

U.S. Department of
Homeland Security

**United States
Coast Guard**



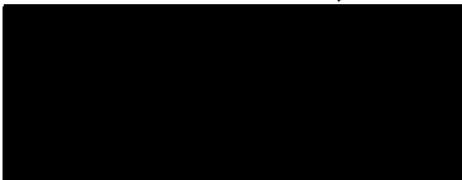
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113
5890
16 July 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 7011 1570 0001 4803 7902

Rob's Trailer Hitch Center, Inc.



RE: Claim Number: N10036-1765

Dear Mr. Reynolds:

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 N10036-1765 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

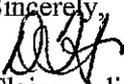
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1765.

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: Rob's Trailer Hitch Center, Inc.
Attn: Dennis Whitworth



CERTIFIED MAIL
Number: 7011 1570 0001 4803 7919

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1765
Claimant	: Rob's Trailer Hitch Center, Inc.
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$1,502,153.61

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.

On 8 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 12 April 2012, Robert A. Reynolds, Esquire, on behalf of Rob's Trailer Hitch Center, Inc. (jointly referred to as 'the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$1,502,153.61 for loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.¹ The Claimant is a business that specializes in the installation of trailer hitches and repairing of boats. The Claimant is located in Pensacola, Florida, and asserts that there was a decline in boating subsequent to the oil spill, which resulted in a decline in business, and necessitating its closing one location and laying off employees.² The Claimant asserts that it lost income in 2010 and 2011, as well as additional losses due to an "industry effect multiplier".³

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.

¹ Greenspoon-Marder letter to the National Pollution Funds Center signed 4 April 2012 and received 12 April 2012.

² Claimant's GCCF Full Review/Final Payment Claim Form dated 21 September 2011.

³ Lost Earnings/Income Worksheet for Dennis Whitworth/Rob's Trailer Hitch Center dated 13 October 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.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Greenspoon-Marder letter to the NPFC dated 4 April 2012 and received 12 April 2012.
- NPFC Authorization Agreement executed 16 March 2012 by Dennis Whitworth.
- GCCF Full Review Final Payment Claim Form dated 21 September 2011.
- Deepwater Horizon Lost Earnings/Income Worksheet dated 13 October 2011.
- Dennis Whitworth's Florida Driver License.
- Escambia County, FL, Business Tax Receipt for Rob's Trailer Hitch Center – Retail, 2011 – 2012, paid 8/16/2011.
- Escambia County, FL, Business Tax Receipt for Rob's Trailer Hitch Center – Misc. Manufacturing, 2011 – 2012, paid 8/16/2011.
- State of Florida Certificate of Incorporation for Rob's Trailer Hitch Center, Inc. and current payment of fees, dated 13 March 2011.
- Profit & Loss Statement, January through December 2008.
- Profit & Loss Statement, January through December 2009.
- Profit & Loss Statement, January through December 2010.

- Profit & Loss Statement, January through September 2011.
- GCCF Determination Letter on Final Payment Claim dated 29 February 2012.
- GCCF letter 12 March 2012, Re: Important Deadline to Elect Quick Payment Option: May 7, 2012.
- GCCF letter 15 March 2012, Re: Pending Final Payment Offer with the GCCF.
- Claimant's Client Authorization Form authorizing Greenspoon-Marder to represent the claimant to the GCCF dated 21 September 2011.

The Claimant indicates having submitted a Full Review Final Payment (FRF) Claim to the GCCF on 21 September 2011.⁴ The Claimant also indicates that the responsible party has denied its claim.⁵

The NPFC reviewed the FRF Claim presented to the GCCF and confirmed that the claim amount of \$1,502,153.61 had been presented to the GCCF.⁶ The GCCF assigned Claimant Identification Number 1073404 to the Claimant and Claim Number 9548230 to the claim.⁷ The NPFC notes that the FRF Claim Form indicates a previous claim had been submitted to the GCCF. The NPFC also notes that, according to the GCCF determination on the FRF Claim, an emergency advance payment of \$12,000.00 had been made to the Claimant. Further, the GCCF determination made an offer on the FRF Claim which, based on information at the NPFC to date, the Claimant has not accepted.⁸

Based upon the information provided by the Claimant, this claim can be adjudicated in the full amount of damages presented to the NPFC in the amount of \$1,502,153.61.

Additionally, the NPFC notes that evidence presented in this claim submission indicates that the Claimant is a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement).

NPFC Determination

As an initial matter, it appears that the Claimant is a member of the economic damages class of the BP settlement. This claim is therefore considered to have been settled, and the Claimant is ineligible to recover funds from the OSLTF.

According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the Claimant no longer has rights to the claim and therefore cannot subrogate rights to the NPFC.

While this claim may not have been quantified or paid, it is considered to have been settled by virtue of the Court's preliminary approval of the settlement agreement. If the Claimant disagrees that it is a member of the economic damages class of the BP Settlement, then he should submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in its request for reconsideration of this claim.

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, additional financial documentation to support that the Claimant sustained lost profits & earnings, as well as other documentation supporting and

⁴ Greenspoon-Marder letter to the National Pollution Funds Center signed 4 April 2012/received 12 April 2012 and Claimant's GCCF Full Review/Final Payment Claim Form dated 21 September 2011.

