

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 2000 0001 1246 7011

5890/DWHZ
11 Sept 2013

Johnny Christopher Painting


Re: Claim Number: N10036-1984

Dear Mr. Christopher:

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 N10036-1984 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 N10036-1984.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1984
Claimant	Johnny Christopher
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$461,832.00

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 22 August 2013, Mr. Johnny Christopher ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$461,832.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant states he was the sole proprietor of Johnny Christopher Painting, operating primarily out of Gulf Shores and Orange Beach, AL for eighteen years. As a result, he states that he lost work as the condominiums with which he had performed painting and repair work experienced lower occupancy rates and thus new projects were not needed. The Claimant provided financials, as well as letters from one of the condominium owners that states the lack of occupancy was a result of the decline in tourism, which was ultimately a result of the oil spill.²

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:

¹ Optional OSLF Claim Form, 14 August 2013.

² See Claimant's cover letter.

- (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, 14 August 2013;
- Claim Cover Letter, 22 August 2013;
- Copies of Various Work Receipts, 2007 – 2009 (including some undated receipts);
- GCCF Notice of Determination Emergency Advance Payment for \$6,800.00, 4 August 2011;
- 2008 1099-MISC for Claimant from Brett-Robinson;
- 2010 1099-MISC for Claimant from Brett-Robinson;
- Letter from Ann Taylor to BP regarding Claimant's contract work, 20 July 2010;
- Letter from Manager of 115 Units (name is illegible) to BP regarding Claimant's contract work, 20 July 2010;
- Letter from Patricia Kindl to BP regarding Claimant's contract work, 20 July 2010;
- Copy of Brett-Robinson Painting Costs-Owner Authorization Form;
- Brett-Robinson Recommendation Letter for Claimant, 5 May 2005;
- 2010 U.S. Individual Income Tax Return for Claimant;
- 2009 U.S. Individual Income Tax Return for Claimant;

- 2008 U.S. Individual Income Tax Return for Claimant;
- 2007 U.S. Individual Income Tax Return for Claimant;
- Johnny Christopher Painting Internal Profit & Loss Reports for Claimant, 2007-2010;
- Copy of Insurance Policy for Claimant, 2005-2008;
- 2012 Annual Summary and Transmittal of U.S. Information Returns;
- State of Alabama Licensing Board for General Contractors, 1 October 2009;
- State of Alabama Occupational License, 3 November 2009;
- City of Orange Beach, AL Business License, 28 September 2009;
- City of Orange Beach, AL Business License, 18 January 2008;
- W-9 Request for Taxpayer Identification Number and Certification for Claimant, 22 May 2012;
- GCCF Denial Determination, undated.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.³ On 22 August 2013, the Claimant presented this claim to the NPFC, seeking \$461,832.00 in loss of profits or impairment of earning capacity. The NPFC will adjudicate the claim to the extent presentment requirements have been satisfied. If any damages subject of this claim were not first presented to and denied by the RP, these damages are denied for improper presentment.⁴

Evidence in this claim submission indicates that the Claimant is a member of the Deepwater Horizon Economic and Property Damage Class Action Settlement (E&PD Settlement).⁵

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 E&PD Settlement Class. 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 he is a member of the economic damages class of the E&PD Settlement, he should 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.

Furthermore, even if the Claimant was not included in the Settlement Class, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained a loss or reduction in income, and (2) that the loss was caused by damage to real or personal property or natural resources caused by the discharge of oil during the Deepwater Horizon oil spill.

³ Optional OSLTF Claim Form, 14 August 2013.

⁴ 33 C.F.R. § 136.103(c)(2).

⁵ At the time of the spill, the Claimant was living within the economic settlement loss zones.

The Claimant alleged that, as a result of the oil spill, he was unable to do paint and repair work in and around the Gulf Shores and Orange Beach, AL areas. However, he does not provide contracts and/or work orders that were in place and canceled as a result of the spill. The letters he provided from owners simply state they did not hire him for contracts due to reduced occupancy, but do not give a reason for the reduction, nor provide a time period that would show that their decision was based on the oil spill. Even if they had done so, his loss would still result from business decisions of the condominium owners/managers (who may or may not have contracted with him at the time of the spill, as there are no canceled work orders provided to prove this) choosing not to paint or repair their units, and not a direct cause of the spill. Additionally, the Claimant does not provide clear documentation for work performed after 4 February 2009, as there are a number of undated receipts included with the claim submission.

The Claimant also doesn't provide a clear explanation of how his claim total was derived or for what period of time it entails. The federal tax and income documentation provided shows that the Claimant experienced losses in 2009, well before the spill. Furthermore, the Claimant provided documentation that the GCCF issued him an emergency payment for the month of May 2010 on 4 August 2011 in the amount of \$6,800.00 for what they determined his loss of profits to be. Again, the Claimant has not provided further documentation to show how he calculated his loss to the NPFC, and it cannot be determined whether this payment was part of his claim SUM CERTAIN or not.

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 of \$461,832.00, 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. Additionally, this claim is considered to have been settled by virtue of the Claimant belonging to the E&PD Settlement.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/11/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: