

U.S. Department of
Homeland Security

**United States
Coast Guard**



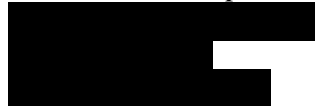
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 3602

5890/DWHZ
05 June 2012

Southwest Development Group, Inc.



Re: Claim Number: N10036-1821

Dear Mr. Vilkas:

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 N10036-1821 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 N10036-1821.

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	N10036-1821
Claimant	Southwest Development Group, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity (reclassified)
Amount Requested	\$273,844.00

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 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 24 May 2012, Mr. Walter Vilkas, on behalf of Southwest Development Group, Inc.(the Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$273,844.00 in public service damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant filed a rudimentary, hand-drawn design with the Alternative Response Technology (ART) process for the Deepwater Horizon incident on 9 June 2010.² On 2 July 2010, the ART team notified the Claimant that they had categorized the Claimant's submission as "Already Considered/Planned, Not Feasible, or Not Possible," and declined to evaluate it further.³

On 13 July 2010, BP engineers fitted a cap over the ruptured pipe, and closed the cap's valves over the next few days, ultimately stopping the flow of oil into the Gulf of Mexico.⁴ Mr. Vilkas followed news reports of these efforts, and determined from these reports that BP had used the Claimant's idea in capping the leaking well.⁵ The Claimant alleges that BP has failed to provide compensation for the design efforts, and claims \$273,844.00 in public service damages.

It is unclear how the Claimant reached this figure, as there is no accounting for the costs leading to this number. There is simply a total figure in the Contractor Invoice for \$273,844.00.⁶

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 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.

¹ Optional OSLTF Form, signed 16 May 2012.

² Horizon Call Center receipt confirmation e-mail, dated 9 June 2010.

³ Deepwater Horizon Call Center update e-mail, dated 2 July 2010.

⁴ *BP Begins Testing New Well Cap*, USA Today 14 July 2010, page 5A.

⁵ E-mail to Michael Cortez, Deepwater Horizon Call Center, dated 29 August 2010.

⁶ Contractor Invoice, dated 23 December 2010.

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

- Optional OSLTF Form, signed 16 May 2012;
- Hardship letter addressed to NPFC, dated 16 May 2012;
- GCCF letter notifying the Claimant of the proposed Deepwater Horizon litigation settlement, dated 16 March 2012;
- GCCF re-review denial letter, dated 15 May 2012;
- Hardship letter addressed to GCCF, dated 14 November 2011;
- Hand-drawn design of well cap, dated 3 May 2010;
- Four pieces of correspondence from Horizon Call Center, dated 9 June 2010, 2 July 2010, 21 August 2010, and 27 December 2010;
- Alternative Technology Response Form, dated 11 June 2010;
- Correspondence from Mr. Vilkas to Horizon Support, dated 29 August 2010;
- Contractor Invoice for \$273,844, dated 23 December 2010;
- Two Certified Mail Receipts, both dated 23 December 2010;
- 13 newspaper articles from various publications outlining efforts to cap the well;
- 2011 For Profit Corporation Annual Report, filed 27 April 2011;

- Printout from Florida Department of State, Division of Corporations, outlining entity information, dated 27 October 2011; and
- Contact information page for Mr. Vilkas, undated.

Prior to presenting this claim to the NPFC, the Claimant presented a Full Review Final Claim (FRF) to the GCCF.⁷ The GCCF assigned Claimant ID # 7278074 to the Claimant and assigned the FRF claim # 9545736.⁸ The RP/GCCF denied payment on this claim.⁹

On 11 May 2012, the Claimant presented this claim to the NPFC, seeking \$273,844.00 in public services damages,¹⁰ Under 33 C.F.R. § 237, though, only a state or political subdivision of a state can claim public services damages for the “net costs of providing increased or additional public services during or after removal activities . . . caused by a discharge of oil.”¹¹ The Claimant, though, seeks compensation for allegedly developing the design that ultimately capped the leaking pipe discharging oil into the Gulf of Mexico. In essence, the Claimant alleges that he failed to earn an anticipated profit. Claims of this nature are more aptly characterized as claims for lost profits and earnings capacity. Accordingly, the NPFC is reclassifying the \$273,844.00 claimed for public services damages as loss of profits and earning capacity. Because the Claimant first presented this claim to the GCCF, who denied the claim, the NPFC may adjudicate this claim.¹²

NPFC Determination

33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136 require that a claimant 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.

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

A compensable loss under the OPA is lost or reduced income caused by an oil spill.¹³ The Claimant, however, seeks profits he anticipated receiving from BP. The Claimant does not allege any reduction in profits, only missed opportunity. The Claimant’s alleged loss of compensation is therefore not an OPA compensable cost. Accordingly, the Claimant’s request of \$273,844.00 is denied in its entirety.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *6/5/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

⁷ GCCF Claimant Status, accessed on 29 May 2012.

⁸ GCCF Claimant Status, accessed on 29 May 2012.

⁹ GCCF Claimant Status, accessed on 29 May 2012.

¹⁰ Optional OSLTF Claim Form, signed 16 May 2012.

¹¹ 33 C.F.R. § 136.237 (emphasis added).

¹² 33 C.F.R. § 136.103(a).

¹³ 33 C.F.R. § 136.233.