⁵ Greenspoon-Marder letter to the National Pollution Funds Center signed 4 April 2012 and received 12 April 2012.

⁶ Claimant's GCCF Full Review Final Payment Claim Form dated 21 September 2011.

⁷ GCCF Determination Letter on Final Payment Claim, dated 29 February 2012

⁸ GCCF Determination Letter on Final Payment Claim, dated 29 February 2012.

explaining how the Deepwater Horizon oil spill caused the Claimant's losses. The Claimant was given 14 days to respond to the letter, dated 15 May 2012.⁹ To date, no response has been received.

The NPFC has considered all documentation and information presented by the Claimant.

This claim is also denied because the Claimant failed to prove the amount of the alleged loss and to prove that the alleged loss was due to the Deepwater Horizon oil spill.

Failure to Prove Loss of Earnings

The Claimant asserts a loss of income in 2010 and 2011 due to the Deepwater Horizon oil spill.¹⁰ The Claimant asserts a loss of income/profits in 2010 and 2011 when, after the oil spill, boating declined and the support business of selling trailer hitches and repair work for boats declined.¹¹ The Claimant provided information showing, amount other things, Florida corporate registration fees had been paid through 31 December 2011;¹² county business tax registration fees for both retail and misc. manufacturing had been paid for 2011-2012;¹³ annual profit & loss statements for 2008, 2009, 2010 and 2011;¹⁴ the Claimant's FRF Claim with loss worksheet,¹⁵ and the GCCF's deficiency letter on the FRF Claim.¹⁶

The Claimant has not provided sufficient financial documentation for which its alleged loss can reasonably be measured; therefore, the alleged losses are not proven. If the Claimant submits a request for reconsideration to the NPFC, additional financial evidence should be provided to prove the loss. Additional evidence should include at least the Claimant's complete 2008, 2009, 2010 and 2011 Federal Tax Returns; evidence of business taxes paid in 2009, 2010 and 2011; a complete copy of the 2009 annual P&L Statement; monthly P&L Statements for 2008, 2009, 2010 and 2011; information on any cancellations of orders or services that were made due to the oil spill; a complete copy of correspondence with the GCCF including other claims and comment letters; and a full description of business locations and staffing since 2008, as well as documentation of losses & loss dates that fall under the "industry effect multiplier".

Failure to Prove Causation

The Claimant asserts that a loss of income occurred due to the oil spill.¹⁷ The NPFC will not presume causation or lack thereof based upon business type or location. Causation is an element of every claim that must be proven the Claimant. Statements without supporting documentation are not satisfactory to prove that the alleged loss was caused by the oil spill.

⁹ NPFC letter dated 15 May 2012.

¹⁰ Greenspoon-Marder, P.A. letter to the NPFC received 12 April 2012 and Claimant's GCCF Full Review Final Payment Claim Form dated 21 September 2011.

¹¹ Claimant's GCCF Full Review/Final Payment Claim Form dated 21 September 2011 and Lost Earnings/Income Worksheet for Dennis Whitworth/Rob's Trailer Hitch Center dated 13 October 2011.

¹² State of Florida Certificate of Incorporation for Rob's Trailer Hitch Center, Inc. and current payment of fees, dated 13 March 2011.

¹³ Escambia County, FL, Business Tax Receipt for Rob's Trailer Hitch Center – *Retail*, 2011 – 2012, paid 8/16/2011 and Escambia County, FL, Business Tax Receipt for Rob's Trailer Hitch Center – *Misc. Manufacturing*, 2011 – 2012, paid 8/16/2011.

¹⁴ Profit & Loss Statement, January through December 2008; Profit & Loss Statement, January through December 2009; Profit & Loss Statement, January through December 2010; and Profit & Loss Statement, January through December 2010.

¹⁵ GCCF Full Review Final Payment Claim Form dated 21 September 2011 and Deepwater Horizon Lost Earnings/Income Worksheet dated 13 October 2011.

¹⁶ GCCF Determination Letter on Final Payment Claim dated 29 February 2012.

¹⁷ Greenspoon-Marder, P.A. letter to the NPFC received 5 April 2012 and Claimant's GCCF Full Review Final Payment Claim Form dated 21 November 2011.

The Claimant has not provided documentation supporting that its claimed losses were due to the oil spill; that it had cancellations because of the oil spill; any historical information on local boating statistics and the local vs. tourist aspects of its clientele; or that the alleged losses were not caused by the economy or other factors, rather than the oil spill.

The Claimant has not proven that the Deepwater Horizon oil spill was the cause of its alleged losses. If the Claimant submits a request for reconsideration to the NPFC, evidence linking its losses to the Deepwater Horizon oil spill, not other factors, must be submitted in order for the claim to be successful.

This claim is denied for the following reasons: (1) the claim has been settled by virtue of belonging to the economic damages class associated with the CSSP; (2) the Claimant has failed to demonstrate its alleged loss through financial documentation; and (3) the Claimant has failed to demonstrate that its 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 (i.e., the Deepwater Horizon oil spill).

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/16/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments: