

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 4803 9111

**5890/DWHZ**  
**13 June 2012**

Mr. Robert C. Harrison  


Re: Claim Number: N10036-1811

Dear Mr. Harrison:

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 N10036-1811 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

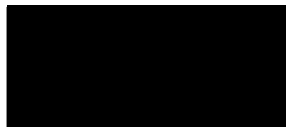
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1811.

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	N10036-1811
Claimant	Mr. Robert C. Harrison
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,000

### ***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 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 17 May 2012, Mr. Robert C. Harrison (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon incident.<sup>1</sup>

The Claimant makes his living collecting scrap metal that shrimpers bring up in their nets while fishing.<sup>2</sup> The Claimant alleged that “the shrimpers did not work on their boats when the oil was coming up in the Gulf, so there was no metal to collect.”<sup>3</sup>

The Claimant therefore seeks \$5,000 as compensation for income he did not earn following the Deepwater Horizon incident; due to his inability to collect scrap metal.

### ***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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF 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. 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;

<sup>1</sup> Optional OSLTF Claim Form, signed 04 May 2012.

<sup>2</sup> Optional OSLTF Claim Form, signed 04 May 2012.

<sup>3</sup> Optional OSLTF Claim Form, signed 04 May 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; and
- (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 his claim, the Claimant submitted the following documentation:

- Optional OSLTF Form, signed 4 May 2012;
- Letter authorizing NPFC to retrieve the Claimant's file from the GCCF;
- GCCF Claim file, which includes the following:
  - GCCF Emergency Advance Payment Claim Form, with supporting documentation forms, signed 13 December 2010;
  - GCCF Full Review Final Payment Claim Form, signed 27 December 2010;
  - GCCF Full Review Final Payment Claim Form, signed 19 January 2011;
  - GCCF Interim Payment Claim form, signed 8 August 2011;
  - GCCF Interim Payment Claim form, signed 20 November 2011;
  - GCCF Supplemental Request Form for Emergency Advance Payments for Lost Earnings or Profits, signed 17 November 2010;
  - GCCF Denial Letter, dated 15 December 2010;
  - GCCF Request for Supporting Documentation, undated;
  - GCCF Request for Supporting Documentation, dated 29 January 2011;
  - GCCF Denial Letter, dated 22 April 2011;
  - GCCF Determination Letter on Final Payment Claim, dated 15 August 2011;
  - GCCF Release and Covenant Not to Sue, dated 25 August 2011 (two copies—one unsigned, one signed 29 August 2011);

- Identification documents—Social Security card and Mississippi Identification Card;
- Rental Lease Agreement with Evangelistic Crusader Ministry Properties, lease term to begin 01 September 2009;
- Five receipts for medication purchases;
- Eight rental receipts confirming rental payments;
- Correspondence from Social Security Administration, dated 3 December 2010;
- 27 handwritten letters from the Claimant with the following attachments among them:
  - Five newspaper articles;
  - One photocopy of a Greyhound bus ticket; and
  - One business card of Jeremiah Urbano, Southern Recycling;
- 24 receipts for scrap metal from Southern Recycling; and
- Four receipts for scrap metal from David Motor Scrap, Inc.

Prior to presenting this claim to the NPFC, the Claimant filed a Third Quarter 2011 Interim Payment Claim (ICQ32011), a Fourth Quarter 2011 Interim Payment Claim (ICQ42011), and a Full Review Final Claim (FRF) to the RP/GCCF.<sup>4</sup> The RP/GCCF assigned Claimant ID # 3471392 to the Claimant and assigned the ICQ32011 claim # 9436359, the ICQ42011 claim # 9541344, and the FRF claim # 9234682.<sup>5</sup> The RP/GCCF issued final payment on the claims, offering \$19,765.38.<sup>6</sup> The Claimant accepted payment and signed the accompanying Release and Covenant Not to Sue on 29 August 2011.<sup>7</sup>

On 17 May 2012, the Claimant presented this claim to the NPFC, seeking \$2,500 in loss of profits and earnings capacity damages and \$2,500 in natural resources damages.<sup>8</sup> The Claimant amended his claim in a phone conversation,<sup>9</sup> making the entire \$5,000 a claim for loss of profits and impairment of earning capacity damages.

Based upon the documentation provided by the Claimant and retrieved from the RP/GCCF, it appears that the subject matter of each of these claims is identical—i.e., that the Claimant lost earnings from selling scrap metal because of the Deepwater Horizon incident. The NPFC deems each of the Claimant's prior claims with the RP/GCCF to satisfy OPA presentation requirements. Accordingly, this Claim Summary and Determination addresses the damages claimed in all of the Claimant's prior submissions to the RP/GCCF, specifically, GCCF Claim #'s 9436359, 9541344, and 9234682.

### **NPFC Determination**

33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136 require a claimant to prove that a 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

<sup>4</sup> GCCF Online Claimant Status Report, retrieved 29 May 2012.

<sup>5</sup> GCCF Online Claimant Status Report, retrieved 29 May 2012.

<sup>6</sup> GCCF Online Claimant Status Report, retrieved 29 May 2012.

<sup>7</sup> GCCF Release and Covenant Not to Sue, signed 29 August 2011.

<sup>8</sup> Optional OSLTF Claim Form, signed 16 May 2012.

<sup>9</sup> PHONECON: NPFC Staff and Robert C. Harrison, 17 May 2012 JBH.

Here, in order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an uncompensated financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

Based on information presented by the Claimant and available to the NPFC, the GCCF has compensated the Claimant a total of \$19,765.38 as full and final payment.<sup>10</sup> The Claimant executed a Release and Covenant Not to Sue in return for final payment on 29 August 2011.<sup>11</sup> By signing this document, the Claimant has fully settled his claim for damages resulting from the Deepwater Horizon incident.<sup>12</sup> In doing so, he has waived any rights to further recovery for alleged injuries resulting from effects of the Deepwater Horizon oil spill.

Any payment from the OSLTF requires the acquisition of rights from the responsible party. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover compensation from the OSLTF. The subrogation of the Claimant's rights to BP is made clear in the release by the following language:

"... As this Release is fully and completely resolving, together with all other Claims, Claimant's claim under OPA, BP is hereby subrogated to any and all rights that Claimant has arising from the Incident."

If the Claimant believes that payments received from GCCF are for a different set of damages for which he submitted a claim to the RP/GCCF, he must fully explain this in a request for reconsideration. The Claimant must also include any and all waivers and covenants that he has signed regarding compensation for injuries resulting from the Deepwater Horizon incident.

This claim for \$5,000 in loss of profits and earnings capacity is denied because the Claimant has accepted final payment from the GCCF. The Claimant is therefore ineligible to recover from the OSLTF.

Claim Supervisor:  *NPFC Claims & Litigation Division*

Date of Supervisor's Review: *6/13/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>10</sup> GCCF Determination Letter on Final Payment Claim, dated 15 August 2011.

<sup>11</sup> GCCF Release and Covenant Not to Sue, signed 29 August 2011.

<sup>12</sup> GCCF Release and Covenant Not to Sue, signed 29 August 2011.