

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  
Number: 7011 1570 0001 4803 8756

5890/DWHZ  
18 October 2012

Rapid Claims Recovery  
[REDACTED]

Re: Claim Number: N10036-1856

Dear Mr. King:

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 N10036-1856 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 N10036-1856.

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  
cc: [REDACTED]

By Certified Mail:  
No. 7011 1570 0001 4803 8732

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1856
Claimant	Ardent Commercial Services
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$26,268.00

### ***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 29 June 2012, Rapid Claims Recovery, on behalf of Ardent Commercial Services (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$26,268.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is a commercial cleaning service located in Wesley Chapel, Florida. The Claimant alleged that the Deepwater Horizon oil spill caused a general economic decline in the area, which caused the Claimant to be "unable to secure some cleaning contracts."<sup>2</sup>

The Claimant alleged to have lost \$13,134.50 in revenue in 2010, which he multiplied by two, to reach his claimed loss amount of \$26,268.00.<sup>3</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 on 20 June 2012.

<sup>2</sup> Optional OSLTF Claim Form, signed on 20 June 2012.

<sup>3</sup> Attachment B, Sample Calculation for a Business Claimant.

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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 20 June 2012;
- Representation authorization letter, signed on 20 June 2012;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, 22 March 2011;
- Attachment B- Sample Calculation For A Business Claimant;
- General representation agreement, signed on 17 May 2012;

- Cover Letter, filed on 21 May 2012;
- Articles of Amendment to Articles of Organization for KP Business Services, LLC;
- General Representation Agreement, signed on 20 June 2012;
- 2010 Form 1065.

On 29 June 2012, the Claimant presented this claim to the NPFC, seeking \$26,268.00 in loss of profits or impairment of earning capacity damages.<sup>4</sup> On 17 January 2011, the Claimant submitted a First Quarter Interim Claim (ICQ12011) to the RP/GCCF, in which the Claimant sought to recover \$11,000.00 in loss of profits and earnings damages.<sup>5</sup> The Claimant was assigned 3488272 and the ICQ12011 was assigned claim # 9223161. The RP/GCCF denied payment on this claim.

On 18 July 2012, the Claimant submitted this claim to the CSSP. The Claimant was assigned ID 1000842123, and this claim for business economic loss was assigned claim number 37713.<sup>6</sup> Having submitted this claim to the CSSP, the Claimant is currently a member of the Deepwater Horizon oil spill economic and property damage class action settlement (the E&PD Settlement.).

All claims before the NPFC must have been first presented to the Responsible Party or its representative. Should the RP fail to issue payment on a claim, or should the claim be pending for a period longer than 90 days, the claimant may present the same claim, for the same damages, to the NPFC.<sup>7</sup> Evidence available to the NPFC indicates that the Claimant has previously presented claims seeking to recover financial losses from both the GCCF and the CSSP. However, it appears that the Claimant has only presented damages to the pre-mentioned entities in the amount of \$11,000.00.<sup>8</sup> Any damages now before the NPFC, which were not first presented to the RP or its representative, are denied for improper presentment.<sup>9</sup> Therefore, this claim is initially denied in the amount of \$15,268.00.

### **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, the NPFC notes 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 the NPFC to those rights.

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 they are a member of the economic damages class of the E&PD Settlement, they should

<sup>4</sup> Hardship Letter, dated 28 June 2012.

<sup>5</sup> Deepwater Horizon Claims Center, United States Coast Guard Report, 16 August 2012.

<sup>6</sup> Deepwater Horizon Claims Center, United States Coast Guard Report, 16 August 2012.

<sup>7</sup> 33 C.F.R. § 136.103(c)(2).

<sup>8</sup> Deepwater Horizon Claims Center, United States Coast Guard Report, 16 August 2012.

<sup>9</sup> 33 C.F.R. § 136.103(a).

submit evidence to indicate that they have either opted out or are excluded from the E&PD Settlement in a request for reconsideration of this claim.

However, even if this claim were not considered to have been settled, it is denied on its merits, 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. As previously noted, \$15,268.00 of this claim is initially denied, as this amount was not properly presented to the Responsible Party, prior to its presentment to the NPFC.

Regarding the remaining \$11,000.00 of this claim, the Claimant has failed to provide evidence sufficient to prove that they have sustained a financial loss in this amount as a result of the Deepwater Horizon oil spill. The Claimant alleged that their commercial cleaning business, located in Wesley Chapel, Florida, lost revenue as a result of the Deepwater Horizon oil spill, citing a general lack of work in the area following the oil spill. However, the Claimant has failed to provide any evidence to support their alleged loss or to establish a link between their loss and the oil spill.

In a letter dated 5 July 2012, the NPFC requested that the Claimant provide certain additional information in support of this claim. Among other items, the NPFC requested that the Claimant provide financial documentation to substantiate alleged losses, including copies of income tax returns as well as any other financial documents which might prove that the Claimant sustained the losses alleged. Importantly, the NPFC also requested a detailed explanation as to how the oil spill actually caused the Claimant's alleged losses. The Claimant was asked to respond to the additional information request letter within 14 days of the date of the letter. As of the date of this claim determination, the Claimant has failed to respond.

Documentation included in this claim submission fails to prove how or if the oil spill in fact impacted the Claimant's business. As such, this claim is denied because the Claimant has failed to provide documentation sufficient to prove (1) that they sustained a financial loss in the amount of \$26,268.00, (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, and (3) the Claimant failed to properly present the full amount of their claim to the Responsible Party. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement, and is therefore not eligible for OSLTF compensation.

Claim Supervisor: NPFC  *ion*

Date of Supervisor's Review: 10/18/12

Supervisor's Action: ***Denial approved***

Supervisor's Comments: