

U.S. Department of  
Homeland Security

United States  
Coast Guard



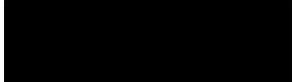
Director  
National Pollution Funds Center  
United States Coast Guard

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:  
ari-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 5404

5890/DWHZ  
14 November 2011

Mr. Paul Gilbert Deroche



Re: Claim Number: N10036-1335

Dear Mr. Deroche:

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 N10036-1335 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 N10036-1335.

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 Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1335
Claimant	Mr. Paul Deroche
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

### ***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 was 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.

### ***CLAIM AND CLAIMANT***

On 26 August 2011, Mr. Paul Deroche (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$25,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant alleged that at the time of the oil spill, he was working as a commercial fisherman for Captain Albert D. Biehl on the vessel Vernon F. Seymour.<sup>2</sup> The Claimant alleged that the oil spill caused "closures of oyster leases, fishing, etc, therefore putting [the Claimant] out of work."<sup>3</sup>

The Claimant alleged that he sustained \$25,000.00 in lost profits because of his inability to continue working as a commercial fisherman, due to effects of the Deepwater Horizon oil spill.

### ***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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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

<sup>1</sup> Optional OSLTF Claim Form, dated 3 August 2011.

<sup>2</sup> Letter from the Claimant's employer, listing payments made to the Claimant in cash, notarized 4 June 2010.

<sup>3</sup> Optional OSLTF Claim Form, dated 10 June 2011.

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.

### ***DETERMINATION OF LOSS***

#### **Claimant's Submission to the OSLTF**

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 10 June 2011;
- 2009 Form 1099-R;
- 2009 Schedule C, Form 1040;
- Notarized letter from Albert D. Biehl, noting cash payments to the Claimant.

On 24 August 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits damages in the amount of \$16,000.00, as well as a Final Payment claim, also seeking \$16,000.00 in loss of profits damages.<sup>4</sup> The Claimant was assigned Claimant ID 1014835; the EAP claim was assigned claim # 13433; the Final Payment claim was assigned claim # 9011572. The EAP claim was paid in full, and the Final Payment claim was denied by the RP/GCCF.<sup>5</sup>

On 7 March 2011, the Claimant presented a Quick Pay claim to the RP/GCCF. This claim was assigned claim # 9315630. The Quick Pay claim was denied by the RP/GCCF.<sup>6</sup>

Prior to presentation to the RP/GCCF, the Claimant received compensation by BP in the amount of \$6,000.00.<sup>7</sup>

On 26 August 2011, the Claimant presented this claim to the NPFC, seeking \$25,000.00 in loss of profits damages. The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.<sup>8</sup> The NPFC does not have sufficient information to verify the amount claimed in the Claimant's Quick Pay claim, however the NPFC may adjudicate this claim to the extent the damages now before the NPFC were first presented to the RP/GCCF in the Claimant's Final Payment claim and in the Quick Pay claim. Any damages now presented to the NPFC, which were not first presented to the RP/GCCF in the Claimant's Final Payment and Quick Pay claims, are denied for improper presentation.<sup>9</sup>

#### **NPFC Determination**

<sup>4</sup> GCCF U.S. Coast Guard Report, 2 November 2011.

<sup>5</sup> GCCF U.S. Coast Guard Report, 2 November 2011.

<sup>6</sup> GCCF U.S. Coast Guard Report, 2 November 2011.

<sup>7</sup> GCCF U.S. Coast Guard Report, 2 November 2011.

<sup>8</sup> 33 C.F.R. §136.103(a).

<sup>9</sup> 33 C.F.R. §136.103(a).

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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity damages, a claimant must demonstrate (1) that he sustained a loss or reduction in profits or earning capacity and (2) that the loss was a result of the discharge or substantial threat of discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant has not provided sufficient documentation to indicate that he sustained an actual financial loss, or to show that any loss he sustained was caused by the Deepwater Horizon oil spill.

The Claimant alleged that he was working as a commercial fisherman at the time of the oil spill.<sup>10</sup> To substantiate his alleged loss of profits, the Claimant presented a letter containing a handwritten list of his cash earnings before the oil spill. The Claimant also provided tax documentation for the year 2009 to validate the amount listed in the letter. However, neither the letter nor the tax documentation could be verified by the NPFC. Furthermore, the Claimant has not provided any evidence of his earnings in 2010 to show that he was actually employed at the time of the oil spill.

Additionally, the Claimant has not provided evidence to show that his earnings were actually affected by the Deepwater Horizon oil spill. The Claimant has not indicated in which waters he was fishing at the time of the oil spill, nor has he indicated that these waters were closed for fishing for any particular period of time. Furthermore, the Claimant has not provided evidence to show that he had a commercial fishing license that would authorize him to catch and sell fish, and has not presented evidence to show that he ever previously caught or sold fish.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss of profits in the amount of \$25,000.00, and (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 a discharge of oil.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *11/14/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>10</sup> Optional OSLTF Claim Form, dated 10 June 2011.