

U.S. Department of  
Homeland Security

United States  
Coast Guard



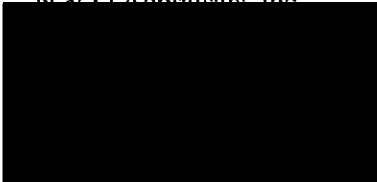
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4803 9999

5890/DWHZ  
16 July 2012

N & O Appraisals, Inc.



Re: Claim Number: N10036-1829

Dear Mr. Gawel:

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 N10036-1829 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 N10036-1829.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000  
Arlington, VA 20598-7100



Claims Adjudication Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

cc: N&O Appraisals, Inc.



By Certified Mail  
No: 7011 1570 0001 4803 9982

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1829
Claimant	N&O Appraisals, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$83,000

### ***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 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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

### ***CLAIM AND CLAIMANT***

On 30 May 2012, Florida BP Claim Inc., on behalf of N&O Appraisals Inc, (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$83,000 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 a home and property appraisal company operating primarily in Pinellas County Florida.<sup>2</sup> The Claimant alleged that the oil spill caused a sharp decrease in appraisals that resulted in lost income and compelled the Claimant to open a second office in North Carolina in the summer of 2010.<sup>3</sup>

In order to calculate losses, the Claimant compared income for the Florida office in the months after the spill with a similar time period in 2009 to reach a requested sum certain of \$83,000.<sup>4</sup>

### ***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 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.

<sup>1</sup> Optional OSLTF Claim Form, signed 15 May 2012.

<sup>2</sup> Hardship Letter from the Claimant, undated.

<sup>3</sup> Hardship Letter from the Claimant, undated.

<sup>4</sup> Letter from the Claimant to the GCCF, 2 February 2012.

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.
- (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 undertake, 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission to the OSLTF**

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed 15 May 2012;
- Hardship Letter from the Claimant, undated;
- Letter from the Claimant to the GCCF, undated;
- Location Maps of Business;
- Letter of Support from Ronald Giovino, signed 23 April 2012;
- Letter from the Claimant to the GCCF, dated 3 February 2012;
- Profit and Loss Statements for 2008 – 2011, Florida office;
- Profit and Loss Statements for 2010 – 2011, North Carolina office;
- Bank Account Statement for November 2011;
- Bank Account Statement for October 2011;
- Bank Account Statement for September 2011;
- Bank Account Statement for August 2011;
- Bank Account Statement for July 2011;

- Bank Account Statement for June 2011;
- North Carolina Office Bank Account Statements with Copies of Checks;
- Articles of Incorporation, dated 1 June 2005;
- Photocopy of Drivers License
- Claimant Letter to the NPFC, dated 17 June 2012;
- Profit & Loss Summary for 2007 to 2011 for Florida Office;
- Profit & Loss Summary for 2010 to 2011 for North Carolina Office;
- 2007 S Corporation Income Tax Return;
- 2008 S Corporation Income Tax Return;
- 2009 S Corporation Income Tax Return;
- 2010 S Corporation Income Tax Return;
- 2011 S Corporation Income Tax Return;
- Letter of Support from Ronald Giovino of NEA Valuebuilder, signed 23 April 2012;
- Copy of GCCF Interim Payment Claim, signed 8 February 2012.

On 8 February 2012, the Claimant presented an Interim Payment (IP) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$83,000.00<sup>5</sup> Claimant was issued GCCF Claimant ID # 3576840. According to Claimant, the RP/GCCF denied this claim.

On 30 May 2012, the Claimant submitted this claim to the NPFC, seeking \$83,000 in loss of profits and impairment of earning capacity damages.<sup>6</sup> The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>7</sup> Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC.

Evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

### **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.

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that he is a member of the economic damages class of the BP Settlement, he should then submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

<sup>5</sup> Copy of GCCF Interim Payment Claim, signed 8 February 2012.

<sup>6</sup> Optional OSLTF Claim Form, signed 15 May 2012.

<sup>7</sup> 33 C.F.R. § 136.103(a).

Furthermore, this claim is denied under OPA's loss of profits damage category, as the Claimant has failed to prove that they have sustained a financial loss as a result of the Deepwater Horizon oil spill.

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 seeks \$83,000 in compensation for losses attributable to the oil spill. However, according to the provided tax documentation, the Claimant earned \$11,864 more in 2010 sales as compared to 2009.<sup>8</sup> Sales increased further \$80,897.00 from 2010 to 2011.<sup>9</sup> The Claimant asserts that as a result of declining business in Florida due to the Deepwater Horizon oil spill, the family opened a second office in North Carolina in the summer of 2010. As a result, the family business was able to mitigate the damages allegedly suffered by the Florida location and their year over year income increased. Claimant still seeks, however, alleged lost profits from the Florida location.<sup>10</sup>

Under the claims regulations cited above, the amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered and calculations must reflect all income from alternative employment or business undertaken. As stated by the Claimant, the "office in North Carolina, which operates under the same Federal Tax Id, was opened due to the actual and forecasted decline in revenue in the Florida office after the Oil Spill."<sup>11</sup> Accordingly, the Claimant did not suffer a loss of profits under the law because she wisely mitigated her damages by undertaking a new business opportunity in opening the North Carolina office.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that she sustained a loss in the amount of \$83,000, (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, and because (3) the claim is considered settled by virtue of belonging to the economic damages class associated with the CSSP.

Claim Supervisor: **NPFC**  **Mediation Division**

Date of Supervisor's Review: **7/16/12**

Supervisor's Action: **Denial approved**

Supervisor's Comments:

<sup>8</sup> 2010 S Corporation Income Tax Return; 2009 S Corporation Income Tax Return.

<sup>9</sup> 2011 S Corporation Income Tax Return; 2010 S Corporation Income Tax Return.

<sup>10</sup> Claimant's answer to request for Additional Information dated 17 June 2012.

<sup>11</sup> Claimant's answer to request for Additional Information dated 17 June 2012.