

U.S. Department of
Homeland Security

**United States
Coast Guard**



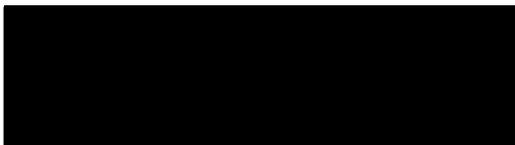
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 9920

5890/DWHZ
16 July 2012

Mark Hawkins



Re: Claim Number: N10036-1772

Dear Mr. Barksdale:

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 N10036-1772 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

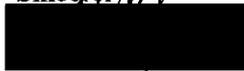
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-1772.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,



Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

cc: Mark W. Hawkins



By Certified Mail:
No: 7011 1570 0001 4803 9937

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1772
Claimant	Mark W. Hawkins
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$436,579.00

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.

On 08 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 the 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 25 April 2012, Arthur S. Barksdale IV, Esq., on behalf of Mark Hawkins (collectively the Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$436,579.00 in loss of profits damages allegedly resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was the owner and general manager of a club in Fort Walton Beach, Florida that regularly hosted musical acts.² The Claimant alleged that a decrease in tourism due to the oil spill, as well as the free concerts put on by BP in the nearby area, caused a steep decline in business.³

In order to calculate his losses, the Claimant subtracted 2010 and 2011 profits from 2008. He then determined average monthly losses and multiplied it by an 'industry effect multiplier' and added the resulting number to his losses reaching the requested sum certain of \$436,579.00.⁴

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

¹ Law Firm Claim Cover Letter, signed 20 April 2012.

² Letter from the Claimant Describing Losses, signed 8 February 2011.

³ Letter from the Claimant Describing signed Losses, 8 February 2011.

⁴ Lost Earnings/Income Worksheet, 18 January 2012.

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 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 submitted the following documentation:

- Law Firm Claim Cover Letter, signed 20 April 2012;
- NPFC Authorization Form, signed 4 April 2012;
- Copy of GCCF Full Review Final Claim, signed 2 November 2011;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 6 April 2012;
- Lost Earnings/Income Worksheet, dated 18 January 2012;
- Photocopy of Drivers License, Armed Forces ID Card, and Company Business Card;
- Copy of Social Security Card;

- Letter of Support from Claimant's Employer, undated;
- Certificate of Exemption from Florida Workers' Compensation Law;
- Fire Department Notice to Comply With NFPA 13, signed 28 January 2009;
- Legal Memo from Toni L Craig Regarding Compliance With Fire Code, dated 11 May 2009;
- B&C Fire Safety Inc, Fire Suppression System Proposal, signed 9 June 2009;
- 2008 W-2 Wage and Tax Statement;
- 2009 W-2 Wage and Tax Statement;
- 2010 W-2 Wage and Tax Statement;
- Payroll Information for Mark Hawkins;
- Letter from Accountant, signed 30 August 2011;
- Second Letter from Accountant, signed 3 October 2011;
- Copy of GCCF Signature Page, signed 2 November 2011;
- Email from Law Firm to NPFC with Attached Files, dated 24 April 2012.

On 2 November 2011, the Claimant presented Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and impairment of earning capacity damages in the amount of \$436,578.95.⁵ The Claimant was assigned Claimant ID 3127018 and the FRF claim was assigned claim # 3127018.⁶ The RP/GCCF denied payment on this claim.

On 25 April 2012, the Claimant submitted this claim to the NPFC, seeking \$436,579.00 in loss of profits and impairment of earning capacity damages.⁷ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.⁸ Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$436,579.00.

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

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.

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.

⁵ GCCF Full Review Final Payment Claim Form for Claimant Mark Hawkins.

⁶ GCCF Denial Letter on Interim Payment/Final Payment Claim, 6 April 2012.

⁷ Law Firm Claim Cover Letter, signed 20 April 2012.

⁸ 33 C.F.R. § 136.103(a).

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 he is a member of the economic damages class of the BP Settlement, he should then submit evidence to indicate that he has either opted out or is excluded from the BP Settlement in his request for reconsideration of this claim.

Furthermore, this claim is denied under OPA's loss of profits damage category, as the Claimant has failed to prove that he has sustained a financial loss as a result of the Deepwater Horizon oil spill.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill. This claim is denied because the Claimant has not provided sufficient documentation to prove either requirement.

In a letter dated 1 May 2012, the NPFC requested that the Claimant provide additional documentation to meet the requirements of the law listed above, including (1) completed copies of income tax returns, (2) financial documentation from the Claimant's place of employment, and (3) copies of claims and correspondence with the GCCF.⁹

The NPFC requested that the Claimant respond to the additional information request within 14 days of the date of the letter. As of the date of this determination, the Claimant has failed to respond. Information included in the Claimant's original submission is insufficient to prove that the Claimant's place of employment actually sustained losses attributable to the Deepwater Horizon oil spill. The bulk of Claimant's provided documentation and noted expenditures occur before 2010 and are unrelated to Deepwater Horizon. Without documentation showing the impact of the Deepwater Horizon oil spill on the Claimant's business, it is impossible for the NPFC to causally link alleged losses to the oil spill.

This claim is therefore denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$436,579.00, (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, and (3) that the Claimant's claim has not been settled by virtue of belonging to the economic damages class associated with the CSSP.

Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ NPFC Request for Additional Information, 24 May 2012.