

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 2446 2582

5890/DWHZ  
15 May 2012

Mr. Michael A Smith  


Re: Claim Number: N10036-1790

Dear Mr. Smith:

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 N10036-1790 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 N10036-1790.

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	N10036-1790
Claimant	Mr. Michael Smith
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$9,831.49

### ***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 May 2012, Mr. Michael Smith (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$9,831.49 in loss of profits damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant is a real estate agent in Houma, Louisiana, who alleged that general economic effects of the oil spill caused a drop in property sales in 2010, resulting in the Claimant sustaining income losses of \$9,831.49.<sup>2</sup> Specifically, the Claimant stated that following the Deepwater Horizon oil spill, the "loss of jobs and fear of lost jobs" caused the housing market in Houma to slow.<sup>3</sup>

In order to calculate his losses, the Claimant took the average of his income from 2007 to 2009, and subtracted his actual 2010 income, to come to a total claimed loss amount of \$9,381.49.<sup>4</sup> The Claimant alleged that this difference in income is attributable to effects of the Deepwater Horizon oil spill.

### ***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:

<sup>1</sup> Optional OSLTF Claim Form, signed on 25 April 2012.

<sup>2</sup> Optional OSLTF Claim Form, signed on 25 April 2012.

<sup>3</sup> Optional OSLTF Claim Form, signed on 25 April 2012.

<sup>4</sup> GCCF Full Review Final Payment Claim Form, at page 7.

- (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:

- Optional OSLTF Claim Form, signed on 25 April 2012;
- Copy of the Claimant's driver's license;
- GCCF Full Review Final Payment Claim Form, Claimant ID 1618564;
- 2007 Form 1099-MISC, showing nonemployee compensation of \$56,488.15;
- 2008 Form 1099-MISC, showing nonemployee compensation of \$28,060.75;
- 2009 Form 1099-MISC, showing nonemployee compensation of \$58,690.65;
- 2010 Form 1099-MISC, showing nonemployee compensation of \$37,915.03;
- 2011 Form 1099-MISC, showing nonemployee compensation of \$54,073.20;
- 2007 Form 1040;
- 2008 Form 1040;
- 2009 Form 1040;
- 2010 Form 1040;
- 2011 Form 1040;

Prior to presentment of this claim to the NPFC, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking \$9,831.49 in lost profits and impairment of earning

capacity damages.<sup>5</sup> The Claimant was assigned Claimant ID 1618564 and the FRF claim was assigned claim # 9353422.<sup>6</sup> The RP/GCCF denied payment on this claim.<sup>7</sup>

On 3 May 2012, the Claimant presented this claim to the NPFC, seeking \$9,831.49 in loss of profits and impairment of earning capacity damages.<sup>8</sup> Because this claim was first presented to and denied by the RP/GCCF, the NPFC may properly adjudicate this claim.<sup>9</sup>

### **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 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.

The Claimant alleged that the housing market in Houma, Louisiana, slowed as a result of the Deepwater Horizon oil spill, due specifically to “fear of job losses.”<sup>10</sup> However, the Claimant has failed to provide any evidence to indicate that any particular home sales were either lost or cancelled as a result of the discharge of oil caused by the Deepwater Horizon oil spill. Furthermore, the Claimant has not provided evidence indicating that the oil spill had any effect on the housing market in Houma, Louisiana.

Should the Claimant decide to request reconsideration, the Claimant must provide evidence of a cancelled contract demonstrating that he specifically had a loss that resulted from the oil spill and he will need to provide documented evidence that the market decline was caused by the Deepwater Horizon oil spill as opposed to any other possible economic factor.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$9,831.49, and (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.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

<sup>5</sup> GCCF Full Review Final Payment Claim, page 7.

<sup>6</sup> GCCF Claimant Status, accessed on 14 May 2012.

<sup>7</sup> GCCF Claimant Status, accessed on 14 May 2012.

<sup>8</sup> Optional OSLTF Claim Form, signed on 25 April 2012.

<sup>9</sup> 33 C.F.R. § 136.103(a).

<sup>10</sup> GCCF Full Review Final Payment Claim Form, at page 7.