

U.S. Department of
Homeland Security

**United States
Coast Guard**



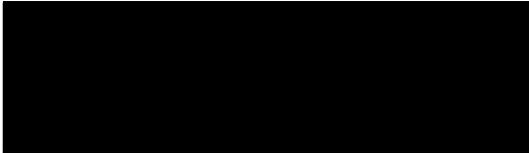
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4494

5890/DWHZ
27 April 2012

Mr. Randy Hughes



Re: Claim Number: N10036-1752

Dear Mr. Barksdale:

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 N10036-1752 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 N10036-1752.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form
CC: Randy Hughes
2715 Willow Grove Lane, Destin, FL 32547
Certified Mail #: 7011 1570 0001 2446 4500

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1752
Claimant	Randy Hughes
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$217,931.00

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 12 April 2012 Arthur S. Barksdale IV, Esquire, on behalf of Randy Hughes (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$217,931.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was working as a seasonal airbrush artist at a Tropical Waves store in Destin, Florida.² The Claimant alleged to have sustained a loss of income in 2010 due to a decrease in tourism in Destin following the Deepwater Horizon oil spill.³

In order to calculate his losses, the Claimant subtracted his 2010 and 2011 income from his 2008 income, and then added the results. He then determined an average monthly loss for those two years and multiplied it by an "industry effect multiplier" of 60, to reach his claim request total of \$217,931.00.⁴

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.

¹ Law Firm Claim Cover Letter, signed 10 April 2012.

² Second Hardship Letter from Claimant, undated.

³ Second Hardship Letter from Claimant, undated.

⁴ Lost Earnings/Income Worksheet.

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 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:

- Law Firm Claim Cover Letter, signed 10 April 2012;
- NPFC Authorization Agreement, signed 7 March 2012;
- Email from Law Firm Sending Claim Documents, 11 April 2012;
- Copy of GCCF Claim, signed 7 October 2011;
- Letter from the GCCF Regarding Deadline to Elect Quick Payment, 12 March 2012;
- Hardship Letter from the Claimant, signed 10 February 2012;
- Lost Earnings/Income Worksheet, 13 December 2011;
- Photocopy of Claimant's Drivers License
- Second Hardship Letter from the Claimant, undated;
- Third Hardship Letter from the Claimant, signed 7 October 2011;
- Letter from Employer, dated 23 May 2011;
- 2008 Paystubs
- 2009 Paystubs
- 2010 Paystubs

- 2011 Paystubs

Prior to presentment of this claim to the NPFC, the Claimant submitted an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages. The Claimant was assigned Claimant ID 103400. In his submission to the NPFC, the Claimant indicated that he has received payment from the RP/GCCF on his this claim, totaling “roughly \$14,000.00.”⁵

On 7 October 2011, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$217,930.98.⁶ The Claimant retained Claimant ID 1034000. The RP/GCCF denied payment on this claim.⁷

On 12 April 2012, the Claimant submitted this claim to the NPFC, seeking \$217,931.00 in loss of profits and impairment of earning capacity damages.⁸ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.⁹ Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$217,931.00.

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 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 damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

1. Material Misrepresentation

The Claimant has misrepresented material elements of this claim. Under 33 C.F.R. § 136.9, persons submitting false claims, or making false statements in connection with claims under this part, may be subject to prosecution under Federal law, including, but not limited to 18 U.S.C. § 287 and 1001. In addition, persons submitting written documentation in support of claims under this part, which they know or should know, is false may be subject to civil penalty for each claim.

The Claimant provided a letter allegedly written by his employer regarding the general terms of his employment.¹⁰ In an effort to verify the authenticity of the letter, the NPFC contacted the corporate office of the Claimant’s employer.¹¹ After reviewing a copy of the letter, the corporate office confirmed it had not originated from the named supervisor or from their office. The office

⁵ Third Hardship Letter from the Claimant, signed 7 October 2011.

⁶ Copy of GCCF Claim, signed 7 October 2011.

⁷ Law Firm Claim Cover Letter, signed 10 April 2012.

⁸ Law Firm Claim Cover Letter, signed 10 April 2012.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ Letter From Employer, dated 23 May 2011.

¹¹ PHONECON: NPFC and the Claimant’s Employer’s Corporate Office, 26 April 2012.

stated that all letters coming from the company must go through the corporate office, and that no records of this letter existed. Furthermore, the corporate office contacted the supervisor who allegedly authored the letter and informed the NPFC that he had no knowledge of the letter and did not believe he authored it.¹²

Based on the foregoing, this claim is denied because the Claimant materially misrepresented elements of this claim in order to falsely obtain funds from the Federal Government.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/27/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹² PHONECON: NPFC and the Claimant's Employer's Corporate Office, 26 April 2012.