

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 2113

5890/DWHZ
21 September 2011

Mr. Princeton S. Westry



Re: Claim Number: N10036-1372

Dear Mr. Westry:

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 N10036-1372 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

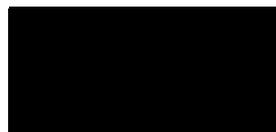
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1372.

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	N10036-1372
Claimant	Mr. Princeton Westry
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$45,000.00

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 8 September 2011, Mr. Princeton Westry (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$42,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant worked as a used car salesman in Mobile, Alabama at the time of the oil spill.² The Claimant alleged that economic effects of the Deepwater Horizon oil spill caused low car sales, which eventually resulted in the Claimant being laid off from his position on 29 October 2010.³

The Claimant seeks \$45,000 in lost earnings due to the loss of his position as a car salesman.⁴ The Claimant's submission does not indicate the particular time period in which he is claiming to have lost \$45,000.00 in earnings strictly from his employment as a car salesman.

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 24 August 2011.

² Optional OSLTF Claim Form, dated 24 August 2011.

³ Optional OSLTF Claim Form, dated 24 August 2011; *See also*, Separation Notice, 29 October 2010.

⁴ Optional OSLTF Claim Form, dated 24 August 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

To support this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 24 August 2011;
- Fax Cover Letter, dated 7 September 2011;
- Copy of the Claimant's Alabama driver's license;
- Notice of separation, showing separation date of 29 October 2010;
- Employee pay history, 1 January 2010 – 19 November 2010;
- 2009 Schedule C (Form 1040);
- Earnings Statement, 29 October 2010;
- 2008 Form 1040;
- 2008 Schedule C-EZ (Form 1040);
- 2008 Schedule SE (Form 1040);
- 2009 Form 1040;
- 2009 Schedule A (Form 1040);
- 2009 Schedule C (Form 1040);
- 2009 Schedule SE (Form 1040);
- 2009 Schedule M (Form 1040A or 1040);
- 2010 Form 1040;
- 2010 Schedule C (Form 1040);

- 2010 Schedule SE (Form 1040);
- 2010 Schedule EIC (Form 1040 or 1040a);
- 2010 Form 8812;
- 2010 Form 4562.

Prior to presentment to the NPFC, the Claimant presented a business claim on behalf of Westry's Painting and Sandblasting, for loss of profits and impairment of earnings capacity to the RP/GCCF. The Claimant's business was assigned Claimant ID 1086326. The business was paid an Emergency Advance Payment (EAP) in the amount of \$42,000.00 on 8 January 2011.⁵ The Claimant then submitted a Full Review Final payment claim (FRF) to the RP/GCCF. The FRF claim was assigned Claim # 9003034 and the Claimant accepted a final payment of \$25,000.00 on 10 January 2011.⁶

The Claimant asserted that this claim contained alleged losses for his business, as well as losses claimed due to the loss of his position as a car salesman.⁷ According to the Claimant, payments made by the GCCF only compensated the Claimant for losses incurred by his business, but not losses incurred due to the loss of his sales position. The Claimant seeks his alleged remaining losses from the NPFC, in the amount of \$45,000.00.⁸

This NPFC determination shall address the Claimant's alleged losses related to the loss of his sales position in Mobile, Alabama, to the extent that this damage amount was included in the Claimant's original submission to the RP/GCCF. Any amount now claimed, which was not previously presented to the RP/GCCF is denied.

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.

This claim is denied because the Claimant (1) has released any rights to further recovery regarding damages allegedly incurred due to the Deepwater Horizon oil spill, (2) has not demonstrated that any losses he might have sustained were caused by effects of the Deepwater Horizon oil spill, and (3) has not provided sufficient evidence that would clearly demonstrate that his alleged losses associated with his position as a salesman were properly presented to the RP/GCCF. The NPFC has only been able to confirm a business claim for the Claimant vice a claim for lost wages outside the Claimant's business.

1. The Claimant has released rights regarding this injury to the RP/GCCF.

The Claimant first submitted a claim to the RP/GCCF for losses sustained by the Claimant's business, Westry's Painting and Sandblasting.⁹ The business accepted a final payment from the GCCF in the amount of \$25,000.00.¹⁰

⁵ Notice of Determination, Emergency Advance Payment, 8 January 2011.

⁶ Notice of Quick Payment Final Claim Determination, 10 January 2011.

⁷ PHONECON: The Claimant and NPFC staff, 16 September 2011.

⁸ Optional OSLTF Claim Form, 24 August 2011.

⁹ Notice of Determination, Emergency Advance Payment, 8 January 2011.

¹⁰ Notice of Quick Payment Final Claim Determination, 10 January 2011.

On behalf of the business, the Claimant executed a Release and Covenant Not to Sue in return for final payment.¹¹ By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding damages resulting from the Deepwater Horizon oil spill.¹²

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

The Notice of Quick Payment Final Determination Form (the Notice) indicates that the Claimant “waived and released any claims that [the Claimant] has or may have in the future against BP or all other potentially responsible parties with regard to the Spill.”¹³ The Claimant has therefore waived his rights to further recovery regarding losses he may have incurred due to the loss of his sales position if he in fact included his lost wages as part of his business claim as confirmed to the NPFC via a phone conversation.¹⁴

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.¹⁵ The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill and provide a complete copy of his claim submission to the RP/GCCF so the NPFC can confirm what costs were presented by the Claimant under his business name.

2. The Claimant has not demonstrated that his alleged losses were caused by the Deepwater Horizon oil spill.

The Claimant alleged that he was laid off from his position due to effects of the Deepwater Horizon oil spill. However, the Claimant did not provide any documentation or other evidence to indicate that his layoff was in fact due to economic effects of the oil spill.

In order to verify the Claimant’s assertion, The NPFC contacted the Claimant’s former place of employment. A human resource manager of the company informed the NPFC that the Claimant was terminated on 29 October 2010, and that his termination was not a result of the Deepwater Horizon oil spill.¹⁶

3. The Claimant has not demonstrated that he has made proper presentment of costs for his alleged losses as a car salesman.

The Claimant asserted in a phone conversation with the NPFC that his business claim which was paid by the RP/GCCF included the alleged losses he is seeking from the NPFC although other than what the Claimant has asserted, the NPFC has not been able to independently confirm the validity of such information therefore the NPFC is denying the alleged lost wages pursuant to 33 CFR 136.103(a) because the Claimant has not demonstrated that he in fact identified these losses in a claim to the RP/GCCF.

¹¹ Notice of Quick Payment Final Claim Determination, 10 January 2011.

¹² Notice of Quick Payment Final Claim Determination, 10 January 2011.

¹³ Notice of Quick Payment Final Claim Determination, 10 January 2011.

¹⁴ PHONECON: The Claimant and NPFC staff, 16 September 2011.

¹⁵ 33 C.F.R. § 136.115.

¹⁶ PHONECON: NPFC Staff and Human Resources, McConnell Automotive Corporation, 16 September 2011; *See also*, Separation notice, marking “discharge,” rather than “layoff,” 29 October 2010.

This claim is denied because the Claimant (1) has waived rights to further recovery regarding loss of profits claims resulting from the Deepwater Horizon oil spill, (2) has failed to meet his burden to demonstrate 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, and (3) has failed to prove that he has properly presented a claim to the RP/GCCF associated with his lost wages as a car salesman pursuant to 33 CFR 136.103(a).

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *9/20/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: