

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
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2694

5890/DWHZ
Claim# N10036-1314
29 September 2011

Amanda G. Proujan, Esq.



RE: Claim Number: N10036-1314

Dear Ms. Proujan:

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 claim number N10036-1314 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-1314.

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2700
CC: Christopher Dugas
222 Tudor Street
Houma, LA 70364

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1314
Claimant	Christopher Dugas
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$63,015.00

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 17 August 2011, Christopher Dugas (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$155,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill. On 20 September 2011, the Claimant revised his sum certain from \$155,000.00 to \$63,015.00.¹

At the time of the oil spill, the Claimant worked for Global Industries, Inc. as an oil rig crane operator.² The Claimant was laid off in September of 2010 due to the oil drilling moratorium.³ The Claimant returned to work for Global Industries, Inc. on 23 May 2011, this time as a “rigger” earning \$9.00 an hour less than in his former position as a crane operator.⁴ The Claimant’s legal representation is Nexsen Pruet, LLC (Nexsen Pruet).

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 Response to NPFC request for additional information 20 September 2011, Item Four.

² Optional OSLTF claim form dated 09 August 2011.

³ Optional OSLTF claim form dated 09 August 2011.

⁴ Response to the NPFC request for additional information 20 September 2011, Item Three.

- (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 his claim, Claimant submitted:

- 1) Optional OSLTF claim form dated 09 August 2011
- 2) Douglas M. Schmidt, APLC Retainer Agreement dated 21 February 2011
- 3) Co-counsel letter for Nexsen Pruet, LLC
- 4) Letter from Claimant explaining claim and lost work due to six month ban on drilling
- 5) Screenshot of Global Industries Homepage
- 6) Paystubs from Global Industries for 08 April 2010, 22 April 2010, 01 July 2010, 12 August 2010,
- 7) Paystubs from Tetra Applied Technologies LLC for 01 October 2010
- 8) Paystubs from Performance Management Services, LLC for 19 November 2010, 17 December 2010, 23 December 2010, 30 December 2010,
- 9) Unemployment letters from Louisiana Workforce Commission for the benefit year of 16 January 2011 to 14 January 2012
- 10) 2010 W-2 from Global Industries
- 11) 2010 W-2 from Tetra Applied Technologies LLC
- 12) 2010 W-2 from Performance Management Service
- 13) 2009 W-2 from Global Industries

- 14) 2008 W-2 from Global Industries
- 15) 2010 IRS Tax Return Transcript
- 16) 2009 IRS Tax Return Transcript
- 17) 2008 IRS Tax Return Transcript

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$63,015.00.

Claimant's Optional OSLTF Claim form indicated that the Claimant filed a claim in the multidistrict litigation now pending in the United States District Court for the Eastern District of Louisiana (MDL-2179 In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf Of Mexico, on April 20, 2010) against BP (the "MDL") on 20 April 2011. Although under the statute the NPFC may not approve and certify the payment of a claim during the pendency of an action by the person in court to recover costs which are the subject of the claim, the NPFC may adjudicate such a claim to determine whether it may be compensable. Where appropriate, such a claim may be denied.

Prior to presenting his claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 17 June 2011 in the amount of \$155,000.00.⁵ He was assigned Claimant ID #3503601 and claim #9310424. This claim was denied on 02 July 2011.⁶ Based upon the evidence provided by the Claimant, it appears that the subject matter for his FRF GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's FRF denied GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1314 considers and addresses the earnings claimed in the FRF claim presented to the responsible party, specifically; GCCF Claim #3503601 (FRF).

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 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 the documentation submitted by the Claimant.

The claimant showed a loss in wages since losing his job with Global Industries, Inc. in September of 2010.⁷ The Claimant was rehired by Global Industries, Inc. on 23 May 2011 for nine dollars less an hour and thus alleged that he continued to suffer a loss of profits and impairment of earnings capacity.⁸ In response to NPFC's request to provide a computation of the alleged loss, Nexsen Pruet calculated the Claimant's revised sum certain as follows: 2010 losses of \$12,048.00,⁹ 2011 losses of \$26,842.00,¹⁰ and 2012 losses of \$26,842.00¹¹ minus the total unemployment collected by the Claimant in the amount of \$2,717.00¹² for a sum certain of

⁵ Report from the GCCF dated 21 September 2011.

⁶ GCCF Denial Letter dated 01 July 2011.

⁷ Response to the NPFC request for additional information 20 September 2011, Item Four.

⁸ Response to the NPFC request for additional information 20 September 2011, Item Two and Four.

⁹ 2009 W-2 of \$67,515.00 minus 2010 W-2 of \$55,467.00 equals \$12,048.00

¹⁰ Crane operator hourly rate of \$22.00 compared to \$13.00 as a rigger, restarted employment 23 May 2011 for Global Industries, LLC.

¹¹ Crane operator hourly rate of \$22.00 compared to \$13.00 as a rigger, restarted employment 23 May 2011 for Global Industries, LLC.

¹² Response to the NPFC request for additional information 20 September 2011, Item Three.

\$63,015.00.¹³ The Claimant's calculation for 2011 assumes a full year of lower wages of nine dollars an hour. However, under the Oil Pollution Act, future losses are not compensable. In light of the foregoing, the Claimant has failed to meet the burden to demonstrate the requested sum certain by a preponderance of the evidence.

NPFC staff sent a certified letter requesting additional information to the Claimant's legal representative, Nexsen Pruet, LLC, on 02 September 2011.¹⁴ Question seven of the letter inquired as to whether the Claimant was precluded from working due to the presence of oil in Gulf of Mexico waters and whether the moratorium and/or permitting processes implemented for deepwater drilling affected his employment.¹⁵ Nexsen Pruet responded on 20 September 2011 and stated that the oil was not near the Claimant's work site but that his work was "precluded by the moratorium primarily and by the permitting secondarily, neither which would have occurred if not for the Deepwater Horizon Incident."¹⁶ The NPFC cannot assume as fact the conclusory statement that the drilling moratorium would not have been instituted if not for the Deepwater Horizon oil spill.¹⁷ Also, as to any period of the claim for which the moratorium was not in effect, according to legal counsel's own statement, any oil in the water did not preclude the Claimant from working at Global Industries, Inc.¹⁸

Furthermore the Claimant has not provided any direct information from his employer which states the reason for his initial layoff or otherwise addresses the Claimant's rehiring at a lower wage as a Rigger as opposed to rehiring the Claimant back into his prior position as a Crane Operator.¹⁹

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his 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: *9/29/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹³ \$12,048.00 plus \$26,842.00 plus \$26,842.00 minus \$2,717.00 equals

¹⁴ Certified Letter 7011 1150 0000 4666 9755.

¹⁵ Certified Letter 7011 1150 0000 4666 9755 question seven.

¹⁶ Response to the NPFC request for additional information 20 September 2011, Item Seven.

¹⁷ The NPFC notes that it is hypothetically possible that had the Deepwater Horizon explosion and subsequent loss of life incurred absent the oiling, the moratorium might still have been enacted.

¹⁸ Response to the NPFC request for additional information 20 September 2011, Item Seven.

¹⁹ Response to the NPFC request for additional information 20 September 2011, Item One.