

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)
Phone: 1-800-280-7118
E-mail: ari-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7010 1570 0001 2446 3855

5890/DWHZ
13 June 2012

George Delong


Re: Claim Number: N10036-1706

Dear Mr. Barksdale:

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 N10036-1706 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

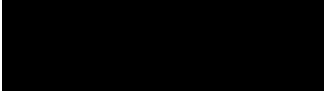
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however you 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 N10036-1706.

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: George Delong
151 Fig Court
Santa Rosa Beach, FL 32459

USPS Certified Receipt: 7011 1570 0001 2446 3862

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1706
Claimant	George Delong
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$91,062.50

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 06 March 2012, Arthur S. Barksdale IV, Esq., on behalf of George Delong (collectively, the Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$91,062.50 in loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant was employed as Manager of PCI, The Showroom (PCI), located in Santa Rosa Beach, Florida.¹ PCI is a retail showroom for plumbing equipment, fixtures, and supplies.² The Claimant asserted that he was laid off from PCI in May of 2010 due to a downturn in business at PCI caused by a reduction in tourism related to the Deepwater Horizon oil spill.³ After being laid off, the Claimant moved to Maine in search of work and took a significantly lesser paying position. The Claimant was able to return to his position at PCI in February of 2011.⁴

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

¹ GCCF Full Review Final Payment Claim Form, 03 November 2011.

² GCCF Full Review Final Payment Claim Form, 03 November 2011.

³ Letter of claim explanation from the Claimant, undated.

⁴ Letter of claim explanation from the Claimant, undated.

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:

- Cover letter from Vance, Lotane & Bookhardt, dated 02 March 2012;
- NPFC Authorization Agreement, dated 07 February 2012;
- GCCF Full Review Final Payment Claim Form, dated 03 November 2011;
- Denial Letter on Interim Payment/Final Payment Claim, dated 13 January 2012;
- Lost Earnings/Income Worksheet;
- Copy of Florida Driver's License;

- Letter of claim explanation from the Claimant, undated;
- Letter from Diana R. Moreland, Owner of PCI, The Showroom, dated 15 March 2011;
- 2008 Form W-2 Wage and Tax Statement from Plumbing Consultants, Inc.;
- 2009 Form W-2 Wage and Tax Statement from Plumbing Consultants, Inc.;
- 2010 Form 1040 U.S. Individual Income Tax Return (No Form 1099's or W-2's) ;
- Payroll Summary from PCI, The Showroom for the period: 1 January 2011 through 3 November 2011; and
- GCCF Client Authorization Form, dated 03 November 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Interim I (ICQ12011) claim with the GCCF for loss of earnings in the amount of \$18,036.79 on 30 March 2011.⁵ The Claimant was assigned Claimant ID # 1619531 and Claim # 9339225; this claim was denied.⁶ The Claimant also filed a Full Review Final Claim (FRF) claim with the GCCF for loss of earnings in the amount of \$91,062.50 on 10 January 2012; he was assigned Claim # 9554898.⁷ This claim is still under review with Deepwater Horizon Claims Center.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claim 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 lost his job at PCI and was forced to take a lesser paying job in Maine. 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 N10036-1706 considers and addresses the earnings claimed in the claims presented to the responsible, specifically; GCCF Claim #'s 9339225 (ICQ12011) and 9554898 (FRF).

NPFC Determination

The claim is denied. 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.

The Claimant asserted that he lost his job at PCI due to decreased tourism caused by the Deepwater Horizon oil spill. In support of his claim, the Claimant submitted to the NPFC assorted personal tax information, 2011 payroll information from PCI, and a letter from Diane Moreland (Owner of PCI). PCI presented a separate claim to the NPFC for loss of earnings related to the Deepwater Horizon oil spill and retained the services of the same legal representative as the Claimant, Arthur S. Barksdale IV, Esquire.

Accordingly, the NPFC attempted to contact Mr. Barksdale on 30 April 2012 to obtain authorization to utilize documentation from PCI's claim in the adjudication of the Claimant's individual claim.⁹ Evidence that PCI, as a business, experienced a loss due to the Deepwater Horizon would be integral to substantiating the Claimant's individual loss. However, the NPFC

⁵ Report from the Transition Program, dated 13 May 2012.

⁶ Report from the Transition Program, dated 13 May 2012.

⁷ Report from the Transition Program, dated 13 May 2012.

⁸ Report from the Transition Program, dated 13 May 2012.

⁹ PHONECON between the NPFC and Vance, Lotane, and Bookhardt, P.A. on 30 April 2012.

never received authorization, nor any other response, to its request for the use of PCI's documentation.

The NPFC then requested in writing on 03 May 2012, that the Claimant provide additional information to substantiate his claim. The NPFC requested that the Claimant provide more complete personal tax information, payroll information from 2008 - 2011, and financial documentation from PCI.¹⁰ To date, the NPFC has not received any additional information or other response in regards to its request. As a result, the Claimant failed to provide sufficient evidence to prove that he experienced a financial loss as a result of the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant failed to prove that he experienced a loss in the amount claimed, 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: *6/13/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁰ Letter from the NPFC to the Claimant, dated 03 May 2012.