

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 1570 0001 2446 2414

5890/DWHZ
9 April 2012

Mr. Benedikt Stefansson



Re: Claim Number: N10036-1743

Dear Mr. Stefansson:

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 N10036-1743 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 N10036-1743.

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	N10036-1743
Claimant	Mr. Benedikt Stefansson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$39,435,286.00

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 3 April 2012, Mr. Erlingur Thorsteinsson,¹ on behalf of Mr. Benedikt Stefansson (collectively, “the Claimant”) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$39,435,286.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.²

The Claimant alleged that he invented an inverted funnel device that could be used to contain the Deepwater Horizon oil spill.³ He alleged to have presented this invention to BP, who then used the invention to eventually cap the well.⁴ The Claimant alleged that BP failed to compensate him for the use of his invention, and therefore seeks \$39,435,286.00 from the NPFC in loss of profits damages.⁵

It is unclear how the Claimant calculated his alleged damage amount. However, the Claimant states that this amount represents “1% of the total cost of the BP Oil spill Gulf matter.”⁶

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 §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

¹ Identified in an email dated 3 April 2012 as “ex president of Icelandic Inventor Association”

² Optional OSLTF Claim Form, signed on 30 January 2012.

³ Document # 27, “Concerning Oil Spill Solution.”

⁴ Document # 27, “Concerning Oil Spill Solution.”

⁵ Optional OSLTF Claim Form, signed on 30 March 2012.

⁶ Optional OSLTF Claim Form, signed on 30 March 2012; *See also*, Document # 27, “Concerning Oil Spill Solution.”

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, signed on 30 March 2012;
- Email from the Claimant's representative to the NPFC, 3 April 2012;
- Authorization for the Claimant's claim representative, Mr. Erlingur Thorsteinsson;
- Document #27, "Concerning Oil Spill Solution";
- Authorization for the Claimant's inventor representative, 22 December 2010;

The Claimant has not provided evidence to prove that this claim was first presented to the RP/GCCF, prior to its presentment to the NPFC. According to OPA, a claim must be either denied by, or undetermined following 90 days of presentment to the RP, prior to adjudication by the NPFC.⁷

Therefore, this determination shall adjudicate this claim to the extent that it was first presented to the RP/GCCF. Any damages now before the NPFC, which have not first been properly presented to the RP/GCCF, are 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.

In terms of the Deepwater Horizon oil spill, the Oil Spill Liability Trust Fund (the Fund) is available to pay claims for "certain uncompensated removal costs or uncompensated damages resulting from the discharge or substantial threat of discharge of oil"⁸ caused by the spill. In this case, the Claimant alleged

⁷ 33 C.F.R. 136.103(a).

⁸ 33 C.F.R. § 136.1(a)(1).

that BP failed to properly compensate him for the use of his invention. Because the Claimant is alleging that he failed to earn an anticipated profit, this claim is being determined under OPA's loss of profits and impairment of earning capacity damage category.⁹

Failure to prove a financial loss.

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must prove that he incurred an OPA compensable financial loss. This claim is denied because the Claimant has not sustained a financial loss within the meaning of OPA.

According to 33 C.F.R. § 136.233, a compensable "loss" is a reduction in income, demonstrated in part by "the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered."¹⁰ In this case, the Claimant is not alleging that his income was reduced as a result of the oil spill. Rather, the Claimant alleges that he was unable to earn a profit as a result of the oil spill.

Claimant's alleged loss of compensation is not an OPA compensable damage. Further, even if Claimant's alleged damages were OPA-compensable, he has not provided detailed information on: the associated costs or expenses related to his design, a computation or explanation of the earnings that he should have received, or any other financial documentation upon which he has based his sum certain. Furthermore, the Claimant has not provided documentation of a valid contract or evidence of use of his design with the responsible party, or any other interested parties involved with the Deepwater Horizon oil spill.

Accordingly, this claim is denied. As an initial matter, the claim is denied because it does not allege an OPA compensable loss; and second, because even if the claim was an OPA compensable loss, the Claimant's documentation proves neither a financial loss nor that any alleged loss was the result of the Deepwater Horizon oil spill.

Claim Supervisor:  *NPTC Claims Adjudication Division*

Date of Supervisor's Review: *4/6/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ 33 C.F.R § 136.231.

¹⁰ 33 C.F.R. § 136.233(b-c).