

U.S. Department of
Homeland Security

**United States
Coast Guard**



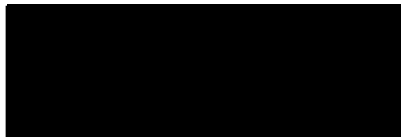
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 1301

5890/DWHZ
16 July 2012

Mr. Alberto Rodriguez



Re: Claim Number: N10036-1702

Dear Ms. Aguilar:

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 N10036-1702 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 N10036-1702.

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

cc: Alberto J Rodriguez
868 SE 9th Avenue
Hialeah, FL 33010

By Certified Mail:
7011 1570 0001 2446 1295

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1702
Claimant	Alberto Rodriguez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$20,000.00

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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 05 March 2012, Alberto Rodriguez (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$20,000.00 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 Tampa Ship LLC as a ship fitter from 01 December 2008 through 29 April 2010.¹ The Claimant asserts that "as a result of the BP oil spill, Tampa Ship was unable to conduct business and I was laid off only nine days later on 29 April 2010."² The Claimant calculates his alleged damages by including lost wages and travel time to a new job with a "4 hour" commute both ways for Rybovich, LLC located in Fort Lauderdale Florida.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 Section 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.

¹ Claimant's response to NPFC's request for additional information dated 05 July 2012 at 5.

² Claimant's response to NPFC's request for additional information dated 05 July 2012 at 1.

³ Claimant's response to NPFC's request for additional information dated 05 July 2012 at 6.

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 undertake, 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.

Pursuant to 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, the Claimant submitted:

- Optional OSLTF claim form dated 05 January 2012
- 2008 IRS Tax Return Transcript for \$30,714.00
- 2008 Wage and Income Transcript for \$2,288.00
- 2009 IRS Tax Return Transcript for \$42,572.00
- 2009 Wage and Income Transcript
- 2010 Form 1040 U.S. Individual Income Tax Return
- 2010 W-2 from Rybovich Boat Company for \$13,512.49
- GCCF Full Review Final Payment Claim Form
- Do Campo & Thornton, P.A. response to NPFC's request for additional information dated 05 July 2012
- 2009 W-2 from Tampa Ship LLC for \$42,572.31

- 2011 W-2 from Rybovich Boat Company
- Legal Representation Letter dated 24 May 2012

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$20,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed a Full Review Final claim (FRF1) with the GCCF on 05 September 2011 in the amount of \$20,000.00.⁴ He was assigned Claimant ID #3543791 and claim #9450582.⁵ This claim was denied.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter for his GCCF FRF1 claim is the same as the subject matter of his claim before the NPFC, i.e., that he lost his job and had commuting expenses as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1702 considers and addresses the earnings claimed in GCCF claim #9450582 (FRF1).

Evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

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 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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled and the Claimant is ineligible to recover funds from the OSLTF.

According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, then he should submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

⁴ Report from the GCCF dated 21 May 2012.

⁵ Report from the GCCF dated 21 May 2012.

⁶ Report from the GCCF dated 21 May 2012.

Furthermore, this claim would be denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

In order to prove a claim for loss of profits and impairment of earning capacity 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.

The Claimant worked for Tampa Ship LLC as a ship fitter from 01 December 2008 through 29 April 2010 when he was laid off.⁷ The Claimant states "as a result of the BP oil spill, Tampa Ship was unable to conduct business and I was laid off only nine days later on 29 April 2010."⁸ The NPFC requested a letter of explanation from his employer as to why he was terminated and contact information via certified letter dated 30 May 2012.⁹ In a letter dated 05 July 2012, the Claimant's legal representative stated they "contacted Mr. Rodriguez' former employer requesting a letter of explanation which to date has not been provided."¹⁰ NPFC staff located the contact information for Tampa Ship LLC on 05 July 2012 and left a message with Human Resources to call the NPFC regarding the Claimant and to date no return call has been received. Furthermore NPFC staff called HR twice more and left messages on 06 July 2012 and 10 July 2012, however as of this date no return call or answer has been received.¹¹

No evidence has been submitted that shows the Claimant was terminated from his employment as a result of the Deepwater Horizon oil spill. The mere assertion of the Claimant that he was terminated nine days after the oil spill as a result of the oil spill is not corroborated by the Claimant's submission to the NPFC. The nature of the "BP contract" which allegedly employed the Claimant with Tampa Ship LLC was not evidenced through documentation or anyone aside from the Claimant's statements. Thus, the Claimant has provided no documentation to substantiate his alleged loss of profits and impairment of earnings capacity or to show that his alleged loss of earnings was due to the Deepwater Horizon oil spill.

This claim is therefore denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$20,000.00 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, and (2) because the Claimant has settled his claim by virtue of belonging to the economic damages class associated with the CSSP.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/16/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ Claimant's response to NPFC's request for additional information at question 1.

⁸ Claimant's response to NPFC's request for additional information at question 1.

⁹ NPFC's request for additional information dated 30 May 2012 at 1.

¹⁰ Do Campo & Thornton P.A. letter dated 05 July 2012.

¹¹ Calls to Tampa Ship LLC at 813-248-9310 and messages left for Marvin Lewis et al.