

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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail:
arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7010 0780 0001 8634 2449

5890/DWHZ
23 December 2013

Aylstock, Witkin, Kreis & Overholtz, PLLC



Re: Claim Number: N10036-2012

Dear Mr. Barger,

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 N10036-2012 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 N10036-2012.

Mail reconsideration requests to:

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

Sincerely,



Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CC: Mr. Jason Ely Blackmon



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7010 0780 0001 8634 2135

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-2012
Claimant	Jason Ely Blackmon
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$113,648.00

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 02 December 2013, Mr. Justin Barger, attorney for Mr. Jason Ely Blackmon ("the Claimant"), submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$113,648.00 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 working as a welder helper/panel operator for Serimax North America, a pipeline contractor. He asserts that, as a result of the spill, the work was stopped. Because it could not continue with work because drilling ceased, the Claimant states he lost his job. Claimant asserts that he tried to find another job, but claims he was unsuccessful.

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.

¹ Optional OSLF Claim Form, 17 November 2013.

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:

- Fax Cover Letter, 02 December 2013;
- Claim Summary spreadsheet for Claimant;
- Optional OSLTF Claim Form, signed on 17 November 2013;
- Serimax North America paycheck for Claimant, 15 July 2010;

- Serimax North America paycheck for Claimant, 01 July 2010;
- Serimax North America paycheck for Claimant, 22 July 2010;
- W-2 Wage and Tax Statement for Claimant, 2008;
- W-2 Wage and Tax Statement for Claimant, 2009;
- W-2 Wage and Tax Statement for Claimant, 2010
- W-2 Wage and Tax Statement for Claimant; year unknown
- Request for TIN for Claimant; 09 April 2013;
- Serimax North America Earnings Statement for Claimant, 22 July 2010;
- Serimax North America Earnings Statement for Claimant, 15 July 2010;
- Serimax North America Earnings Statement for Claimant, 08 July 2010;
- Serimax North America Earnings Statement for Claimant, 01 July 2010;
- Serimax North America Earnings Statement for Claimant, 24 June 2010;
- Serimax North America Earnings Statement for Claimant, 17 June 2010;
- Serimax North America Earnings Statement for Claimant, 10 June 2010;
- Serimax North America Earnings Statement for Claimant, 03 June 2010;
- Serimax North America Earnings Statement for Claimant, 27 May 2010;
- Serimax North America Earnings Statement for Claimant, 20 May 2010;
- Serimax North America Earnings Statement for Claimant, 09 April 2009;
- Serimax North America Earnings Statement for Claimant, 19 March 2009;
- Serimax North America Earnings Statement for Claimant, 05 March 2009;
- Serimax North America Earnings Statement for Claimant, 26 February 2009;
- Serimax North America Earnings Statement for Claimant, 19 February 2009;
- Serimax North America Earnings Statement for Claimant, 04 February 2009;
- Serimax North America Earnings Statement for Claimant, 29 January 2009;
- Serimax North America Earnings Statement for Claimant, 22 January 2009;
- Serimax North America Earnings Statement for Claimant, 30 December 2008;
- Serimax North America Earnings Statement for Claimant, 23 December 2008;
- Serimax North America Earnings Statement for Claimant, 18 December 2008;
- Serimax North America Earnings Statement for Claimant, 06 November 2008;
- Federal 1099-G Unemployment Compensation Statement for Claimant, 2010;
- Serimax Letter of Termination to the Claimant, 17 July 2010.

The Claimant alleged that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.² On 02 December 2013, the Claimant presented this claim to the NPFC, seeking \$113,648.00 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.³

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).⁴

² Optional OSLTF Claim Form, signed on 17 November 2013.

³ 33 C.F.R. § 136.103(c)(2).

⁴ At the time of the spill, the Claimant was living within the economic settlement loss zones.

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 also 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.

The Claimant alleged that the company for which he worked lost work, and thus he was laid off as a result. However, he does not offer documentation to connect this to the oil spill. He also does not provide documentation to show that he was gainfully employed before working on this project and that it was a permanent position with Serimax North America and not simply a contracted position. The letter of termination he received from his employer states that he was terminated as a result of "the completion of production," and not the oil spill. Additionally, the earning statements provided show a gap of employment with Serimax between 09 April 2009 and 20 May 2010, which preceded the oil spill. The Claimant also provided a 1099-G that shows he was on unemployment for 2010 and, because he has not provided earning statements or paycheck stubs for employment prior to May 2010, it is unclear what time period he was being paid. Without proper documentation, it cannot be determined the Claimant actually suffered a loss.

It should be noted that the Claimant's alleged losses for 2011 and 2012 are speculative, and not actual damages incurred as a result of the spill. As such, these claimed losses are not compensable under OPA and are therefore denied.

Furthermore, the Claimant's losses appear to have been caused by changes in drilling and permitting regulations implemented after the oil spill, i.e. "the moratorium." These losses therefore, which were not caused by "damage to real or personal property or natural resources"

resulting from “the discharge or substantial threat of discharge of oil” are not losses that can be compensated by the OSLTF.

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 \$113,648.00, 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 C**  **ication Division**

Date of Supervisor’s Review: **12/23/13**

Supervisor’s Action: **Denial approved**

Supervisor’s Comments: