

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

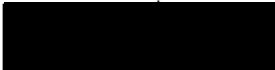


Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7010 0780 0001 8634 2173

5890/DWHZ  
23 April 2014

Mr. Ian Blaise  


Re: Claim Number: N10036-2021

Dear Mr. Blaise,

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 N10036-2021 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 N10036-2021.

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	N10036-2021
Claimant	Ian Blaise
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$63,633.60

### ***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 15 April 2014, Mr. Ian Blaise ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$63,633.60 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

At the time of the oil spill, the Claimant states he was working as a forklift operator, boat operator and all-around customer service representative at Zeke's Marina. It was an interim position while the Claimant relocated his residence. After the spill, however, he states that the season at the marina was over before it started. The Claimant asserts that he immediately attempted to find work and mitigate any unemployment, but every company was on a "hiring freeze" until the outcome of the spill was known. The Claimant states he was eventually hired on by a small cleaning company, Smith Marine.

### ***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.

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<sup>1</sup> Optional OSLF Claim Form, 15 April 2014.

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:

- Email from Claimant with claim documents, dated 15 April 2014;
- Optional OSLTF Form, 15 April 2014;



- BP Claims Program Submission for Claimant;
- Letter from BP Claims Program to Claimant re settlement class, 14 November 2013;
- Letter for BP Claims Program to Claimant re claim number, 27 December 2013;
- Denial Letter from BP Claims Program to Claimant, 21 January 2014;
- 2008, 2010 and 2011 W-2s for Claimant;
- Copy of State of WA Driver License for Claimant;
- Letter from Smith Marine to USCG re Employment of Claimant, 2 September 2010;
- Paystub for Claimant, 17 October 2008;
- Claimant breakdown of claim;
- Claimant explanation of claim.

The Claimant states that this claim was first presented to the Responsible Party and that the RP denied payment on this claim.<sup>2</sup> On 05 December 2013, the Claimant presented this claim to the NPFC, seeking \$63,633.60 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.<sup>3</sup>

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).<sup>4</sup>

### **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 and, this claim is denied on its merits. In order to prove a claim for loss of profits or impairment of earning

<sup>2</sup> Optional OSLTF Claim Form, 15 April 2014.

<sup>3</sup> Denial Letter from BP Claims Program to Claimant, 21 January 2014.

<sup>4</sup> At the time of the spill, the Claimant was working within Economic Loss Settlement Zone A.

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 did not keep him employed, nor could he get hired elsewhere for a period of approximately 197 days. All documentary evidence presented by the Claimant indicates that the Claimant's loss resulted from an independent business decision by employers, and not as a result of the Deepwater Horizon oil spill in the Gulf of Mexico. The Claimant's loss did not occur because there was an oil spill in the Gulf of Mexico, but rather because a determination was made by various employers to reduce their workforce. In fact, the Claimant appears to have benefitted, at least temporarily, from the wages he earned at Smith Marine as a result of the oil spill. Accordingly, the Claimant's subsequent termination from Zeke's and Smith Marine are the consequence of a business decision by the companies themselves and not the direct result of the oil spill.

Lastly, the Claimant has not provided documentation to demonstrate why he lost employment or the date he was let go from Zeke's in 2010. The Claimant only states that he found employment during and because of the oil spill. Additionally, the Claimant has not provided comparable financials from 2009 that show whether or not he was employed. It should be noted that his income for 2008 appears to have been \$19,860.00 (Martin Resource Management); for 2010, a cumulative of \$39,806.84 (Zeke's, Smith Marine and Signet Maritime); and for 2011, \$31,353.27 (Signet Maritime). Thus, he actually made a higher income historically in 2010 than in other calendar years. Again, without documentation of his 2009 income, this is only speculation. In closing, the Claimant states he ended his 2011 employment at the end of April 2011 and he does not show why or for what reason that employment ended.

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 \$63,633.60, 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: *4/23/14*

Supervisor's Action: *Denial approved*

Supervisor's Comments: