

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
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5890/DWHZ  
23 July 2012

Mr. Scott Blackwell  


Re: Claim Number: N10036-1840

Dear Mr. Blackwell:

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 N10036-1840 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 N10036-1840.

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	N10036-1840
Claimant	Mr. Scott Blackwell
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$50,000.00

### ***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 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

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

On 05 June 2012, Mr. Scott Blackwell (the Claimant) submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$50,000 in loss of profits and impairment of earning capacity damages.<sup>1</sup>

At the time of the Deepwater Horizon incident, the Claimant was lead hair stylist at the Wellness Spa at IMG Academies (IMG) in Bradenton, Florida, where he received a commission of 45 percent of what his employer charged for his hair care services.<sup>2</sup> The Claimant stated that "[o]ver 50 percent of [IMG] business was a result of tourism."<sup>3</sup> The Claimant alleged that "[a]ll of these locations [in the Bradenton area] had significant impacts on tourism due to the oil spill," causing his customer base to shrink and, therefore, his earnings to decline.<sup>4</sup>

As a result, the Claimant filed this claim for \$50,000 in loss of profits and impairment of earning capacity damages.<sup>5</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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

<sup>1</sup> Optional OSLTF Claim Form, signed 03 June 2012.

<sup>2</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>3</sup> Hardship Letter, undated.

<sup>4</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>5</sup> Optional OSLTF Claim Form, signed 03 June 2012.

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;
- (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.

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 NPFC**

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

- Optional OSLTF Form, signed 03 June 2012;
- Hardship Letter, undated;
- Copies of GCCF correspondence, dated 23 May 2012 and 02 June 2012;
- Excerpts of GCCF Program Statistics—Florida Summary;
- Excerpt from news article detailing BP payments in Manatee County as a result of the Deepwater Horizon incident;
- Payroll details for 05 January 2011 through 08 January 2011;
- 2008 Form W-2 from IMG Academics, LLP;

- 2009 Form W-2 from IMG Academies, LLP;
- 2010 Form W-2 from IMG Academies, LLP;
- 2011 Form W-2 from IMG Academies, LLP;
- 2008 U.S. Individual Income Tax Return, including Form 6251;
- 2009 U.S. Individual Income Tax Return, including Schedules A and M;
- 2010 U.S. Individual Income Tax Return;
- 2011 U.S. Individual Income Tax Return;
- One Form W-2 from IMG Academies, appearing to be from tax year 2003;
- One U.S. Individual Income Tax Return, appearing to be from tax year 2008; and
- Responses to NPFC Request for Additional Information, responses dated 18 June 2012.

Prior to submitting a claim with the NPFC, the Claimant sought compensation from the RP/GCCF, who assigned him Claimant ID # 3587271.<sup>6</sup> The Claimant filed at least one claim with the RP/GCCF, which was assigned claim # 9599451.<sup>7</sup> The RP/GCCF denied payment on this claim.<sup>8</sup>

On 05 June 2012, the Claimant presented this claim to the NPFC, seeking \$50,000 in loss of profits damages.<sup>9</sup> Based upon the Claimant's submissions, it appears that the subject matter for the RP/GCCF claim is identical to the claim now before the NPFC—i.e., that a drop in tourism, caused by the Deepwater Horizon incident, resulted in the Claimant suffering reduced earnings. The NPFC deems each of the Claimant's prior claims with the RP/GCCF to satisfy OPA presentation requirements.<sup>10</sup> Accordingly, this Claim Summary and Determination addresses the damages claimed in the Claimant's prior submission to the RP/GCCF. Any damages sought by the Claimant that were not first presented to the RP/GCCF are denied for improper presentment.

Additionally, the NPFC notes that 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the 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 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>6</sup> GCCF Denial Letter, dated 23 May 2012.

<sup>7</sup> GCCF Denial Letter, dated 23 May 2012.

<sup>8</sup> GCCF Denial Letter, dated 23 May 2012.

<sup>9</sup> Optional OSLTF Claim Form, signed 03 June 2012.

<sup>10</sup> 33 C.F.R. § 136.103(a).

Furthermore, this claim for loss of profits and impairment of earning capacity damages is denied on its merits, as the Claimant has failed to establish that he has sustained a financial loss as a result of the Deepwater Horizon incident. In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficiently proving (1) that the claimant sustained an actual financial loss, and (2) that the discharge of oil resulting from the Deepwater Horizon oil spill caused that loss.

