

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 4802 9709

5890/DWHZ  
14 May 2012

Mansoor Pourmirzaie  


Re: Claim Number: N10036-1728

Dear Mr. Pourmirzaie:


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 N10036-1728 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 N10036-1728.

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

Enclosures: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1728
Claimant	Mansoor Pourmirzaie
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$46,000.00

### ***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 26 March 2012, Mansoor Pourmirzaie (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$46,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a pipefitter/welder from San Jose, California who works at oil refineries around the country.<sup>1</sup> The Claimant stated that, prior to the Deepwater Horizon oil spill, Turner Industries had several shut down projects scheduled at refineries in Louisiana and he had been told by Turner to travel there and to work on those projects.<sup>2</sup> However, the Claimant asserted that, due to the Deepwater Horizon oil spill, those projects were either put on hold or cancelled, resulting in a significant loss of earnings for the Claimant.<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

<sup>1</sup> Letter of claim explanation from the Claimant, dated 09 Nov 2010.

<sup>2</sup> Letter of claim explanation from the Claimant, dated 09 Nov 2010.

<sup>3</sup> Letter of claim explanation from the Claimant, dated 09 Nov 2010.

regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the 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 his claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, dated 08 March 2012;
- Letter of claim explanation from the Claimant, dated 09 Nov 2010;
- Letter of claim explanation from the Claimant, dated 15 July 2010;
- Letter of claim explanation from the Claimant, dated 11 Dec 2011;

- GCCF Denial letter for Emergency Advance Payment (EAP) to Claimant, dated 02 Nov 2010;
- Various emails between the GCCF and the Claimant;
- GCCF Claim Form, dated 09 November 2010;
- GCCF Claim Form, dated 13 September 2010;
- Copies of California Driver's License, US Passport, and Social Security Card;
- Letter from GCCF indicating receipt of Full Review Final Claim, dated 26 January 2011;
- Tax Returns for 2007, 2008, 2009, 2010, and 2011;
- GCCF Denial letter for Interim Payment and / or Full Review Final Payment, dated 1 April 2011;
- Form SC-105, Item 4 Small Claims Case No 710-SC-042041, Plaintiff Mansoor Pourmirazie, Defendant Gulf Coast claims Facility, 4 pages;
- Late notice from Shadowcreek Apartments located in Campbell, CA requesting that Claimant pay his rent, dated 17 September 2010; and
- Letter regarding an outstanding National Water & Power (NW&P) balance from Shadowcreek Apartments located in Campbell, CA, dated 20 September 2010.

Prior to presenting this claim to the NPFC, the Claimant filed three claims with the GCCF for loss of earnings, all under Claimant ID # 1023921. Claim # 3008460 was an Emergency Advance Payment (EAP) filed on 20 September 2010, Claim # 9013446 was a Full Review Final (FRF1) claim filed on 28 November 2010 in the amount of \$45,600.00, and Claim # 9587613 (FRF2) was a Full Review Final (FRF2) claim filed on 10 April 2012 in the amount of \$5,000.00.<sup>4</sup> These claims were all denied by the GCCF.<sup>5</sup>

Based upon the evidence provided by 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 the Claimant lost earnings as pipefitter for Turner Industries due to the Deepwater Horizon oil spill. 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 N10036-1728 considers and addresses the earnings claimed in the claims presented to the responsible party, specifically; GCCF Claim #'s 3008460 (EAP), 9013446 (FRF1) and 9587613 (FRF2).

### **NPFC Determination**

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 had planned to travel to the Louisiana Gulf Coast to work for Turner Industries as a pipefitter on several refinery projects; however, due to the Deepwater Horizon oil spill, these projects were either postponed or cancelled.<sup>6</sup> Notably, the Claimant did not provide the NPFC contracts or any other information documenting a business relationship with Turner Industries or indicating the existence of any planned projects in Louisiana. On 27

<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> Letter of claim explanation from the Claimant, dated 09 Nov 2010.

April 2012, the NPFC contacted Turner Industries to verify the Claimant's assertions and establish a connection between his alleged loss and the Deepwater Horizon oil spill. The NPFC was informed that Turner Industries had no record of any scheduled or pending projects with the Claimant.<sup>7</sup> Furthermore, the NPFC was informed that none of Turner Industries' projects were disrupted during the Deepwater Horizon oil spill.<sup>8</sup> Consequently, the Claimant failed to prove that he lost earnings as a result of the Deepwater Horizon oil spill.

This claim is denied because 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: *5/14/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>7</sup> PHONECON between the NPFC and Turner Industries on 27 April 2012; Fax from Turner Industries to the NPFC on 01 May 2012.

<sup>8</sup> PHONECON between the NPFC and Turner Industries on 27 April 2012.