

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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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0155

5890/DWHZ
2 May 2013

James Case Oil, Inc.
[REDACTED]

Re: Claim Number: N10036-1916

Dear Mr. White,

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 N10036-1916 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 N10036-1916.

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
cc: James Case Oil, Inc.
[REDACTED]

By Certified Mail:
No. 7012 2210 0001 7215 0162

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1916
Claimant	James Case Oil, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$387,875.00

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 23 April 2013, Mr. John White, on behalf of James Case Oil, Inc, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$387,875.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is located in Brookhaven, MS and describes itself as a "family owned and operated fuel distributor to stations for resale, trucking companies, oilfield businesses, local country stores, loggers and farmers."² The Claimant does not specifically state how the oil spill affected their business in particular, but states generally that the oil spill

caused an immediate negative impact to both businesses and individuals in the Gulf Coast region. Tourism and income generated by tourism in the Gulf Coast region came to a halt. The Claimant's business is among those who lost business because of the Deepwater Horizon oil spill.³

The Claimant uses prior year earnings in determining that they sustained a loss of \$387,875.00 as a result of the Deepwater Horizon oil spill.⁴

¹ Optional OSLTF Claim Form, signed on 18 April 2013.

² Faust & Associates, Description of Client.

³ Optional OSLTF Claim Form, signed on 18 April 2013.

⁴ Faust & Associates Report, pg. 13.

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:

- Claim cover letter, 18 April 2013;
- Optional OSLTF Claim Form, signed on 18 April 2013;
- Faust & Associates, Full Review Final Payment, Claimant Specific Data;
- Mississippi, 2007 Corporate Annual Reports, 2007, 2008, 2009, 2010, 2011;
- Federal and State Tax Returns, 2007 – 2011;
- Profit and Loss Statements, 2007 – 2011;
- Business Permit, James Case Oil, Inc.;
- Resolution authorizing corporate agent, Janice C. Britt.

The Claimant alleged that this claim was presented to the responsible party on 18 January 2013, where the Claimant was assigned ID # 1015243-01.⁵ According to the Claimant, the responsible party has not yet issued a determination on this claim.

On 23 April, the Claimant submitted this claim to the NPFC seeking \$387,875.00 in loss of profits or impairment of earning capacity damages. Because it appears as though the Claimant previously submitted the same claim to the responsible party, and because the claim has not been settled by payment within ninety days of presentment, OPA presentment requirements have been satisfied.⁶

Furthermore, evidence in this claim submission indicates that the geographic location of the Claimant's business likely excludes them from the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁷

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.

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.

This claim is denied because the claimant has not demonstrated that they sustained a financial loss as a result of the Deepwater Horizon oil spill. In support of their claim, the Claimant provided profit and loss statements, federal income tax returns and a report concluding that the Claimant sustained \$387,875.00 in losses in 2010. However, proffered financial data fails to indicate that the business sustained an economic loss, and the Claimant has failed to provide any evidence to indicate how the oil spill may have caused the alleged losses.

⁵ Optional OSLTF Claim Form, signed on 18 April 2013.

⁶ 33 C.F.R. § 136.103(c)(2).

⁷ The Claimant is located in Brookhaven, MS, which appears to be outside of the Economic Loss Zone. See, e.g., http://www.deepwaterhorizonsettlements.com/Documents/Economic%20SA/Ex1A_Map_of_Economic_Loss_Zone_s.pdf, accessed on 1 May 2013.

1. Failure to prove a financial loss.

Tax returns submitted in support of this claim indicate that the Claimant recorded higher total income in 2010 than in any year from 2007 through 2011. The Claimant reported total income in 2008, 2009, 2010 and 2011 of \$502,918.00, \$552,801.00, \$744,075.00 and \$698,718.00 respectively.⁸ Furthermore, profit and loss statements indicate that the Claimant's sales revenue fails to indicate that the Claimant's sales decreased at any time from May through December of 2010. Rather, 2010 sales revenue was and was significantly increased throughout the year as compared to 2009.

2. Failure to prove oil spill causation.

In order to prove a claim for loss of profits damages, a claimant must provide evidence to prove that their alleged loss was caused by the discharge of oil resulting from a particular oil spill. In this instance, the Claimant has not provided any proof to indicate that the business was somehow affected by the Deepwater Horizon oil spill, only citing a general economic impact of the oil spill "in the Gulf Coast region" as the basis for the alleged loss.⁹ However, the location of the business alone does not serve as proof that the Claimant was affected by the oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that they sustained a financial loss in the amount \$387,875.00, 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: *5/3/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ Federal Tax Returns, Forms 1120s.

⁹ Optional OSLTF Claim Form, signed on 18 April 2013.