

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: 202-493-6839
E-mail:
arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 3212 3759

5890/DWHZ
Claim # N10036-1202
4 August 2011

Berthony Angervil


Re: Claim Number: N10036-1202

Dear Mr. Angervil:

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 N10036-1202 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 N10036-1202.

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	N10036-1202
Claimant	Berthony Angervil
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$10,000.00

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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 3 August 2011, Mr. Berthony Angervil (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant was working at Denny's restaurant in Sarasota, FL during the time of the Deepwater Horizon oil spill.² The Claimant alleges that because Denny's serves seafood, the restaurant was affected and his pay was reduced as a result of the oil spill.³

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

¹ Optional OSLTF Claim Form dated 18 July 2011.

² Optional OSLTF Claim Form dated 18 July 2011.

³ *Id.*

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 the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 18 July 2011;
- Copy of GCCF Full Review Final Claim Form; and
- Copy of GCF Release and Covenant Not to Sue, Signed by Claimant, 7 February 2011.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF, and was assigned Claimant ID 3382952. This claim consisted of a claim for losses of profits and wages, which was assigned claim # 450421, and a claim for loss of subsistence use, which was assigned claim # 450481. Claimant's EAP # 450421 for lost profits was paid in the amount of \$5,000.00, and claim # 450481 for loss of subsistence use was denied.

The Claimant then presented a Full Review Final (FRF) claim to the RP/GCCF. The Claimant was offered payment, accepted a Quick Pay, and executed a Release and Covenant Not to Sue on 7 February 2011.⁴

On 3 August 2011, this claim for lost profits and earnings was presented to the NPFC. As will be discussed below, this claim is denied as Claimant has discharged his rights to recover for the alleged injuries that are the subject of this claim.

⁴ Release and Covenant provided in Claimant's submission to the NPFC.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that the 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 the claim.

The Claimant executed a Release and Covenant Not To Sue in return for final payment.⁵ By signing this document, the Claimant released any rights to recover against the RP or another party regarding this injury.

Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the responsible party. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover compensation from the Fund.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in his request for reconsideration.

Because the Claimant has accepted Final Payment and released rights regarding this injury to the RP/GCCF, this claim is de

Claim Supervisor: NPFC C

Date of Supervisor's Review: 6/7/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ Release signed by Claimant on 7 February 2011.