

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6700
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 0470 0000 8895 1935

5890
25 October 2011

Holland, Groves, Schneller & Stolze
Attn: Gerard B. Schneller
300 N. Tucker Blvd., Suite 801
St. Louis, MO 63101

Re: Claim Number: N10036-1209

Dear Mr. Schneller:

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 N10036-1209 involving Deepwater Horizon. You presented this claim on behalf of Mr. Donald Holmes. 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 N10036-1209.

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: (1) Claim Summary/Determination Form

Copy to: Donald Holmes
19311 14th Street
Covington, LA 70433

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 0470 0000 8895 1942

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1209
Claimant	: Donald Holmes
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earnings Capacity
Amount Requested	: \$150,000.00

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 9 June 2011, Mr. Gerard B. Schneller of Holland, Groves, Schneller & Stolze presented a claim on behalf of Donald D. Holmes (jointly referred to as "Claimant") to the Oil Spill Liability Trust Fund (OSLTF) for \$150,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ Claimant owns a consulting company that performs deep water ROV² and construction consulting work.³ Claimant indicated that, if there is no construction or drilling, there is no need for the services of his company.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.

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.

¹ Optional OSLTF Claim Form dated 3 June 2011 and received 9 June 2011.

² ROV, remotely operated vehicles, are described by NOAA as unoccupied, highly maneuverable underwater robots operated by a person aboard a surface vessel. See <http://oceanexplorer.noaa.gov/technology/subs/rov/rov.html>.

³ Optional OSLTF Claim Form dated 3 June 2011 and received 9 June 2011

⁴ Optional OSLTF Claim Form dated 3 June 2011 and received 9 June 2011.

- (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

Prior to presentment to the NPFC, Claimant represents having filed a claim with the RP/GCCF on 20 January 2011.⁵ The NPFC independently verified that the Claimant had presented to the RP/GCCF an Emergency Advance Payment Claim on 30 October 2010 in the amount of \$800.00; an Interim Payment Claim on 21 January 2011 in the amount of \$100,000.00; and a Full Review Final Claim on 14 June 2011 in the amount of \$150,000.00.⁶ GCCF Claimant ID Number 1173707 was assigned to all of these claims and all have been denied.⁷

On 9 June 2011, Claimant presented this claim in the amount of \$150,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁸

To support this claim, Claimant submitted the following documentation:

⁵ Optional OSLTF Claim Form dated 3 June 2011 and received 9 June 2011.

⁶ GCCF – U.S. Coast Guard Report as of 7 September 2011.

⁷ GCCF – U.S. Coast Guard Report as of 7 September 2011.

⁸ Optional OSLTF Claim Form dated 3 June 2011 and received 9 June 2011.

- Optional OSLTF Claim Form dated 3 June 2011 and received on 9 June 2011.
- Letter dated 25 May 2010 from Holland, Groves, Schneller & Stolze submitting the claim.
- Louisiana Identification Card, expiring 5 July 2011.
- Transportation Worker Credential, expiring 1 August 2013.
- 2010 Form 1099-MISC from Mako Technologies, LLC.
- 2010 Form 1099-MISC from Williams Inspection Services, Inc.
- 2009 Form 1040 with Schedules C, E, and SE
- 2009 Form 1120S, U.S. Income Tax Return for an S Corporation with Schedules A, B, K, L, M, M-1, and M-2.
- 2009 Louisiana Individual Income Tax Voucher (R-540-SD).
- 2009 Louisiana Resident Individual Income Tax Return (IT-540-SD)
- 2009 Louisiana Corporate Income Tax Return (CIFT-620SD)
- 2008 Form 1099-MISC from Williams Inspection Services, Inc.
- 2008 Form 1099-MISC from Magellan Marine, Int'l, LLC.
- 2008 Form 1040 with Schedules C, E, and SE.
- 2008 Form 1120S Schedule K-1.
- 7 October 2010 letter from D.H. Inspections, Inc to Don D. Holmes forwarding 2008 Schedule K-1.

NPFC Determination

Under 33 U.S.C. § 2702 (b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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.

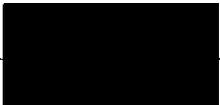
The NPFC considered all documentation presented by the Claimant.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, financial documentation to support lost profits and earnings, as well as an explanation of how the Deepwater Horizon oil spill caused his business losses. The Claimant was given 14 days to respond to the letter, dated 16 September 2011. To date, the Claimant has not responded.

Regarding the valuation of the lost profits, the NPFC's specific request included an explanation of how the amount claimed was determined; an explanation of the large difference in gross sales receipts in previous years; project names & project ledgers for projects in 2008, 2009, 2010 and 2011 (to date); copies of contracts/agreements for continuing or re-occurring services; and copies of Federal & State tax returns for 2010.

Regarding the cause of the claimed losses, the NPFC's specific requests included explanation of services performed by the Claimant's company over the last three years and how the Deepwater Horizon oil spill caused the Claimant's losses. The NPFC also asked for any cancellations that cited the oil spill as reason for the cancellation.

This claim is denied for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information and documentation deemed necessary by the Director, NPFC, to support the claim; (2) Claimant has failed to demonstrate the alleged loss in the amount of \$150,000.00 through financial documentation; and (3) Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/25/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: