

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

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2618

5890/DWHZ
3 October 2011

Glynn Smith


Re: Claim Number: N10036-1318

Dear Mr. Smith:

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 your claim number N10036-1318 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. If, however 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 N10036-1318.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

| | |
|------------------|---|
| Claim Number | N10036-1318 |
| Claimant | Glynn Smith |
| Type of Claimant | Private (US) |
| Type of Claim | Loss of Profits and Impairment of Earnings Capacity |
| Amount Requested | \$12,000.00 |

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 18 August 2011, Glynn E. Smith (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$12,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant was employed by the Cross Group, Inc. in Houma, LA.¹ The Cross Group provides marine barges and offshore support services for the offshore oil and gas exploration and production industry.² The Claimant asserted that as a result of the Deepwater Horizon oil spill, Cross Group vessels were restricted from navigating to their work area in the Gulf of Mexico and that their vessels were rendered unusable due to the inability to obtain permits.³ The Claimant asserted that the Cross Group's reduced business led to a reduction in his work hours and eventually to his layoff.⁴

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

¹ Paystubs from Cross Group, Inc.

² <http://www.thecrossgroup.com/multipurposevessels.aspx>

³ OSLTF Claim Form.

⁴ PHONECON between the NPFC and the Claimant on 27 September 2011.

- (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

In support of the claim, the Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, received 16 August 2011;
- Handwritten notes on document titled "Record of Changes" from NPFC Claimant Guide;
- Paystubs from Cross Group, Inc. with check dates: 11 February 2011, 3 December 2010, and 31 December 2010; and
- Partial GCCF Claim form.

Claimant's Submission to the GCCF

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Six Month Claim with the GCCF on 09 November 2010 in the amount of \$3,000.00⁴ He was assigned Claimant ID # 3374307 and Claim # 440006.⁵ The EAP claim was denied by the GCCF on 6 December 2010.⁶ Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 27 January

⁴ Report from the GCCF, dated 21 September 2011.

⁵ Report from the GCCF, dated 21 September 2011.

⁶ GCCF Denial Letter, dated 6 December 2010.

2011 in the amount of \$12,000.00.⁷ The claim was assigned Claim # 9252251. The FRF claim was denied by the GCCF on 22 April 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings at Cross Group as a result of the Deepwater Horizon oil spill. The NPFC deems that Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1318 considers and addresses the earnings claimed in both claims presented to the responsible party, specifically; GCCF Claim #'s 44006 (EAP) and 9252251 (FRF).

NPFC Determination

The claim is denied. 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 Claimant.

This claim is denied because the Claimant failed to prove he suffered a loss due to the Deepwater Horizon oil spill. The Claimant asserted that business at the Cross Group was slowed due to the Deepwater Horizon oil spill, which led to his reduced work hour and eventual layoff. The NPFC contacted Cross Group to verify the Claimant's assertions regarding his reduced work hours and layoff. Cross Group confirmed the Claimant's reduced work hours and layoff in March of 2011.⁹ When asked about the reason for the lack of work, Cross Group indicated that it was hard to say exactly, but moratorium and permitting issues were involved.¹⁰ Consequently, the Claimant failed to prove that his alleged loss was a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, 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: *10/2/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ Report from the GCCF, dated 21 September 2011.

⁸ Denial Letter on Interim Payment/Final Payment Claim, dated 22 April 2011.

⁹ PHONECON between the GCCF and Cross Group on 2 September 2011.

¹⁰ PHONECON between the GCCF and Cross Group on 2 September 2011.