

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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Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 2970 0004 1302 0014

5890/DWHZ
12 February 2013

Ciro's Seafood Specialties


Re: Claim Number: N10036-1888

Dear Mr. Leonard,

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 N10036-1888 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

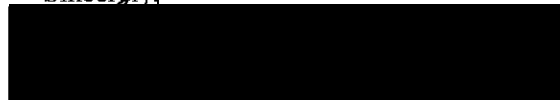
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1888.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1888
Claimant	Ciro's Seafood Specialties
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$40,000.00

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 29 January 2013, Mr. Ciro Leonard, on behalf of Ciro's Seafood Specialties, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking to recover \$40,000.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

In September of 2009, the Claimant opened a seafood distributing business in Miami, Florida which sells seafood "to high end restaurants throughout South Florida"² as well as private "fish aficionados."³ The Claimant alleged that in May of 2010, his sales fell 30 to 40% due to consumer concern regarding the possibility of oil contaminated seafood.⁴

Furthermore, although the Claimant's business is located in south Florida, he alleged that prior to the oil spill, he intended on expanding his business to certain areas near Fort Myers, Florida. The claimant alleged that this expansion opportunity was lost after the oil spill due to product unavailability as well as lack of consumer interest.⁵

The Claimant seeks to recover \$40,000.00 in losses allegedly sustained in 2010 and 2011.

¹ Optional OSLTF Claim Form, signed on 29 January 2013.

² Letter from the Claimant to the Deepwater Horizon Claims Center, 18 January 2013.

³ Letter from the Claimant to the GCCF, 13 May 2012.

⁴ Letter from the Claimant to the GCCF, 13 May 2012.

⁵ Letter from the Claimant to the Deepwater Horizon Claims Center, 23 January 2013.

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.

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

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 29 January 2013;
- Deepwater Horizon Claims Center, Denial Notice, 17 January 2013 noting exclusion from E&PD Settlement;
- Deepwater Horizon Claims Center, Request For Reconsideration Form;
- Letter from the Claimant in support of reconsideration request, 18 January 2013;
- Letter from the Claimant to the GCCF, 1 December 2011;
- Letter from the Claimant to the Deepwater Horizon Claims Center, 23 January 2013;
- Florida Residential Lease Agreement or Month-To-Month Rental Agreement, signed 1 March 2010;
- Letter from the Claimant to the Deepwater Horizon Claims Center, 18 January 2013;
- Letter from the Claimant to the GCCF, 13 May 2012;
- 2008 Form 1040;
- 2009 Form 1120S;
- 2010 Form 1120S;
- 2010 Form 1040;
- Letter from the Claimant to the GCCF, 1 December 2011;
- Monthly Profit and Loss Statement, 2008;
- Monthly Profit and Loss Statement, 2009;
- Monthly Profit and Loss Statement, 2010;
- Documentation of mailing to GCCF;
- 2011 Form 1120S;
- Bank of America, statements, September 2009 -- December 2011;

Prior to presenting this claim to the NPFC, the Claimant attempted to recover these damages through the Responsible Party. The Claimant first submitted this claim to the GCCF and then to the Deepwater Horizon Claims Center.⁶ According to the Claimant, all previously presented claims were denied. An attached Notice of Denial from the Deepwater Horizon economic and property damage class action settlement (E&PD Settlement) indicates that the Claimant is excluded from the economic class of the E&PD Settlement.⁷

On 29 January 2013, the Claimant submitted this claim to the NPFC seeking \$40,000.00 in loss of profits or impairment of earning capacity damages.⁸ Because the Claimant has previously presented a claim for a certain amount of losses to the Responsible Party and has been denied payment, the NPFC will adjudicate the claim to the extent that presentment requirements have been met. Any damages now being presented to the NPFC which were not first presented to the Responsible Party are denied.⁹

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.

⁶ Optional OSLTF Claim Form, signed on 29 January 2013.

⁷ Deepwater Horizon Claims Center denial notice, 17 January 2013.

⁸ Optional OSLTF Claim Form, signed on 17 January 2013.

⁹ 33 C.F.R. § 136.103(a).

In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant opened a fish distributing business in Miami, Florida, in September of 2009. The Claimant alleged that after the oil spill, he became unable to purchase or sell seafood due to lack of product availability as well as lack of consumer interest. However, the Claimant has failed to provide any information to indicate where he bought or caught seafood. No evidence in this claim submission establishes that the Claimant in any way relied upon the seafood supply in areas affected by the Deepwater Horizon oil spill. The Claimant has also not identified any of his customers, nor has he provided evidence to prove that customer orders indeed decreased following the oil spill.

The Claimant specifically alleged that he “lost a large account” as a result of the oil spill.¹⁰ However, the Claimant did not provide evidence to prove that any accounts were cancelled in the period following the oil spill. Furthermore, he has not provided any evidence to prove that any allegedly lost accounts were indeed cancelled as a result of the oil spill.

Furthermore, the Claimant’s financial documentation fails to prove that the Claimant sustained a loss or reduction in income in the period following the Deepwater Horizon oil spill. According to the Claimant’s submission, the business “did not have a chance to really take off due to [the oil spill].”¹¹ However, the Claimant provides no evidence to indicate that the oil spill caused his business to grow less quickly than it otherwise would have. Rather, the Claimant’s financial data seems to indicate that the Claimant’s business earnings steadily increased from September 2009 through December 2011.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$40,000.00, or (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.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *2/12/13*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹⁰ Letter from the Claimant to the Deepwater Horizon Claims Center, 18 January 2013.

¹¹ Letter from the Claimant to the Deepwater Horizon Claims Center, 18 January 2013.