

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4340

5890/DWHZ
24 April 2012

Radoslav Vlahovic


Re: Claim Number: N10036-1735

Dear Mr. Vlahovic:

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 N10036-1735 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

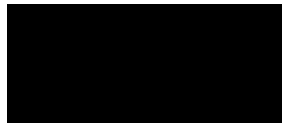
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1735.

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	N10036-1735
Claimant	Radoslav Vlahovic
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

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 27 March 2012, Mr. Radoslav Vlahovic (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$25,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, the Claimant was working for a pest control company in Sarasota, Florida, as a "Fertilization and Insect control technician."² The Claimant alleged that after the oil spill "work got slow, which lead to [the Claimant's] lay off."³ The Claimant further stated that,

Many propert[ies] that we maintained stopped using [our] service due to lack of tourism. The negative media and obvious signs of pollution have no doubt been the cause of this problem.⁴

The Claimant was laid off from his position in April of 2011 and seeks \$25,000.00 to compensate for financial losses allegedly caused by the Deepwater Horizon oil spill.

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.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

¹ Optional OSLTF Claim Form, signed on 12 January 2012.

² Email from the Claimant's employer, 6 October 2011.

³ Letter from the Claimant, describing losses, undated.

⁴ Letter from the Claimant, describing losses, undated.

- (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 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 22 March 2012;
- Email from Pestguard to the Claimant, 6 October 2011;
- Earnings record, 2011;
- Earnings record, 7/29/10 – 12/31/10;
- Pestguard Commercial Services, Check Register, 1/1/2010 – 12/31/2010;
- List of properties serviced by the Claimant at the time of the oil spill;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 17 March 2012;

On 23 September 2011, the Claimant presented a Third Quarter Interim Claim (ICQ32011) to the RP/GCCF, seeking \$12,500.00 in loss of profits and impairment of earning capacity damages.⁵ The Claimant was assigned Claimant ID 3556397 and the ICQ32011 was assigned claim # 9499845.⁶ The RP/GCCF denied payment on this claim.

⁵ GCCF United States Coast Guard Report, 17 April 2012.

⁶ GCCF United States Coast Guard Report, 17 April 2012.

On 27 December 2011, the Claimant presented a Fourth Quarter Interim Claim (ICQ42011) to the RP/GCCF, again seeking \$12,500.00 in loss of profits and impairment of earning capacity damages.⁷ The ICQ42011 was assigned claim # 9550267 and remains under Re-Review with the RP/GCCF at the time of this determination.⁸

On 27 March 2012, the Claimant presented this claim to the NPFC, seeking \$25,000.00 in loss of profits and impairment of earning capacity damages.⁹ Because the ICQ32011 and ICQ42011 previously presented to the RP/GCCF, concern the same damages and together equal the same damage amount as now presented to the NPFC, and because the claims have either been denied, or remain undetermined following 90 days from presentment to the GCCF, the NPFC may properly consider this claim in full.¹⁰ The remainder of this determination, therefore, shall address this claim for \$25,000.00 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 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 alleged that he was laid off from his position as a fertilization and insect control technician due to a lack of business caused by a decrease in tourism in the Sarasota, Florida area following the Deepwater Horizon oil spill.¹¹

According to the company's website, the Claimant's former employer "specializes in large scale termite and pest control treatments for condominium, apartment, commercial and residential properties."¹² The Claimant alleged that prior to the oil spill; he provided pest control services "from Port Richey, FL to Naples, FL."¹³ Specifically, the Claimant provided a list of six properties in Sarasota, Florida, which he serviced at the time of the oil spill.

The NPFC was able to speak with the property managers at two of the six properties. Each property manager stated that they did not cancel or limit contracts with Pestguard as a result of the Deepwater Horizon oil spill.¹⁴

The NPFC also consulted tourism statistics for Sarasota County, Florida. According to a report compiled by Sarasota County Tax Collections, Fiscal Year 2011 tourist development tax collections increased by 5% over the previous fiscal year, "with collections much stronger in the

⁷ GCCF United States Coast Guard Report, 17 April 2012.

⁸ GCCF United States Coast Guard Report, 17 April 2012.

⁹ Optional OSLTF Claim Form, signed on 22 March 2012.

¹⁰ 33 C.F.R. § 136.103(a).

¹¹ Letter from the Claimant describing losses, undated.

¹² See, http://www.pestguardtermite.com/html/our_company.html, accessed on 23 April 2012.

¹³ Letter from the Claimant describing losses, undated.

¹⁴ PHONECONS: NPFC Staff, and property management: Midnight Cove Condominiums, Whispering Sands Condominiums, 23 April 2012.

second half of the year.”¹⁵ Furthermore, the report indicates that most revenue was generated from condominiums as opposed to hotels or motels.¹⁶ These statistics therefore fail to support the Claimant’s assertions that the oil spill caused a reduction in tourism in Sarasota. The Claimant also fails to prove that any reduction in tourism also resulted in a reduction in the number of customers using pest control services, thereby causing him to be laid off in April of 2011.

Based on the foregoing, the Claimant has failed to prove that his lay-off in April of 2011 was a result of the effects of the discharge of oil resulting from the Deepwater Horizon oil spill. Furthermore, the Claimant has not provided evidence to indicate how he calculated his losses to arrive at his sum certain of \$25,000.00.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$25,000.00, 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 [REDACTED] Communication Division*

Date of Supervisor’s Review: *4/24/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁵ Sarasota County Tourist Development Tax report, at A-2; This calculation takes into account the increase in tax rate from 4.5% to 5% in May of 2011.

¹⁶ *Id.*