At the time of the Deepwater Horizon incident, the Claimant was the lead hair stylist at the IMG in Bradenton, Florida.<sup>11</sup> The Claimant alleged that because his customer base is comprised largely of tourists, and because the Deepwater Horizon incident caused a decrease in tourism to the Bradenton area, the Claimant lost a significant amount of business.<sup>12</sup> The Claimant also alleged that because of the declining business, he decided to forego his benefits package and not be committed to 35 hours per week at IMG, so that he could pursue other opportunities.<sup>13</sup> After forfeiting his benefits package, the Claimant purchased his own medical insurance, costing \$519 per month—a cost for which he also seeks compensation from the OSLTF.<sup>14</sup> The Claimant accepted a job at Aqua Aveda Wellness Spa in February 2012 that paid a commission ten percentage points higher than IMG.<sup>15</sup>

In a letter dated 11 June 2012, the NPFC requested additional information from the Claimant.<sup>16</sup> The NPFC sought financial documentation as well as evidence proving that the Claimant's employer indeed sustained a financial loss in the period claimed.<sup>17</sup> The Claimant responded to this request with the financial documentation requested, contact information for his employer, and answers to each of the NPFC's questions.<sup>18</sup>

### *1. Financial Loss*

The Claimant alleges that the Deepwater Horizon incident caused a decrease in tourism in the Bradenton area, which resulted in \$50,000 in loss of profits damages.<sup>19</sup> The Claimant's submissions support his assertion that he suffered a financial loss in 2010, which continued into 2011.

The Claimant's submissions, however, do not support his assertions that his financial loss amounted to \$50,000. The Claimant calculated his losses by comparing his 2009 earnings to his 2010 and 2011 earnings, and adding \$519 monthly medical insurance expenses that he incurred when he forfeited his benefits in July 2011.<sup>20</sup> The remainder presumably is meant to account for "growth in income from the 2009 income [and] 2012 wages."<sup>21</sup>

A review of the Claimant's financial documentation establishes that, at best, compared to his 2009 earnings, he earned \$13,195 less in 2010 and \$16,420 less in 2011.<sup>22</sup> The Claimant has not, however, established the remainder of the \$50,000 that he has claimed nor has he provided certain documentation relating to his increased costs as requested by the NPFC.<sup>23</sup> As such, the difference between the Claimant's alleged loss and the lesser amount possibly attributable to the Deepwater

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<sup>11</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>12</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>13</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>14</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>15</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>16</sup> Request for Additional Information, dated 11 June 2012.

<sup>17</sup> Request for Additional Information, dated 11 June 2012.

<sup>18</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>19</sup> Optional OSLTF Claim Form, signed 03 June 2012.

<sup>20</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>21</sup> Response to NPFC Request for Additional Information, response dated 18 June 2012.

<sup>22</sup> The Claimant earned \$47,025 in 2009, \$33,830 in 2010, and \$30,605 in 2011. 2009 U.S. Individual Income Tax Return; 2010 U.S. Individual Income Tax Return; 2011 U.S. Individual Income Tax Return.

<sup>23</sup> Request for Additional Information, dated 11 June 2012.

Horizon incident—\$20,385—is denied as documentation provided by the Claimant does not establish that he has suffered a financial loss in the amount alleged.

## *2. Failure to Prove Deepwater Horizon Incident Caused Alleged Losses*

The Claimant has also failed to meet his burden to prove the required causal link between the Deepwater Horizon incident and his claimed losses. Though he has shown that his financial loss roughly correlates in time to the Deepwater Horizon incident, he has not shown that the Deepwater Horizon incident in fact caused that financial loss.

The Claimant alleged that the Bradenton area suffered “significant impacts on tourism due to the oil spill.”<sup>24</sup> This allegedly reduced tourism resulted in a smaller client pool, and therefore decreased earnings, as his earnings are commission-based.<sup>25</sup>

Bradenton area tourism statistics, however, show that tourism in the area actually increased in 2010. The 2011 Visitor Profile for the Bradenton Area Convention and Visitors Bureau indicates that 2010 saw 80,100 more tourists visit the area than in 2009, and an increase of nearly \$15 million in tourist expenditures.<sup>26</sup>

Accordingly, this claim of \$50,000 is denied in its entirety because the Claimant has not demonstrated (1) a financial loss in the amount alleged, 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 discharge of oil. Furthermore, this claim is considered to have been settled by virtue of Claimant belonging to the economic damages class associated with the CSSP.

Claim Supervisor:  *NPRC Claims Adjudication Division*

Date of Supervisor's Review: 7/23/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>24</sup> Response to Request for Additional Information, dated 11 June 2012.

<sup>25</sup> Response to Request for Additional Information, dated 11 June 2012.

<sup>26</sup> The Bradenton area saw 2,511,200 visitors in 2009 and 2,591,300 visitors in 2010. Tourist expenditures were \$693,413,301 in 2009 and \$708,349,105 in 2010. Bradenton Area Convention and Visitors Bureau 2011 Visitor Profile page 5.