

U.S. Department of
Homeland Security

United States
Coast Guard



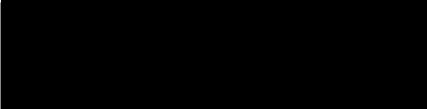
Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8565

5890/DWHZ
13 August 2012

Rapid Claims Recovery



Re: Claim Number: N10036-1853

Dear Mr. Jones:

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 N10036-1853 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 N10036-1853.

Mail reconsideration requests to:

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



ion Division
National Pollution Funds Center

Enclosure: Claim Summary/Determination Form

cc: Audio Plus, LLC
ATTN: Robin Young
10050 Gibsonton Dr.
Riverview, FL 33569

By Certified Mail:
No. 7011 1570 0001 4803 8572

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1853
Claimant	Audio Plus, LLC
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$65,000.00

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.

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 29 June 2012, Mr. Christopher Jones, on behalf of Audio Plus, Inc. (collectively, the Claimant), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$65,000.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant is a car and marine audio installation business, located in Riverview, Florida. The Claimant alleged that the Deepwater Horizon oil spill caused business to decrease and local customers to cancel scheduled installations. The Claimant does not specifically state how the oil spill affected the business, other than to state that "some customers ha[ve] cancelled installations, and business has substantially decrease[d] in retail sales service as a result of the spill."²

The Claimant seeks to recover \$65,000.00 in profits allegedly lost as a result of the Deepwater Horizon oil spill.

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 Claim Form, signed on 21 May 2012.

² Optional OSLTF Claim Form, signed on 21 May 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; 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 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

In support of this claim, the Claimant presented the following documentation.

- Cover Sheet, Rapid Claims Recovery, 28 June 2012;
- Optional OSLTF Claim Form, signed on 21 May 2012;
- Representation Authorization agreement, signed on 7 June 2012;
- 2008 Form 1120S, showing gross sales of \$68,905.00 and business loss of \$42,600.00;
- Copy of business advertisement;
- 2008 Income Statement, showing gross sales of \$105,373.34;
- 2009 Form 1120S, showing gross sales of \$105,373.34 and business loss of \$8,448.30;
- Confirmation letter, Wrobel Accounting, 14 April 2011;
- Invoice, Wrobel Accounting, 14 April 2011;
- 2008 Profit and loss statement;
- Balance Sheet as of June 26, 2009;
- 2010 Form 1120S, showing gross sales of \$231,595.00 and business profits of \$35,285.00.

On 29 June 2012, the Claimant presented this claim to the NPFC, seeking \$65,000.00 in loss of profits or impairment of earning capacity damages. Prior to presentment of this claim to the NPFC, the Claimant presented a claim to the GCCF and was assigned Claimant ID 1641358.³ According to OPA, all claims must be presented first to the RP/GCCF, prior to their presentment to the NPFC.⁴ If any damages now presented to the NPFC were not first presented to the RP/GCCF, these damages 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 economic and property damages class action settlement (the E&PD 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 E&PD 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 E&PD Settlement, he should then submit evidence to indicate that he has either opted out or is excluded from the E&PD settlement in his request for reconsideration of this claim.

However, even if this claim had not been settled, it is denied under OPA's loss of profits damage category. In order to prove a claim for loss of profits damages, a claimant must provide evidence 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. Here, the Claimant has failed to provide evidence to prove that he has sustained a financial loss as a result of the oil spill.

1. Failure to prove a financial loss.

In order to prove that a Claimant has sustained an actual financial loss within the meaning of OPA, a claimant must prove that his "income was reduced"⁵ following the oil spill. In establishing a baseline by which to measure the Claimant's loss, the OPA requires that the NPFC consider "the claimant's profits or earnings in comparable periods."⁶ A Claimant may also present evidence of actual cancelled contracts. However, in order to prove that any cancelled contracts resulted in actual losses; a Claimant must prove that any cancelled installation projects were not replaced with other projects and that any lost sales were not made up at a later time or replaced with other work.

³ Optional OSLTF Claim Form, signed on 21 May 2012.

⁴ 33 C.F.R. § 136.103(a).

⁵ 33 C.F.R. § 136.233(b).

⁶ 33 C.F.R. § 136.233(c).

Here, Claimant alleged that business decreased following the oil spill. However, financial documentation provided by the Claimant indicates that the Claimant's income increased substantially in 2010. According to tax documents, the Claimant reported business losses of \$42,600.00 and \$8,448.30 in 2008 and 2009, before reporting a profit of \$35,385.00 in 2010.⁷


Because financial documentation included in this claim submission indicates that the Claimant's profits grew substantially in 2010 as compared to prior years, the Claimant has failed to prove that he has sustained an actual financial loss in the period following the Deepwater Horizon oil spill.

2. Failure to prove a loss as a result of the Deepwater Horizon oil spill.

The Claimant alleged that certain installation services were cancelled and that business generally slowed as a result of the Deepwater Horizon oil spill. However, the Claimant has failed to provide any evidence regarding how his business may have been impacted by the Deepwater Horizon oil spill.

Furthermore, Sales and Use Tax Records for Hillsborough County, Florida indicate that monthly sales for May through December of 2010, showed consistent increases as compared to the same period of 2009.⁸ September of 2010 was the only month of 2010 following the oil spill, in which sales tax collections did not increase as compared to 2009. Therefore, it seems that as with the Claimant's sales, overall County sales actually increased in the period following the Deepwater Horizon oil spill.

This claim is therefore denied because the Claimant has failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$65,000.00, 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 a 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: *NPR*  *ication Division*

Date of Supervisor's Review: *8/13/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ 2008, 2009, 2010 Forms 1120S.

⁸ See, Hillsborough County, Florida, Taxable Sales Records, available at, <http://www.hillsboroughcounty.org/index.aspx?NID=1116>, accessed on 9 August 2012.