the Claimant failed to meet his burden to demonstrate 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 Review: *5/15/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: