

U.S. Department of
Homeland Security

United States
Coast Guard

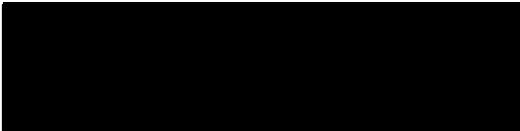


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4968

5890/DWHZ
15 May 2012

Mr. Daniel Robinson


Re: Claim Number: NI0036-1779

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 NI0036-1779 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 NI0036-1779.

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
CC: Mr. Daniel Robinson


CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7011 1570 0001 2446 3879

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1779
Claimant	Daniel Robinson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$481,205.70

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 22 February 2012, Arthur S. Barksdale IV, Esq., on behalf of Mr. Daniel Robinson, (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$481,205.70 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant is the owner of an automotive repair business in Gulf Breeze, Florida, which the Claimant states, relies heavily on tourist traffic. In a letter describing the nature of his losses, the Claimant specifically stated,

[w]e are within a mile of the entrance to Pensacola Beach. We depend on tourist traffic during the summer months. In 2010, we had no tourist [traffic] during the summer, which directly affected our car count, which affected our gross for this period of time.²

However, loss calculations included in this claim submission indicate that the Claimant sustained no losses in 2010. In 2011, the Claimant alleged to have sustained losses of \$154,349.00, and calculated an average monthly loss of \$9,079.35.³ The Claimant multiplied his alleged monthly loss of by 36, for a three year loss of \$326,856.71. The Claimant added this amount to his alleged actual losses to come to a total claimed loss amount of \$481,205.71.⁴

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 Section 2702(b) of OPA.

¹ Claim Cover Letter, 21 February 2012.

² Letter from the Claimant, explaining losses.

³ Lost Income/Earning Worksheet.

⁴ Lost Income/Earning Worksheet.

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 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:

- Claim cover letter, 21 February 2012;
- NPFC Authorization Agreement, signed on 2 March 2012;
- GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim, 13 February 2012;
- GCCF Full Review Final Payment Claim Form;
- Lost Earnings/Income Worksheet;
- Copy of the Claimant's driver's license;
- Letter from the Claimant describing losses, undated;

- 2008 Form 1120S, showing gross sales of \$736,899.00 and business income of \$67,058.00;
- 2009 Form 1120S, showing gross sales of \$691,447.00 and business income of \$44,706.00;
- 2010 Form 1120S, showing gross sales of \$831,821.00 and business income of \$50,629.00;
- Robinson Automotive, Inc. Comparative Statement of Revenues and Expenses, Income Tax Basis;
- Emails between the Claimant's legal representative and the NPFC, regarding authority to represent, 22 February 2012.

Prior to presentment of this claim to the NPFC, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking \$481,205.71 in loss of profits and impairment of earning capacity damages.⁵ The Claimant was assigned Claimant ID 3539242 and the FRF claim was assigned claim # 9525836.⁶ The RP/GCCF denied payment on this claim in a Deficiency Denial Letter dated 9 February 2012.⁷

On 22 February 2012, the Claimant presented this claim to the NPFC, seeking loss of profits and impairment of earning capacity damages totaling \$481,205.70.⁸ Because the Claimant has presented this same claim to the RP/GCCF, and because the RP/GCCF denied payment on the claim, the NPFC may fully adjudicate this claim for loss of profits damages in the amount of \$481,205.70.⁹

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 order to prove a claim for loss of profits and impairment of earning capacity 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.

As an initial matter, prospective future damages are not compensable under OPA's loss of profits damage category, which limits potentially available compensation to "the actual net reduction or loss of earnings or profits *suffered*" [emphasis added].¹⁰ Therefore, payment is denied on \$326,856.71 of this claim, which constitutes future losses not incurred by the Claimant.¹¹

The remaining \$154,349.00 of this claim is also denied, as the Claimant has not provided evidence to prove that losses allegedly sustained by the Claimant in 2011 were caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

⁵ GCCF Full Review Final Payment Claim Form, at pg. 7.

⁶ GCCF Denial Letter on Interim Payment/Final Payment Claim, 19 March 2012.

⁷ GCCF Denial Letter on Interim Payment/Final Payment Claim, 19 March 2012.

⁸ Claim Cover Letter, 21 February 2012.

⁹ 33 C.F.R. § 136.103(a).

¹⁰ 33 C.F.R. § 136.235.

¹¹ Lost Earning/Income Worksheet.

The Claimant alleged that “[i]n 2010, we had no tourist [traffic] during the summer, which directly affected our car count, which affected our gross for this period of time.”¹² However, financial documentation provided by the Claimant indicates that the Claimant recorded higher earnings in 2010 than in either 2008 or 2009. In fact, from 2009 to 2010, the Claimant’s gross revenue increased from \$691,447.00 to \$831,821.00.¹³

In spite of the Claimant’s assertions that the oil spill affected the Claimant’s earnings in 2010, a Lost Earning/Income Worksheet prepared by the Claimant, indicates that the Claimant did not experience losses until 2011, when the Claimant’s gross revenue dropped to \$351,614.00.¹⁴

Because tourism in and around Pensacola, Florida, was much improved in 2011 over 2010, it is unclear how the Claimant’s losses might have been caused by the Deepwater Horizon oil spill as opposed to other potential economic factors. According to a press release issued by the Pensacola Bay Area Chamber of Commerce, in 2011, tourism in Escambia County improved over 2010 for every month of the year, even setting lodging and revenue records in both June and July.¹⁵ Based on this data, which shows that tourism increased significantly during the same year that the Claimant began experiencing losses, it does not appear that increases or decreases in tourist traffic correlated with fluctuations in the Claimant’s revenue.

This claim is therefore denied because (1) the Claimant failed to meet his burden to demonstrate that he sustained an actual loss in the amount of \$481,205.70, (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) the Claimant is seeking \$326,856.71 in future losses which are not compensable under OPA.


Claim Supervisor: *NPPC Claims Adjudication Division*

Date of Supervisor’s Review: *5/15/12*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

¹² Letter from the Claimant, describing losses, undated.

¹³ Lost Earning/Income Worksheet.

¹⁴ Lost Earning/Income Worksheet.

¹⁵ Bay Area Chamber of Commerce, Press Release, *Pensacola Bay Area Sets Tourism Records*, 2 September 2011, available at, <http://www.pensacolachamber.com/TheChamber/PR-chamber/2011/pr-chamber-tourism-records.html>. Accessed on 11 May 2012.