

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
United States Coast Guard  
National Pollution Funds Center

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5890  
7/26/2012

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 7582

Mount Seafood  


RE: Claim Number: N10036-1786

Dear Mr. Lewis:

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 claim number N10036-1786 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,  


Chief, Claims Adjudication Division  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

|                  |  |
|------------------|--|
| Claim Number     | : N10036-1786                          |
| Claimant         | : Mount Seafood                        |
| Type of Claimant | : Private (US)                         |
| Type of Claim    | : Loss of Profits and Earning Capacity |
| Amount Requested | : \$150,000.00                         |

### **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 2 May 2012, Mr. William Lewis, on behalf of Mount Seafood (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$150,000.00 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant was operating a seafood market in Georgiana, Alabama. The Claimant alleged that his business,

relied on the purchase of seafood from Mobile, Alabama, Milton, Florida, and Pensacola, Florida, but after the spill, we shut down seafood sales due to threat of contamination.<sup>2</sup>

The Claimant alleged that from June to December of 2010, the Claimant made no purchases or sales of seafood.<sup>3</sup> The Claimant seeks \$150,000.00 for the loss of his business, allegedly due to effects of the Deepwater Horizon oil spill.

Prior to presentment of this claim to the NPFC, the Claimant submitted a claim to the RP/BP on May 18, 2010, seeking loss of wages and earnings damages. BP failed to issue payment on this claim.

On 7 September 2010, the Claimant submitted an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking an unspecified amount of loss of wages and earnings damages.<sup>4</sup> The GCCF assigned the Claimant ID 1083776 and the EAP claim # 3005453. The GCCF denied payment on this claim.

<sup>1</sup> Optional OSLTF Claim Form, received on 2 May 2012.

<sup>2</sup> Optional OSLTF Claim Form, received on 2 May 2012.

<sup>3</sup> 2009, 2010 monthly sales statements.

<sup>4</sup> GCCF United States Coast Guard Report, 21 May 2012.

On 7 September 2010, the Claimant also submitted a Final payment claim to the RP/GCCF, in which the Claimant also sought an unspecified amount of wages and earnings damages.<sup>5</sup> The Final payment claim was assigned claim # 9012449 and was also denied.<sup>6</sup>

On 20 September 2011, the Claimant submitted a Fourth Quarter Interim Claim (ICQ42011) to the RP/GCCF, seeking \$150,000.00 in loss of wages and earnings damages.<sup>7</sup> The ICQ42011 was assigned claim # 9505298 and was also denied payment by the GCCF.

On 26 March 2012, the Claimant submitted a "Fifth Quarter" Interim Claim (ICQ52012) to the RP/GCCF, seeking an unspecified amount of loss of wages and earnings damages. The GCCF denied payment on the Claimant's ICQ52012.

The NPFC sent the Claimant a certified letter requesting additional information on 14 May 2012. The Claimant did not provide sufficient details to allow the NPFC to actually contact any of the identified sellers, nor did the Claimant provide documentation of any past transactions with these sellers. The Claimant also failed to provide evidence to indicate where he actually sold seafood, and whether his alleged loss was based on his inability to buy seafood as opposed to his decision not to purchase seafood following the spill. The Claimant also failed to provide a copy of a valid seafood dealer's license. The NPFC informed the Claimant that in order to substantiate this claim, the NPFC requested that the Claimant provide certain additional documentation, including (1) evidence indicating names and contact information of the businesses and individuals from whom the Claimant purchased seafood prior to the oil spill, (2) sales receipts and other information regarding the Claimant's prior sales, (3) an explanation as to how the Claimant calculated his loss to arrive at his claimed damage amount of \$150,000.00, and (4) a copy of a seafood dealer's license, valid at the time of the oil spill.<sup>8</sup> The NPFC also emailed copies of the letter to the Claimant twice at his request.<sup>9</sup> The Claimant responded to the additional information request via fax on 6 June 2012, but failed to provide documentation to respond to any of the points listed above, other than by providing a list of three names of locations where the Claimant "purchased seafood before the oil spill."<sup>10</sup>

The NPFC originally denied the claim on June 15, 2012 because documentation initially provided by the Claimant was insufficient to prove that the Claimant's business actually closed as a result of the oil spill. He failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$150,000.00, and (2) that the alleged loss was 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.

The NPFC informed the Claimant that should he choose to pursue this claim on reconsideration, the Claimant needed to respond in full to the NPFC's request for additional information.

#### **REQUEST FOR RECONSIDERATION:**

The Claimant requested reconsideration which was received by the NPFC on July 18, 2012 via facsimile. The Claimant provided a one-page letter requesting reconsideration. The Claimant provided a copy of his business license that was valid from 1/7/09 through 9/30/09 only. The

<sup>5</sup> GCCF United States Coast Guard Report, 21 May 2012.

<sup>6</sup> GCCF United States Coast Guard Report, 21 May 2012.

<sup>7</sup> GCCF United States Coast Guard Report, 21 May 2012.

<sup>8</sup> NPFC request for additional information, 14 May 2012.

<sup>9</sup> PHONECONS: NPFC Staff and the Claimant, 17 May 2012, 6 June 2012.

<sup>10</sup> Fax received on 13 June 2012.

Claimant provided no other information and provided no arguments or information for consideration by the NPFC.

**NPFC Determination on Reconsideration**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. On reconsideration, the Claimant made no arguments whatsoever and only provided a copy of a business license that was valid from January 7, 2009 through September 30, 2009, the year preceding the oil spill. Because the Claimant did not provide the requested information made by the NPFC prior to its initial denial and did not provide information to support his request for reconsideration the NPFC is again unable to determine whether or not the Claimant actually sustained a loss or even that any such loss was due to the injury, destruction or loss of property or natural resources resulting from a discharge or substantial threat of a discharge of oil.

Based on the foregoing, this claim is denied on reconsideration.

Claim Supervisor

Date of Supervisor's review: 7/26/12

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments: