

U.S. Department of
Homeland Security

United States
Coast Guard



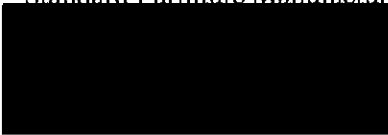
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 2537

5890/DWHZ
18 April 2012

Standard Furniture Manufacturing Company, Inc.



Re: Claim Number: N10036-1719

Dear Ms. Still:

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 N10036-1719 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

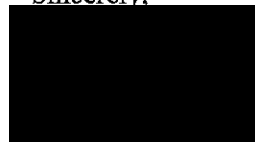
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1719.

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	N10036-1719
Claimant	Standard Furniture Manufacturing Company, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$46,387.00

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 15 March 2012, Karmen Still, on behalf of Standard Furniture Manufacture Company, Inc., (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$46,387.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

The Claimant is a furniture manufacturing company located in Bay Minette, Alabama. The Claimant alleged that during the period following the Deepwater Horizon oil spill, its furniture sales in the Gulf Coast region decreased, while its sales in unaffected areas slightly increased.² The Claimant attributes the alleged decrease in sales to effects of the Deepwater Horizon oil spill, and seeks \$46,387 in loss of profits damages for losses allegedly sustained during the period of 20 April 2010 to 23 September 2010.³

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 Optional OSLTF Claim Form, signed on 12 March 2012.

² Bullet-pointed list regarding the Claimant's losses.

³ Bullet-pointed list regarding the Claimant's losses; Optional OSLTF Claim Form, signed on 12 March 2012.

- (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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 12 March 2012;
- GCCF Claimant Status, printed on 24 January 2012;
- Letter from the Claimant to the GCCF, 28 March 2011;
- GCCF Full Review Final Payment Claim Form;
- Bullet-pointed list regarding the Claimant's losses;
- Loss Calculation page;
- 2008 Form 1120S, showing business loss of (\$6,203,479.00);
- 2009 Form 1120S, showing business loss of (\$5,041,540.00);
- Letter from the Claimant to the GCCF, 22 March 2011;
- Unanimous Written Consent of all Directors and Shareholders of Standard Furniture Manufacturing Company, Inc.;
- Exhibit A.

On 19 November 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages of \$46,387.00.⁴ The Claimant was assigned Claimant ID 109084 and the EAP claim was assigned claim # 494685.⁵ The RP/GCCF denied payment on this claim.

⁴ GCCF United States Coast Guard Report, 12 April 2012.

⁵ GCCF United States Coast Guard Report, 12 April 2012.

On 30 March 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, again seeking \$46,387.00 in loss of profits and impairment of earning capacity damages.⁶ The FRF claim was assigned claim # 9339230 and remains under review as of the date of this determination.⁷

On 15 March 2012, the Claimant presented this claim to the NPFC, seeking \$46,387.00 in loss of profits and impairment of earning capacity damages.⁸ OPA requires that a claimant first present a claim for costs or damages to the RP, prior to presentment to the NPFC.⁹ Should the RP fail to issue on a determination on the claim within ninety days, or should the RP issue a full or partial denial on a claim, the claimant may present the same claim to the NPFC.¹⁰ Because the RP/GCCF has denied payment on the Claimant's EAP and because no determination has been issued on the FRF, the NPFC may fully adjudicate this claim for \$46,387.00 in loss of profits and impairment of earning capacity damages.

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, 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 this claim.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must prove (1) that it sustained a financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

OPA allows for compensation for "the actual net reduction or loss of earnings or profits suffered."¹¹ In other words, the Claimant must prove that any alleged loss in sales resulted in a loss of profits to the business over the time period in which it was allegedly affected by the oil spill. The Claimant alleged that from 20 April 2010 through 23 September 2010, furniture sales "along the Gulf Coast from Texas to Tampa decreased by 12.82%" as compared to sales for that same period of 2009.¹² Outside of the Gulf Coast region, the Claimant alleged that sales increased by 1.21% for the same time period of 2010 as compared to 2009.¹³ The Claimant alleged that this 1.21% growth would have been reflected in sales along the Gulf Coast had the oil spill not occurred. However, other than the Claimant's own assertions and limited tax information, the Claimant has not provided financial documentation or other evidence, such as sales data, to support these figures or to prove that the alleged drop in sales actually resulted in an overall loss of profits to the business during the period claimed.

The Claimant alleged that general loss of income amongst Gulf Coast residents caused a decline in furniture sales.¹⁴ However, the Claimant has not provided evidence to prove that customers, on whom the Claimant would have relied, were financially impacted by the discharge of oil

⁶ GCCF United States Coast Guard Report, 12 April 2012.

⁷ GCCF United States Coast Guard Report, 12 April 2012.

⁸ Optional OSLTF Claim Form, signed on 12 March 2012.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ 33 C.F.R. § 136.235.

¹² Bullet-pointed list regarding the Claimant's losses.

¹³ Bullet-pointed list regarding the Claimant's losses.

¹⁴ Optional OSLTF Claim Form, signed on 12 March 2012.

resulting from the Deepwater Horizon oil spill. Moreover, the Claimant has not proven that it was the economic impacts of the oil spill that caused individuals not to purchase furniture that they would have otherwise purchased.

This claim is denied because the Claimant failed to meet its burden to demonstrate (1) that it sustained a loss of profits in the amount of \$46,387.00, and (2) 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 Supervisor's Review: *4/18/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: